

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING

Monday, March 6, 2023

4:00 PM – Special Meeting/Closed Session

5:30 PM – Regular Meeting

David B. Roberts Council Chambers

City Hall

2729 Prospect Park Drive, Rancho Cordova

Join the Meeting Via Zoom Link:

<https://cityofranhocordova.zoom.us/j/82822154666?pwd=T3hwbWNCOWtBMzFZS2h6ZTNqREVBZz09>

Join the Meeting via the Zoom Phone Number

Zoom Phone Number: +1 669 900 6833, +1 253 215 8782, or +1 309 205 3325

Webinar ID: 828 2215 4666

Password: 578969

Instructions to Make Public Comment

Submitting Public Comment via Email

Members of the public who wish to provide public comment via email will need to submit written comments to CityClerk@cityofranhocordova.org no later than 2:00 p.m. on Monday, March 6, 2023. Written comments received no later than 2:00 p.m. will be distributed to the Council, filed in the record, and will not be read aloud. All comments submitted later than 2:00 p.m. will be distributed to the Council.

Listening to a Zoom Meeting by Zoom Video Conference

To make a public comment using the Zoom platform, please use the “raise hand” feature at the bottom center of the screen. Please make sure to enable audio controls once access has been given by the City Clerk’s office to speak. Please wait to be called upon by the City Clerk.

Listening to a Zoom Meeting by Phone Only

You can join a Zoom meeting via teleconferencing/audio conferencing using a cell phone or traditional landline phone. To request to make a public comment by phone press *9 to raise your hand. Please wait to be called upon by the City Clerk.

All public comments will be limited to three-minutes.

If you have questions related to the City Council Meeting or the use of Zoom, please contact the City Clerk's Office at (916) 851-8720 before Monday, March 6, 2023, at 2:00 p.m.

AGENDA

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Council Members Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge.

2. PUBLIC COMMENT

At a special meeting, citizens wishing to address the Council for any matter on the agenda may do so at the time the matter is discussed. Under the provisions of the California Government Code, the City Council is prohibited from discussing or taking action on any item not on the agenda.

3. ADJOURN TO CLOSED SESSION

Mayor Budge will adjourn the meeting to closed session.

4. CLOSED SESSION - CALL TO ORDER/ROLL CALL

Council Members Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

5. CLOSED SESSION

Council will meet in closed session to discuss the following item:

- 5.1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2) (One Case, relating to Notice and Alleged Default Under Development Agreement and 60-Day Period to Cure; Logisticcenter Project at Corner of N. Mather Blvd. and Bear Hollow Drive from Arthur Coon, January 25, 2023).

6. OPEN SESSION - REPORT FROM CLOSED SESSION

The City Attorney will report on action taken in closed session.

7. ADJOURN TO REGULAR MEETING

Mayor Budge will adjourn to regular meeting.

8. REGULAR MEETING - CALL TO ORDER/ROLL CALL

Council Members Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

9. METRO CABLE TV TELEVISION ANNOUNCEMENT

The Clerk will announce the meetings video recording and playback schedules.

10. PLEDGE OF ALLEGIANCE

The Mayor will call on someone in attendance to lead the Pledge.

11. INVOCATION

Jennifer Laret with The Church of Jesus Christ of Latter-day Saints will give the invocation.

12. PRESENTATIONS

- 12.1. Presentation of Proclamation in Recognition of Women's History Month.

13. PUBLIC COMMENT

Citizens wishing to address the Council for any matter not on the agenda may do so at this time via teleconference or by completing and submitting a Speaker Card to the City Clerk.

If you want to make a public comment via teleconference, please use the "raise hand" feature at the bottom center of the screen. If you are participating by telephone and you want to make a public comment, please press *9 to raise your hand. For those participating by Zoom or telephone, please wait to be called upon by the City Clerk.

For items on the agenda, speakers will be called by the Mayor at the point on the agenda when the item will be heard. Speakers are encouraged to keep comments to three minutes or less and to state name and community of residence.

Under the provisions of the California Government Code, the City Council is prohibited from discussing or taking immediate action on any item not on the agenda unless it can be demonstrated to be of an emergency nature or the need to take immediate action arose after the posting of the agenda.

14. COUNCIL REPORTS

15. CITY MANAGER'S REPORT

16. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

- 16.1. **Subject:** Meeting Minutes from the Regular City Council Meeting of February 21, 2023 and the Special Meeting of February 28, 2023.

Recommendation: Adopt the Minutes.

- 16.2. **Subject:** A Resolution Authorizing the City Manager to Execute Construction Contract Amendment No. 2022-182-1 with B&M Builders, Inc. to Increase the Contract Amount from \$268,685.00 to an Amount not to Exceed \$492,240.71 for the Construction of the Kilgore and International Drainage Repair Project.

Recommendation: Adopt the Resolution.

- 16.3. **Subject:** A Resolution Authorizing the City Manager to Award Construction Contract No. 2023-31 in an Amount not to Exceed \$1,994,006.00 with Central Valley Engineering for the White Rock Road - Sunrise Boulevard to Fitzgerald Road Project.

Recommendation: Adopt the Resolution.

- 16.4. **Subject:** A Resolution Authorizing the City Manager to Execute Contract Amendment No. 2022-116-02 with California Inn and Suites to Increase the Contract Amount from \$100,000 to an Amount not to Exceed \$150,000 and to Extend the Contract Term from June 30, 2023, to June 30, 2024, for Housing Services.

Recommendation: Adopt the Resolution.

17. CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE

18. PUBLIC HEARING ITEMS

- 18.1. **Subject:** Logisticenter at Rancho Cordova Major Design Review (CEQA Exempt Pursuant to Section 15183) - Project No. PLND-1021-0015.

Recommendation: There is no staff recommendation at this time.

Staff will be seeking additional direction from Council for this project. Staff requests that Council receive additional testimony, potentially close the public hearing, ask any questions, deliberate and provide staff sufficiently detailed direction to prepare documents for final action at the March 20, 2023, Council Meeting based upon Council direction.

19. REGULAR CALENDAR ITEMS

None.

20. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

21. ADJOURNMENT

ADDITIONAL INFORMATION

Special Meetings listed below are subject to change/cancellation without further notice.

Unless the Council adopts a motion to extend the meeting, any item that is not initiated before 11:00 p.m. will be continued to the next day at 5:30 p.m. or scheduled on the next regular meeting agenda of the Council.

Public documents related to items on the open session portion of this agenda, which are distributed to the City Council less than 72 hours prior to the meeting, shall be available for public inspection at the time the documents are distributed to the Council. Documents are available for inspection at the City Clerk's office located in Rancho Cordova City Hall.

The agenda items are accessible on the City's website at www.cityofranchocordova.org on Thursdays or Fridays prior to the Regular City Council Meeting.

UPCOMING MEETINGS

March 20, 2023	5:30 PM Regular Meeting
April 3, 2023	4:00 PM Special Meeting/Regular Meeting
April 11, 2023	5:30 PM Special Meeting/Work Session
April 17, 2023	5:30 PM Regular Meeting

May 1, 2023	4:00 PM Special Meeting/Regular Meeting
May 15, 2023	5:30 PM Regular Meeting
May 23, 2023	5:30 PM Special Meeting/Work Session
June 5, 2023	4:00 PM Special Meeting/Regular meeting

If you have any technical questions related to the agenda items, please contact City Hall at (916) 851-8700.

The Rancho Cordova City Council meeting will be videotaped in its entirety and will be cablecast without interruption on Metro Cable 14, the Government Affairs Channel on the Comcast, Consolidated Communications and AT&T U-Verse Systems. Closed Captioning will be available on the playback cablecast. A DVD copy is available from the City Clerk's Department and a webcast of this meeting will be available for viewing via video streaming from the City's website within 48 hours of adjournment of this meeting.

In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation, including auxiliary aids or services, to participate in this meeting, please contact the City Clerk's Office at (916) 851-8720 at least 48 hours prior to the meeting.

CERTIFICATION OF POSTING OF AGENDA

I, Stacy Leitner, City Clerk for the City of Rancho Cordova, declare that the foregoing agenda for the March 6, 2023 Regular Meeting of the Rancho Cordova City Council was posted and available for review on March 2, 2023 at City Hall of the City of Rancho Cordova, 2729 Prospect Park Drive, Rancho Cordova, California, 95670. The agenda is also available on the city website at www.cityofranhocordova.org.

Signed March 2, 2023 at Rancho Cordova, California.



Stacy Leitner, CMC
City Clerk

ITEM 16.1

CITY OF RANCHO CORDOVA



CITY COUNCIL MEETING

Tuesday, February 21, 2023

5:30 PM – Regular Meeting

David B. Roberts Council Chambers

City Hall

2729 Prospect Park Drive, Rancho Cordova

Pursuant to California Assembly Bill 361 amending the Ralph M. Brown Act (Govt. Code 54950-54963), the City has declared a state of emergency relating to COVID-19 and imposed measures to promote social distancing.

DRAFT MINUTES

1. REGULAR MEETING - CALL TO ORDER/ROLL CALL

Mayor Budge called the Regular meeting to order in the David B. Roberts Council Chambers at 5:40 p.m.

Council Members Present: Garrett Gatewood, Siri Pulipati (arrived at 6:07 p.m.), David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: None

Staff Members Present: Adam Lindgren, Stacy Leitner, Persephonie Riley. and Micah Runner

2. METRO CABLE TV TELEVISION ANNOUNCEMENT

The City Clerk read the meetings recordings and playback schedule.

3. PLEDGE OF ALLEGIANCE

Chief Dan M. Haverty led the pledge.

4. INVOCATION

Julie Steinbach of the United Methodist Church of Rancho Cordova gave the invocation.

5. PRESENTATIONS

- 5.1. New Employee Introductions: Katrina Colvig, Administrative Assistant I by Karin Hayden,

ITEM 16.1

Rancho Cordova City Council - MINUTES
Meeting of Tuesday, February 21, 2023

Administrative Assistant II and Haley Arata, Deputy City Clerk by Stacy Leitner, City Clerk.

6. PUBLIC COMMENT

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. Dan M. Haverty
2. Frank Hall
3. Fayzah Mughal
4. James Garcia
5. Helen Whelan-Bashaw
6. Cathy Birch
7. Brenda Gustin
8. Fayzah Mughal

Mayor Budge closed the public comment period.

7. COUNCIL REPORTS

Council reported on events since the last meeting.

8. CITY MANAGER'S REPORT

City Manager Micah Runner gave his report.

8.1. Update on Assembly Bill 2449 Implementation.

The City Attorney and the City Clerk gave an update on Assembly Bill 2449 Implementation.

9. CONSENT CALENDAR ITEMS - ROLL CALL VOTE

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. Angel Ball

Mayor Budge closed the public comment period.

ACTION: Motion to Approve items 9.1 through 9.10 including the correction to item 9.2 by Sander second by Gatewood;
Motion passed with a 5:0 vote.

9.1. **Subject:** Meeting Minutes from the Regular City Council Meeting of February 6, 2023.

Recommendation: Adopt the Minutes.

9.2. **Subject:** A Resolution Authorizing an Application to and Participation in the Prohousing Designation Program.

Recommendation: Adopt the Resolution.

9.3. **Subject:** A Resolution Authorizing Application for the Prohousing Incentive Pilot Program.

Recommendation: Adopt the Resolution.

9.4. **Subject:** A Resolution of the City Council of the City of Rancho Cordova Approving the

ITEM 16.1

Rancho Cordova City Council - MINUTES
Meeting of Tuesday, February 21, 2023

Final Map of Rio Del Oro Lot 66, Subdivision No. FM-2019-004-06 and Authorizing the City Manager to Execute Subdivision Improvement Agreement Contract No. 2023-04 With Alta Vista, LLC.

Recommendation: Adopt the Resolution.

- 9.5. **Subject:** A Resolution Authorizing the City Manager to Approve a Five-Year Contract for Janitorial Services and Maintenance for all Buildings Operated by the City with the Easter Seals Superior California for an Amount not to Exceed \$1,275,000.

Recommendation: Adopt the Resolution.

- 9.6. **Subject:** A Resolution Authorizing the City Manager to Execute Construction Contract Amendment 2022-01-02 with FBD Vanguard Construction to Increase the Contract Amount from \$884,964.56 to an Amount not to Exceed \$1,023,340.16 for the Construction of the Cordova School Zones Project.

Recommendation: Adopt the Resolution.

- 9.7. **Subject:** A Resolution Authorizing the Public Works Director to Issue a Reimbursement to Lennar Homes of California, LLC in the Amount of \$1,290,497 from the Storm Drainage Impact Fee Program.

Recommendation: Adopt the Resolution.

- 9.8. **Subject:** A Resolution Authorizing the City Manager to Execute Contract No. 2023-18 with Wood Rodgers, Inc. in an Amount not to Exceed \$687,484 for Civil Engineering Design and Environmental Services for the Monier Circle Flood Control Basin Project.

Recommendation: Adopt the Resolution.

- 9.9. **Subject:** A Resolution Authorizing the City Manager to Approve the Third Amendment to a Contract with Shums Coda to Modify Exhibit B to Update the Billing Rates.

Recommendation: Adopt the Resolution.

- 9.10. **Subject:** A Resolution Authorizing the City Manager to Execute a Third Amendment to the Contract with Sytech Solutions to increase the amount from \$95,000 to \$345,000, extend the Term of Services, and update Billing Rates.

Recommendation: Adopt the Resolution.

10. CONSENT PUBLIC HEARING ITEMS - ROLL CALL VOTE

Mayor Budge opened the public comment period. Seeing no speakerS, Mayor Budge closed the public comment period.

ACTION: Motion to approve item 10.1 by Sander second by Terry;
Motion passed with a 5:0 vote.

- 10.1. **Subject:** A Resolution Vacating a Public Utility Easement Pursuant to the Provisions of Chapter 3, Part 3 of Public Streets, Highways, and Service Easements Vacation Law Commencing at Section 8320 of the California Streets and Highways Code (Easton Research Park West).

Recommendation: Adopt the Resolution.

11. PUBLIC HEARING ITEMS

- 11.1. **Subject:** Logisticcenter at Rancho Cordova Major Design Review - Project No. PLND-1021-0015.

Recommendation: Continue to the March 6, 2023, City Council Meeting.

ITEM 16.1

Rancho Cordova City Council - MINUTES
Meeting of Tuesday, February 21, 2023

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. Kate Carroll
2. James Garcia
3. Sara Malone
4. Maily Metzger
5. Paul Carroll
6. Levi Winegar
7. Eric Winegar
8. Ken Cooley
9. Barbara Kropacek
10. Nancy Lacoss
11. Jonathan Lacoss
12. Marilyn Metzger
13. Paul Carroll
14. Kate Carroll (2 Submissions)
15. Valerie Knippschild (3 Submissions)
16. Jennifer Garcia
17. James Garcia (2 Submissions)
18. Eric Winegar

Mayor Budge closed the public comment period.

ACTION: Motion to continue item 11.1 to the March 6, 2023, City Council Meeting by Gatewood second by Pulipati;
Motion passed with a 5:0 vote.

12. REGULAR CALENDAR ITEMS

12.1. **Subject:** Mills Crossing Project Update.

Recommendation: Receive presentation, provide feedback.

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. James Garcia
2. Tera Kolvenbach
3. Helen Whelan-Bashaw

Mayor Budge closed the public comment period.

ACTION: Input was received regarding Mills Crossing Project Update.

12.2. **Subject:** Proposed Neighborhood Traffic Management Program, Phase VI.

Recommendation: Receive staff presentation and provide comments on the proposed Phase VI Neighborhood Traffic Management Program (NTMP).

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. Valerie Knippschild
2. Helen Whelan-Bashaw

Mayor Budge closed the public comment period.

ITEM 16.1

Rancho Cordova City Council - MINUTES
Meeting of Tuesday, February 21, 2023

ACTION: Input was received regarding Proposed Neighborhood Traffic Management Program, Phase VI.

13. COUNCIL REQUESTS FOR FUTURE AGENDA ITEMS

None.

14. ADJOURN TO CLOSED SESSION

Mayor Budge adjourned the meeting to closed session at 8:10 p.m.

15. CLOSED SESSION - CALL TO ORDER/ROLL CALL

Mayor Budge called closed session to order at 8:10 p.m.

Council Members Present: Garrett Gatewood, Siri Pulipati, David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: None

Staff Members Present: Adam Lindgren and Micah Runner

16. CLOSED SESSION

Council met in closed session to discuss the following item:

- 16.1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION: Significant Exposure to Litigation Pursuant to Government Code Section 54956.9(d)(2) (One Case, relating to Notice and Alleged Default Under Development Agreement and 60-Day Period to Cure; Logisticenter Project at Corner of N. Mather Blvd. and Bear Hollow Drive from Arthur Coon, January 25, 2023).

17. OPEN SESSION - REPORT FROM CLOSED SESSION

City Attorney Adam Lindgren reported that staff was given direction, no reportable action was taken in closed session, and the Special meeting of February 22, 2023 would be cancelled.

18. ADJOURNMENT

Mayor Budge adjourned the meeting at 10:28 p.m.

Stacy Leitner, CMC
City Clerk

ITEM 16.1.

CITY OF RANCHO CORDOVA



**JOINT MEETING OF THE RANCHO CORDOVA CITY COUNCIL AND THE RANCHO
CORDOVA PLANNING COMMISSION**

Tuesday, February 28, 2023

**5:30 PM – Special Joint Meeting with Planning Commission/Work Session
American River Room North**

**City Hall
2729 Prospect Park Drive, Rancho Cordova**

**Pursuant to California Assembly Bill 361 amending the Ralph M. Brown Act (Govt. Code
54950-54963), the City has declared a state of emergency relating to COVID-19 and
imposed measures to promote social distancing.**

DRAFT MINUTES

1. SPECIAL MEETING - CALL TO ORDER/ROLL CALL

Mayor Budge called the Special meeting to order in the American River North Room at 5:37 p.m.

Council Members Present: Garrett Gatewood, David Sander, Donald Terry, and Mayor Linda Budge

Council Members Absent: Siri Pulipati

Planning Commissioners Present: Surender Devarapalli, Sergio Diaz, Lee Frechette, Robert McGarvey, Cynthia Stauss, Leyroy Tripetto, and Chair Anil Reddy Kondakrindi

Staff Members Present: Haley Arata, Adam Lindgren, Stacy Leitner, Persephonie Riley, Micah Runner, and Kelly Whitman

2. PUBLIC COMMENT

Mayor Budge opened the public comment period. Seeing no speakers, Mayor Budge closed the public comment period.

3. SPECIAL MEETING

ITEM 16.1.

Rancho Cordova City Council - DRAFT MINUTES
Meeting of Tuesday, February 28, 2023

3.1. **Subject:** Updates Regarding Recent State Housing Laws and Legislation.

Recommendation: Receive presentation, provide feedback.

Mayor Budge opened the public comment period. The following individuals addressed the Council or submitted public comment via email:

1. Brenda Gustin
2. Mark Berry
3. Jim Garcia

Mayor Budge closed the public comment period.

ACTION: Input was received from Council and the Planning Commission regarding Recent State Housing Laws and Legislation.

4. ADJOURNMENT

Mayor Budge adjourned the meeting at 7:54 p.m.

Stacy Leitner, CMC
City Clerk

MEMORANDUM



ITEM 16.2.

DATE: March 6, 2023

TO: Honorable Mayor and Council Members

FROM: Albert Stricker, Public Works Director
Kristine Courdy, Senior Civil Engineer
Jesse Yabes, Assistant Civil Engineer

SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONSTRUCTION CONTRACT AMENDMENT NO. 2022-182-1 WITH B&M BUILDERS, INC. TO INCREASE THE CONTRACT AMOUNT FROM \$268,685.00 TO AN AMOUNT NOT TO EXCEED \$492,240.71 FOR THE CONSTRUCTION OF THE KILGORE AND INTERNATIONAL DRAINAGE REPAIR PROJECT**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would allow the City Manager to execute Construction Contract Amendment No. 2022-182-1 with B&M Builders, Inc., increasing the contract amount from \$268,685.00 to an amount not to exceed \$492,240.71 for the construction of the Kilgore and International Drainage Repair Project.

BACKGROUND

The Public Works department regularly evaluates the condition of the City's infrastructure. As part of that evaluation, it was determined that a 300-foot storm drain line made of 27-inch corrugated metal pipe on Kilgore Road near International Drive needed to be replaced due to perforations in the pipe which caused road settlement. The Kilgore and International Drainage Repair Project was scoped and designed to include trenching, removal of the damaged pipe, replacement with new pipe, backfilling and repairing the road.

The City Council awarded the Construction Contract No. 2022-182 on September 6, 2022, to B&M Builders, Inc. in the amount of \$268,685.00 with construction beginning in October 2022. Per the Rancho Cordova Municipal Code, Section 3.60.110 C, the City Manager is given the authority to approve change orders up to 10% of the contract value.

Upon initial excavation of the drainage pipe to be replaced, the Contractor encountered unstable soil which began sloughing within the trench. This resulted in a need for additional trench shoring, excavation and backfill which was in excess of the project scoped at the time of bid. This change order is for costs related to these unforeseen site soil conditions. This change

order is valued at \$223,555.71, which exceeds the City Manager's signing authority, thus requiring City Council approval.

After negotiations with the Contractor, this final contract change order amount was deemed acceptable by City staff and therefore is recommended for approval by City Council.

FISCAL IMPACT AND FUNDING SOURCE

This project is funded by the Stormwater Enterprise Fund. This project is included in the City's current approved Capital Improvement Plan and in the FY 2021/2022 - 2022/2023 budget. There is no impact to the City's General Fund.

ATTACHMENT(S)

1. Resolution
2. Contract No. 2022-182-1

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT AMENDMENT NO. 2022-182-1 INCREASING THE CONTRACT AMOUNT FROM \$268,685.00 TO AN AMOUNT NOT TO EXCEED \$492,240.71 WITH B&M BUILDERS, INC. FOR THE KILGORE AND INTERNATIONAL DRAINAGE REPAIR PROJECT

WHEREAS, the city solicited bids for the Kilgore & International Drainage Repair Project under the requirements of State Law and publicly opened bids on August 11, 2022; and

WHEREAS, the lowest responsive and responsible bidder was B&M Builders, Inc.; and

WHEREAS, on September 6, 2022, the City Council awarded Construction Contract No. 2022-182 to B&M Builders, Inc. in the amount of \$268,685.00; and

WHEREAS, this Project replaces a defective 27-inch diameter corrugated metal drainage main and repairs settled roadway surface; and

WHEREAS, Construction Contract Amendment No. 2022-182-1 in the amount of \$223,555.71 exceeds the City Manager's signing authority to approve; and

WHEREAS, funding for this Project will consist of the Stormwater Enterprise Fund; and

WHEREAS, this Project was reviewed under the requirements of the California Environmental Quality Act (CEQA), and a notice of exemption was filed on August 17, 2022, with the County of Sacramento.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA authorizes the City Manager to execute Construction Contract Amendment No. 2022-182-1 in an amount of \$223,555.71 with B&M Builders, Inc., increasing the contract amount from \$268,685.00 to an amount not to exceed \$492,240.71, for the construction of the Kilgore and International Drainage Repair Project.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 6th day of March 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

ITEM 16.2.

ATTACHMENT 1

Stacy Leitner, CMC
City Clerk

ITEM 16.2.**ATTACHMENT 2**

Project Name:
**Kilgore/International Storm
 Drain Repair**

CITY OF RANCHO CORDOVA
Contract Change Order No. 1

Sheet 1 of 2
 City Contract No. 2022-182-1

To: **B&M Builders**. You are hereby directed to make the herein described changes from the plans and specifications or do the following described work not included in the plans and specifications on this contract.

Description of work to be done, quantities and prices to be paid. Unless otherwise stated, rates for rental of equipment cover only such time as equipment is actually used and no allowance will be made for idle time.

Change requested by: **Engineer**

Extra Work at Agreed Lump Sum/Agreed Unit Price

- | | | |
|---|------------------|----------------------|
| 1. PCO#01 – Traffic Loop Repair (Bid Item #10) is updated to install a video traffic detection unit on the SB approach to the Kilgore/International intersection, in place of traffic loop detectors. This is a no cost change. | INCREASE: | \$0.00 |
| 2. PCO#02 – Rental Equipment – Contractor required the use of larger equipment, shoring, and traffic plates due to unstable trench soils. Compensation for difference in rental cost at agreed lump sum. | INCREASE: | \$45,536.33 |
| 3. PCO#03 – Pipe Purchase – City to purchase excess 64 LF of 30" Storm drain pipe resulting from the installation of a new manhole (PCO#4). Payment for pipe at agreed lump sum. | INCREASE: | \$3,424.64 |
| 4. PCO#04 - Manhole – Contractor is directed to install a 48" storm drain manhole just outside of the crosswalk on the SB approach. Payment for this work at agreed lump sum. | INCREASE: | \$28,244.98 |
| 5. PCO#05 - Traffic Stripe – Contractor directed to remove and replace and additional 155 LF of traffic stripe. Payment for work at agreed lump sum. | INCREASE: | \$1,627.50 |
| 6. Balancing Change Order – Adjustment based on quantities measured and placed in the field. | DECREASE: | (\$22,492.00) |

Extra Work at New Unit Price

7. PCO#06 – Backfill Unit Rate – Contractor is directed to remove unstable trench material and backfill the additional area with engineered fill. Cost for excavation, off haul, backfill, and compaction at agreed unit price.

Description	Quantity	Unit	Unit Price	Amount
Backfill Material	1271.79	TON	\$ 100.00	\$ 127,179.00

INCREASE:
\$127,179.00

Extra Work at Force Account

8. Force Account DEWRS #1 - #7: Contractor encountered unstable trench walls, unknown buried structures, unmarked utilities, placed geotechnical fabric, and installed temporary pipe for storms during construction. Payment for work at agreed force account.

INCREASE:
\$40,035.26

Total Cost of Change: \$223,555.71

ITEM 16.2.**ATTACHMENT 2**

Project Name:
**Kilgore/International Storm
Drain Repair**

CITY OF RANCHO CORDOVA
Contract Change Order No. 1

Sheet 2 of 2
City Contract No.
2022-182-1

Authorization Resolution 56-2022

Contract Summation:

Original Contract:	\$268,685.00	Total Change Orders:	\$223,555.71	New Contract Cost Total:	\$492,240.71
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By reason of this order the time of completion will be adjusted as follows: **16 non-compensatory working days**

Submitted by: _____	Construction Manager/Resident Engineer City of Rancho Cordova	Date: _____
Recommend Approval by: _____	Project Manager City of Rancho Cordova	Date: _____
Approved by: _____	Public Works Director City of Rancho Cordova	Date: _____

We, the undersigned Contractor, have given careful consideration to the change proposed and all of its impacts, both direct and indirect, and hereby agree, if this proposal is approved, that we will provide all equipment, furnish all materials, except as may otherwise be noted above, and perform all services necessary for the work above specified, and will accept as full payment therefor the prices and time extensions shown above.

Acceptance Date: _____	Contractor: _____
By: _____	Title: _____

If the Contractor does not sign acceptance of this order, his attention is directed to the requirements of the specifications as to proceeding with the ordered work and filing a written protest within the time therein specified.

Original to: *Contractor
City Clerk*

Copies to: *Resident Engineer
City Project Manager*

_____ City Manager or Designee City of Rancho Cordova	_____ Date
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MEMORANDUM



ITEM 16.3.

DATE: March 6, 2023
TO: Honorable Mayor and Council Members
FROM: Albert Stricker, Public Works Director
Edgar Medina, Principal Engineer
SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO AWARD CONSTRUCTION CONTRACT NO. 2023-31 IN AN AMOUNT NOT TO EXCEED \$1,994,006.00 WITH CENTRAL VALLEY ENGINEERING FOR THE WHITE ROCK ROAD - SUNRISE BOULEVARD TO FITZGERALD ROAD PROJECT**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize the City Manager to execute Contract No. 2023-31 in an amount not to exceed \$1,994,006.00 with Central Valley Engineering for the White Rock Road - Sunrise Boulevard to Fitzgerald Road Project.

BACKGROUND

The White Rock Road - Sunrise Boulevard to Fitzgerald Road Project is part of an innovative planning effort to alleviate regional congestion, improve roadway safety, nurture economic development, and promote the livability and quality of life in Rancho Cordova and the greater Sacramento region. Refer to Attachment 2 for the Project Location.

The road condition in this segment is very poor, which impedes safe and efficient transportation and freight movement, and economic growth. The project will improve approximately 0.25 mile of 4-lane White Rock Road by rehabilitating the deteriorating segment of roadway, installing a new traffic signal at Gold Valley, median, bike lanes, sidewalk curb ramps, storm drain lines and driveway improvements. This project will connect to the recent improvements on White Rock completed in late 2022 that, collectively, serve to support immediate growth, traffic volumes, parallel capacity and drive our economy.

Bids were solicited on the City's Website, CIPList.com and the Sacramento, Placer and El Dorado County Builders Exchanges on January 5, 2023. Bids for the project were publicly opened on February 2, 2023. A total of seven bids were received and staff determined Central Valley Engineering & Asphalt, Inc. to be the lowest responsive and responsible bidder. The bid summary sheet is provided as Attachment 3.

The project was solicited with the Base Bid governing the low bid selection, though the project included Add Alternate 1 and Add Alternate 2 as part of the solicitation. Based on the bids received for all components of the solicitation, staff recommends including Add Alternate 1 & 2 and awarding a construction contract for the total bid amount of \$1,994,006.00 to Central Valley Engineering & Asphalt, Inc.

On February 9, 2023, the City received a Bid Advisory notice from The Foundation for Fair Contracting regarding Central Valley Engineering & Asphalt, Inc. Based on review of this notice and the City's prior history with the contractor, the City believes the contractor is responsive and responsible for the purposes of this project.

The tentative project schedule is to begin construction in Spring 2023 and end construction in Fall 2023.

FISCAL IMPACT AND FUNDING SOURCE

Funding for this project consists of Traffic Impact Mitigation Fees, Gas Tax, New Measure A Maintenance, Supplemental Transportation Fee and Capital Infrastructure Fund. There is no impact on the City's General Fund.

This project is included in the City's current approved FY 2022-23 Capital Improvement Plan.

ATTACHMENT(S)

1. Resolution
2. Project Location
3. WRR Ph 1 Bid Summary
4. Contract No. 2023-31

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT NO. 2023-31 IN AN AMOUNT NOT TO EXCEED \$1,994,006 WITH CENTRAL VALLEY ENGINEERING & ASPHALT, INC FOR THE WHITE ROCK ROAD - SUNRISE BOULEVARD TO FITZGERALD ROAD PROJECT

WHEREAS, the City solicited bids for the White Rock Road - Sunrise Boulevard to Fitzgerald Road Project under the requirements of state law and publicly opened bids on February 2, 2023; and

WHEREAS, the lowest responsive and responsible bidder is Central Valley Engineering & Asphalt, Inc.; and

WHEREAS, the Project will rehabilitate a deteriorating segment of roadway, add bike lanes, median, drainage facilities and traffic signals; and

WHEREAS, adoption of this Resolution will award construction Contract No. 2023-31 with Central Valley Engineering & Asphalt, Inc. in an amount not to exceed \$1,994,006 for the White Rock Road - Sunrise Boulevard to Fitzgerald Road Project; and

WHEREAS, on February 9, 2023, the City received a Bid Advisory Notice from The Foundation for Fair Contracting regarding Central Valley Engineering & Asphalt, Inc. Based on review of this notice and the City's prior history with the contractor, the City believes the contractor is responsive and responsible for the purposes of this project; and

WHEREAS, funding for this project consists of Traffic Impact Mitigation Fees, Gas Tax, New Measure A Maintenance, Supplemental Transportation Fee and Capital Infrastructure Fund. There is no impact to the City's General Fund; and

WHEREAS, this project was reviewed under the requirements of the California Environmental Quality Act and National Environmental Policy Act and Initial Study with Mitigated Negative Declaration/Environmental Assessment with Finding of No Significant Impact and Section 4(f) Evaluation was approved in January 2016 and re-validated in September, 2020.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA does authorize the City Manager to execute Contract No. 2023-31 in an amount not to exceed \$1,994,006.00 with Central Valley Engineering & Asphalt, Inc. in a form approved by the City Attorney.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 6th day of March 2023 by the following vote:

AYES:

NOES:

ITEM 16.3.

ATTACHMENT 1

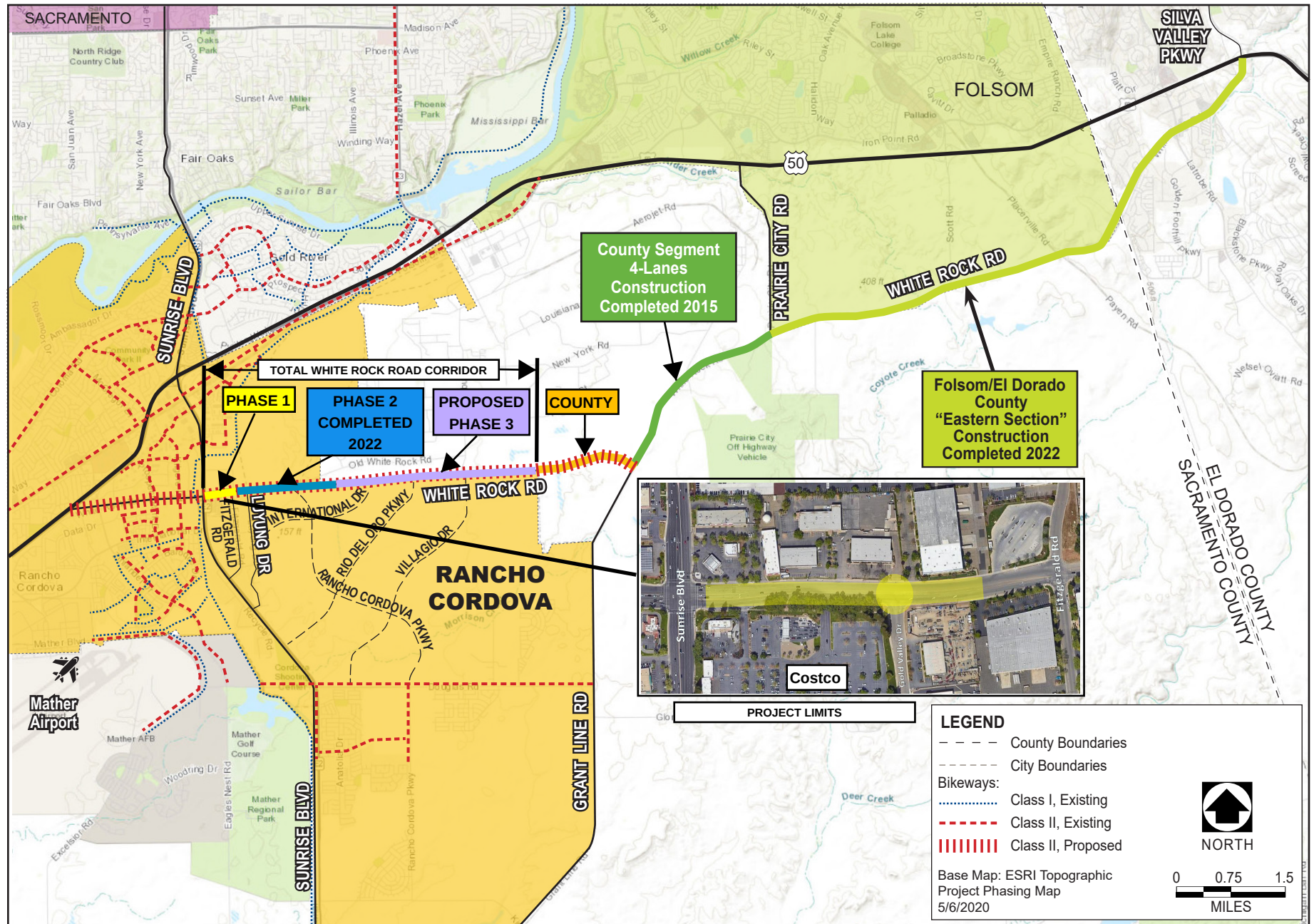
ABSENT:

ABSTAIN:

ATTEST:

Stacy Leitner, CMC
City Clerk

Linda Budge, Mayor



ITEM 16.3.

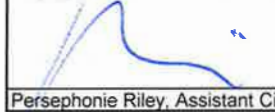
ATTACHMENT 3



White Rock Road - Sunrise Blvd to Fitzgerald Rd
Bid Summary - CP15-2146
2729 Prospect Park Drive, Rancho Cordova, CA 95670
February 2, 2023, 2:00 PM, City Hall, Council Chambers

	Construction Contractor	Total Base Bid Amount	Add Alternate 1	Add Alternate 2	Proposal Signed	Contractors License	DIR Registration	Equal Employment	Public Contract Code	Designation of Subcontractors	Experience / Qualifications Statement	Bidder's Bond	Non-Collusion Affidavit	Debarment & Suspension	Addendum 1
A	Central Valley Engineering	\$1,498,076.00	\$214,105.00	\$281,825.00	X	X	X	X	X	X	X	X	X	X	X
B	McGuire Hester	\$1,971,128.00	\$302,155.00	\$238,230.00	X	X	X	X	X	X	X	X			X
C	Ducth Contracting	\$2,024,254.00	\$212,379.60	\$354,734.00		X	X	X	X	X	X	X	X	X	
D	Western Engineering	\$2,088,662.00	\$293,782.00	\$271,410.00	X	X	X	X	X	X	X	X	X	X	X
E	Martin General Engineering	\$2,130,847.35	\$343,436.00	\$309,780.00	X	X	X	X	X	X	X	X	X	X	X
F	Martin Brothers Construction	\$2,225,543.00	\$245,764.00	\$285,254.00	X	X	X	X	X	X	X	X	X	X	X
G	B & M Builders	\$2,266,958.00	\$323,449.00	\$354,750.00	X	X	X	X	X	X	X	X	X	X	X
H															
I															
J															

Attendees Persephonie Riley, Assistant City Clerk
 Edgar Medina, Principal Engineer


 Persephonie Riley, Assistant City Clerk


 Date

**CONSTRUCTION SERVICES AGREEMENT BETWEEN
THE CITY OF RANCHO CORDOVA AND CENTRAL VALLEY ENGINEERING & ASPHALT, INC.
FOR WHITE ROCK ROAD – SUNRISE BLVD TO FITZGERALD RD PROJECT**

THIS AGREEMENT made and entered into between the City of Rancho Cordova ("City") and Central Valley Engineering & Asphalt, Inc. ("Contractor") as of March 6th, 2023.

WITNESSETH:

WHEREAS, the City Council for the City heretofore caused plans and specifications for WHITE ROCK ROAD – SUNRISE BLVD TO FITZGERALD RD PROJECT ("Project") to be prepared, and therefore did approve and adopt said plans and specifications; and

WHEREAS, the City Council for the City did cause to be published for the time and in the manner required by law, a notice inviting sealed bids for the performance of said work; and

WHEREAS, the City solicited bids in CIPList.com ("Notice), for the White Rock Road - Sunrise Boulevard to Fitzgerald Road Project under the requirements of state law and publicly opened bids on February 2, 2023; and

WHEREAS, the Contractor, in response to such Notice, submitted to the City Council for the City within the time specified in said Notice, and in the manner provided for therein, a sealed bid for the performance of the Project specified in said plans and specifications, which said bid and proposal, and other bids and proposals submitted in response to said Notice, the City Council opened and canvassed in the manner provided by law; and

WHEREAS, the Contractor was the lowest responsible bidder for the performance of said Project, and said City Council for the City as a result of the canvass of said bids, did determine and declare Contractor to be the lowest responsible bidder for said Project and award to a contract therefore.

NOW THEREFORE, in consideration of the promises herein, it is mutually agreed between the parties hereto as follows:

Section 1. CONTRACT DOCUMENTS. The following documents are by this reference incorporated in and made a part of this Agreement: The County of Sacramento, Standard Construction Specifications dated January 2016; the Special Provisions; the contract drawings, all addenda; the Notice to Contractors; the Proposal; all required bonds; and all supplemental Agreements covering alterations, amendments, or extensions to the contract. The documents which describe the work to be performed are sometimes collectively referred to herein as the Plans and Specifications.

Section 2. TERM. The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2025.

Section 3. SCOPE OF WORK. The Contractor will furnish all labor, materials, services, transportation, appliances, and mechanical workmanship required for **Contract No. 2023-31**, as provided for and set forth in said Plans and Specifications, or in either of them, which said Plans

5039694.3

Construction Services Agreement between
City of Rancho Cordova and Central Valley Engineering & Asphalt, Inc.

March 6, 2023

Page 1 of

and Specifications are hereby referred and by such reference incorporated herein and made a part of this Agreement. All of the said work done under this Agreement shall be under the supervision of and performed to the satisfaction of the Public Works Director of the City of Rancho Cordova who shall have the right to reject any and all materials and supplies furnished by the Contractor which do not comply with the Plans and Specifications, together with the right to require the Contractor to replace any and all work furnished by the Contractor which shall not either in workmanship or material be in strict accordance with the Plans and Specifications.

Section 4. COMPLETION. Said work shall be completed and ready for acceptance.

Section 5. PAYMENT. Attached hereto as Exhibit "A" and by reference made a part hereof, is the bid and proposal of Contractor. Said bid and proposal will contain, as required by the terms of said specifications, the full and complete schedule of the different items with the lump sums or unit prices as so specified. The City agrees in consideration of the work to be performed for the Project herein and subject to the terms and conditions thereof, to pay Contractor all sums of money which may become due to Contractor in accordance with the terms of the aforesaid bid and proposal, and this Agreement, to wit: **ONE MILLION NINE HUNDRED NINETY-FOUR THOUSAND SIX DOLLARS AND ZERO CENTS, (\$1,994,006.00).** Said sum shall be paid in accordance with Section 8 of the Standard Specifications. With respect to that portion of the above sum as is based upon the estimated quantities specified for the general scope of the work to be performed herein, actual payment will be based upon the quantities as measured upon completion. No payment made under this Agreement shall be construed to be an acceptance of defective work or improper materials.

Section 6. PREVAILING WAGES. To the extent required by law, Contractor and all of the Contractor's subcontractors shall comply with California Health and Safety Code Section 33422.1 and shall comply with California Labor Code Section 1770 et seq. and all regulations adopted pursuant thereto (referred to herein as, "**Prevailing Wage Laws**"), and be responsible for carrying out the requirements of such provisions. Pursuant to the provisions of Articles 1 and 2 of Chapter 1, Part 7, Division II, of the Labor Code of the State of California, not less than the general prevailing rate of per diem wages, and not less than the general prevailing rate of per diem wages for holidays and overtime work, for each craft, classification or type of worker needed to execute the Project contemplated under this Agreement shall be paid to all workers, laborers and mechanics employed in the execution of said Project by Contractor, or by any subcontractor doing or contracting to do any part of said Project. The appropriate determination of the Director of the California Department of Industrial Relations is filed with, and available for inspection at 2729 Prospect Park Drive, Rancho Cordova, CA 95670, the office of the Clerk of the City. Contractor shall post, at each job site, a copy of such prevailing rate of per diem wages as determined by the Director for the California Department of Industrial Relations. The Contractor shall, and hereby agrees to, unconditionally indemnify, reimburse, defend, protect and hold harmless the City and its elective and appointive boards, commissions, officers, agents, attorneys, consultants and employees, and all of their respective successors and assigns, from and against any and all claims, demands, suits and actions at law or in equity, and losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, and costs and damages of every kind, nature and description (including but not limited to attorneys' fees and court costs; with counsel reasonably acceptable to the City), and administrative, enforcement or judicial proceedings, whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to

comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to California Labor Code Section 1770 et seq. and the Prevailing Wage Laws, or any act or omission of the City or the Contractor related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such claims, demands, suits, actions, losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, costs, damages, or administrative, enforcement or judicial proceedings. It is further agreed that the City does not, and shall not, waive any rights against the Contractor which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by the City, or the deposit with the City by the Contractor, of any of the insurance policies described in this Agreement.

Section 7. INSURANCE. The Contractor shall carry and maintain for the duration of the term of this Agreement, such public liability, property damage and contractual liability, auto, worker's compensation and builders' risk insurance as required by the specifications.

Section 8. WORKERS' COMPENSATION CERTIFICATION. By execution of this Agreement, the Contractor certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Section 9. PERFORMANCE AND PAYMENT BONDS. The Contractor shall, before beginning said work for the Project, file two (2) bonds with the City, each made payable to the City. These bonds shall be issued by a surety company authorized to do business in the State of California and shall be maintained during the entire life of the Agreement at the expense of the Contractor. One bond shall be in the amount of one hundred percent (100%) of the Agreement and shall guarantee the faithful performance of the Agreement. The second bond shall be the payment bond required by California Civil Code Section 3247 et seq. and shall be in the amount of one hundred percent (100%) of the Agreement. Any alterations made in the specifications which are a part of this Agreement or in any provision of this Agreement shall not operate to release any surety from liability on any bond required hereunder and the consent to make such alterations is hereby given, and any surety on said bonds hereby waives the provisions of California Civil Code Sections 2819 and 2845.

Section 10. INDEMNIFICATION.

10.1 Contractor's Performance. Contractor shall indemnify, defend with counsel selected by the City, and hold harmless City, its officers, agents, employees and representatives from and against any and all claims, losses, liabilities or damages, demands and actions, including payment of reasonable attorney's fees, arising out of or resulting from Services performed pursuant to this Agreement caused in whole or in part by any negligent or willful act or omission of Contractor, its officers, agents, employees, or anyone directly or indirectly acting on behalf of Contractor. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury,

loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10.2 PERS Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing Services under this Agreement is determined by a court of competent jurisdiction of the California Public Employees Retirement System ("PERS") to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any and all employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City, and any attorneys' fees and costs incurred by the City to enforce this Section.

10.3 No Limitation of Liability for Indemnification. The indemnities set forth in this Section shall not be limited by the insurance requirements set forth in the Contract.

Section 11. Nondiscrimination and Equal Opportunity. Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby. Contractor shall include the provisions of this section in any subcontract approved by the City.

Section 12. AMENDMENTS. No modification or amendment of this Agreement is effective unless made in writing and signed by both the City and Contractor.

Section 13. ASSIGNMENT AND SUBCONTRACTING. Contractor shall not assign or transfer any interest in this Agreement without the prior written consent of the City.

Section 14. MISCELLANEOUS PROVISIONS.

14.1 Successors. This Agreement shall bind and inure to the heirs, devisees, assignees, and successors in interest of Contractor and to the successors in interest of Contractor in the same manner as if such parties had been expressly named herein. All times stated herein or in the contract documents are of the essence hereof. As used in this instrument the singular includes the plural, and the masculine includes the feminine and the neuter. This Agreement may create

a possessory interest subject to property taxation, and Contractor may be subject to the payment of property taxes levied on such interest.

14.2 Contract Administration. This Agreement shall be administered by Edgar Medina ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

14.3 Notices. Any written notice to Consultant shall be sent to:

James Castle CFO/Secretary
Central Valley Engineering & Asphalt, Inc.
216 Kenroy Lane
Roseville, Ca. 95678
[Email Address (used for insurance update requests)]
bayley@cenvalley.com

Any written notice to City shall be sent to:

Edgar Medina
City of Rancho Cordova
Department of Public Works
2729 Prospect Park Drive
Rancho Cordova, CA 95670
emedina@cityofranchocordova.org

14.4 IRS Form W-9. Contractor shall complete and submit Internal Revenue Service Form W-9 to the City before execution of this Agreement. The City's Finance Director shall have authority to waive this requirement.

14.5 Governing Law and Venue. The laws of the State of California shall govern this Agreement. Venue for any action regarding this Agreement shall be in the Superior Court of the County of Sacramento or in the United States District Court for the Eastern District of California.

14.6 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

14.7 Severability. If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

14.8 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

14.9 Survival. The obligations of this Agreement, which by their nature would continue beyond the term or expiration of this Agreement, including without

limitation obligations regarding indemnification shall survive the term or expiration of this Agreement.

14.10 Entire Agreement. This Agreement, including the terms of payment attached hereto and incorporated herein as Exhibit A, and the Contract Documents as referenced above in Section 1, of this Agreement, represents the entire and integrated Agreement between City and Contractor and supersedes all prior negotiations, representations, and Agreements regarding the subject matter of this Agreement, either written or oral.

IN WITNESS WHEREOF, the City Council and Contractor have caused this Agreement to be executed as of the day and year first above written.

CITY OF RANCHO CORDOVA:

CONTRACTOR:

Micah Runner, City Manager

James Castle, CFO/Secretary

Date

Date

Attest:

Stacy Leitner, CMC, City Clerk

Date

Approved as to Form:

Adam U. Lindgren, City Attorney

Date

Last revised June 23, 2022

Exhibit A

**CITY OF RANCHO CORDOVA
DEPARTMENT OF PUBLIC WORKS**

BID FORM

City Project No. CP15-2146

Project: WHITE ROCK ROAD IMPROVEMENTS - SUNRISE BOULEVARD TO FITZGERALD ROAD

SUBMIT BID TO:

City of Rancho Cordova
Department of Public Works
Project No. CP15-2146
2729 Prospect Park Drive
Rancho Cordova, CA 95670

BID OPENING:

City of Rancho Cordova
Department of Public Works
2729 Prospect Park Drive
Rancho Cordova, CA 95670

NO LATER THAN: 2:00 PM

APPROXIMATELY 2:10 PM

DAY OF BID: January 31, 2023

TO: City Clerk
City of Rancho Cordova

Name of Bidder: Central Valley Engineering & Asphalt, Inc.

Business Address: 216 Kenroy Lane

City, State, Zip Code: Roseville, CA 95678

Telephone Number: 916-791-1609

Email Address: Bayley@cenvalley.com

Contact Person: Bayley Follett

The Contractor is encouraged to submit these Bid Forms typed or neatly printed.

CITY OF RANCHO CORDOVA FORMS

CONTRACTORS LICENSE FORM

City Project No. CP15-2146**Project: WHITE ROCK ROAD IMPROVEMENTS – SUNRISE BOULEVARD TO FITZGERALD ROAD**

Any person or entity submitting a bid on this project to engage in the business or act in the capacity of a contractor shall be licensed as a contractor in accordance with the provisions of Division 3, Chapter 9 of the California Business and Professions Code. A bid submitted to the City by a contractor who is not licensed as set forth above shall be considered non-responsive and shall be rejected by the City.

Before awarding the contract for this project, the City must verify that the contractor was properly licensed when the contractor submitted his/her bid on this project. In order for the City to verify the license status of a contractor, the contractor, at the time he/she submits his/her bid for the project, shall provide in writing to the City his/her contractor's license number, name on the license, classification, and expiration date of the license.

No bid submitted to the City shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the City that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

CERTIFICATION

In accordance with the Business and Professions Code, we do hereby, under Penalty of Perjury, certify that the following contractor's license information is true and correct.

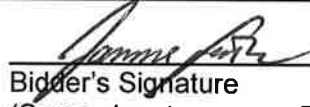
Contractor's License No. <u>773404</u>	Expiration Date: <u>3/31/2024</u>
Subcontractor's License No. <u>885546</u>	Expiration Date: <u>3/31/23</u>
Subcontractor's License No. <u>755317</u>	Expiration Date: <u>3/31/24</u>
Subcontractor's License No. <u>621781</u>	Expiration Date: <u>6/30/23</u>
Subcontractor's License No. <u>303609</u>	Expiration Date: <u>9/30/24</u>
Contractor's Classification: _____	

Central Valley Engineering & Asphalt, Inc.

Contractor's Name (Printed)

2/2/23

Date


 Bidder's Signature
 (Same signature as on Bid Proposal)
 James Castle

Bidder's Name (Printed)

CFO/ Secretary

Bidder's Title

CITY OF RANCHO CORDOVA FORMS

CONTRACTORS LICENSE FORM

City Project No. CP15-2146**Project: WHITE ROCK ROAD IMPROVEMENTS – SUNRISE BOULEVARD TO FITZGERALD ROAD**

Any person or entity submitting a bid on this project to engage in the business or act in the capacity of a contractor shall be licensed as a contractor in accordance with the provisions of Division 3, Chapter 9 of the California Business and Professions Code. A bid submitted to the City by a contractor who is not licensed as set forth above shall be considered non-responsive and shall be rejected by the City.

Before awarding the contract for this project, the City must verify that the contractor was properly licensed when the contractor submitted his/her bid on this project. In order for the City to verify the license status of a contractor, the contractor, at the time he/she submits his/her bid for the project, shall provide in writing to the City his/her contractor's license number, name on the license, classification, and expiration date of the license.

No bid submitted to the City shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the City that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

CERTIFICATION

In accordance with the Business and Professions Code, we do hereby, under Penalty of Perjury, certify that the following contractor's license information is true and correct.

Contractor's License No. <u>773404</u>	Expiration Date: <u>3/31/2024</u>
Subcontractor's License No. <u>1503811</u>	Expiration Date: <u>5/31/23</u>
Subcontractor's License No. _____	Expiration Date: _____
Subcontractor's License No. _____	Expiration Date: _____
Subcontractor's License No. _____	Expiration Date: _____
Contractor's Classification: _____	

Central Valley Engineering & Asphalt, Inc.

Contractor's Name (Printed)

2/2/23

Date


Bidder's Signature(Same signature as on Bid Proposal)
James Castle

Bidder's Name (Printed)

CFO/ Secretary

Bidder's Title

CITY OF RANCHO CORDOVA FORMS

CONTRACTORS REGISTRATION FORM

City Project No. CP15-2146Project: **WHITE ROCK ROAD IMPROVEMENTS – SUNRISE BOULEVARD TO FITZGERALD ROAD**

Any person or entity submitting a bid on this project to engage in the business or act in the capacity of a contractor shall be licensed as a contractor in accordance with the provisions of Division 3, Chapter 9 of the California Business and Professions Code. A bid submitted to the City by a contractor who is not licensed as set forth above shall be considered non-responsive and shall be rejected by the City.

Before awarding the contract for this project, the City must verify that the contractor was properly licensed when the contractor submitted his/her bid on this project. In order for the City to verify the license status of a contractor, the contractor, at the time he/she submits his/her bid for the project, shall provide in writing to the City his/her contractor's license number, name on the license, classification, and expiration date of the license.

No bid submitted to the City shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the City that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

CERTIFICATION

In accordance with the Business and Professions Code, we do hereby, under Penalty of Perjury, certify that the following contractor's license information is true and correct.

Contractor's Registration No. 1000001249Expiration Date: 6/30/2025Subcontractor's Registration No. 1000000381Expiration Date: 6/30/24Subcontractor's Registration No. 10000002783Expiration Date: 6/30/25Subcontractor's Registration No. 1000002818Expiration Date: 6/30/23Subcontractor's Registration No. 1000000562Expiration Date: 6/30/23

Central Valley Engineering & Asphalt, Inc.

Contractor's Name (Printed)

2/2/23

Date


Bidder's Signature

(Same signature as on Bid Proposal)

James Castle

Bidder's Name (Printed)

CFO/ Secretary

Bidder's Title

CITY OF RANCHO CORDOVA FORMS

CONTRACTORS REGISTRATION FORM

City Project No. CP15-2146**Project: WHITE ROCK ROAD IMPROVEMENTS – SUNRISE BOULEVARD TO FITZGERALD ROAD**

Any person or entity submitting a bid on this project to engage in the business or act in the capacity of a contractor shall be licensed as a contractor in accordance with the provisions of Division 3, Chapter 9 of the California Business and Professions Code. A bid submitted to the City by a contractor who is not licensed as set forth above shall be considered non-responsive and shall be rejected by the City.

Before awarding the contract for this project, the City must verify that the contractor was properly licensed when the contractor submitted his/her bid on this project. In order for the City to verify the license status of a contractor, the contractor, at the time he/she submits his/her bid for the project, shall provide in writing to the City his/her contractor's license number, name on the license, classification, and expiration date of the license.

No bid submitted to the City shall be invalidated by the failure of the bidder to be licensed in accordance with the laws of this state. However, at the time the contract is awarded, the contractor shall be properly licensed in accordance with the laws of this state. The first payment for work or material under any contract shall not be made unless and until the Registrar of Contractors verifies to the City that the records of the Contractors' State License Board indicate that the contractor was properly licensed at the time the contract was awarded. Any bidder or contractor not so licensed shall be subject to all legal penalties imposed by law, including, but not limited to, any appropriate disciplinary action by the Contractors' State License Board. Failure of the bidder to obtain proper and adequate licensing for an award of a contract shall constitute a failure to execute the contract and shall result in the forfeiture of the security of the bidder.

CERTIFICATION

In accordance with the Business and Professions Code, we do hereby, under Penalty of Perjury, certify that the following contractor's license information is true and correct.

Contractor's Registration No. <u>1000001249</u>	Expiration Date: <u>6/30/2025</u>
Subcontractor's Registration No. <u>1000025222</u>	Expiration Date: <u>6/30/23</u>
Subcontractor's Registration No. <u>1000003382</u>	Expiration Date: <u>6/30/23</u>
Subcontractor's Registration No. <u>1000022308</u>	Expiration Date: <u>6/30/23</u>
Subcontractor's Registration No. _____	Expiration Date: _____

Central Valley Engineering & Asphalt, Inc.

Contractor's Name (Printed)

2/2/23

Date


 Bidder's Signature
 (Same signature as on Bid Proposal)

James Castle

Bidder's Name (Printed)

CFO/ Secretary

Bidder's Title

BID SCHEDULE

The following quantities are approximate only and are given for the purpose of comparing proposals. The City does not expressly or by implication agree that the actual amount of work will correspond with quantities given herein, but reserves the right to increase or decrease the amount of any class or portion of the work as may be deemed necessary or advisable by the Director of Public Works. Payment will be based upon the actual quantities installed or constructed, unless otherwise specified.

The award of the contract, if it is awarded, will be to the lowest responsible bidder whose proposal complies with all the requirements prescribed. The project bid sheet is set up using a Base Bid/Additive Alternate Bid format. Bids are required on Base Bid and Additive Alternate Bid items. For some items, the Base Bid and Alternate Bid items are identical, and only one amount will be bid for both. Unless otherwise described, the Additive Alternative Bid Items are additional quantities to those in the Base Bid, not alternative/replacement quantities to those in the Base Bid.

The City shall determine the lowest responsible, responsive bidder **based on the lowest total of the Bid Schedule - Base Bid.**

The City, if it chooses to award, shall award the contract to the lowest responsible, responsive bidder based on the criteria listed above. The City may, at its discretion, award the Base Bid only, all Additive Alternate Bid items, or only some of the Additive Alternate Bid items, as determined necessary for budgetary purposes.

The Contractor must submit bids for all Base Bid items and all Alternate Bid items. No response or a response of zero on any bid items will be deemed a non-responsive bid.

ITEM 16.3.**ATTACHMENT 4****CP15-2146 WHITE ROCK ROAD IMPROVEMENTS – SUNRISE BOULEVARD TO FITZGERALD ROAD
CITY OF RANCHO CORDOVA****BID
SCHEDULE
BASE BID****ATTACHMENT A
PART OF ADDENDUM NO. 1
CP15-2146**

Item NO.	Item Description	Quantity	Unit	Unit Price	Bid Amount
1	Mobilization	1	LS	\$35,550	\$35,550
2	Construction Staking	1	LS	15,500	15,500
3	Erosion, Sediment, and Water Pollution Control Plan	1	LS	3,500	3,500
4	Stage Construction and Traffic Control	1	LS	51,400	51,400
5	Construction Area Signs	1	LS	8,500	8,500
6	Clearing and Grubbing	1	LS	3,500	3,500
7	Remove Tree	2	EA	950	1,900
8	Roadway Excavation	1,930	CY	65	125,450
9	Remove Existing Curb	3	CY	750	2,250
10	Remove Existing Curb & Gutter	60	CY	350	21,000
11	Remove Existing Sidewalk	70	CY	350	24,500
12	Asphalt Concrete (Type A)	880	TON	186	163,680
13	Aggregate Base (Class 2)	1,530	CY	71.90	110,007
14	Cape Seal	15,400	SQYD	7.50	115,500
15	Slurry Seal	2,300	SQFT	3.30	7,590
16	PCC, Valley Gutter	1,150	SQFT	25	28,750
17	PCC, Stamped & Colored	1,280	SQFT	28	35,840
18	PCC Sidewalk	910	SQFT	20	18,200
19	PCC Type 1A Curb & Gutter	75	LF	75	5,625
20	PCC Type 2 Curb & Gutter	150	LF	75	11,250
21	PCC Type 3 Curb (modified)	110	LF	65	7,150
22	PCC Type 4 Curb	1,270	LF	32	40,640
23	PCC Type 5 Curb	70	LF	65	4,550
24	Curb Ramp	10	EA	3,200	32,000
25	Detectable Warning Surface	10	EA	550	5,500
26	Adjust Valve to Grade	2	EA	1,500	3,000
27	Drop Inlet Type B	3	EA	3,500	10,500
28	Drop Inlet Type C	2	EA	3,500	7,000
29	48" Manhole	2	EA	12,500	25,000
30	60" Manhole	1	EA	14,500	14,500
31	10" PVC C900 Pipe	40	LF	350	14,000

**City of Rancho Cordova
White Rock Road Improvements - Sunrise Boulevard to Fitzgerald Road****Bid Form
Page 101**

ITEM 16.3.

Item NO.	Item Description	Quantity	Unit	Unit Price	Bid Amount
32	12" Reinforced Concrete Pipe (Class III)	120	LF	350	42,000
33	Remove Drop Inlet	3	EA	1,250	3,750
34	Fire Hydrant Assembly	1	EA	10,000	10,000
35	Remove Fire Hydrant	1	EA	1,550	1,550
36	Fire Lane Curb Paint	155	LF	4.30	666.50
37	Thermoplastic Traffic Striping	11,600	LF	1.65	19,140
38	Thermoplastic Pavement Marking	1,000	SQFT	10	10,000
39	Roadside Sign	10	EA	500	5,000
40	Install Roadside Sign (SSBM)	3	EA	520	1,560
41	Relocate Roadside Sign	1	EA	500	500
42	Remove Roadside Sign	5	EA	115	575
43	Relocate Parking Lot Light	1	LS	5,750	5,750
44	White Rock Road/Gold Valley Drive Traffic Signal	1	LS	373,380	373,380
45	White Rock Road/Sunrise Boulevard Traffic Signal Modification	1	LS	6,900	6,900
46	Traffic Signal Interconnect	840	LF	63	52,920
47	Modification to Existing Irrigation Facilities	1	LS	750	750
48	Irrigation System	1,250	SQFT	5.50	6,875
49	Maintain Existing Planted Areas	1	LS	100	100
50	Soil Amendment and Preparation	1,250	SQFT	.50	625
51	Turf Sod	1,250	SQFT	1.75	2,187.50
52	Mulch	1	CY	115	115
53	Plant Establishment Period	1	LS	400	400
TOTAL BASE BID PRICE IN DOLLARS (\$)				1,498,076	
TOTAL BASE BID PRICE IN WORDS				One million four hundred ninety-eight thousand seventy-six dollars	

ITEM 16.3.

ATTACHMENT A
ATTACHMENT 4
 PART OF ADDENDUM NO. 1
 CP15-2146

ADDITIVE ALTERNATE 1 BID

Item NO.	Item Description	Quantity	Unit	Unit Price	Bid Amount
1	Remove Tree	2	EA	\$3,000	\$6,000
2	Roadway Excavation	390	CY	104.50	40,755
3	Remove Existing Curb	5	CY	408	2,040
4	Remove Existing Curb & Gutter	7	CY	408	2,856
5	Remove Existing Sidewalk	6	CY	408	2,448
6	Asphalt Concrete (Type A)	120	TON	232	27,840
7	Aggregate Base (Class 2)	220	CY	72	15,840
8	PCC, Valley Gutter	360	SQFT	35	12,600
9	PCC Sidewalk	320	SQFT	25	8,000
10	PCC Type 2 Curb & Gutter	55	LF	55	3,025
11	PCC Type 5 Curb	170	LF	55	9,350
12	Adjust Valve to Grade	2	EA	1,850	3,700
13	Fire Hydrant Assembly	1	EA	10,000	10,000
14	Remove Fire Hydrant	1	EA	1,250	1,250
15	Rotate Fire Department Connection	1	EA	3,500	3,500
16	Fire Lane Curb Paint	85	LF	4.30	365.50
17	Thermoplastic Traffic Striping	160	LF	1.65	264
18	Thermoplastic Pavement Marking	45	SQFT	10.50	472.50
19	Relocate Internally Illuminated Business Sign	1	LS	12,000	12,000
20	Install Parking Lot Lighting	1	LS	17,500	17,500
21	Irrigation System	4,660	SQFT	4.60	21,436
22	Soil Amendment and Preparation	4,660	SQFT	.50	2,330
23	5 Gallon Shrubs	70	EA	41.50	2,905
24	Turf Sod	550	SQFT	1.60	880
25	Mulch	45	CY	46	2,070
26	Cobblestone	3	CY	406	1,218
27	Moss Rock	4	EA	535	2,140
28	Redwood Header Board	120	LF	11	1,320
TOTAL ADDITIVE ALTERNATE 1 BID PRICE IN DOLLARS (\$)				\$214,105	
TOTAL ADDITIVE ALTERNATE 1 BID PRICE IN WORDS				Two hundred fourteen thousand one hundred five dollars	

ITEM 16.3.

ATTACHMENT A
ATTACHMENT 4
PART OF ADDENDUM NO. 1
CP15-2146

ADDITIVE ALTERNATE 2 BID

Item NO.	Item Description	Quantity	Unit	Unit Price	Bid Amount
1	Asphalt Concrete (Type A)	1,550	TON	\$143.50	\$222,425
2	Cold Plane Asphalt Concrete	13,200	SQYD	4.50	59,400
TOTAL ADDITIVE ALTERNATE 2 BID PRICE IN DOLLARS (\$)				\$281,825	
TOTAL ADDITIVE ALTERNATE 2 BID PRICE IN WORDS				Two hundred eighty-one thousand eight hundred twenty-five dollars	

In the event that a product of a unit price and an estimated quantity does not equal the extended amount stated, the unit price will govern and the correct product of the unit price and estimated quantity shall be deemed to be the amount bid. Show total bid amounts in both words and figures. In case of discrepancy, amount shown in words will govern.

ALLOW = Allowance; CY = Cubic Yard; EA = Each; LB = Pound; LF = Linear Foot; LS = Lump Sum;
SQFT = Square Feet; SQYD = Square Yard; TON = Ton

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

The bidder Central Valley Engineering & Asphalt, Inc., proposed subcontractor _____, hereby certifies that he has X, has not _____, participated in a previous contract or subcontract subject to the equal opportunity clauses, as required by Executive Orders 10925, 11114, or 11246, and that, where required, he has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b) (1)), and must be submitted by bidders and proposed subcontractors only in connection with contracts and subcontracts which are subject to the equal opportunity clause. Contracts and subcontracts which are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally only contracts or subcontracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Proposed prime contractors and subcontractors who have participated in a previous contract or subcontract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b) (1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

Initial JC 

PUBLIC CONTRACT CODE

PUBLIC CONTRACT CODE SECTION 10285.1 STATEMENT

In conformance with Public Contract Code Section 10285.1 (Chapter 376, Stats. 1985), the bidder hereby declares under penalty of perjury under the laws of the State of California that the bidder has _____, has not X been convicted within the preceding three years of any offenses referred to in that section, including any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or Federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Public Contract Code Section 1101, with any public entity, as defined in Public Contract Code Section 1100, including the Regents of the University of California or the Trustees of the California State University. The term "bidder" is understood to include any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, as referred to in Section 10285.1.

Note: The bidder must place a check mark after "has" or "has not" in one of the blank spaces provided. The above Statement is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement. Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

PUBLIC CONTRACT CODE SECTION 10162 QUESTIONNAIRE

In conformance with Public Contract Code Section 10162, the Bidder shall complete, under penalty of perjury, the following questionnaire:

Has the bidder, any officer of the bidder, or any employee of the bidder who has a proprietary interest in the bidder, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or a safety regulation?

Yes _____ No X

If the answer is yes, explain the circumstances in the following space.

Initial JC 

PUBLIC CONTRACT CODE 10232 STATEMENT

In conformance with Public Contract Code Section 10232, the Contractor, hereby states under penalty of perjury, that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two year period because of the Contractor's failure to comply with an order of a federal court which orders the Contractor to comply with an order of the National Labor Relations Board.

Note: The above Statement and Questionnaire are part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Statement and Questionnaire.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Initial JC 

DESIGNATION OF SUBCONTRACTORS

In compliance with the provisions of Section 4100-4114 of the Public Contracts Code of the State of California, and any amendments thereof, each Bidder shall set forth below the name and location of the place of business of each Subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement to be performed under these specifications in excess of one-half of one percent (0.5%) of the prime Contractor's total bid or ten thousand dollars (\$10,000.00) whichever is greater. The prime Contractor shall list the portion of the work which will be done by such Subcontractor.

If the Contractor fails to specify a Subcontractor for any portion of the work to be performed under the Contract, the Contractor shall be deemed to have agreed to perform such portion itself, and the Contractor shall not be permitted to subcontract that portion of the work except under the conditions allowed by applicable law.

SUBCONTRACTOR (Name and Location)	PORTION OF WORK	ESTIMATED DOLLAR AMOUNT
Sierra Traffic Markings Roseville, CA	Thermo Stripe Signs	\$38,600 \$45,000
Parker Landscape Development Sacramento, CA	Landscape & Irrigation	\$40,000
ABSL Construction Sacramento, CA	Pavement Grinding	\$25,000
Interpoint Engineering Rocklin, CA	Staking	\$15,500
MT Hall & Associates Chico, CA	QC	\$19,000
Pavement Coatings Company Yuba Valley, CA	Slurry Seal Cape Seal	\$132,000

Central Valley Engineering & Asphalt, Inc.
Contractor's Name (Printed)

2/2/23

Date


Bidder's Signature
(same signature as on Bid Proposal)

James Castle

Bidder's Name (Printed)

CFO/ Secretary

Bidder's Title

DESIGNATION OF SUBCONTRACTORS

In compliance with the provisions of Section 4100-4114 of the Public Contracts Code of the State of California, and any amendments thereof, each Bidder shall set forth below the name and location of the place of business of each Subcontractor who will perform work or labor or render service to the Contractor in or about the construction of the work or improvement to be performed under these specifications in excess of one-half of one percent (0.5%) of the prime Contractor's total bid or ten thousand dollars (\$10,000.00) whichever is greater. The prime Contractor shall list the portion of the work which will be done by such Subcontractor.

If the Contractor fails to specify a Subcontractor for any portion of the work to be performed under the Contract, the Contractor shall be deemed to have agreed to perform such portion itself, and the Contractor shall not be permitted to subcontract that portion of the work except under the conditions allowed by applicable law.

SUBCONTRACTOR (Name and Location)	PORTION OF WORK	ESTIMATED DOLLAR AMOUNT
Pacific Northwest Oil Stockton, CA	Tack	\$9,200
St Francis Electric San Leandro, CA	Electrical	\$467,500

Central Valley Engineering & Asphalt, Inc.
Contractor's Name (Printed)

2/2/23

Date


Bidder's Signature
(same signature as on Bid Proposal)

James Castle

Bidder's Name (Printed)

CFO/ Secretary
Bidder's Title

EXPERIENCE/QUALIFICATIONS STATEMENT

The Bidder has been engaged in the contracting business, under the present business name for 23 years. Experience in work of a nature similar to that covered in the proposal extends over a period of 23 years.

The Bidder, as a Contractor, has never failed to satisfactorily complete a Contract awarded to it, except as follows:

The following contracts have been satisfactorily completed in the last three (3) years for the persons, firm or authority indicated, and to whom reference is made:

Year	Type of Work	Contract Amount	Owner/Agency for Whom Work was Performed
	SEE ATTACHED		

The following is a list of plant and equipment owned by the Bidder, which is definitely available for use on the proposed work as required.

Quantity	Name, Type and Capacity	Condition	Location
	SEE ATTACHED		

COPY AND ATTACH ADDITIONAL SHEETS AS NECESSARY

Central Valley Engineering & Asphalt, Inc.

Contractor's Name (Printed)

2/2/23

Date


 Bidder's Signature
 (same signature as on Bid Proposal)
 James Castle

Bidder's Name (Printed)

CFO/ Secretary

Bidder's Title

Central Valley Engineering & Asphalt, Inc.

Contractor Experience Statement

Contract Year	Project Name	Contract Amt	Location/Agency Name	Contact Name	Phone Number
2022	Howe Ave Bicycle & Pedestrian Improvement	\$ 2,480,000	County of Sacramento	Kyle Cameron	510-331-3996
2022	Roseville Road @ Diablo Dr. Traffic	\$ 916,000	County of Sacramento	Kyle Cameron	510-331-3996
2022	First Street Resurfacing Phase 2	\$ 1,100,000	City of Lincoln	Edgar Garcia	916-434-2419
2022	2020 Neighborhood Rehab Phase 2	\$ 4,427,000	City of Ranch Cordova	Brian Ellis	916-584-5315
2021	Winding Ln Curve & Lost Ave Intersection	\$ 327,000	City of Rocklin	Keith Jukes	916-625-5511
2021	Median Improvements	\$ 367,000	City of Rocklin	Keith Jukes	916-625-5511
2021	Access Curb Ramp Improvement	\$ 795,000	County of Sacramento	Christopher Abruscato	916-875-2772
2021	Signalized Intersection Safety Improvements	\$ 977,000	City of Citrus Heights	Leslie Blomquist	916-727-4770
2020	Rocklin Road Bike/Pedestrian Path	\$ 212,680	City of Rocklin	Keith Jukes	916-625-5511
2020	East Bidwell Street Widening	\$ 756,454	City of Folsom	Ryan Chance	916-355-8346
2020	Spring 2020 Roadway Base Repair	\$ 154,835	City of Auburn	Mengil A. Deane	530-823-4211
2019	Paving Repairs at Gate E & Levee Rd.	\$ 319,000	CA Construction Authority	Michael Sellens	916-263-6155
2019	Residential Street Resurfacing	\$ 987,000	City of Citrus Heights	Stu Hodgkins	916-727-4770
2019	Asphalt Concrete Repairs	\$ 714,000	City of Elk Grove	Robert French	916-478-3648
2019	Iron Point Railroad Reconstruction	\$ 720,000	City of Folsom	Ryan Chance	916-355-8346
2019	Utility Trench Backfill	\$ 304,000	City of Roseville	Daniel Pruden	916-746-1891
2019	Barge Canal Trail Phase 1	\$ 937,000	City of West Sacramento	Jeremy Chapdelaine	916-617-4766
2019	44th Street Beautification Phase 2	\$ 208,000	County of Sacramento	Ali Chehade	916-875-2721
2019	ADA Path of Travel Upgrades	\$ 256,000	County of Sacramento	Mike Fallon	916-956-9764
2019	Boreham and Gayle Lane Phase 1 & 2	\$ 288,000	Nevada Irrigation District	Cameron Price	530-271-6808
2019	Rocklin Parking Lot Maintenance	\$ 318,000	Sierra Community College	Colin Irwin	916-660-7655
2019	800 South First Street	\$ 729,000	Silverville Cemetery Dist.	Melissa Apaka	707-678-5578
2018	2018 Accessibility & Drainage	\$ 752,000	City of Citrus Heights	Stu Hodgkins	916-727-4770
2018	Greenback/Madison/Folsom Auburn	\$ 2,103,000	City of Folsom	Ryan Chance	916-355-8346
2018	Cimmaron Overlay and Pavement Repair	\$ 733,000	City of Folsom	Ryan Chance	916-355-8346
2018	RFB 18-06 Asphalt Project	\$ 230,000	Sacramento Metro Fire Dist.	John Raeside	916-616-2482
2017	Bridgewater/Stillwater Paving Project	\$ 898,000	Riverlake Community Assoc.	Skip Brown	916-761-1817
2017	AC Overlay 2017 - Drayton Heights	\$ 2,185,000	County of Sacramento	Ali Chehade	916-875-2721
2017	Joiner Pky & 12 Bridges Dr Pavement	\$ 998,000	City of Lincoln	Roland Neufeld	916-434-2481
2017	2017 Pavement Repairs	\$ 500,000	Rancho Murieta	Skip Brown	916-761-1817
2017	2017 Street Rehabilitation Project	\$ 1,419,000	City of Ranch Cordova	Bob LoRusso	707-689-3890
2017	Nevada City Highway Sidewalk Ext	\$ 514,000	County of Nevada	Martin Jackson	916-677-6869
2017	Douglas Rd/Grant Line Signalization Proj.	\$ 891,000	City of Ranch Cordova	Bob LoRusso	707-689-3890

Equipment List

Quantity	Name, Type and Capacity	Condition	Location
4	Asphalt Pavers	Good	Roseville, CA
7	Rollers	Good	Roseville, CA
12	Tractors/Mini Excavators	Good	Roseville, CA
3	Transfers / 10-Wheelers	Good	Roseville, CA

ITEM 16.3.**ATTACHMENT 4**

Accompanying this proposal is Bidder's Bond

(NOTICE: INSERT THE WORDS "CASH(\$ _____)," "CASHIER'S CHECK,"
"CERTIFIED CHECK," OR "BIDDER'S BOND," AS THE CASE MAY BE.)

in amount equal to at least ten percent (10%) of the total of the bid.

The names of all persons interested in the foregoing proposal as principals are as follows:

IMPORTANT NOTICE: If bidder or other interested person is a corporation, state legal name of corporation, also names of the president, secretary, treasurer, and manager thereof; if a co-partnership, state true name of firm, also names of all individual co-partners composing the firm; if bidder or other interested person is an individual, state first and last names in full.

Central Valley Engineering & Asphalt, Inc.

Warren Holt, President Bob Leppek, Vice President

James Castle, CFO/ Secretary

Licensed in conformance with an act providing for the registration of Contractors

License No. 773404

Classification(s) A

ADDENDA

This Proposal is submitted with respect to the changes to the contract included in addenda number/s

1

(Fill in addenda numbers if addenda have been received and insert, in this Proposal, any Engineer's Estimate sheets that were received as part of the addenda.)

By my signature on this proposal I certify, under penalty of perjury under the laws of the State of California, that the foregoing questionnaire and statements of Public Contract Code Sections 10162, 10232 and 10285.1 are true and correct and that the bidder has complied with the requirements of Section 8103 of the Fair Employment and Housing Commission Regulations (Chapter 5, Title 2 of the California Administrative Code). By my signature on this proposal I further certify, under penalty of perjury under the laws of the State of California and the United States of America, that the Noncollusion Affidavit required by Title 23 United States Code, Section 112 and Public Contract Code Section 7106; and the Title 49 Code of Federal Regulations, Part 29 Debarment and Suspension Certification are true and correct.

Date: 2/2/2023



James Castle

CFO/ Secretary

Signature and Title of Bidder

Business Address 216 Kenroy Lane Roseville, CA 95678

Place of Business 216 Kenroy Lane Roseville, CA 95678

Place of Residence _____

**CITY OF RANCHO CORDOVA
DEPARTMENT OF PUBLIC WORKS
SAMPLE PAYMENT BOND**
(Section 3247, Civil Code)

WHEREAS, The City of Rancho Cordova, acting by and through the Department of Public Works, hereafter referred to as "Obligee", has awarded to Contractor _____, hereafter designated as the "Principal", a contract for the work described as follows:

AND WHEREAS, said Principal is required to furnish a bond in connection with said contract, to secure the payment of claims of laborers, mechanics, material men and other persons as provided by law.

NOW, THEREFORE, we the undersigned Principal and Surety are bound unto the Obligee in the sum of _____ dollars (\$ _____), for which payment, we bind ourselves, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if said Principal or its subcontractors shall fail to pay any of the persons named in Civil Code Section 3181, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by such claimant, or any amounts required to be deducted, withheld, and paid over to the Franchise Tax Board for the wages of employees of the Principal and his subcontractors pursuant to Section 18806 of the Revenue and Taxation Code, with respect to such work and labor, that the surety herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void. In case suit is brought upon this bond, the surety will pay a reasonable attorney's fee to fix by the court.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 3181 as to give a right of action to such persons or their assigns in any suit brought upon this bond.

Dated: _____, 20 ____

Correspondence or claims relating to this bond should be sent to the surety at the following address:

Principal

Surety (SEAL)

By: Attorney-in-Fact

NOTE: Signatures of those executing for the surety must be properly acknowledged.

CERTIFICATE OF ACKNOWLEDGEMENT

State of California

City of Rancho Cordova

On this _____ day of _____ in the year 20 ____ before me _____, personally appeared _____, personally known to me (or proved to me

Attorney-in-fact

on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney-in-fact of _____ and acknowledged to me that he/she subscribed the name of the said company thereto as surety, and his/her own name as attorney-in-fact.

(SEAL)

Notary Public

**CITY OF RANCHO CORDOVA
DEPARTMENT OF PUBLIC WORKS
SAMPLE PERFORMANCE BOND**
(To Accompany Contract)

Bond No. _____

WHEREAS, the City of Rancho Cordova, acting by and through the Department of Public Works, has awarded to Contractor _____, hereafter designated as the "Contractor", a contract for the work described as follows:

AND WHEREAS, the Contractor is required to furnish a bond in connection with said contract, guaranteeing the faithful performance thereof:

NOW, THEREFORE, we the undersigned Contractor and Surety are held firmly bound to the City of Rancho Cordova in the sum of \$ _____ dollars (\$ _____), to be paid to said City or its certain attorney, its successors and assigns: for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH,

That if the above bound Contractor, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the foregoing contract and any alteration thereof made as therein provided, on his or their part to be kept and performed at the time and in the manner therein specified, and in all respects according to their intent and meaning, and shall indemnify and save harmless the City of Rancho Cordova, its officers and agents, as therein stipulated, then this obligation shall become and be null and void; otherwise it shall be and remain in full force and virtue.

IN WITNESS WHEREOF, We have hereunto set our hands and seals on this _____ day of _____, 20____.

Correspondence or claims relating to this bond should be sent to the surety at the following address:

Contractor

Name of Surety (SEAL)

By: Attorney-in-Fact

NOTE: Signatures of those executing for the surety must be properly acknowledged.

CERTIFICATE OF ACKNOWLEDGEMENT

State of California, City of Rancho Cordova

On this _____ day of _____ in the year 20____ before me _____, a notary public in and for the City of Rancho Cordova, personally appeared _____,

Attorney-in-fact

known to me to be the person whose name is subscribed to this instrument and known to me to be the attorney-in-fact of _____ and acknowledged to me that he/she subscribed the name of the said company thereto as surety, and his/her own name as attorney-in-fact.

(SEAL)

Notary Public

CITY RANCHO CORDOVA - DEPARTMENT OF PUBLIC WORKS**NONCOLLUSION AFFIDAVIT**

(Title 23 United States Code Section 112 and
Public Contract Code Section 7106)

To the CITY of RANCHO CORDOVA
DEPARTMENT OF PUBLIC WORKS.

In conformance with Title 23 United States Code Section 112 and Public Contract Code 7106 the bidder declares that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and, further, that the bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid.

Note: The above Noncollusion Affidavit is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Noncollusion Affidavit.

Bidders are cautioned that making a false certification may subject the certifier to criminal prosecution.

Initial JC

CITY OF RANCHO CORDOVA - DEPARTMENT OF PUBLIC WORKS

DEBARMENT AND SUSPENSION CERTIFICATION

TITLE 49, CODE OF FEDERAL REGULATIONS, PART 29

The bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated therewith in the capacity of owner, partner, director, officer, manager:

- is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;
- has not been suspended, debarred, voluntarily excluded or determined ineligible by any Federal agency within the past 3 years;
- does not have a proposed debarment pending; and
- has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past 3 years.

If there are any exceptions to this certification, insert the exceptions in the following space.

Exceptions will not necessarily result in denial of award, but will be considered in determining bidder responsibility. For any exception noted above, indicate below to whom it applies, initiating agency, and dates of action.

Notes: Providing false information may result in criminal prosecution or administrative sanctions.

The above certification is part of the Proposal. Signing this Proposal on the signature portion thereof shall also constitute signature of this Certification.

Initial JC

5.	QUESTION: SHEET 9 CALLES OUT TYPE 1A CURB AND GUTTER AND I BELIEVE IT SHOULD BE TYPE 2. TAKE A LOOK AT BASE BID BID QUANTITIES AND CONFIRM. THE ONLY TYPE 1A CURB AND GUTTER IS ISOLATED ON WHITE ROCK ROAD STATION 108+37 TO 108+86. RESPONSE: THE PLAN SHEETS ARE CORRECT. A TYPE 1A CURB WILL BE USED UNDER BASE BID AND A TYPE 2 CURB WILL BE USED UNDER ADDITIVE ALTERNATE 1.
6.	QUESTION: Also, we are coming up with more SF for sidewalk based on the detail sheets for base bid. Possibly when you respond to the driveway/valley gutter clarification this too can be clarified. RESPONSE: THE BID ITEM HAS BEEN UPDATED. REFER TO REVISED BID SCHEDULED ATTACHED TO THIS ADDENDUM.
7.	QUESTION: If the Add alternates are taken will there be added working days or will it remain 80WD? RESPONSE: NO ADDITIONAL WORKING DAYS WILL BE ASSIGNED FOR ADD ALTERNATIVES.
8.	BID SCHEDULE PAGE 101 BI#7 Remove tree, there appears to be 2, not 1 each. Sheet 7 and sheet 11. BI#8 Roadway Exc – we are coming up with a greater qty simply due to excavation for the new AC/AB sections based on the SF and the notated sections. BI#14 Cape Seal – it appears that this should be SY not SF. RESPONSE: THE BID ITEMS HAVE BEEN UPDATED. REFER TO REVISED BID SCHEDULED ATTACHED TO THIS ADDENDUM.
9.	QUESTION: BI#16 PCC Valley Gutter – is this item for both the cross gutter call outs and the Type B driveways? RESPONSE: THE PCC VALLEY GUTTER ITEM INCLUDES CROSS GUTTER AND REINFORCED PCC CURB AND GUTTER TRANSITION AREA AS SHOWN ON SAC COUNTY STANDARD DRAWING 4-36 “TYPE B DRIVEWAY”
10.	QUESTION: Add Alt 1 BI#8 PCC Valley Gutter – should this be in SF as in Base Bid? Also I came up with 640 sf based on sheets 9A/9B takeoff RESPONSE: SQUARE FOOT IS CORRECT UNIT. REFER TO REVISED BID SCHEDULED ATTACHED TO THIS ADDENDUM. PCC VALLEY GUTTER ON SHEET 9A ALONG WHITE ROCK ROAD IS INCLUDED IN BASE BID.

11.	QUESTION: RESPONSE:	Add Alt 2 • BI#2 Cold Plan AC – please clarify why this quantity differs from the Cape seal if it is to be used in it's place? COLD PLANE AC AREA DOES NOT INCLUDE REMOVE AND REPLACE PAVEMENT AREAS. THE REMOVE AND REPLACE PAVEMENT AREAS SHALL BE CAPE SEALED. REFER TO PLAN SHEET 2.
12.	Plansheet 24 L1.01 RESPONSE:	Plan sheet 24, detail C Colored and Stamped Concrete • Please confirm that the Type 4 curb is to follow County detail 4-30 per the notes on the typical street section sheets as this detail is conflicting with detail 4-30 for Type 4 curb TYPE 4 CURB CALLOUT ON TYPICAL SHEETS IS CORRECT. REFER TO NOTE 1 ON DETAIL C.
13.	Plansheet 24 L1.01 RESPONSE:	Plan sheet 24, detail C Colored and Stamped Concrete • Please confirm if a rat slab can be poured on the existing asphalt in lieu of AB below the concrete median. Placing AB on top of asphalt is not a good method of construction. CONTRACTORS ARE ADVISED TO BID PER THE PLANS. THIS CAN BE PROPOSED AFTER AWARD OF CONTRACT BUT NO ADDITIONAL COMPENSATION WOULD BE PROVIDED.
14.	QUESTION: RESPONSE:	When is the anticipated NTP expected for this project? THE CITY ANTICIPATES START OF CONSTRUCTION TO BEGIN LATE MARCH OR EARLY APRIL.
15.	QUESTION: RESPONSE:	Will the City of Rancho Cordova be using a CM firm for project Manager/oversight? If so, what firm? YES. THE CITY HAS CONTRACTED WITH PSOMAS FOR CONSTRUCTION MANAGEMENT SERVICES.
16.	QUESTION: RESPONSE	Will the City of Rancho Cordova be hiring a geotechnical engineer for City testing and inspection? THE CITY'S CONSTRUCTION MANAGER HAS A GEOTECHNICAL SUBCONSULTANT TO PROVIDE QUALITY ASSURANCE. CONTRACTOR ARE REQUIRED TO PROVIDE GEOTECHNICAL SERVICES FOR QUALITY CONTROL.

17.	BID FORM PG 99	CONTRACTORS REGISTRATION FORM <i>THIS FORM IS FOR THE CONTRACTOR AND SUBCONTRACTORS DEPARTMENT OF INDUSTRIAL RELATIONS REGISTRATION NUMBERS.</i>
18.	Traffic Signal Poles	The City shall furnish the following traffic signal poles and mast arms: GALVINIZED 29-5-100, 55,15 GALVINIZED 29-5-100, 50,15 GALVINIZED 23-4-100, 35 GALVINIZED 19-4-100, 30, 15 <i>CONTRACTOR IS REQUIRED TO FURNISH ALL REMAINING TRAFFIC SIGNAL COMPONENTS.</i>

Please note: The bid date **HAS BEEN CHANGED** to **FEBRUARY 2, 2023 at 2:00 pm.**
No further questions will be considered.

Addendum No.1 Attachments:

- A – Revised Bid Schedule, Pages 101-104
- B – Plansheet PP-3

END OF ADDENDUM NO. 1


Edgar Medina
Project Manager


Albert Stricker
Director of Public Works


James Castle, CFO/ Secretary
Central Valley Engineering & Asphalt, Inc.

**CITY RANCHO CORDOVA
DEPARTMENT OF PUBLIC WORKS
BIDDER'S BOND**

We, Central Valley Engineering & Asphalt, Inc.

Everest Reinsurance Company

as Principal, and

as Surety are bound unto the City of Rancho Cordova, State of California, hereafter referred to as "Obligee", in the penal sum of ten percent (10%) of the total amount of the bid of the Principal submitted to the Obligee for the work described below, for the payment of which sum we bind ourselves, jointly and severally,

THE CONDITION OF THIS OBLIGATION IS SUCH, THAT:

WHEREAS, the Principal is submitted to the Obligee,
for

White Rock Road Improvements - Sunrise Boulevard to Fitzgerald Road, CP15-2146

(Copy here the exact description of work, including location as it appears on the proposal)

for which bids are to be opened at Rancho Cordova, California on February 2, 2023

(Insert place where bids will be opened)

(Insert date of bid opening)

NOW, THEREFORE, if the Principal is awarded the contract and, within the time and manner required under the specifications, after the prescribed forms are presented to him for signature, enters into a written contract, in the prescribed form, in conformance with the bid, and files two bonds with the Obligee, one to guarantee faithful performance of the contract and the other to guarantee payment for labor and materials as provided by law, then this obligation shall be null and void; otherwise, it shall remain in full force.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the Surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

Dated: January 31, 2023

Central Valley Engineering & Asphalt, Inc.

James Castle, CFO

Principal

Everest Reinsurance Company

By Breanna Boatright

Surety

Breanna Boatright, Attorney-in-fact

CERTIFICATE OF ACKNOWLEDGEMENT

State of California
City Rancho Cordova

On this ____ day of _____ in the year 20__ before me

_____, personally appeared _____,
Attorney-in-fact

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument as the attorney-in-fact of _____, and acknowledged to me that he (she) subscribed the name of the said company thereto as surety, and his (her) own name as attorney-in-fact.

(SEAL)

-See Attached - California all Purpose Acknowledgment Complies with Civil Code section 1189.

Notary Public

City of Rancho Cordova
White Rock Road Improvements - Sunrise Boulevard to Fitzgerald Road

Bid Form
Page 111

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Placer

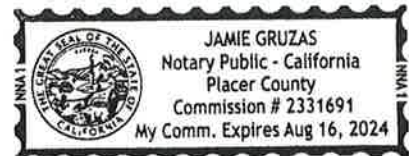
On February 2, 2023 before me, Jamie Gruzas, Notary Public
(insert name and title of the officer)

personally appeared James Castle
who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~
subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in
his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the
person~~(s)~~, or the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Jamie Gruzas* (Seal)



Clear Form

Print Form

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Nevada

County of Washoe

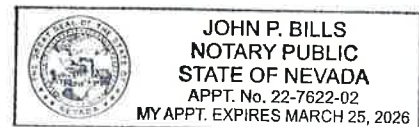
On 1/31/2023 before me, John P. Bills, Notary Public
(insert name and title of the officer)

personally appeared Breanna Boatright
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~
subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in
~~his~~/her/~~their~~ authorized capacity(~~ies~~), and that by ~~his~~/her/~~their~~ signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)





**POWER OF ATTORNEY
EVEREST REINSURANCE COMPANY
DELAWARE**

KNOW ALL PERSONS BY THESE PRESENTS: That Everest Reinsurance Company, a corporation of the State of Delaware ("Company") having its principal office located at 477 Martinsville Road, Liberty Corner, New Jersey 07938, do hereby nominate, constitute, and appoint:

Elizabeth Collodi, John Hopkins, John J. Weber, Joseph H. Weber, Renee Ramsey, Sara Walliser, Mindy Whitehouse, Jennifer Lakmann, Deanna Quintero, Bill Rapp, Jason March, Matthew Foster, Tony Clark, Mary Collins, Kristie Phillips, Claudine Gordon, Michael K. Feeney, Samantha Watkins, Phil Watkins, Brad Espinosa, Paula Sena, Paula Senna, Pam Sey, Breanna Boatright, Kathleen Le, and Sharon Smith

its true and lawful Attorney(s)-in-fact to make, execute, attest, seal and deliver for and on its behalf, as surety, and as its act and deed, where required, any and all bonds and undertakings in the nature thereof, for the penal sum of no one of which is in any event to exceed UNLIMITED, reserving for itself the full power of substitution and revocation.

Such bonds and undertakings, when duly executed by the aforesaid Attorney(s)-in-fact shall be binding upon the Company as fully and to the same extent as if such bonds and undertakings were signed by the President and Secretary of the Company and sealed with its corporate seal.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Board of Directors of Company ("Board") on the 28th day of July 2016:

RESOLVED, that the President, any Executive Vice President, and any Senior Vice President and Anthony Romano are hereby appointed by the Board as authorized to make, execute, seal and deliver for and on behalf of the Company, any and all bonds, undertakings, contracts or obligations in surety or co-surety with others and that the Secretary or any Assistant Secretary of the Company be and that each of them hereby is authorized to attest to the execution of any such bonds, undertakings, contracts or obligations in surety or co-surety and attach thereto the corporate seal of the Company.

RESOLVED, FURTHER, that the President, any Executive Vice President, and any Senior Vice President and Anthony Romano are hereby authorized to execute powers of attorney qualifying the attorney named in the given power of attorney to execute, on behalf of the Company, bonds and undertakings in surety or co-surety with others, and that the Secretary or any Assistant Secretary of the Company be, and that each of them is hereby authorized to attest the execution of any such power of attorney, and to attach thereto the corporate seal of the Company.

RESOLVED, FURTHER, that the signature of such officers named in the preceding resolutions and the corporate seal of the Company may be affixed to such powers of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be thereafter valid and binding upon the Company with respect to any bond, undertaking, contract or obligation in surety or co-surety with others to which it is attached.

IN WITNESS WHEREOF, Everest Reinsurance Company has caused their corporate seals to be affixed hereto, and these presents to be signed by their duly authorized officers this 28th day of July 2016.



Everest Reinsurance Company



Attest: Nicole Chase, Assistant Secretary



By: Anthony Romano, Vice President

On this 28th day of July 2016, before me personally came Anthony Romano, known to me, who, being duly sworn, did execute the above instrument; that he knows the seal of said Company; that the seal affixed to the aforesaid instrument is such corporate seal and was affixed thereto; and that he executed said instrument by like order.

LINDA ROBINS
Notary Public, State of New York
No 01R06239736
Qualified in Queens County
Term Expires April 25, 2023



Linda Robins, Notary Public

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Company, at the Liberty Corner, this 31st day of January 2023.

**Central Valley Engineering
& Asphalt, Inc.**

216 Kenroy Lane

Roseville, CA 95678

(916) 791-1609

CA Lic: 773404; DIR #1000001249

ATTACHMENT 4

RECEIVED

FEB 02 2023

BY: *Y. J. 1:52pm*

**City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95760**

**Project: White Rock Rd Improvements – Sunrise
Blvd to Fitzgerald Rd
Bid Date: February 2, 2023 at 2:00 pm**

SEALED BID ENCLOSED

MEMORANDUM



ITEM 16.4.

DATE: March 6, 2023
TO: Honorable Mayor and Council Members
FROM: Russell Ducharme, Neighborhood Services Manager
SUBJECT: **A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACT AMENDMENT NO. 2022-116-02 WITH CALIFORNIA INN AND SUITES TO INCREASE THE CONTRACT AMOUNT FROM \$100,000 TO AN AMOUNT NOT TO EXCEED \$150,000 AND TO EXTEND THE CONTRACT TERM FROM JUNE 30, 2023, TO JUNE 30, 2024, FOR HOUSING SERVICES**

RECOMMENDATION

Adopt the Resolution.

RESULT OF RECOMMENDED ACTION

Adoption of the Resolution would authorize the City Manager to execute Contract Amendment No. 2022-116-02 for additional housing services with California Inn and Suites to extend the contract term from June 30, 2023, to June 30, 2024, which results in increasing the contract amount from \$100,000 to an amount not to exceed of \$150,000 for housing services.

BACKGROUND

The City entered into a Professional Services Agreement with California Inn & Suites dated July 6, 2022, in the amount of \$25,000 to provide temporary housing for the homeless, displaced residents, and those in transition between drug and alcohol rehab and/or other housing services. A First Amendment was approved on October 1, 2022, increasing the total compensation to \$100,000. This Second Amendment will increase the total compensation to an amount not to exceed \$150,000 and extend the term through June 30, 2024.

FISCAL IMPACT AND FUNDING SOURCE

Funded through the Community Enhancement and Investment Fund.

ATTACHMENT(S)

1. Resolution
2. Draft Second Amendment California Inn and Suites

CITY OF RANCHO CORDOVA

RESOLUTION NO. XX-2023

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA, STATE OF CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A SECOND AMENDMENT TO THE HOUSING SERVICES AGREEMENT WITH CALIFORNIA INN & SUITES

WHEREAS, the City and California Inn & Suites entered into a Professional Services Agreement (“PSA”) dated July 6, 2022, for an amount not to exceed \$25,000 for the purpose of providing temporary housing for the homeless, displaced residents, and those in transition between drug and alcohol rehab; and those in transition between drug and alcohol rehab; and

WHEREAS, a First Amendment was approved on October 1, 2022 and increased the compensation by \$75,000 to an amount not to exceed \$100,000; and

WHEREAS, this second amendment will increase the compensation by \$50,000 to an amount not to exceed \$150,000 and extend through June 30, 2024; and

WHEREAS, the Parties agree that changes to the term and services provided for in the PSA are necessary in order for the City to continue receiving services by Professional.

NOW, THEREFORE, BE IT HEREBY RESOLVED THE CITY COUNCIL OF THE CITY OF RANCHO CORDOVA authorizes the City Manager to execute the Second Amendment to the contract with California Inn & Suites.

PASSED AND ADOPTED by the City Council of the City of Rancho Cordova on the 6th day of March 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Linda Budge, Mayor

Stacy Leitner, CMC
City Clerk

**SECOND AMENDMENT TO THE HOUSING SERVICES AGREEMENT
BETWEEN THE CITY OF RANCHO CORDOVA AND
CALIFORNIA INN & SUITES**

This Second Amendment to the Agreement for Professional Services ("Amendment") is made by and between the City of Rancho Cordova ("City") and California Inn & Suites ("Professional") as of March 6, 2023 City and Professional are hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties entered into a Professional Services Agreement ("PSA" or "Agreement") dated July 6, 2022 for the purpose of providing temporary housing for the homeless, displaced residents, and those in transition between drug and alcohol rehab ("Original Agreement"); and

WHEREAS, the Parties previously entered into a First Amendment to increase the total cost of this Agreement by \$75,000, for a total not-to-exceed cost of \$100,000.

WHEREAS, this Amendment will **increase the compensation by \$50,000 and extend the contract through June 30, 2024**; and

WHEREAS, the Parties agree that changes to the term and services provided for in the PSA are necessary in order for the City to continue receiving services by Professional.

NOW, THEREFORE, the Parties hereto agree as follows:

AGREEMENT

1. Section 2 of the PSA, "Compensation," provides for the City to pay Professional a sum not to exceed \$25,000. The First Amendment to this Agreement amended Section 2 to provide for a sum not to exceed \$100,000. The Parties agree to further amend Section 2 of the PSA in order to increase the compensation amount to pay Professional for additional services. The first sentence of Section 2 of the PSA is amended to read as follows:

"City hereby agrees to pay Professional a sum not to exceed One Hundred Fifty Thousand Dollars (\$150,000), notwithstanding any contrary indication that may be contained in Professional's proposal, for services to be performed and reimbursable costs incurred under this Agreement."

2. Section 1.1 of the PSA, "Term of Services," states that "The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2023, the date of completion of the Agreement. Professional shall provide the services described in Exhibit A prior to the end date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Professional to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8." The Parties agree

ITEM 16.4.

**ATTACHMENT 2
CONTRACT NO. 2022-116-2**

- to an extension of the PSA in accordance with Section 8.2, to provide for an additional one (1) year of professional services, ending on June 30, 2024.
3. This Amendment shall form part of the Original Agreement. Except to the extent otherwise amended in this Amendment, all other terms and conditions of the Original Agreement shall remain the same, provided that in the event of a conflict between the provisions of this Amendment and those of the balance of the Original Agreement or First Amendment, the terms and provisions of this Amendment shall supersede those provisions of the balance of the Original Agreement and First Amendment with which they conflict.
 4. The signatures of the Parties to this Amendment may be executed and acknowledged on separate pages or in counterparts which, when attached to this Amendment, shall constitute one complete Amendment.
 5. **Contract Administration.** This Agreement shall be administered by Russ Ducharme, Neighborhood Services Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

Notices. Any written notice to Professional shall be sent to:

Nayem Islam
10800 Olson Drive
Rancho Cordova, CA 95670
Email Address (for Insurance Update Requests):
Californiainn.gm@gmail.com

Any written notice to City shall be sent to:

Russ Ducharme
Neighborhood Service
2880 Gold Tailings
Rancho Cordova, CA 95670
rducharme@cityofranchocordova.org

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year first above written.

CITY OF RANCHO CORDOVA

PROFESSIONAL

Micah Runner, City Manager

Nayem Islam, General Manager

Date: _____

Date: _____

Attest:

ITEM 16.4.

**ATTACHMENT 2
CONTRACT NO. 2022-116-2**

Stacy Leitner, CMC, City Clerk
Date: _____
Approved as to Form:

Adam U. Lindgren, City Attorney
Date: _____
5297334.1

MEMORANDUM

ITEM 18.1.



DATE: March 6, 2023

TO: Honorable Mayor and Council Members

FROM: Nicholas Sosa, Associate Planner

SUBJECT: LOGISTICENTER AT RANCHO CORDOVA MAJOR DESIGN REVIEW (CEQA EXEMPT PURSUANT TO SECTION 15183)– PROJECT NO. PLND-1021-0015

PROPERTY OWNER:	APPLICANT/DEVELOPER:
DPML Bear Hollow, LLC	Dermody Properties
5500 Equity Avenue	George Condon
Reno, NV 89502	5500 Equity Avenue
	Reno, NV 89502

PROJECT:	Logisticenter at Rancho Cordova – Major Design Review
FILE:	PLND-1021-0015
LOCATION:	Corner of Bear Hollow Drive and N. Mather Boulevard
APN:	072-2360-041-0000
PLANNER:	Nicholas Sosa, Associate Planner

RECOMMENDATION

There is no staff recommendation at this time.

Staff will be seeking additional direction from Council for this project. Staff requests that the Council receive additional testimony, potentially close the public hearing, ask any questions, deliberate, and provide staff sufficiently detailed direction to prepare documents for final action at the March 20, 2023, Council Meeting based upon Council direction.

PROJECT BACKGROUND

The project was most recently presented on January 17, 2023, at the regularly scheduled City Council meeting. At the meeting, the applicant presented modifications to the landscape plan and elevations since the December 5, 2022, meeting, as well as provided updated visual renderings. Staff presented a list of additional requests made by the community that the applicant was agreeable to that could become conditions of approval for the project. Council requested the project be continued to the February 6, 2023, Council meeting. However, staff needed additional time to respond to legal letters and resident comments and continued the item until the March 6, 2023, meeting.

As part of this package, staff will be providing a response to legal letters received by attorneys from both the Stone Creek residents and the applicant as well as updated responses to the previously created Frequently Asked Questions (FAQ) sheet for Logistcenter.

There have been no additional modifications to the project site plan, conditions of approval, or building design since the project's most recent presentation on January 17, 2023.

Resident Frequently Asked Questions Updates

The application was originally submitted in October of 2021. Over the course of the Council deliberations on the project, both staff and City Council have received voluminous correspondence from the community with inquiries on the details of the project, the status of review, and the standards and regulations applicable, as well as correspondence voicing direct opposition to the project. Many of the questions presented by the community were similar or overlapped other questions that City staff have received from other community members. Therefore, in an effort to provide a response to all community members that is consistent and available to everyone, staff created a Frequently Asked Questions (FAQ) sheet that addresses a majority of the common questions received. A similar FAQ sheet was included in the Council package when the item was taken to City Council on December 5, 2022.

Since the December 5, 2022, Council meeting, staff has updated the FAQ sheet to address new issues raised in correspondence from community members by direct email, through public comment at Council meetings, and through emails to Council Members forwarded to staff.

The FAQ sheet does not answer certain questions that require a final discretionary determination by the Council.

The topics that have been addressed within the revised FAQ sheet include:

- Particulate Matter Analysis
- Truck Parking on Public Rights-of-Way
- Environmental Questionnaire Requirements
- The Annual Review of the Development Agreement

The revised FAQ sheet is Attachment 3 to this staff report.

Additional Conditions of Approval

At the January 17, 2023, City Council meeting, staff presented a list of community requests and the Developer's response to those requests, including:

- Limiting hours of operation
- Requiring a sound wall at the end of Debina Court
- No parking on N. Mather
- Additional clean energy building details and infrastructure on-site (e.g. skylights, EV charging, bike lockers, solar panels, LEED certification, etc.)

The Applicant has reviewed these community requests and has agreed to a majority of them with the exception of obtaining LEED certification and truck parking on N. Mather, which has already received added signage by city staff to state "No Truck Parking." As part of this project,

staff has generated draft conditions of approval to address these topics that would be added to the project's final set of conditions if the project would be approved. These conditions have been drafted as shown below.

1. **ONGOING** – Truck movements into, out of, and around the truck court of the project site, shall be prohibited between 10:00 p.m. and 6:00 a.m.
2. **PRIOR TO APPROVAL OF IMPROVEMENT PLANS** – The project shall be required to pay its fair share of a new sound/screen wall at the end of Debina Court near the intersection of Zinfandel Drive and Baroque Drive, as well as any additional traffic calming measures required along Bear Hollow Drive.
3. **PRIOR TO ISSUANCE OF BUILDING PERMIT** – The project shall include skylights and a roof that is designed to carry solar panels. This information shall be shown on the submitted building permits.
4. **PRIOR TO ISSUANCE OF BUILDING PERMIT** – The project shall provide bicycle parking spaces on-site, in a combination of both short-term and long-term spaces.
5. **PRIOR TO ISSUANCE OF BUILDING PERMIT** – The project shall include EV charging infrastructure upon construction, and be EV ready as required by the California Building Code.
6. **PRIOR TO ISSUANCE OF BUSINESS LICENSE** – Should the building, or a portion of the building, be leased to a use that requires refrigerated trucks, electrical outlets shall be installed at each loading dock to minimize truck idling.

Again, these conditions would be included as part of the final conditions of approval, if the Council provides direction to prepare documents for approval.

Additional Conditions Requested by the Community

In addition to the community requests listed above that have been agreed to by the Applicant, the community has requested additional conditions of approval that were received on January 17, 2023, listed below. Staff's initial feedback on these specific requests is also provided below.

1. No construction traffic on Bear Hollow north of entrance.
2. Limited construction traffic (construction phase) and truck traffic (operational stage) during Navigator school drop off and pick up times as well as peak traffic hours on Zinfandel to the Hwy 50 overpass (7:45 a.m.- 9:00 a.m. and 4:30 p.m.-5:30 p.m.)
3. All light fixtures, both pole and building mounted have motion sensors installed.
4. The wall pack units that are to be installed on the east side of the building facing Bear Hollow Drive be replaced with pole lights to minimize glare into the Veranda neighborhood.
5. Establish a \$200,000 fund to provide the highest quality air filters for neighbors in the Villages of Stone Creek.
6. As an alternative to active enforcement, put up cameras at key locations to catch truck route and parking violators paid by Developer(s) and fund for operations, maintenance. Suggested camera locations would be N. Mather and Bear Hollow by school.

7. Increase the height of sound walls all along Zinfandel for the residents whose homes back up to Zinfandel and will be impacted by the increase in truck noise. VOZSPA stated 6-8 foot walls, 6' were built. Increase to 8'.

In regards to the construction traffic items in 1 and 2 listed above, those could be addressed in a construction traffic management plan and could be a condition of approval if agreed to by the Applicant. However, regarding the request for a permanent hours limitation on truck operations during peak school traffic hours requested in items 1 and 2, the Applicant is unlikely to agree and the City could not presently require such a restriction without their agreement.

Staff would not support the additional lighting requests outlined in 3 and 4. The current lighting standards in the code require lighting to be shielded downward so that it does not create an offsite impact. Additionally, increasing the amount of light poles could create additional unwanted glare and brightness when the site is viewed from a distance. Requiring motion sensors on the lights could lead to constant flickering on and off when any motion is detected and would not adequately provide safe nighttime lighting on the site.

Items requested in 5 and 6 would be above and beyond what the City is permitted to impose as a condition on a design review. However, in the future the City Council could direct staff to look into methods to fund these additional requests through other means.

Lastly, staff would not be in support of raising the existing wall along Zinfandel to 8 feet. There is not a nexus to require the Applicant to increase the wall height by two feet. Further, this effort would require the removal of the existing wall, as it likely is not currently constructed to handle the additional weight load of two more feet of masonry material. Removal of this wall would also result in the removal of existing improvements along Zinfandel, including mature landscaping and on adjacent private property which could also include landscaping, accessory structures and/or pools.

ENVIRONMENTAL

The Logisticenter at Rancho Cordova Major Design Review is exempt from CEQA review under CEQA State Guidelines section 15183. Projects that are consistent with the development density established by existing zoning, community plan, or general plan policies for which an Environmental Impact Report (EIR) was certified, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site and which were not addressed as significant effects in the prior EIR, or which substantial new information shows will be more significant than described in the prior EIR are exempt from CEQA. The project is located within the Villages of Zinfandel Special Planning Area (VOZSPA). An EIR was certified by the Sacramento County Board of Supervisors in 1998 for the VOZSPA. Additionally, a Supplemental EIR was prepared and certified by the Sacramento County Board of Supervisors in 2002 for the plan area.

The Logisticenter at Rancho Cordova Major Design Review involves development of a 155,040 square foot industrial shell building with parking and loading docks. The development also includes landscaping, drainage, and required screening/fencing for a loading dock area. The business and professional park (BP) site was identified in the Villages of Zinfandel Special Planning Area EIR and uses contemplated within the BP designation include those uses listed in the Sacramento County Zoning Code under the BP and MP (Industrial Office Park) use tables located in Chapter 25 and Chapter 30. Warehousing is a permitted by right uses as listed in Table IV I.3.

Additional supplemental technical studies were prepared to further support that no additional project related impacts would occur as a result of the proposed project. These technical studies include additional traffic analysis, as well as a noise study. The traffic analysis results were summarized under the Traffic Improvements section of the December 5, 2022, staff report. The noise study that was completed concluded that noise levels associated with the project generated on-site operations would satisfy the General Plan noise criteria at the nearest existing residential uses. This is due in part to existing solid noise barriers in the vicinity, as well as overall on-site operational practices.

As this Major Design Review is consistent with the Special Planning Area and the environmental documentation prepared for the Special Planning Area, it is exempt from CEQA review. So long as the project does not have any project-specific significant effects peculiar to the Major Design Review and not identified in the previous environmental documentation, the project is exempt and no additional environmental document pursuant to CEQA is required.

The project applicant is requesting approval of a Major Design Review for the proposed project. Additionally, under CEQA, the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the project, including, but not limited to human health impacts from toxic air contaminants, greenhouse gas emissions, and impacts of biological resources.

Analysis of Major Legal Issues

Members of the Stone Creek community and the Applicant have retained legal counsel that are actively engaged in letter writing and advocacy regarding the project. The major legal questions raised by the legal counsel are:

Is the 2003 Development Agreement valid and enforceable?

Is the project exempt from further project-specific legal review?

On behalf of members of the Stone Creek Community, Counsel Gloria Smith argues that the answers to these two questions are “no” (Attachments 4, 5, and 6) and urges the City Council not to approve the project as proposed. On behalf of Dermody, Arthur Coon responds that the answers to these questions are “yes” and asserts that the City must approve the project, substantially in its current form, or be in default of the Development Agreement (Attachments 7, 8, 9, 10, 11, 12, and 13).

While there are various other legal issues that have been raised by the attorneys and members of the public, these are the central legal and procedural questions.

Given the unusual level of public controversy and the high stakes on both sides of the project, the City has taken the additional step of supplementing the considerable land use and CEQA experience of the City Attorney’s law firm, with an independent legal assessment of these issues by another respected law firm, Hanson Bridgett (Attachment 14).

As summarized in their letter, Hanson Bridgett has a mix of public agency and private entity experience. They are well-versed in land use transactional work, CEQA, and warehouse development, and have assembled a highly-qualified group of attorneys to consider these issues. Hanson Bridgett has never represented the Developer, and has not previously worked

with the City, the City Attorney, or the City Manager. Hanson Bridgett's conclusions are in Attachment 14.

Having carefully evaluated and weighed the arguments and analysis on these two issues by the legal counsel for members of the Stone Creek community and the Applicant, and performed additional analysis, Hanson Bridgett and the City Attorney's firm have reached the same legal answers to these two critical issues. The City's law firms are of the opinion that the answer to both questions is yes.

The Development Agreement is Valid and Enforceable

The County and Dermody Properties' predecessor in interest entered into the Development Agreement on May 28, 2003. The City's incorporation had been approved shortly before, in the November 2002 election. As Hanson Bridgett explains, the LAFCO resolution approving the incorporation stated in part that "[a]ny and all development agreements entered into between the County of Sacramento and any development project applicant . . . shall remain valid and enforceable between the applicant and the new City of Rancho Cordova, subject to Government Code Section 65865.3, subdivisions (a) and (b)."¹

Hanson Bridgett and the City Attorney's firm interpret this provision of the LAFCO resolution as having the effect of making all prior development agreements entered into by the County initially binding on Rancho Cordova, including the Villages of Zinfandel Development Agreement. After incorporation the City took multiple actions on the Development Agreement, which were valid actions, amending an existing and enforceable development agreement (see Attachment 14 page 3). If the City did not want to accept and be bound by the Villages of Zinfandel Development Agreement, it could have taken action to object to or sue on the terms of the LAFCO resolution. It did not.

Instead, the City has had a twenty-year history of actions in furtherance of the Villages of Zinfandel Development Agreement. These actions² show that the City believed that the Development Agreement was valid and binding.³ These actions were not challenged within the statutes of limitations that apply to development agreement amendments.

¹ Government Code section 65865.3 provides, in part, that a city will be bound by a development agreement after its incorporation if: (1) the application for the agreement was submitted to the county prior to the date that the first signature was affixed to a petition for incorporation or annexation, or the adoption of a resolution; (2) the county entered into the agreement prior to the date of the election for incorporation or annexation, or if there was an annexation without an election, prior to the date the applicable authority ordered the annexation; and (3) the annexation proposal was initiated by the city. (Gov. Code, § 65865.3, subd. (c)(1)-(3).)

² Including significantly Ordinance No. 38-2004 amending the Development Agreement, and including the following language in Section G. "Except as expressly amended by this Amendment, all of the terms, conditions and provisions of the Development Agreement remain in full force and effect.", Ordinance No. 25-2009, amending the Development Agreement and including the following language in Section D. "Except as expressly amended by this Amendment, all of the terms, conditions and provisions of the Development Agreement remain in full force and effect." and Ordinance No. 6-2016, amending the Development Agreement a third time, including the following language in Section E. "Except as expressly amended by this Amendment, all of the terms, conditions and provisions of the Development Agreement remain in full force and effect."

³ As Hanson Bridgett notes, the most recent amendment extended the term of the Development Agreement to June 2023.

Hanson Bridgett and the City Attorney's firm agree that the durational limitations in Government Code section 65865.3 are not applicable because the Development Agreement was approved after the incorporation election.

In short, Hanson Bridgett and the City Attorney's firm are both of the opinion that the Development Agreement is valid and enforceable.

The Project is Exempt from Further CEQA Review

Public Resources Code section 21083.3 established a procedure for streamlined CEQA review for projects that are consistent with development densities established by an existing community plan for which an EIR was previously certified (Pub. Resources Code, § 21083.3, subd. (a); see also Guidelines, § 15183). As discussed above, in these instances, CEQA review "shall be limited to effects upon the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report" (Pub. Resources Code, § 21083.3, subd. (a)).

As noted above, the project is located in the Villages of Zinfandel Special Planning Area (VOZSPA). An EIR for this area was certified by the County in 1998. A Supplemental EIR was certified by the County in 2002.

As explained by Hanson Bridgett (Attachment 14) and as explained above by the City (see also, Attachment 1 December 5, 2022, and Attachment 2 January 17, 2023, staff reports), the project is consistent with development densities in the VOZSPA. Hanson Bridgett also concluded that no technical studies have identified any project-specific environmental effects not analyzed in the VOZSPA EIR. Neither Hanson Bridgett, the City Attorney, nor City staff have identified any other project-specific factors that would require further environmental review under Section 21083.3 and Guideline Section 15183.

Further, consistent with the City's above analysis, Hanson Bridgett noted that the project design is not anticipated to implicate any new environmental effects, and the scope of any CEQA review and analysis is limited to environmental effects within the scope of the City's design review authority.

The City Attorney's firm agrees with Hanson Bridgett that the project is accordingly exempt from further CEQA review. The City cannot require additional CEQA review.

NEXT STEPS

Upon conclusion of the presentation and public testimony, City Council could do one of the following:

1. Direct staff to return at a later City Council meeting with final action documents.
2. Direct the Applicant to make additional modifications to the proposed project.

ATTACHMENT(S)

1. Staff Report dated December 5, 2022, for Logisticenter
2. Staff Report dated January 17, 2023, for Logisticenter
3. Frequently Asked Questions

4. The Law Offices of Gloria D. Smith dated January 17, 2023
5. The Law Offices of Gloria D. Smith dated January 27, 2023
6. The Law Offices of Gloria D. Smith dated February 13, 2023
7. Miller Starr Regalia dated September 16, 2022
8. Miller Starr Regalia dated November 29, 2022
9. Miller Starr Regalia dated December 14, 2022
10. Miller Starr Regalia dated January 10, 2023
11. Miller Starr Regalia dated January 25, 2023 – 1st Letter
12. Miller Starr Regalia dated January 25, 2023 – 2nd Letter
13. Miller Starr Regalia dated February 6, 2023
14. Hanson Bridgett dated February 28, 2023

MEMORANDUM

ITEM 22.1.



DATE: December 5, 2022

TO: Honorable Mayor and Council Members

FROM: Nicholas Sosa, Associate Planner

SUBJECT: LOGISTICENTER AT RANCHO CORDOVA - MAJOR DESIGN REVIEW – PROJECT NO. PLND-1021-0015

PROPERTY OWNER: DPML Bear Hollow, LLC 5500 Equity Avenue Reno, NV 89502	APPLICANT/DEVELOPER: Dermody Properties George Condon 5500 Equity Avenue Reno, NV 89502
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PROJECT: Logisticenter at Rancho Cordova – Major Design Review FILE: PLND-1021-0015 LOCATION: Corner of Bear Hollow Drive and N. Mather Boulevard APN: 072-2360-041-0000 PLANNER: Nicholas Sosa, Associate Planner

RECOMMENDATION

There is no staff recommendation at this time. Staff is providing a response to public comment received as well as Council's concerns that were raised at the July 18th Council meeting and will be looking for any additional direction from Council for this project. The requested Major Design Review is within the Villages of Zinfandel Special Planning Area (VOZSPA) and therefore applicable design standards listed within the VOZSPA would be utilized to determine approval or denial of the project. This meeting is intended to discuss the project in detail regarding these standards and provide direction to Staff to return to Council with a final resolution based upon that discussion, at a later date. As a result of the holiday City Council schedule, the public hearing will be continued to the January 17, 2023 City Council meeting. At that time, staff may bring back draft documents for possible final action based upon Council's direction.

VILLAGES OF ZINFANDEL SPECIAL PLANNING AREA BACKGROUND

The Project, Logisticenter at Rancho Cordova, is located within the VOZSPA. The Special Planning Area was approved in 2002 by Sacramento County. The VOZSPA includes residential, commercial, business professional, light industrial, parks, bike trails, and open space uses. An Environmental Impact Report (EIR) was prepared, which took into consideration full build out impacts of the VOZSPA, including biological, noise, traffic, and utilities. The EIR was

certified for the Special Planning Area in 1998 by Sacramento County and a Mitigation Monitoring Reporting Program was adopted.

When the VOZSPA was adopted, the property owners entered into a Development Agreement with Sacramento County, which had jurisdiction over the planning area at the time. This Development Agreement created vested rights for the property owner which effectively solidified all regulations and developments standards at that time (2003) to be applicable within the VOZSPA for the life of the twenty-year term of the development agreement. At the time that these rights were vested by the County in favor of the property owners, the VOZSPA and 2003 Sacramento County Zoning Code were the applicable documents and therefore continue to be the regulatory documents utilized for permitted and conditionally permitted uses and development standards such as building size, setbacks, landscaping, and parking for projects under review today. The standards in the City of Rancho Cordova Municipal Code, including the standards for Major Design Review in Section 23.141 are subordinate to and cannot be applied in conflict with the VOZSPA or the County Code. Under the Development Agreement only City standards that do not “prevent development of the Property to the uses, and to the density, or intensity of development” and “do not negatively impact the timing or rate of development of the Property” can be applied to the Project. (DA Section 2.4)

In addition to the vested rights established by the property's Development Agreement, the Villages of Zinfandel's allowed uses and development standards are further limited by the Mather Field Airport's overflight zone which is “governed” by the Sacramento Area of Council of Governments and the Mather Airport Land Use Plan. The Land Use Plan includes limitations based upon a property's proximity to the airport. Areas that are most restrictive are those within the flight safety zones which are within the direct approach/departure flight paths of the runway. These areas are limited in both use and construction to minimize potential destruction if an accident should occur. The Land Use Plan also includes “Sound Contours” which are areas of excessive noise from the approach and departure of planes on the runway. The noise levels in these areas range from 75-60 decibel's which further dictates allowed uses within the area as these noise levels would not be appropriate for certain uses such as office space or residential housing which has a limitation of a maximum of 55 decibels. The proposed project is located partially within one noise contour level, the 65-decibel noise contour. The Land Use Plan of the airport in conjunction with the vested rights of property owners in the Villages of Zinfandel SPA are both utilized in reviewing projects to determine which uses are allowed within certain areas of the VOZSPA and which development standards are applicable to each project.

PROJECT HISTORY

The Applicant submitted an application on October 25, 2021, for a 155,040 square foot shell building called Logisticcenter at Rancho Cordova which includes a loading dock area, commercial parking, and additional site improvements located at the intersection of Bear Hollow Drive and N. Mather Boulevard. The project site is zoned Business and Professional Office (BP) within the Zinfandel Special Planning Area (VOZSPA) and is surrounded by other office and industrial uses as shown in **Figure 1** and listed in **Table 1** below.

Figure 1: Project Location

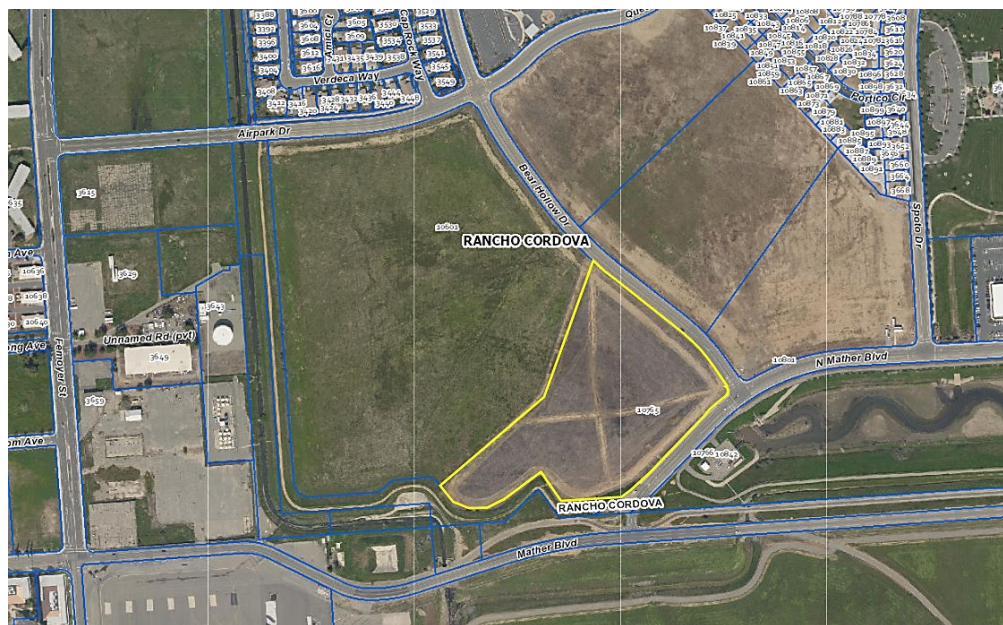


Table 1: Surrounding Designations and Existing Uses

Location	Existing Use	General Plan Designation	Zoning Designation
Subject Site	Undeveloped lot	Office Mixed Use (OMU)	Business Professional Zinfandel Special Planning Area (BP VOZSPA)
Northwest	California Military Department Consolidated Headquarters	Office Mixed Use (OMU)	Business Professional Zinfandel Special Planning Area (BP VOZSPA)
Northeast	Undeveloped Lot	Office Mixed Use (OMU)	Business Professional Zinfandel Special Planning Area (BP VOZSPA)
South	Mather Air Force Base (County) / Detention Basin	Airport (County) / Open Space	Mather Airport (County) and Open Space Zinfandel Special Planning Area (O VOZSPA)

The proposed project included a 155,040 SF building oriented with frontage along N. Mather Boulevard and side frontage along Bear Hollow Drive. The site provides a total of 3 access points to the property, one along N. Mather and two along Bear Hollow. This project is only for a shell building and does not include specific uses at this time and therefore no use permits have been included with this project. As a shell building, the project has been reviewed as a “wholesaling and warehousing” use which is permitted by right within the BP zoning designation of the VOZSPA. Any future tenants that are not permitted by right at this location will be required to obtain the appropriate use permits from the Planning Department and will be subject to additional review at that time.

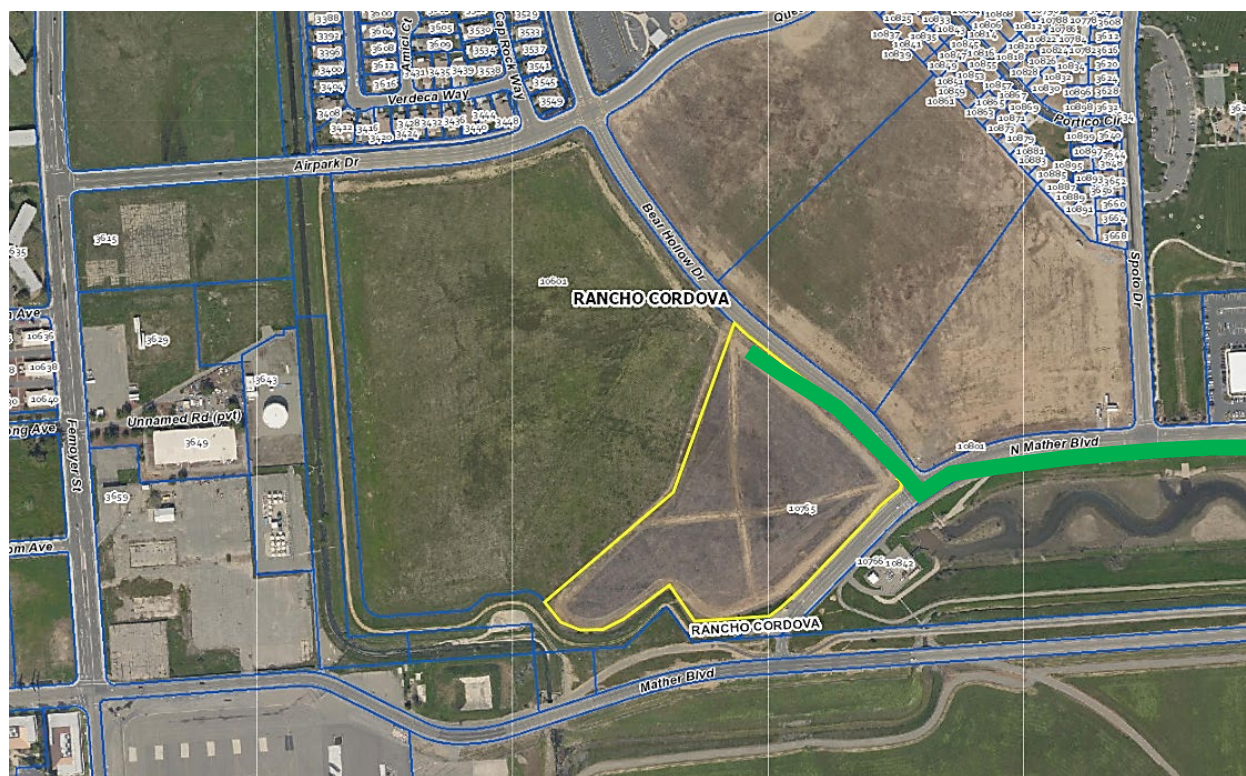
The Applicant held their initial neighborhood meeting on November 16, 2021, at 6:00PM via zoom and responded to minor concerns that were proposed at the meeting regarding lighting and noise which were adequately addressed by the Applicant.

The project was then presented at City Council on April 18, 2022, at the regularly scheduled City Council Meeting. After City Council was presented the project, there were some concerns with the bulk and massing of the building and staff was directed to work with the applicant to utilize additional landscaping to help mask the massing. Concern was also raised regarding direction of the truck traffic to and from the subject property. Staff was directed to continue to work with the Applicant to resolve these concerns and return to Council with an updated project.

City Staff held a community meeting at City Hall on June 27, 2022, to provide the Stone Creek Community a better understanding of the history of the Villages of Zinfandel Special Planning Area, regulatory documents applicable to this site, as well as all other sites in the SPA, and the extent of Staff's ability to regulate these projects. Over 150 residents attended the meeting. Attendees provided both questions and concerns, that were addressed by Staff and the original developer/property owner of the Villages of Zinfandel. Concerns that arose at the community meeting revolved around overall truck traffic throughout the area as well as the potential air quality effects of the added truck traffic.

Staff worked with the Applicant to address their concerns and the project was presented back to City Council on July 18, 2022. The project included additional large stature trees for landscape screening for the loading dock area both along Bear Hollow and the elevated bike trail. The revised project also included additional conditions of approval for restrictions on truck routes as well as a requirement for additional signage directing trucks to use N. Mather only as shown in green in **Figure 2**.

Figure 2: Allowed Truck Access Route



CURRENT PROJECT

Since the July 18th City Council meeting, an additional neighborhood meeting was held by the Applicant on September 7, 2022, at 5:30PM here at City Hall. The meeting was held with stations highlighting various aspects of the project including traffic, architecture, and landscaping. Each station included a topic expert to help explain the project in detail for residents. From the meeting, there were still concerns regarding traffic and landscaping. To help address these concerns, the most recent submittal has provided modifications to the tree sizes and species on-site, modifications to the façade of the building, modifications to the parking lot, driveway and entrances, as well as off-site improvements to help mitigate potential impacts to the area from the facility.

Updated Façade Designs/Building Form

As previously mentioned, the project is located within the VOZSPA and therefore must adhere to applicable non-residential development standards and architectural guidelines listed within that Special Planning Area. As part of their most recent submittal, the Applicant has added revisions to their project to accommodate the required design guidelines. The Applicable guidelines can be found in Section 5; Subsection (D). Key elements regarding Building Form have also been summarized below.

- “Bulk of building massing generally should be minimized especially where residential character predominates”.
 - The nearest residential neighborhood to the project site is 930 ft. to the east, to the Veranda subdivision and 790 ft. to the north. The National Guard Headquarters building is located immediately north of the project site and includes one large building and a few smaller ancillary buildings totaling 285,000 sq. ft. These building have no roof or wall articulation.
- “Buildings should maintain a scale compatible with residential neighborhoods”
 - The proposed project is for a single building that is approximately 155,040 square feet in size. Other recently constructed buildings in the area include the Bold and Beauty building located at the intersection of Zinfandel Drive and N. Mather Boulevard which is approximately 164,000 square feet with parapets ranging from 37’ (for a majority of the building) with a max height of 46’-4” (at three architectural tower features) and the CA National Guard Headquarters adjacent to this property which is approximately 238,000 square feet for its main building at a height of approximately 39-feet tall.
 - The maximum height listed in section 325-04 of the 2003 Sacramento County Zoning Code is 40-feet. However, the project must meet the required design guidelines.
- “Building masses should be mitigated by elements such as canopies or trellises designed to focus attention on smaller-scaled elements of the building”

- The project incorporates metal canopies at storefront entrances as well as architectural trellises along large facades visible from Bear Hollow Drive and N. Mather Boulevard.
- “Indentations, or other means of articulation, should be used to avoid monolithic effect.”
 - The updated facades have incorporated additional roofline articulation with parapets steps at a maximum height of 40-feet and lower areas at 38-feet along public right of way elevations.
- “Building form should avoid proportionally long, flat surfaces”, “Flat monotonous surfaces shall be avoided.”
 - As proposed, the building incorporates some relief by utilizing canopies and inset vertical panels.
- “Architecture on non-residential buildings should include columns, indentations, overhangs patios, trellises, and surface textures, on all elevations visible off-site”
 - The project includes metal canopies at storefront entrances at the southwest corner as well as the southeast corner. Trellis features have also been incorporated along long facades facing N. Mather Boulevard and Bear Hollow Drive.
 - The project has also included a dark gray inset panels and windows along visible extensive facades to break up large blank walls.
- “Storefronts should wrap around corners to create a sense of transparency and activity at intersections”
 - The projects storefront entrances wrap around corners of facades.
- “Large areas of blank walls with few openings or details should be avoided on facades facing streets or public spaces”
 - The project has added visible dark gray inset panels to the project to accompany vertical windows along large areas of the facades visible by the Public.

The applicant has provided elevations and renderings that portray the design modifications that are detailed in the above section as well as a detailed image of the proposed landscaping at time of installation and 6-10 years from now. These renderings can be seen in **Figures 3-5** below.

Figure 3: Visibility from N. Mather Blvd & Bear Hollow Drive



Figure 4: Visibility at Southeast Corner Close Up





Figure 5: Visibility from Bear Hollow Drive





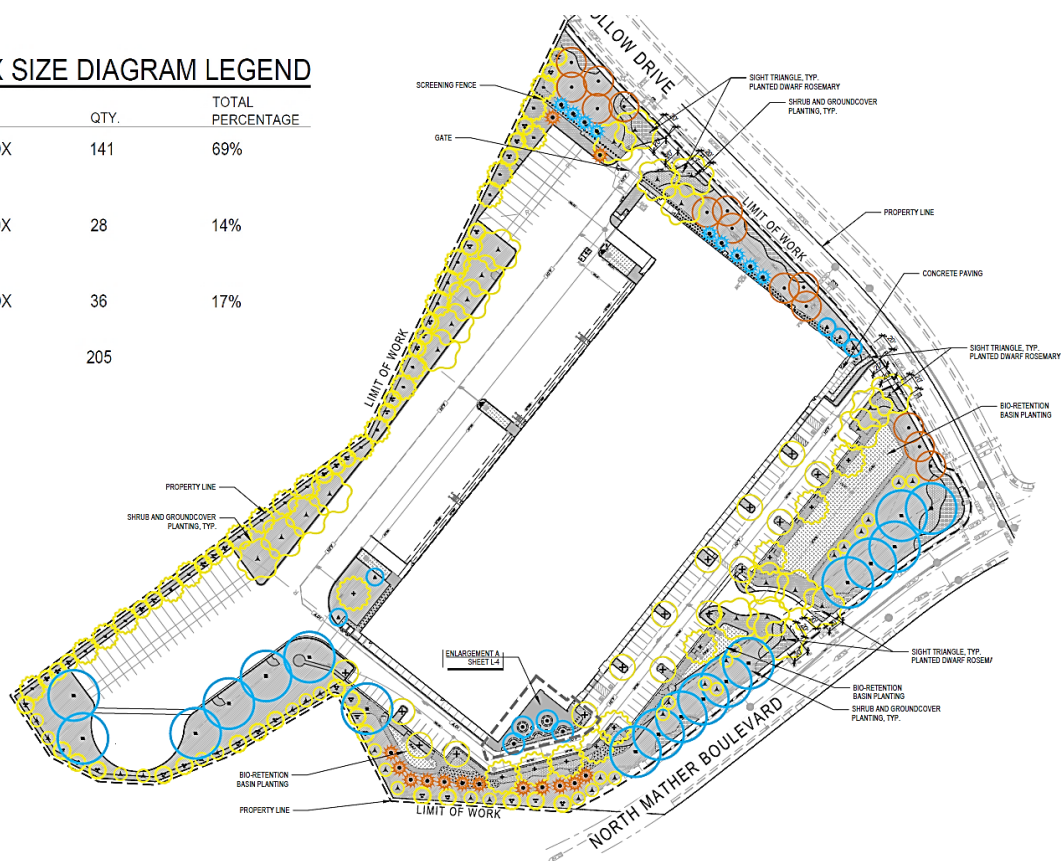
Landscaping Modifications

At the July 18th meeting, residents still voiced concerns regarding landscaping along Bear Hollow Drive and N. Mather Drive. The project includes a 12-foot screen wall at this location, however, rather than increase the height of the wall, the project proposed a more natural landscape screening of trees and shrubs that would minimize visibility of the truck area in the rear at approximately 10 years in the future. Concerns were raised in regard to the size of the landscaping and the time that would be required for the landscaping to complete its intended purpose of screening the loading dock area and commercial truck parking area at the north end of the property. As part of this most recent submittal, the Applicant has modified the proposed species of the trees and has also increased the initial proposed sizes of the trees and density of the plantings to speed up the screening ability of the landscaping.

Figure 6: Landscape Tree Size Map

TREE BOX SIZE DIAGRAM LEGEND

COLOR	SIZE	QTY.	TOTAL PERCENTAGE
	24" BOX	141	69%
	36" BOX	28	14%
	48" BOX	36	17%
TOTAL:		205	



The Applicant has worked with the City's Arborist to determine the best species of trees as well as the most appropriate number of trees throughout the site that would result with the desired outcome while still maintaining the necessary growth spacing and separation.

There is a total of thirty-six, 48-inch box trees placed strategically in areas that would require the most screening such as along public rights of way and the existing bike trail to the southwest of the site. Other proposed trees include twenty-eight, 36-inch box trees and one-hundred forty-one, 24-inch box trees. These trees have been added in areas that are unable to accommodate a 48-inch box tree and areas that would increase the overall density of the landscaping to provide a thorough screening. In speaking with the City Arborist, the proposed density of trees shown in Figure 6 would be the maximum that the site would be able to accommodate with minimal overcrowding of canopies. Overcrowding can lead to several future concerns that could hinder the performance of the tree. The City's Arborist has listed a few of those potential issues below.

- Trees planted too close together can result in narrow misshapen canopies with weak branching and poorly tapered trunks as the trees are not receiving enough sunlight. Long-term survival is much less likely for weakened trees
- There is more competition for available water and nutrients and many of the trees are likely to grow slower and possibly fail to thrive.
- Overcrowded trees are more prone to pests and diseases. Poor air circulation from crowded canopies favors fungal diseases such as powdery mildew. Aphid and mite

infestations are also common in crowded conditions. The 23 proposed London Plane trees are very susceptible to all of these pests and diseases.

The diagram shown in Figure 6 portrays the largest possible trees on-site as well as the largest number of trees possible (a total of 205, most of which are evergreen) without overcrowding the site. The Applicant has also provided updated renderings showing what the proposed landscaping would look like at installation as well as 10 years into the future (**See Figures 3 through 5**)

Traffic Improvements

Trip generation for this site is estimated by KD Anderson & Associates to be 217 to 755 trips per day depending on the ultimate use of the site. Peak hours are estimated to be up to 115 trips in the morning hour and 101 trips in the afternoon hour. Of the daily trips, it is estimated that 34 to 93 will be trucks.

The site is conditioned and designed to direct truck trips to US-50 via two routes:

- North Mather to Zinfandel Drive then US-50.
- North Mather to Mather, Femoyer, International, Mather Field Road then US-50.

In their existing state, traffic on these routes is generally free flowing except during peak hours in the vicinity of interchanges (approaching freeway 50 north of White Rock on Zinfandel, and north of Rockingham on Mather Field). Congestion in the vicinity of urban interchanges is common in the region and state.

Light industrial uses generate less trips than office/residential/retail use and their trips are spread throughout the day (trip generation from light industrial is about 50% of that generated by office). Therefore, warehouse/light industrial uses contribute less to congestion than other uses. Additional traffic from the proposed project is not projected to significantly change the level of service on these roads in the short or long term. And the estimated trip generations are consistent with assumptions of the Villages of Zinfandel Special Planning Area.

Truck traffic results in greater wear on roads compared to passenger vehicle traffic. The project is conditioned to annex into the City's community facilities district for street and lighting maintenance, including a load factor to account for truck trips. The estimated tax for fair-share street and lighting maintenance at this site is approximately \$10,500 per year.

Design elements incorporated into the project include an angled driveway that directs trucks south on Bear Hollow directly to North Mather. And the project is conditioned to construct bulb-outs at the intersection of Bear Hollow with Air Park, Robola and Auvernat. The proposed bulb-outs will narrow the road resulting in further deterrent to trucks driving this corridor, reduced speeds for all vehicles, and greater protection for pedestrians.

In addition to the site-specific analysis, staff analyzed the assumptions of the 2002 environmental impact report relative to current traffic models and development that has occurred through 2022. Staff findings are that the actual development being realized for existing, proposed, and planned developments in the SPA is lower than what was identified in 2002 planning documents. Roadways were planned and built to accommodate traffic based on the projections in 2002. With the lower regional, area, and project specific trip generations, it is expected that there will be sufficient roadway capacity. The interchanges with US 50 have existing peak hour congestion which is expected to continue into the future. These changes in

realized development are lessening the expected future deficiencies at interchanges relative to projections in the 2002 environmental impact report.

Resident Frequently Asked Questions

The application was originally submitted in October of 2021. Over the course of the project, both Staff and City Council have received numerous correspondence from the community with inquiries on the details of the project, the status of the review, and the standards and regulations applicable, as well as correspondence voicing direct opposition to the project. Many of the questions presented by the community were similar or overlapped other questions that we may have received from other community members. Therefore, in an effort to provide a response to all community members that is consistent and available to everyone, Staff has created a Frequently Asked Questions (FAQ) sheet that addresses a majority of the common questions that we've received. This FAQ sheet has been included as Attachment 3. It is important to note that the questions that have been addressed do not include any questions that require a final determination of the project or questions that imply approval or denial of the proposal. These questions can only be answered at the public hearing of the decision-making body, which for this project, would be City Council.

ENVIRONMENTAL

The Logisticcenter at Rancho Cordova Major Design Review would be exempt from CEQA review under CEQA State Guidelines Section 15183. This exempts from CEQA projects that are consistent with the development density established by existing zoning, community plan, or general plan policies for which an Environmental Impact Report (EIR) was certified, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. The project is located within the Villages of Zinfandel Special Planning Area (VOZSPA). An EIR was certified by the Sacramento County Board of Supervisors in 1998 for the VOZSPA. Additionally, a Supplemental EIR was prepared and certified by the Sacramento County Board of Supervisors in 2002 for the plan area.

The Logisticcenter at Rancho Cordova Major Design Review involves development of a 155,040 square foot industrial shell building with parking and loading docks. The development also includes landscaping, drainage, and required screening/fencing for a loading dock area. The business and professional park (BP) site was identified in the Villages of Zinfandel Special Planning Area EIR and uses contemplated within the BP designation include those uses listed in the Sacramento County Zoning Code under the BP and MP (Industrial Office Park) use tables located in Chapter 25 and Chapter 30. Warehousing is a permitted by right uses as listed in Table IV I.3.

Additional supplemental technical studies were prepared to further support that no additional project related impacts would occur as a result of the proposed project. These technical studies include additional traffic analysis, as well as a noise study. The traffic analysis results were summarized under the Traffic Improvements section of this staff report. The noise study concluded that noise levels associated with the project generated on-site operations would satisfy the General Plan noise criteria at the nearest existing residential uses. This is due in part to existing solid noise barriers in the vicinity, as well as overall on-site operational practices.

As this Major Design Review is consistent with the Special Planning Area and the environmental documentation prepared for the Special Planning Area, it is exempt from CEQA review. So long as the project does not have any project-specific significant effects peculiar to the Major Design

Review and not identified in the previous environmental documentation, the project is exempt and no environmental document pursuant to CEQA is required. The project applicant is requesting approval of a Major Design Review for the proposed project. Additionally, under CEQA, the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from toxic air contaminants, greenhouse gas emissions, and impacts of biological resources.

NEXT STEPS

Upon conclusion of the presentation and public testimony, City Council could do one of the following:

1. Direct staff to return at a later City Council meeting with final action documents
2. Direct the applicant to make additional modifications to the proposed project.

ATTACHMENT(S)

1. Project Plans
2. DRAFT Project Conditions
3. Frequently Asked Questions
4. Presentation
5. Letter from Miller Starr Regalia dated November 29, 2022

MEMORANDUM

ITEM 18.1.



DATE: January 17, 2023

TO: Honorable Mayor and Council Members

FROM: Nicholas Sosa, Associate Planner

SUBJECT: LOGISTICENTER AT RANCHO CORDOVA MAJOR DESIGN REVIEW – PROJECT NO. PLND-1021-0015

PROPERTY OWNER: DPML Bear Hollow, LLC 5500 Equity Avenue Reno, NV 89502	APPLICANT/DEVELOPER: Dermody Properties George Condon 5500 Equity Avenue Reno, NV 89502
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PROJECT: Logisticenter at Rancho Cordova – Major Design Review FILE: PLND-1021-0015 LOCATION: Corner of Bear Hollow Drive and N. Mather Boulevard APN: 072-2360-041-0000 PLANNER: Nicholas Sosa, Associate Planner

RECOMMENDATION

There is no Staff recommendation at this time.

Staff is providing a response to Council's concerns that were raised at the December 5, 2022 Council meeting and responding to additional information from the applicant and the applicant's attorney. Staff will be seeking additional direction from Council for this project. The public hearing will be continued to a future Council date. At that time, staff may bring back documents for possible final action based upon Council's direction.

PROJECT BACKGROUND

The project was previously presented on December 5, 2022, at the regularly scheduled City Council Meeting. After City Council was presented the project, there were requests for:

- A. additional modifications to the building to create a more office building feel for the design;
- B. additional renderings for the project from various locations within the vicinity of the site;
- C. further consideration by the applicant about possible limits of operating hours and required truck routes for the project; and

- D. analysis regarding what the definition of a warehouse was at the time of the development agreement and how that relates to today's warehouse standards.

The project was then continued to the January 17th meeting to provide adequate time for Staff to work with the developer on addressing these concerns. The applicant has provided revised project elevations and renderings and additional research has been conducted to respond to questions directed toward Staff. The attorney for the applicant also submitted letters to the City Council on November 29 and December 14 which are discussed in part below. An additional letter from the applicant's attorney was received on January 10th. The letter was not received in time to provide a response in the staff report. However, the City Attorney will address the letter at the hearing.

1. The Council requested to have the building portray more of an office building look with more articulation and horizontal window paneling and to minimize the look of a long monolithic building through variations of color, height, and articulation.

Such requested changes would be consistent with specific provisions of the SPA design guidelines:

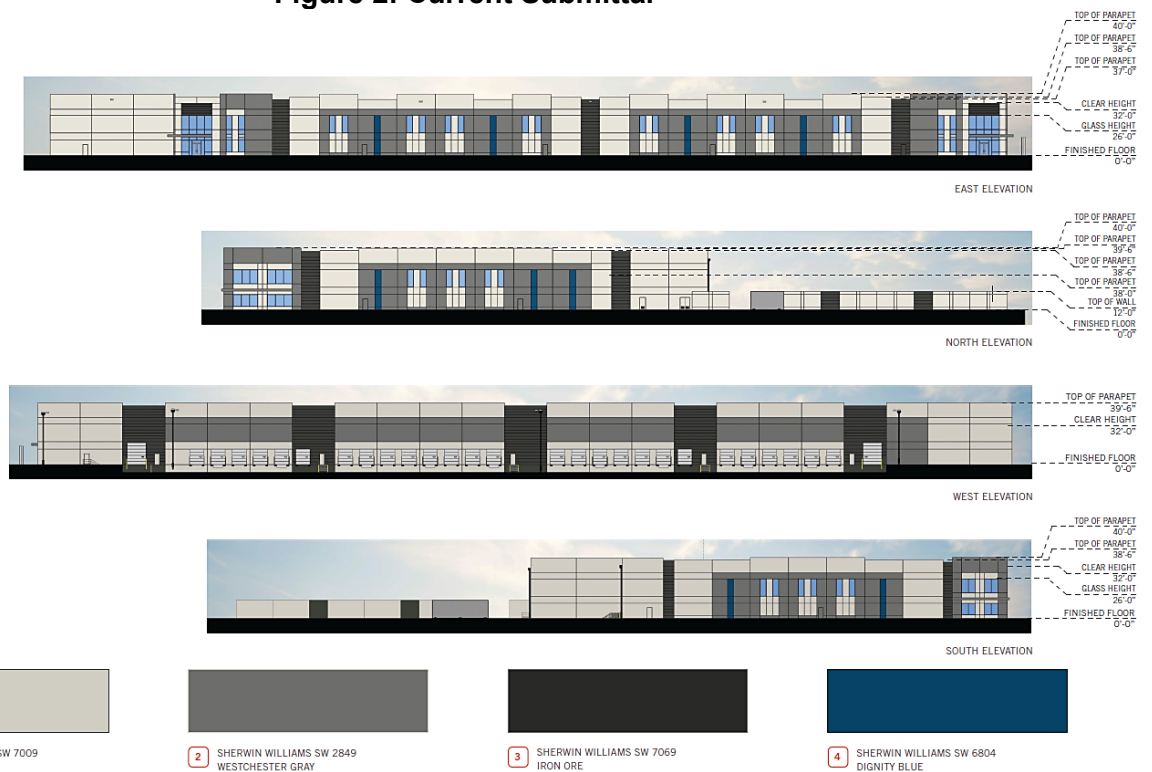
- A. "Building form should avoid proportionally long, flat surfaces. Architecture on non-residential buildings should include columns, indentations, overhangs, patios, trellises, and surface textures, on all elevations visible off-site...Large areas of blank walls with few openings or details should be avoided on facades facing streets or public spaces." (Villages of Zinfandel SPA DG, pg 23.)
- B. "Building elevations must be attractively designed on all four sides. Walls at interior property lines or project phase lines must be given specific design attention, with color, physical relief, and/or landscaping. Backs and sides of buildings visible from public streets should incorporate window and door openings." (Villages of Zinfandel SPA DG, pg 24.)
- C. "Variation in the shape, color, and texture of roof structures should be used to create diversity and interest...Flat, monotonous surfaces shall be avoided." (Villages of Zinfandel SPA DG, pg 24.)

The Applicant has submitted revised elevations that include additional windows to create more visual variation and articulation and more of an office space look. The proposed windows are larger and occupy more of the façade along Bear Hollow Drive and N. Mather Boulevard. The Applicant has also incorporated additional roof variation on the facades facing Bear Hollow and N. Mather that show a maximum height of 40 feet to highlight windowed areas with other parapet areas showing a 3-foot drop at 37 feet in height. On the west elevation, the applicant has provided a slight roofline variation, but has not added details to the large blank facades above the truck bays. The comparison of the project's original submittal with their revised current submittal can be seen in **Figures 1 and 2**.

Figure 1: Original Submittal



Figure 2: Current Submittal



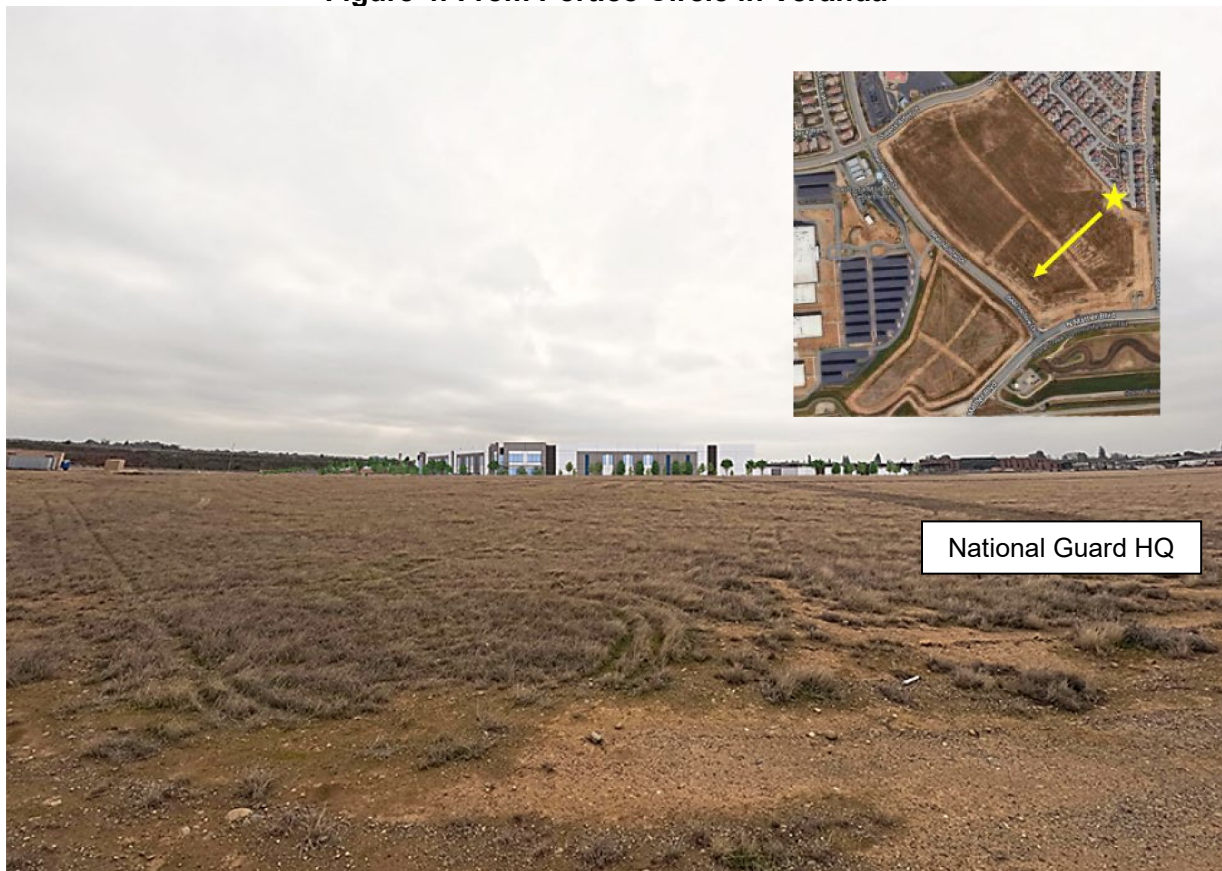
2. The Council also requested additional renderings of the project from locations within the vicinity of the project site.

The Council's request for additional renderings included areas such as Navigator Elementary School and the Veranda subdivision. The renderings below provide a perspective from each of the marked locations of what the built environment would be at project completion. Given these distances, it is difficult for staff to comment on the compatibility of the structure with the surrounding area as the aesthetic impact of the structure within the provided image is minimal. It is also important to note that these photographic renderings show the site and surrounding properties as they stand today and does not include any future proposed projects that may be currently under review or projects that could be potentially submitted that could significantly alter the visibility of the structure from these viewpoints.

Figure 3: From Queens Arbor at Elementary School



Figure 4: From Portico Circle in Veranda



3. The Council also mentioned larger, more mature trees at installation for the project landscaping to mask/screen the building.

The Applicant has been working with the City's Arborist as well as their own landscape architect and have provided the largest trees at installation as possible without sacrificing the future health and performance of the trees. The project proposes (141) 24-inch box trees, (28) 36-inch box trees, and (36) 48-inch box trees. The landscape plan places the largest 48-inch box trees in areas that would provide the most screening of the building. This landscape plan was described in detail as part of the December 5th staff report (see attachment 1). No modifications have been made to the landscape plan as part of this resubmittal.

4. The applicant has already agreed to Conditions of Approval that would significantly limit operation of semi-trucks, and truck routes. This was discussed in the December 5th staff report and presented at the hearing, but a summary of those improvements are listed below.

The site is conditioned and designed to direct truck trips to US-50 via two routes:

- North Mather to Zinfandel Drive then US-50.
- North Mather to Mather, Femoyer, International, Mather Field Road then US-50.

In their existing state, traffic on these routes is generally free flowing except during peak hours in the vicinity of interchanges (approaching freeway 50 north of White Rock on

Zinfandel, and north of Rockingham on Mather Field). Congestion in the vicinity of urban interchanges is common in the region and state.

Design elements incorporated into the project include an angled driveway that directs trucks south on Bear Hollow directly to North Mather. And the project is conditioned to construct bulb-outs at the intersection of Bear Hollow with Air Park, Robola and Auvernat. The proposed bulb-outs will narrow the road resulting in further deterrent to trucks driving this corridor, reduced speeds for all vehicles, and greater protection for pedestrians.

5. Response to assertions of applicant's attorneys.

- A. The City is implementing design standards that were adopted at the same time as the zoning that allows warehouse uses, the City is not imposing any later enacted requirements or conditions.

A warehouse being an allowed use on this site does not mean that the currently proposed design complies with the design standards and must be approved. The use table and Design Guidelines work in concert. The project must comply with both.

- B. The applicant's attorneys misstates or does not address critical design provisions and requirements of the SPA.

The warehouse design standards are those that were in effect when the SPA and DA were adopted in 2003, not those in the 2020 Commercial Real Estate Development Association "Rules of Thumb for Distribution/Warehouse Facilities Design" cited by the applicant's attorneys.

The applicants, not the City, have introduced evidence of warehouse design from after the date the Development Agreement and SPA were approved.

The applicant's attorneys cite to a Rule of Thumb for Distribution/ Warehouse Facilities Design noting that "to support modern logistics uses, buildings of 150,000 square feet and greater should provide 36-foot interior clearance, which requires an exterior height of approximately 40 feet" (December 14 letter, footnote 7)

The applicant's attorney does not point to any section of the SPA or design standards from 2002 or contemporaneous sources to establish that any warehouse use requires a 36-foot internal clearance for the entire structure.

- C. The applicant's attorneys do not address how the building form avoids long flat surfaces, an objective design standard present in the SPA¹.

The City has the discretion to require a design conforming to this standard in the SPA.

- D. The City has the discretion to require design modifications to all four sides of the building and all elevations, contrary to the assertion from the applicant's attorneys' that

¹ "Building form should avoid proportionally long, flat surfaces. Architecture on non-residential buildings should include columns, indentations, overhangs, patios, trellises, and surface textures, on all elevations visible off-site...Large areas of black walls with few openings or details should be avoided on facades facing streets or public spaces." (Villages of Zinfandel SPA, DG pg 23.)

it is not required to “make aesthetic changes to ‘all four sides’ of the Project’s elevations”.

The SPA Design Guidelines specifically provide the City with the authority in two separate sections to require such aesthetic changes on all four sides of the project building. The SPA states “[b]uilding elevations must be attractively designed **on all four sides**” and “[a]rchitecture on non-residential buildings should include columns, indentations, overhangs, patios, trellises, and surface textures, **on all elevations visible off-site.**” (Villages of Zinfandel SPA DG, pgs 23-24.)

The applicant’s attorneys assert that the City does not have the discretion to impose both aesthetic modifications on all four sides as well as requiring landscaping that shields the enormity of the building from view, however this assertion is contrary to the intent of the Design Guidelines as each design modification is not mutually exclusive. The City may impose design modifications as necessary to bring the project into compliance with the design standards. Landscaping is not a substitute for compliance with these building design standards. Even the best landscaping cannot permanently and immediately achieve what building design accomplishes, including avoidance of “proportionally long, flat surfaces” and “[v]ariation in the shape, color and texture of roof structures”.

The Council may wish to consider in particular the articulation, design details of the west elevation.

E. Roof lines on all sides should be articulated and varied.

The SPA states “[v]ariation in the shape, color, and texture of roof structures should be used to create diversity and interest... Flat, monotonous surfaces shall be avoided.” (SPA DG pg 24) In their November 29th letter, the applicant’s attorneys assert that “the City has no legal authority to deny the Project or to condition approval on Dermody’s agreement to reduce the building height”. Unsupported by any cited legally authority and seemingly ignoring this roof design standard, the applicant’s attorneys thus appear to take the position, that in implementing this standard, the City could not cause any even slight reduction of the proposed height of any portion of the project roof line, even in portions that may be flat, monotonous and unvaried contrary to this standard.

F. Project site is different in location, surroundings, and requirements from other nearby commercial sites.

The project site is situated in an area with the National Guard Headquarters to the north and west, Mater airport to the south and a vacant parcel to the east. The specific project location is not adjacent to residential uses or other commercial sites. Similar uses on other locations within the VZSPA have different built environments that may hold those uses to more stringent development standards.

ENVIRONMENTAL

The Logisticcenter at Rancho Cordova Major Design Review would be exempt from CEQA review under CEQA State Guidelines Section 15183. This exempts from CEQA projects that are consistent with the development density established by existing zoning, community plan, or general plan policies for which an Environmental Impact Report (EIR) was certified, except as

might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. The project is located within the Villages of Zinfandel Special Planning Area (VOZSPA). An EIR was certified by the Sacramento County Board of Supervisors in 1998 for the VOZSPA. Additionally, a Supplemental EIR was prepared and certified by the Sacramento County Board of Supervisors in 2002 for the plan area.

The Logisticenter at Rancho Cordova Major Design Review involves development of a 155,040 square foot industrial shell building with parking and loading docks. The development also includes landscaping, drainage, and required screening/fencing for a loading dock area. The business and professional park (BP) site was identified in the Villages of Zinfandel Special Planning Area EIR and uses contemplated within the BP designation include those uses listed in the Sacramento County Zoning Code under the BP and MP (Industrial Office Park) use tables located in Chapter 25 and Chapter 30. Warehousing is a permitted by right uses as listed in Table IV I.3.

Additional supplemental technical studies were prepared to further support that no additional project related impacts would occur as a result of the proposed project. These technical studies include additional traffic analysis, as well as a noise study. The traffic analysis results were summarized under the Traffic Improvements section of the December 5th staff report. The noise study that was completed concluded that noise levels associated with the project generated on-site operations would satisfy the General Plan noise criteria at the nearest existing residential uses. This is due in part to existing solid noise barriers in the vicinity, as well as overall on-site operational practices.

As this Major Design Review is consistent with the Special Planning Area and the environmental documentation prepared for the Special Planning Area, it is exempt from CEQA review. So long as the project does not have any project-specific significant effects peculiar to the Major Design Review and not identified in the previous environmental documentation, the project is exempt and no environmental document pursuant to CEQA is required. The project applicant is requesting approval of a Major Design Review for the proposed project. Additionally, under CEQA, the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from toxic air contaminants, greenhouse gas emissions, and impacts of biological resources.

NEXT STEPS

Upon conclusion of the presentation and public testimony, City Council could do one of the following:

1. Direct staff to return at a later City Council meeting with final action documents
2. Direct the applicant to make additional modifications to the proposed project.

ATTACHMENT(S)

1. Staff Report dated December 5, 2022
2. Project Plans
3. DRAFT Project Conditions
4. Letter from Miller Starr Regalia dated October 3, 2022
5. Letter from Miller Starr Regalia dated November 29, 2022
6. Letter from Miller Starr Regalia dated December 14, 2022

7. Letter from Miller Starr Regalia dated January 10, 2023
8. Presentation

Logistics/Warehouse Projects Frequently Asked Questions

1. What is the Villages of Zinfandel Special Planning Area?

The Zinfandel Special Planning Area (VOZSPA) was established by the County of Sacramento in 2000 and provides a unique set of development standards and a land use plan for a specific area in Rancho Cordova, as shown below. The VOZSPA document regulates land use and zoning, density, permitted uses, setbacks, design guidelines, and other development standards.



2. What is the Villages of Zinfandel (Stonecreek) Development Agreement?

In 2003, the County of Sacramento and Elliot Homes, Inc. entered into an agreement for the future development of the Villages of Zinfandel Special Planning Area. The development agreement confers the right to proceed with the development of the property consistent with the Villages of Zinfandel Special Planning area document, including:

- Permitted uses of the property,
- Density and intensity of use,
- Maximum height and size of proposed buildings,
- Timing or phasing of development,

- Zoning,
- Provisions for reservation or dedication of land for public purposes, and
- Location and size of major transportation facilities

The City amended the Development Agreement three times notably including the following language each time: “Except as expressly amended by this Amendment, all of the terms, conditions and provisions of the Development Agreement remain in force and effect.” The City noticed and processed the adoptions in accordance with the Development Agreement Law. Presently, the Development Agreement is set to expire in June 2023.

3. How does the Sacramento County Zoning Code and the Villages of Zinfandel Special Planning Area document regulate proposed uses in the Villages of Zinfandel Special Planning Area?

Because of development rights vested through the Villages of Zinfandel Development Agreement, proposed uses in this special planning area must utilize the County Zoning Code that was adopted at the time the agreement was put in place.

The permitted uses within the Villages of Zinfandel Special Planning Area document are governed by the 2003 Sacramento County Zoning Code use tables and the Villages of Zinfandel Special Planning Area provides unique design standards and requirements. For the “Light Industrial” zone of the Villages of Zinfandel SPA, permitted uses in the M-1 and MP zones of the 2003 Sacramento County Zoning Code would apply. And for the “Business Professional” zone of the Villages of Zinfandel SPA, permitted uses in the BP and MP zones of the 2003 Sacramento County Zoning Code would apply.

4. What is the Villages of Zinfandel Special Planning Area Design Guidelines?

The Villages of Zinfandel Special Planning Area Design Guidelines are intended to provide design guidance in the planning, review, and approval of individual development projects within the Villages of Zinfandel SPA boundaries. The design guidelines include area-wide design concepts in site planning, circulation and access, architectural design, landscaping, and the provision of open space.

5. What are the required approval findings for Major Design Review?

The City Council may approve or approve with conditions an application within the Villages of Zinfandel SPA based upon applicable non-residential development standards and architectural guidelines in the Special Planning Area found in Section 5; Subsection (D).

6. What is the California Environmental Quality Act (CEQA)?

The California Environmental Quality Act (CEQA) is a statute passed in 1970 that requires analysis of discretionary development projects that potentially impact the environment. CEQA does not directly regulate land uses, but instead requires state and local agencies to analyze and publicly disclose environmental impacts of proposed projects and adopt feasible measures to mitigate those impacts.

The basic goals of CEQA:

- Inform decision makers and the public about the potential significant environment impacts

- Prevent significant, avoidable damage to the environment by requiring changes to a project
- Identify the ways that the environmental damage can be avoided or reduced
- Disclose to the public the reasons why decisions are made if significant impacts occur

If a project is subject to CEQA and does not qualify for an exemption, the next step is to determine whether the project may result in a significant effect on the environment. If it is unclear whether the project may have such an effect, then an initial study is conducted to determine the nature and extent of the project's effects. If the results of an initial study reveal that the project may have a significant effect on the environment, then preparation of an Environmental Impact Report (EIR) is appropriate. If it is clear that a project will result in a significant effect on the environment and an EIR will be required, the initial study process can be skipped, and work can proceed directly on the EIR.

7. What is an Environmental Impact Report (EIR)?

Under the California Environmental Quality Act (CEQA), an Environmental Impact Report (EIR) must be prepared whenever there is substantial evidence, considering the whole record, that a project may have a significant effect on the environment. An EIR contains information on potential effects, measures to mitigate those effects, and an analysis of alternatives to the project. Generally, an EIR discusses whether a project has a significant impact on the following topics:

- Aesthetics
- Agriculture
- Air Quality (GHG)
- Biology
- Cultural
- Geology
- Hazards
- Hydrology
- Land Use
- Minerals
- Noise
- Population/Housing
- Public Services/Utilities
- Recreation
- Transportation/Traffic

8. Are the Villages of Zinfandel Special Planning Area subject to CEQA?

The Villages of Zinfandel Final Environmental Impact Report (EIR) was certified by the Sacramento County Board of Supervisors in February 1998. The EIR was designated a "Master" EIR and evaluated the cumulative impacts, growth-inducing impacts, and irreversible significant effects of the environment of specific, subsequent projects according to the Sacramento County General Plan and zoning designations within the Special Planning Area. Subsequent Supplemental EIRs were completed in April 2000 and June 2002. For further detail, see the legal analysis and environmental sections in the March 6, 2023 agenda report on this item.

9. Do North Mather and Zinfandel have adequate capacity?

- The City of Rancho Cordova has adopted peak hour level of service D for roadways. Level of service D is defined as high density but stable flow.
- The capacity of North Mather at level of service D is 16,200 trips per day. Current traffic counts are about 500-600 trips per day. In 2055, North Mather is projected to carry 4,700 trips per day. North Mather is not projected to experience significant congestion at buildout.
- The capacity of Zinfandel Drive at level of service D is 54,000 trips per day.
 - Current traffic counts north of International to US-50 range from 28,700 to 47,400 trips per day. The 2055 forecasted volumes for Zinfandel Drive are 45,400 to 77,800 trips per day north of International. Zinfandel Drive north of International currently experiences, and will continue to experience, heavy congestion during peak hour travel.
 - Currently Zinfandel Drive carries approximately 17,500 trips per day between International and North Mather. In 2055, this section is projected to carry approximately 43,800 trips per day south of International. This section of Zinfandel Drive is not projected to experience heavy congestion.
- The intersection of North Mather and Zinfandel has adequate capacity to serve expected uses.

10. What is the difference in trip generation and roadway maintenance for warehouse, office, retail and residential uses?

- Office, and residential generate similar number of trips (office is about 7% higher vehicle miles traveled than residential). Few to no truck trips are generated by these uses. Industrial uses generally generate significantly less traffic (approximately 45% of vehicle miles traveled compared to residential). Industrial traffic is generally between 10% and 20% trucks in terms of trip generation.
- Retail generally generates about 24% more vehicle miles traveled relative to residential. Some additional truck trips may also be generated.
- Warehouse/light industrial uses generate about 45% of total trips relative to office use. Although trucks take up two to three times the space of a car, warehouse/light industrial peak hour contribution to congestion is relatively lower than office/residential because the total trips are less, and trips are spread throughout the day. However, truck trips create significantly greater wear on roadways than passenger vehicles generated by office or residential uses. Most wear on roadways is due to truck trips, followed by ongoing weathering. Warehouse uses would annex into the City's roadway maintenance district, similar to other uses, and may also be charged an additional 25% heavy load factor to accommodate for associated additional maintenance costs.

11. How much is the maintenance district with heavy load fee?

- The greater of \$0.068/sf building or \$432/acre site. Therefore:
 - i. Logisticenter = 155,040 sf x \$0.068/sf = \$10,543 per year.

12. Can trucks drive on Zinfandel even though it is not an STAA route?

- California legal trucks may access Zinfandel, but STAA trucks cannot.

- The Surface Transportation Assistance Act defines routes for large trucks with long distance from kingpin to rear axle. These are usually, but not always, trucks with sleeper cabs. And generally, over 65 feet in length.

13. Will trucks drive on Baroque, Bear Hollow, Spoto, or other neighborhood roads?

- The proposed project has conditions of approval specifying that these roads, and other neighborhood roads, cannot be driven on by trucks.
- The driveways will be designed to direct trucks to North Mather->Zinfandel->US 50, or North Mather->Mather->Femoyer->International->Mather Field Road->US 50.
- The proposed project is conditioned to add additional traffic calming islands on Bear Hollow to further deter truck use (similar to those on Spoto).
- If trucks drive on restricted roads they will be out of compliance with their project approval and may be issued a notice of violation or administrative citation.

14. What is the difference in trip generation and roadway maintenance for warehouse, office, retail and residential uses?

- Office and residential generate similar amount of traffic (office is about 7% higher than residential). Few truck trips are generated by these uses. Light industrial uses generate less traffic (approximately 50% compared to office). Light Industrial traffic is generally between 10% and 20% trucks.
- Retail generally generates about 24% more traffic relative to residential. Some additional truck trips may also be generated.
- Light industrial uses generate about 50% of total trips relative to office use. Light industrial peak hour contribution to congestion is relatively lower than office/residential because the total trips are less, and trips are spread throughout the day. Truck trips create greater wear on roadways than passenger vehicles generated by office or residential uses. Light industrial uses would annex into the City's roadway maintenance district and be charged an additional 25% load factor.

15. How much is the maintenance district with load factor?

- The greater of \$0.068/sf building or \$432/acre site. Therefore:
 - i. Logisticenter = 155,040 sf x \$0.068/sf = \$10,543 per year.

16. Can trucks drive on Zinfandel even though it is not an STAA route?

- California legal trucks may access Zinfandel, but STAA trucks cannot.
- The Surface Transportation Assistance Act defines routes for large trucks with long distance from kingpin to rear axle. These are usually, but not always, trucks with sleeper cabs. And generally over 65 feet in length.

17. Will there be any further analysis for Particulate Matter specifically for Diesel Fuels?

- The certified EIRs for the VOZSPA analyzed particulate matter emissions from trucks and industrial and commercial uses and required mitigation which applies to the Project. Since the Project approval is exempt from CEQA and only involves design review, no further environmental review is required. Trucks and other diesel powered equipment related to the warehouse use are subject to CARB regulations to reduce

particulate matter emissions. The Project also includes a number of features to reduce particulate emissions from diesel fuel.

18. Will Semi-Trucks and other commercial trucks be allowed to park on Bear Hollow or N. Mather Blvd?

- In addition to restrictions placed on truck routes through on-site design, “No Truck Parking” signs have been installed on N. Mather Blvd and Bear Hollow Drive. Trucks in violation of the posted signages will be cited.

19. Are Environmental Questionnaires required as part of a project submittal, and what is the effect of updates or modifications to them?

- The intent of the Questionnaire is to determine whether projects require additional CEQA analysis based on the sites existing conditions and the proposed use. This document is only requested “If Applicable” as stated on the Discretionary Entitlement Application.
- This form is typically requested for projects in areas that do not have an approved EIR and is used to determine if an initial study is required for further CEQA analysis. This document is not intended to provide any type of analysis or determination regarding CEQA requirements or exemptions.
- Updates or modifications to Environmental Questionnaires are common and do not invalidate the application.
- The Logisticenter project was determined to be consistent with the approved Villages of Zinfandel EIR upon submittal due to the use listed as an allowed use within the Sacramento County Code and therefore the Environmental Questionnaire was not requested as it was not applicable at that time for this project.

20. Is the Development Agreement (DA) required to have an annual review and does inconsistency with this review render the DA null and void?

- The Development Agreement says that a compliance review shall be performed every year. The City acknowledges that while compliance reviews have been done, they have not been done every year. In an annual review, if the City finds the developer to be out of compliance with the Development Agreement, it may initiate the process of finding the developer in default, providing the developer an opportunity to cure the default, with the City thereafter potentially amending or terminating the Development Agreement. If the City takes any of these actions, the developer is afforded an opportunity to present evidence and appeal. None of these steps have been taken by the City. Failure of the City to conduct one or more compliance reviews does not automatically terminate or amend the Development Agreement.

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January 17, 2023

By E-mail and Hand Delivery

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Vice Mayor David M. Sander, Ph.D.
Councilmember Donald Terry
Councilmember Siri Pulipati
Councilmember Garrett Gatewood

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2729 Prospect Park Drive
Rancho Cordova, CA 95670

RE: LogistiCenter at Rancho Cordova (PLND-1021-0015) Request for Review under the California Environmental Quality Act ("CEQA")

Dear Mayor Budge, Honorable Council Members:

These comments were prepared on behalf of Stone Creek Residents for Smart Growth, a local organization comprised of Rancho Cordova residents concerned about the unchecked proliferation of warehouses in their community. The comments were prepared with the assistance of Dr. Petra Pless, a court-recognized expert on California air quality. Stone Creek Residents continue to analyze the facts and law applicable to this matter and may supplement these comments as needed as the case develops.

I. Introduction

We have read Dermody Properties' (developer) at times hyperbolic letters to the City Council claiming the Council has slow-walked its project approvals. The developer is threatening to sue Rancho Cordova should it not conform to Dermody's ambitious timeline.

However, in reality, the developer was free to file its application materials earlier if it felt an urgent need to have the project approved by a date-certain. Residents do not have the same information or resources as Dermody and have struggled over the last year to understand the myriad impacts associated with siting yet another warehouse distribution center in their community. Nonetheless, Stone Creek Residents for Smart Growth are catching up and are prepared to fully participate in the Council's public approval process going forward.

As detailed below, Stone Creek Residents are particularly concerned about the above-referenced warehouse project proposed for Bear Hollow Drive and urge the City to conduct a proper analysis under the California Environmental Quality Act (CEQA) to investigate and disclose all potentially significant impacts resulting from the proposed project.

II. Proposed Project Description

The developer is requesting major design review to construct a 155,077 square-foot, 40-foot-tall industrial building with parking, lighting and loading docks (the project). What the project description does not detail is the size of the trucks traveling to and from the site and an estimate of the number of daily and annual trips, the timing of those trips, and a description of the adverse impacts on air quality due to emissions of air pollutants and on climate change due to emissions of greenhouse gases associated with those trips.

The developer contends the City's hands are tied to review the project under CEQA and cannot investigate, disclose or mitigate the project's negative impacts beyond aesthetic considerations under the City's major design review program under City Code § 23.141. We disagree. While Dermody does hold certain contract rights allowing it to realize its reasonable development expectations, those rights are not unfettered, and cannot trump the City Council's responsibility to protect human health and the environment.

The developer appears to be raising three overarching arguments to support its claim that the City has no role in protecting residents and the environment from the project's adverse effects under CEQA:

1. The project is consistent with the Zinfandel Special Planning Area (ZSPA), for which Sacramento County adopted an environmental impact report (EIR) in 1998, and a supplemental EIR in 2000;¹ therefore no additional environmental review under CEQA is necessary or permitted according to the developer;²
2. Sacramento County entered into a development agreement with the developer in 2003. That agreement binds the City's ability to take steps to mitigate the proposed warehouse project's impacts some twenty years hence;³ and,

¹ Certified in 2003.

² Letter to Cyrus Abher, Rancho Cordova City Manager, from Arthur Coon of Miller Star Regalia (Oct. 3, 2022).

³ Letter to the Rancho Cordova City Council from Arthur Coon of Miller Star Regalia (Nov. 29; Dec. 14, 2022).

3. The City Council cannot review the project under CEQA because the City lacks discretionary power beyond certain aesthetic considerations pursuant to its major design review process.⁴

As shown below, these three arguments cannot stand individually nor in combination, and do not restrict Rancho Cordova from taking steps to protect nearby residents and the environment while ensuring the developer realizes its reasonable investment expectations.

a. The Project Does Not Comply with CEQA Because the Information in the 25-Year-Old ZSPA EIR is Woefully Stale

The developer is attempting to bypass CEQA review on grounds the project is exempt. Specifically, it points to CEQA Guideline § 15183.⁵ Although this particular section falls within the enumerated exemptions to the Act, § 15183 is not a true exemption. Instead, it allows a project to avoid environmental review if the project is “consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified . . . except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.”⁶

In this way, the section is not an exemption but rather a process to streamline CEQA review by avoiding the preparation of repetitive documents. Environmental review is still required for various types of impacts, including those “peculiar to the project or parcel on which the project would be located;” and those impacts which **“were not analyzed as significant effects in a prior EIR on the zoning action,** general plan or community plan with which the project is consistent;” that “are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for ... the zoning action,” or “[a]re previously identified significant effects which, as a **result of substantial new information which was not known at the time the EIR was certified,** are **determined to have a more severe adverse impact than discussed in the prior EIR.**”⁷

Under subsection (f), a project’s environmental effects are not peculiar to a project if “uniformly applied development policies or standards have been previously adopted” which serve to mitigate environmental impacts, **“unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.”** There is substantial evidence showing the project will have significant impacts on the environment which were not addressed in the ZSPA. A CEQA exemption under §15183 does not apply here, and the City must prepare appropriate CEQA documents to incorporate all substantial new information, regulations and changed circumstances from 2000 to the present.

⁴ Letter to Cyrus Abher from Arthur Coon (Oct. 3, 2022).

⁵ CEQA Guidelines § 15183(a).

⁶ Id. (emphasis added).

⁷ CEQA Guidelines § 15183(b).

The requirement to keep information fresh is consistent throughout CEQA. In addition to Guideline § 15183, the statute and Guidelines make clear agencies must update their EIRs whenever “new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.”⁸ There is no question Rancho Cordova and this particular community have changed dramatically in the last 22 years since the supplemental EIR was adopted. Likewise, environmental laws, regulations, and standards have been updated and made more stringent. For example, California began regulating greenhouse gas emissions with Assembly Bill 32 (AB 32) in 2006. AB 32 required the California Air Resources Board (CARB) to establish in 2008 a statewide greenhouse gas emissions cap for 2020.⁹

In 2007, California expressly recognized the need to analyze greenhouse gas emissions as a part of the CEQA review process with Senate Bill 97 (SB 97). SB 97 required the Office of Planning and Research to develop, and the California Natural Resources Agency (Agency) to adopt, amendments to the CEQA Guidelines addressing the analysis and mitigation of greenhouse gas emissions. Those amendments became effective on March 18, 2010. In late 2018, the Agency finalized amendments to the CEQA Guidelines, including changes to CEQA Guidelines section 15064.4, which addresses the analysis of greenhouse gas emissions. The amendments became effective on December 28, 2018.

In addition, CARB and the Sacramento Metropolitan Air Quality Management District have since adopted numerous legal standards and regulations applicable to stationary and mobile sources. For example, in 2002, CARB adopted revisions to the state ambient air quality standard for particulate matter equal to or smaller than 10 micrometers (PM₁₀) and established a new annual ambient air quality standard for particulate matter equal or smaller than 2.5 micrometer (PM_{2.5}). Subsequently, CARB adopted revisions to the ambient air quality standards for ozone and nitrogen dioxide, which went into effect on May 17, 2006 and March 20, 2008, respectively, along with ground-level ozone and nitrogen.¹⁰ None of these standards were (or could have been) analyzed in the City’s prior EIRs.

Furthermore, Sacramento County prepared the 1998 ZSPA because Rancho Cordova had not yet incorporated as a city. As such, the 1998 EIR did not analyze all of the potentially significant impacts associated with building out a new municipality and balancing all of the various land uses. Since 2003, the City has carried out haphazard plans to site an elementary school and hundreds of homes in close proximity to new warehouse distribution facilities across its sphere of influence. The size, number and nature of these

⁸ CEQA at § 21166; Guidelines § 15162(3).

⁹ <https://ww2.arb.ca.gov/resources/fact-sheets/ab-32-global-warming-solutions-act-2006>.

¹⁰ See <https://ww2.arb.ca.gov/resources/california-ambient-air-quality-standards>.

industrial facilities were not known in 1998 because ubiquitous online shopping driving the explosion of these large warehouses could not have been known in 1998 or 2000.¹¹

The City Council must make a determination on the record that addresses the environmental impacts “peculiar to the project.” According to air quality expert Dr. Petra Pless, there are numerous impacts that are specific to this project that were not addressed or mitigated by any of the City’s policies or standards in 1998 or 2000. For example, greenhouse gas emissions from the project’s truck traffic may exceed the CEQA significance threshold established by SMAQMD of 10,000 metric tons per year.

Similarly, the incremental increase in cancer risk due to toxic diesel particulate matter emissions in truck combustion exhaust, which were not assessed in the prior EIR, may exceed SMAQMD’s CEQA significance thresholds for residents and school children of 10 in one million. Nor does it appear that, in the alternative, the City found that the project’s impact “has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards.”¹² As shown above, the 1998 EIR and 2000 supplemental EIR are entirely out of date and omit the residential buildout adjacent to the project site, and changes in air quality and GHG emission regulations, among other things.

Finally, the City Council must explain whether the Project meets the requirements of § 15183(j) which provides: “This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR.” The record does not show that the Council has analyzed new impacts specific to this project that were not included in the ZSPA EIR. Instead, the Council has limited its discussion to project aesthetics. However, with an intensive industrial use such as a warehouse distribution center, the City has yet to address the issue of the substantial increase in truck traffic due to the project and associated combustion exhaust emissions, which include toxic diesel particulate matter, carbon monoxide, ozone precursors and other air pollutants and the resulting impacts on local (and regional) air quality. These project emissions would occur in close proximity to Navigator Elementary School and residences, exacerbated by the cumulative effects of numerous other warehouse projects in the vicinity and region.

Given the foregoing, even if the ZSPA had generally discussed the effects of industrial zoning, its outdated analyses which did not anticipate the explosion of warehousing due to online commerce, does not exempt this project from CEQA. In light of its woefully stale EIR, the City Council must conduct CEQA review for the project.

¹¹ The 2000 SEIR did analyze significant and unavoidable on: (a) air quality due to vehicular ROG and NOx emissions; and, (b) traffic and circulation due to additional 75,630 daily vehicle trips.

¹² Id. at § 15183(c).

b. Development Agreements Are Subject to CEQA Review

There is no dispute that development agreements are projects under CEQA and the developer does not dispute this fact.¹³ The existence of Dermody's development agreement does not in any way limit the City's obligations under CEQA; rather it is an underlying fact in this case.

c. The City May Not Rely on its Own Major Design Review Ordinance to Avoid Investigating the Proposed Warehouse's Potentially Significant Environmental Impacts under CEQA

Dermody's counsel has not been particularly clear on its position on the City Council's CEQA obligations. On the one hand it opined that the project "qualifies for a streamlining exemption under CEQA Guidelines Section 15183."¹⁴ But on the other hand, and in the same letter, it urged the City Council to scotch CEQA Guidelines Section 15183 altogether:

"Here, the City's Major Design Review process expressly limits the City's discretion to deny or condition approval of the Design Review Project based solely on the effects of its design components, not other effects of the previously authorized uses and density and intensity of those uses at the site. In other words, the City is not at liberty to use its limited design review authority to revisit environmental issues previously analyzed and laid to rest by the prior certified ZSPA EIR."¹⁵

Dermody's first position is the closest to being accurate; however, as shown above in section II(a), the City is not shielded from conducting CEQA review under Guidelines Section 15183. This is because there is substantial evidence of potentially significant impacts that were not analyzed as significant effects in the 1998 SZPA EIR and 2000 supplemental EIR.

The caselaw Dermody cited for the proposition that municipalities that have adopted design review ordinances are shielded from CEQA review are inapposite to the facts and law here and do not apply here.¹⁶ This is because the caselaw cited by the developer upholding design review ordinances contained numerous factual and legal predicates that do not exist in this case.

In the *Friends of Davis* and *McCorkle* cases, both cities were extremely proactive in keeping their general plans and other zoning documents up to date and responsive to the changing conditions in each town. For example, the City of St. Helena in the *McCorkle* case had just updated its housing element in 2015 and the application at issue in the case was

¹³ See *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116.

¹⁴ Letter to Cyrus Abhar from Arthur Coon (Oct. 03, 2022).

¹⁵ *Id.*

¹⁶ To be clear, Stone Creek Residents do not dispute that cities' design review ordinances allow municipalities to place aesthetic conditions on projects to ensure consistency with their zoning plans.

filed in 2016.¹⁷ The city could show the planning documents accurately reflected current conditions and regulations. In *Friends of Davis*, the record showed that the city had adopted and revised the relevant land use planning documents in 1987, 1993, 1994, 1995 and 1996.¹⁸ The application at issue in the case was filed in 1997; therefore, the City's decisions were grounded in recently adopted analyses.¹⁹ These scenarios are in stark contrast to what has transpired here. The relevant planning documents are two decades old and no longer reflect changes in environmental regulations and are not responsive to the myriad changes that have occurred in the years since Rancho Cordova incorporated as a city and began growing.

Next, in both *Friends of Davis* and *McCorkle*, the plaintiffs had raised concerns that were within the purview of and could be competently addressed by the respective design review teams under the design review ordinances. In *Friends of Davis*, residents were concerned about who could own a retail book shop; in *McCorkle*, plaintiffs complained about an eight-unit residential development. These concerns could be dealt with by the design review teams. The courts sided with the cities because the types of impacts the residents were raising were not the types of environmental impacts that CEQA could address (e.g., who can own a bookstore, whether storm drains are adequate and whether firetruck turnarounds are large enough). In other words, CEQA review would have not been duplicative of the design review teams' work; rather, CEQA simply had no mechanism for addressing such concerns.²⁰

The facts here are starkly opposite. To date, residents have not focused on the aesthetic concerns of the warehouse proposal. Instead, the impacts identified in this letter and those raised with the City in 2022 are far more serious and simply beyond the expertise of the design review ordinance's purview. A CEQA document analyzing the environmental impacts not included in the 1998 EIR is the only mechanism for understanding this projects' construction, operational and cumulative environmental impacts. Dermody inadvertently agreed in its October letter when it asserted that the City may not "revisit environmental issues previously analyzed and laid to rest by the prior certified ZSPA EIR." Stone Creek Residents agree that the City need only analyze all of the new circumstances and environmental laws and regulations that were not included in the 1998 or 2000 EIRs, because the record is clear that the 1998 policies and standards cannot mitigate the potentially significant effects this project would cause.

¹⁷ *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 86.

¹⁸ *Friends of Davis v. City of Davis*, (2000) 83 Cal.App.4th 1004, 1008-10.

¹⁹ *Id.* at p. 1011.

²⁰ "While local laws do not preempt CEQA, aesthetic issues like the one raised here are ordinarily the province of local design review, not CEQA." "Where a project must undergo design review under local law, that process itself can be found to mitigate purely aesthetic impacts to insignificance, even if some people are dissatisfied with the outcome. A contrary holding that mandated redundant analysis would only produce needless delay and expense." *McCorkle* at p. 94.

III. Conclusion

The City cannot rely on its design review ordinance to avoid investigating the potentially significant impacts this project would have on the environment, nor can the City assert a CEQA exemption under Guidelines § 15183. Instead, the City must prepare a thorough CEQA analysis to update the wholly inadequate planning documents under which the City has been operating for more than 20 years. Thank you for considering these comments and do not hesitate to contact me with any questions.

A handwritten signature in black ink, appearing to read "Gloria D. Smith".

By: Gloria D. Smith

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January 27, 2023

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Mayor Linda Budge
Vice Mayor David M. Sander, Ph.D.
Councilmember Donald Terry
Councilmember Siri Pulipati
Councilmember Garrett Gatewood

Rancho Cordova City Council
2729 Prospect Park Drive
Rancho Cordova, CA 95670

RE: LogistiCenter at Rancho Cordova (PLND-1021-0015), Second Request for Review under the California Environmental Quality Act ("CEQA") and Land Use Compliance

Dear Mayor Budge, Honorable Council Members:

This second comment letter was prepared on behalf of Stone Creek Residents for Smart Growth. As was apparent at the January 17, 2023 City Council hearing, Stone Creek Residents are concerned about the unchecked proliferation of warehouses in their community. This letter was prepared with the assistance of Dr. Petra Pless, a court-recognized expert in California air quality and other environmental matters. Stone Creek Residents continue to analyze the facts and law applicable to this case and may supplement these comments as needed as the case continues.

This letter concerns Dermody's claim that a development agreement for the Villages of Zinfandel Special Plan Area ("ZSPA") extends through June 2023; and as such, the developer has an unencumbered right to construct the project which is located within the ZSPA. However, as shown below, Stone Creek Residents have not been able to verify Dermody's claims on the validity of the development agreement. In addition, Dr. Pless has determined the project as proposed would cause potentially significant unmitigated impacts that the City must analyze and disclose to the public prior to project approval.

I. The 2003 Development Agreement Dermody Relies Upon Has Long Expired and Is No Longer in Effect

According to Dermody, the City's ability to exercise discretion over the warehouse project is governed and constrained by vested rights under a development agreement that relates to the entire ZSPA entered into on May 28, 2003 by Elliott Homes, Inc., and the County of Sacramento. Dermody claims this development agreement is valid from the effective date of June 28, 2003 for a period of 20 years, *i.e.*, until June 27, 2023.¹ Dermody goes to great lengths in a November 29, 2022 letter to the City describing the City's duties and obligations under the agreement. In that letter, Dermody's counsel correctly acknowledged that the agreement is subject to Gov. Code Section 65865.3, which governs the transfer of development agreements between government agencies in the event of incorporation or annexation.² Here is Gov. Code Section 65865.3(a):

Except as otherwise provided in subdivisions (b) and (c), Section 65868, or Section 65869.5, notwithstanding any other law, if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation **shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier.** The holder of the development agreement and the city may agree that the development agreement shall remain valid for more than eight years, provided that the longer period shall not exceed 15 years from the effective date of the incorporation or annexation.

Consistent with this language, after transfer to the City, the 2003 development agreement was limited by law to a maximum of eight years after the effective date of the City's incorporation on July 1, 2003, unless the City entered into a new agreement with the applicant agreeing to extend it to 15 years. This did not happen for the portion of the site where the project would be located. Either way, both the 8-year and the 15-year duration provided by law for transfer of a development agreement from a county to a newly incorporated city are long past. Therefore, the 2003 development agreement has long expired and is no longer valid.

Furthermore, under subsection (c), "this section [Section 65865.3] only applies to development agreements which meet **all** of the following requirements:

¹ Letter to City of Rancho Cordova from Arthur Coon of Miller Star Regalia, at p. 4 (Nov. 29, 2022).

² Id. at footnote 2 ("The City formally incorporated on July 1, 2003. However, the time limits set forth in Government Code section 65865.3 on the effectiveness of development agreements (8 to 15 years) from the date of incorporation of affected land into a new city do not apply because the election on incorporation of the City in November 2002 occurred before the parties entered into the Development Agreement in June 2003. (See Gov. Code, § 65865.3 (c)(2).")

(1) The application for the agreement is submitted to the county prior to the date that the first signature was affixed to the petition for incorporation or annexation pursuant to Section 56704 or the adoption of the resolution pursuant to Section 56800, whichever occurs first.

(2) The county enters into the agreement with the applicant **prior to the date of the election on the question of incorporation** or annexation, or, in the case of an annexation without an election pursuant to Section 57075, prior to the date that the conducting authority orders the annexation.

(3) The annexation proposal is initiated by the city. If the annexation proposal is initiated by a petitioner other than the city, the development agreement is valid unless the city adopts written findings that implementation of the development agreement would create a condition injurious to the health, safety, or welfare of city residents.”³

Stone Creek residents are operating with incomplete information because they do not have access to all of the original documents that the parties to the agreement have and were required to maintain. These files would verify the chain of events that unfolded between Sacramento County and Elliott Homes. Likewise, it would have been helpful had Dermody’s counsel fully addressed this critical threshold issue beyond a cursory statement in a letter’s footnote. Nevertheless, a plain reading of Section 65865.3(c)(2) makes clear that the development agreement was null and void from the date of the election for incorporation of the City. Here is the chronology as Stone Creek understands it and Dermody has confirmed:

1. “The date of the election on the question of incorporation” for Rancho Cordova was **November 5, 2002**.
2. The original 2003 development agreement for the ZSPA was signed by both Sacramento County and Elliott Homes on **May 28, 2003** for a 20-year term.⁴ On the same day, the County adopted the corresponding ordinance, specifying that the development agreement would take effect 30 days thereafter.⁵
3. Thereafter, on July 1, 2003, the City of Rancho Cordova officially incorporated, placing the ZSPA within City limits.⁶

³ Cal. Gov. Code § 65865.3.

⁴ The Villages of Zinfandel Development Agreement, entered into as of May 28, 2003, by and between Elliott Homes, Inc. and the County of Sacramento.

⁵ County of Sacramento, Ordinance No. SZC-2003-0011, An Ordinance Adopting a Development Agreement between the County of Sacramento and Elliott Homes, Inc. Relating to a Development Known as “Villages of Zinfandel,” May 28, 2003.

⁶ Rancho Cordova, About Our City; available at: <https://www.cityofranchocordova.org/departments/about-our-city>.

The operative date, which Dermody agrees with, is “the date of the election on the question of incorporation.” This date, November 2, 2002, occurred *before* the County and Elliott Homes entered into the development agreement and the City adopted the corresponding ordinance on May 28, 2003, meaning the agreement does not satisfy at least one of the statute’s three requirements for a valid transfer from Sacramento County to the newly incorporated City of Rancho Cordova. Again, Stone Creek Residents do not have the necessary documents to evaluate compliance with the other two statutory requirements, but Dermody has failed at least one of the mandatory criteria.

The California legislature’s mandate to limit transferred development agreements to eight years makes for good public policy. Newly formed cities should be free to make their own land use decisions and not be encumbered for decades by another agency’s choices on land over which that agency no longer has jurisdiction or management responsibilities. In this case, it appears Sacramento County rushed to saddle newly-incorporated Rancho Cordova with a development agreement for which the City had no input. Dermody’s November, 2022 letter underscored the County’s and Elliott Home’s attempt to hamstring Rancho Cordova for two decades: “The Development Agreement relates to the entire approximately 671.39-acre ZSPA and has a term of twenty (20) years from its effective date of June 28, 2003. Its purpose is to facilitate the phased development of the comprehensively planned ZSPA, including a complementary mix of residential, light industrial, business professional (including industrial office parks), and commercial uses.”⁷ The whole point of the development agreement between the County and Elliott Homes was to constrain, for a generation, the ability of the newly-formed City to propose its own land use priorities.

In any case, the 2003 development agreement was not legally transferred to the City; but even if the transfer had been legal, it has long expired. Consequently, Dermody’s warehouse project requires a discretionary conditional use permit and must adhere to the legal requirements that apply to all other land use projects.⁸

II. Because the Development Agreement is No Longer in Effect, the Project Must Comply with California Land Use Laws

The proposed warehouse project must proceed under an application for a conditional use permit. The foregoing analysis, Stone Creek Residents’ letter of January 17, 2023, and Dr. Pless’s additional technical analyses below, show that the project is not protected by a development agreement; *and*, it could cause significant environmental impacts the analyses of which is not within the design review team’s responsibilities. Likewise, it is not the design review team’s responsibility to evaluate the project’s consistency with California land use planning requirements.

⁷ November 2022 letter to City of Rancho Cordova from Arthur Coon at p. 4.

⁸ Stone Creek Residents’ January 17, 2023 letter sets out why the warehouse project is not eligible for a CEQA exemption. Those arguments are herein incorporated by reference.

Accordingly, the developer is required to submit an application for a conditional use permit along with a full CEQA checklist evaluation under CEQA Guidelines Appendix G. But any CUP preliminary review would quickly be hampered by the City's legally deficient planning documents. Before the project could proceed with approval, the City would need to update its general plan and ZSPA.

a. The City's General Plan Does Not Adequately Address Current State Laws and Standards

Since 1971, municipalities have been required to have legally sufficient general plans with all of the mandatory elements reflecting current state laws, regulations and standards.⁹ A general plan must be integrated and internally consistent among its elements and within each element.¹⁰ If a general plan is inconsistent, a court will find it legally inadequate, and any required findings of consistency for land use approvals must be overturned.¹¹

Relevant to this case is the well-settled principle that a municipality may only approve a conditional use permit when its general plan is "in compliance with governing [state] statutes."¹² Put differently, a city may not grant a conditional use permit unless the use is consistent with a *lawful* general plan.¹³ If the general plan fails to provide required criteria relevant to the use sought by the permit, there is no valid measure by which the municipality can evaluate a permit application.¹⁴

Beneath the general plan are zoning ordinances that regulate the allowed uses on particular parcels such as special use areas, such as the ZSPA, or specific plans.¹⁵ These documents must be consistent with a legally defensible general plan.¹⁶ This means the City of Rancho Cordova must make its land use decisions under a defensible general plan with elements that reflect current laws, policies, and regulations for air quality, greenhouse gas emissions, traffic and circulation, and noise, among other elements.

The City's general plan was adopted in 2006.¹⁷ While a few elements have been updated since, many are woefully out of date. Specifically, the General Plan's air quality element has not been updated since 2006, and, therefore, does not address compliance with a number of new and/or lower national and state ambient air quality standards

⁹ Curtin's Land Use and Planning Law, 13th Ed. (2010) at p. 22.

¹⁰ Gov. Code § 65300.5.

¹¹ *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1185; *See also* Curtin's Land Use and Planning Law at p. 24.

¹² *Neighborhood Action Group* at 1185.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800.

¹⁶ Curtin, at p. 25.

¹⁷ City of Rancho Cordova, General Plan; available at:

<https://www.cityofranchocordova.org/departments/community-development/planning/planning-division-document-library>.

(“NAAQS” and CAAQS”) that have since been promulgated. These include the 2007 1-hour and annual CAAQS for nitrogen dioxide (“NO₂”), the 2010 1-hour NAAQS for NO₂, the 2012 annual and 24-hour NAAQS for particulate matter equal to or smaller than 2.5 micrometers (“PM_{2.5}”), and the 2015 8-hour NAAQS for ozone.^{18,19} In addition, the attainment status of the Sacramento Valley Air Basin and Sacramento County laid out in the 2006 General Plan air quality element does not reflect these new or lower ambient air quality standards nor does it reflect the current attainment status with prior NAAQS and CAAQS.

Similarly, the City’s General Plan does not address climate change and greenhouse gas emissions. By enacting Senate Bill 97 (“SB 97”) in 2007, California’s lawmakers expressly recognized the need to analyze greenhouse gas emissions as a part of the CEQA process. SB 97 required the state’s Office of Planning and Research (“OPR”) to develop, and the California Natural Resources Agency to adopt, amendments to the CEQA Guidelines addressing the analysis and mitigation of greenhouse gas emissions. Those amendments became effective on March 18, 2010. In late 2018, the Agency finalized amendments to the CEQA Guidelines, including changes to CEQA Guidelines section 15064.4, which addresses the analysis of greenhouse gas emissions.

Finally, the state’s GHG and climate amendments became effective on December 28, 2018.²⁰ The 2017 Climate Change Scoping Plan published by the California Air Resources Board (“CARB”) describes California’s strategy for achieving the 2030 greenhouse gas emissions reduction target established by Senate Bill 32. The Scoping Plan also recognized the critical and complementary role of local governments in achieving the State’s climate goals.²¹ OPR’s General Plan Guidelines, Chapter 8, on climate change provide specific guidance for cities and counties on how a general plan or climate action plan must be consistent with CEQA Guidelines section 15183.5(b), entitled Plans for the Reduction of Greenhouse Gas Emissions.²² (the City, late to the party, is currently in the process of developing its climate action plan.²³)

¹⁸ California Air Resources Board, History of California’s Ambient Air Quality Standards; available at: <https://ww2.arb.ca.gov/resources/documents/history-californias-ambient-air-quality-standards>; and.

¹⁹ U.S. Environmental Protection Agency, Timeline of Nitrogen Dioxide (NO₂) National Ambient Air Quality Standards (NAAQS); <https://www.epa.gov/no2-pollution/timeline-nitrogen-dioxide-no2-national-ambient-air-quality-standards-naaqs>; Timeline of Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS); <https://www.epa.gov/pm-pollution/timeline-particulate-matter-pm-national-ambient-air-quality-standards-naaqs>; and Timeline of Ozone National Ambient Air Quality Standards (NAAQS); available at: <https://www.epa.gov/ground-level-ozone-pollution/timeline-ozone-national-ambient-air-quality-standards-naaqs>.

²⁰ OPR, CEQA & Climate Change; available at: <https://opr.ca.gov/ceqa/ceqa-climate-change.html>.

²¹ CARB, California’s 2017 Climate Change Scoping Plan, The Strategy for Achieving California’s 2030 Greenhouse Gas Target, November 2017, at 97; available at: https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf.

²² General Plan Guidelines and Technical Advisories, Chapter 8, Climate Change; available at: <https://opr.ca.gov/planning/general-plan/guidelines.html>.

²³ City of Rancho Cordova, Climate Action Plan; available at: <https://www.cityofranhocordova.org/residents/community-topics/climate-action-plan>.

OPR's Guidelines can also be used to update older plans so they comply with the criteria in Section 15183.5(b).²⁴

To comply with state law, the City is required to update the air quality and circulation elements in its general plan and adopt a climate action plan. The City has not done so, and therefore, cannot evaluate the proposed warehouse until these deficiencies are corrected. This is because there is substantial evidence the proposed warehouse project would have adverse impacts on air quality, and would undermine the state's climate goals.

For any project-specific CEQA documents the City prepares, it must analyze and disclose inconsistencies between the general plan, specific plans, and regional plans. This is because deficiencies in the general plan will affect the legal adequacy of the CEQA document.²⁵ An agency cannot review a project under CEQA if it lacks a legally sufficient and complete general plan and local zoning ordinances.²⁶ Finally, the process of updating a general plan's elements also requires CEQA review.²⁷

As shown below, the proposed project would result in significant adverse impacts on air quality and greenhouse gas emissions.

b. The Project Does Not Comply with CEQA Because the Information in the Decades-Old EIR and Supplemental EIR for the ZSPA Is Unlawfully Stale

The Applicant and the City assume that any impacts associated with the project were fully analyzed and all feasible mitigation was required in the 1998 EIR and the 2000 supplemental EIR for the ZSPA (General Plan Amendment, Community Plan Amendment, Rezone, Tentative Subdivision, Tentative Parcel Map, and Development Agreement).²⁸ Like the City's General Plan, these CEQA documents are woefully dated. There is substantial evidence the project would have negative impacts on air quality and greenhouse gas emissions that were not analyzed or adequately mitigated in the 1998 and 2000 CEQA documents.

According to Dr. Pless, emissions associated with project construction and operation would exceed applicable CEQA thresholds of significance established by the Sacramento Metropolitan Air Quality Management District ("SMAQMD") for PM10, PM2.5, and greenhouse gases. Thus, the project would result in significant and unmitigated adverse impacts on air quality and undermine the state's climate goals,

²⁴ Id. at 222.

²⁵ CEQA Guideline § 15125(d).

²⁶ Curtin at p. 23.

²⁷ Pub. Resources Code §§ 21000, et seq.; see also CEQA Guidelines § 15378.

²⁸ See, for example, Nicholas Sosa and Darcy Goulart, City of Rancho Cordova, Logistcenter at Rancho Cordova, PLND-1021-0015 Major Design Review, December 5, 2022, p. 8, and Staff Report on Logistcenter at Rancho Cordova Major Design Review - PLND-1021-0015, July 18, 2022.

Dr. Pless prepared emission estimates for the project with the California Emissions Estimator Model (“CalEEMod”)²⁹ based on project-specific assumptions (for example, 150,076-square foot building, 1.78-acre project site, trip generation estimate of 755 trips/day from Dermody’s traffic study, 10,000 cubic yard soil import, 1,000 cubic yard cut/fill, etc., and otherwise relying on model default assumptions). Emissions of PM10 and PM2.5 during both construction and operation of the project would exceed the SMAQMD’s respective quantitative CEQA significance thresholds of zero (0) pounds per day (“lbs/day”).³⁰ The project does not propose to implement all feasible best available control technologies (“BACT”) or best management practices (“BMPs”) and, thus, is not eligible for the SMAQMD’s alternate significance thresholds of 80 lbs/day and 14.6 tons per year (“tons/year”) for PM10 and 82 lbs/day and 15 tons/year for PM2.5. Thus, the project would result in significant impacts on air quality due to particulate matter emissions that are not mitigated.

Next, the project is not consistent with the operational significance threshold for greenhouse gas emissions established by the SMAQMD, which requires a demonstration of consistency with the Climate Action Scoping Plan by implementing applicable BMPs or equivalent on-site or off-site mitigation. To comply with the SMAQMD’s requirements, all projects must implement, at a minimum, Tier 1 BMPs, which require no natural gas infrastructure at the project (BMP 1) and electric vehicle readiness (BMP2),³¹ which the project fails to demonstrate. In addition, the 1998 and 2000 EIRs found significant unavoidable impacts on air quality after implementation of all feasible mitigation measures that were acceptable 20 years ago.³² Many additional feasible mitigation measures became routinely available after adoption of these decades-old documents which must be required to mitigate the project’s significant adverse impacts (and all other current and future projects within the ZSPA). For example, the wide-spread availability of electric vehicles, including industrial trucks, was not even on the horizon 20 years ago; nor had the state incorporated the now-routine requirement that agencies analyze and mitigate significant greenhouse gas emissions in all CEQA documents.

²⁹ CalEEMod is a statewide land use emissions computer model designed to provide a uniform platform for government agencies, land use planners, and environmental professionals to quantify potential criteria pollutant and greenhouse gas emissions associated with both construction and operations from a variety of land use projects. Model is available at: <http://www.aqmd.gov/caleemod/home> and <https://www.caleemod.com/>.

³⁰ SMAQMD, available at: <https://www.airquality.org/LandUseTransportation/Documents/CH2ThresholdsTable4-2020.pdf>.

³¹ SMAQMD Greenhouse Gas Thresholds/Best Management Practices Applicability4/24/2020, revised 9/23/2020; available at: <https://www.airquality.org/LandUseTransportation/Documents/Ch6GHGBMPApplicabilityFlowChart9-23-2020.pdf>.

³² Sacramento County, Final Environmental Impact Report, Volume I, Village of Zinfandel General Plan Amendment, Community Plan Amendment, Rezone, Tentative Subdivision, Tentative Parcel Map and Development Agreement, Control Number: 95-GPB-CZB-PMR-SDB-DGB-ZOB-0533, January 1998, at 14, and Final Environmental Impact Report, Volume I, March 2000, at 1.14 and 1.15.

Stone Creek Residents are developing evidence of additional environmental impacts analyses on other aspects of the warehouse projects. Dr. Pless will supplement her work as new information becomes available.

III. Conclusion

This letter shows, based on limited publicly-available information, that the development agreement between Elliott Homes and Sacramento County was not legally transferred to the City. Or, at best, the agreement expired long ago. As a consequence, the proposed warehouse project is subject to authorization under a conditional use permit application for which the City must investigate and disclose the potentially significant impacts Dr. Pless has raised. Please contact me if you have questions about this letter.

THE LAW OFFICES OF GLORIA D. SMITH

A handwritten signature in black ink, appearing to read "Gloria D. Smith", with a stylized, cursive script.

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February 13, 2023

By E-mail

CityClerk@cityofranchocordova.org.

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Vice Mayor David M. Sander, Ph.D.
Councilmember Donald Terry
Councilmember Siri Pulipati
Councilmember Garrett Gatewood

Rancho Cordova City Council
2729 Prospect Park Drive
Rancho Cordova, CA 95670

RE: LogistiCenter at Rancho Cordova (PLND-1021-0015)

Dear Mayor Budge, Honorable Council Members:

This letter clarifies Stone Creek Residents for Smart Growth's January 27, 2023 letter concerning the validity of the development agreement under which Dermody asserts the proposed warehouse project would be covered. To recap, the Government Code specifies that newly incorporated cities generally inherit development agreements negotiated by counties where the county entered into the agreement *before* the election for incorporation of the new city.¹ That was not the order of events here; instead, Sacramento County and Elliott Homes entered into the agreement on May 28, 2003 *after* the election for incorporation occurred on November 5, 2002. Because the chain of events conflicts with the statute, the inheritance provisions under the statute never applied. The Institute of Local Self Government, a nonprofit research arm of the League of California Cities, explains the threshold legal requirements:

"The development agreement law provides that cities generally inherit development agreements negotiated by counties for newly incorporated or newly annexed areas. See Cal. Gov't Code § 65865.3(a) (for incorporations, the effective date of the incorporation must be after January 1, 1987). The development agreement must meet the following requirements, however:

¹ Gov't Code § 65865.3(a) and (c).

- The application for the agreement must have been submitted before the first signature was placed on the petition for annexation or incorporation (or resolution initiating such proceedings);
- The agreement must have been entered into prior to the incorporation/annexation election (or prior to the date on which the conducting authority ordered the annexation); and
- The annexation is initiated by the city (or, if initiated by someone else, the city does not adopt written findings that the development agreement is injurious to the health, safety or welfare of city residents. See Cal. Gov't Code § 65865.3(c) and (d). The duration of such inherited development agreements is the duration of the agreement or eight years, whichever is shorter. See Cal. Gov't Code § 65865.3(a)."²

The Elliott Homes development agreement did not meet all of the above requirements, so Rancho Cordova did not inherit the County's agreement (If a development agreement was finalized after the incorporation of a new city, then the new city itself would be the proper governmental signatory in the first instance.).

Ignoring that the statute disallowed inheritance of the development agreement, in 2004, the City amended the agreement's duration to 15 years (presumably in accordance § 65865.3(a)). However, that amendment cannot save the agreement either because the longest statutorily allowed extension is limited to 15 years.³ The City's 2016 attempt to revert the duration of the development agreement to the original term of 20 years was inconsistent with the statute.⁴ So, even under the most expansive reading of the law, the agreement expired in 2018. Dermody must submit to the City an application for a conditional use permit if it intends to pursue its project.

THE LAW OFFICES OF GLORIA D. SMITH



Gloria D. Smith

² https://www.ca-ilg.org/sites/main/files/file-attachments/resources_FinalDevAgreement4-5-02.pdf

³ See Govt Code Section 65865.3(a). ("Except as otherwise provided in subdivisions (b) and (c), Section 65868, or Section 65869.5, notwithstanding any other law, if a newly incorporated city or newly annexed area comprises territory that was formerly unincorporated, any development agreement entered into by the county prior to the effective date of the incorporation or annexation shall remain valid for the duration of the agreement, or eight years from the effective date of the incorporation or annexation, whichever is earlier. The holder of the development agreement and the city may agree that the development agreement shall remain valid for more than eight years, provided that the longer period shall not exceed 15 years from the effective date of the incorporation or annexation.")

⁴ See Ordinance No. 6-2016.

DEVELOPMENT AGREEMENT MANUAL:

Collaboration in Pursuit of Community Interests



INSTITUTE *for* LOCAL
SELF GOVERNMENT

ABOUT THE INSTITUTE FOR LOCAL SELF GOVERNMENT

This publication is a special project of the Institute for Local Self Government, which is the nonprofit research arm of the League of California Cities. The Institute was founded in 1955 as an educational organization to promote and strengthen the processes of local self government. The Institute's mission is to serve as a source of independent research and information that supports and improves the development of public policy on behalf of California's communities and cities.

The Institute's work is concentrated in three areas:

- Land Use
- Fiscal Issues
- Public Confidence in Local Government

For more information about the Institute and its programs, please visit the Institute's website at www.ilsg.org.

ABOUT THE COMMUNITY LAND USE PROJECT

The Institute's work in the land use area is known as the Community Land Use Project. The goal of this effort is to assist local agencies in finding solutions to land and resource issues that appropriately balance private and public interests in community and property. The project focuses primarily on an area of the law known as "regulatory takings," but the project also addresses other issues that pose significant challenges for public agencies.

The Community Land Use Project is developing a number of resources—such as this publication—that are designed to help local officials implement their land use programs. The project is grateful for the generous support of the David and Lucile Packard Foundation and the League of California Cities.



INSTITUTE *for* LOCAL
SELF GOVERNMENT

DEVELOPMENT AGREEMENT MANUAL:

COLLABORATION IN PURSUIT OF COMMUNITY INTERESTS

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DEVELOPMENT AGREEMENT MANUAL: COLLABORATION IN PURSUIT OF COMMUNITY INTERESTS
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THIS PUBLICATION IS NO SUBSTITUTE FOR LEGAL ADVICE

This publication provides an overview of development agreement practices and at times provides summaries of the law. Readers should note that attorneys can, and do, disagree about many of the issues addressed in this *Development Agreement Manual*. Moreover, proposals to change the land use regulatory process are frequently introduced in the state Legislature and new court decisions can alter the practices a public agency should follow. Accordingly:

- **Public officials** should always consult with agency counsel when confronted with specific situations related to land use laws;
- **Agency counsel** using this publication as a resource should always read and update the authorities cited to ensure that their advice reflects a full examination of the current and relevant authorities; and
- **Members of the public and project proponents** reading this publication should consult with an attorney knowledgeable in the fields of land use and real property development law.

CONTENTS

1. INTRODUCTION.....	9
What are Development Agreements	9
In This Manual	9
2. THE ADVANTAGES AND DISADVANTAGES OF DEVELOPMENT AGREEMENTS.....	1
Advancing Land Use Policies.....	11
Potential Advantages: The Ability to Better Implement Planning Policies.....	12
Potential Disadvantages: May Promote Bad Planning	13
Imposing Conditions	14
Potential Advantages: More Encompassing Developer Requirements May be Enforced.....	15
Statutory and Constitutional Restrictions	15
Avoiding Constraints and Uncertainties.....	17
Potential Disadvantages: Unrealistic Expectations May Make Project Infeasible	18
Assuring Project Can Be Built.....	19
Potential Advantages: Fewer Surprises After Project Approval	20
Potential Disadvantages: Rules of Engagement Are Locked In.....	20
Summary	23
3. ACHIEVING LAND USE PLANNING OBJECTIVES THROUGH DEVELOPMENT AGREEMENTS.....	25
The Importance of Comprehensive Planning	25
The Role of Planning Policies in the Negotiation Process	26
Planning Policies as a Mechanism for Defining Project Proponent Expectations .	28
Uses of Development Agreements	28
Summary	28
4. THE NUTS AND BOLTS OF PROCESSING DEVELOPMENT AGREEMENTS	30

Purpose/Findings	31
Application Process	31
Public Hearings and Notice.....	32
Development Agreements and Public Input.....	32
Public Input on Consideration of the Proposed Agreement	34
Notice Issues	35
Decisionmaker Input on Development Agreements and Findings	36
Involving the Planning Commission Early On.....	36
Planning Commission Recommendation and Input on Findings.....	37
Governing Body Hearing and Decision on the Development Agreement.....	38
Action on the Agreement	39
Recordation and Other Post-Approval Steps	39
Amending the Development Agreement	40
Development Agreements and Accountability.....	40
Summary	41
5. THE ART OF NEGOTIATING DEVELOPMENT AGREEMENTS.....	43
Who is Going to Negotiate?.....	43
Reaching Consensus	44
Knowing Who is Across the Table.....	44
Setting Expectations	44
The Utility of Ground Rules.....	45
Setting Priorities.....	46
Have a Strategy.....	46
Interest-Based Bargaining Techniques.....	47
Summary	48
6. THE SUBSTANCE OF A DEVELOPMENT AGREEMENT.....	49
Who Will do the Drafting?	49
When Should the Drafting Begin?	50
Common Provisions In Development Agreements	50
The Parties to the Agreement.....	50

Use of Recitals	51
Term.....	51
Required Contents	52
Public Benefits	53
Addressing a Potential Police Power Challenge	53
Recovery of Costs	55
Which Regulations Are Frozen?	55
“Milestone” Requirements	56
Default, Remedies and Termination	56
Non-Performance Issues.....	56
State or Federal Laws	57
Annual Review.....	57
Enforcement.....	58
Recordation	58
Certificate of Satisfaction	58
Indemnification and Hold Harmless Provision.....	58
Amendment or Cancellation.....	59
Assignment	59
Successors	59
Validity of Portions of the Agreement Severability	60
Attorneys Fees	60
Good Faith and Fair Dealing.....	60
Signatures and Subordination.....	60
Summary	61
7. CONCLUSION	69
FEEDBACK FORM	71
PUBLICATION ORDER FORM	73
INDEX.....	75



INSTITUTE *for* LOCAL
SELF GOVERNMENT

Spring, 2002

Dear Reader:

On behalf of the Institute's board of directors, we are pleased to be able to offer this resource to assist you in understanding issues relating to development agreements.

A key Institute goal is to make a difference for local agencies and the communities they serve. Your feedback and input is a vital part of our efforts to assess the Institute's value and impact:

- Did this publication help you? How? Did it make a difference in how you approached a local issue or policy relating to development agreements?
- How can the publication be improved? Did we leave anything out? Do you disagree with something we said?
- Do you have examples of the kinds of issues we discuss that we might be able to include in future updates of this publication? Are you interested in contributing to the Institute's programs in general?

To assist you in providing feedback, we have provided a feedback form at the back of this publication. Your feedback is also welcome through our website at www.ilsg.org.

Thank you in advance for your assistance.

Very truly yours,

JoAnne Speers
Executive Director

Jerry Patterson
President, Board of Directors

INTRODUCTION

WHAT ARE DEVELOPMENT AGREEMENTS?

Development agreements are contracts negotiated between project proponents and public agencies that govern the land uses that may be allowed in a particular project.¹ Although subject to negotiation, allowable land uses must be consistent with the local planning policies formulated by the legislative body through its general plan, and consistent with any applicable specific plan.²

Neither the applicant nor the public agency is required to enter into a development agreement. When they do, the allowable land uses and other terms and conditions of approval are negotiated between the parties, subject to the public agencies' ultimate approval. While a development agreement must advance the agencies' local planning policies, it may also contain provisions that vary from otherwise applicable zoning standards and land use requirements.

The development agreement is essentially a planning tool that allows public agencies greater latitude to advance local planning policies, sometimes in new and creative ways. While a development agreement may be viewed as an alternative to the traditional development approval process, in practice it is commonly used in conjunction with it. It is not uncommon, for example, to see a project proponent apply for approval of a conditional use permit, zone change and development agreement for the same project.

What Are Development Agreements?.....	9
In This Manual	9

IN THIS MANUAL

As discussed in Chapter 2, both parties to the agreement receive benefits. In addition to the greater latitude afforded by the development agreement to advance local planning policies, the public agency has greater flexibility in imposing conditions and requirements on proposed projects,³ while the applicant is afforded greater assurance that once the project is

¹ See Cal. Gov't Code § 65864 and following.

² See Cal. Gov't Code § 65867.5.

³ See Cal. Gov't Code § 66000(b).

approved, it can be built.⁴ There may be disadvantages associated with development agreements as well (see Chapter 2).

Because development agreements afford greater latitude, local agencies may want to take steps to ensure that local land use objectives are not diminished through the use of development agreements (see Chapter 3). Giving adequate thought to how the parties conduct negotiations can improve an agency's chances of accomplishing its objectives, as well as ensuring that reasonable expectations of both parties are achieved (see Chapter 4). Finally, understanding the "nuts and bolts" of processing development agreements, and the terms and provisions that are typically included, will ensure that procedural requirements are met and legal interests protected (Chapter 5).

In short, this manual provides a practical overview of the development agreement process, including:

- The advantages and disadvantages of using development agreements;
- The role development agreements can play in achieving local agency land use planning objectives;
- Procedural issues related to development agreements;
- Substantive provisions in development agreements; and
- The art of negotiating development agreements.

This manual reflects the variety of experiences that California public agencies and project proponents have had with development agreements, and builds upon the groundbreaking work of the original *Development Agreement Manual* written by Daniel Curtin and published in 1980 (supplemented in 1985) by the League of California Cities.

⁴ See Cal. Gov't Code § 65865.4.

2

CHAPTER

THE ADVANTAGES AND DISADVANTAGES OF DEVELOPMENT AGREEMENTS

Development agreements have three defining characteristics:

- They allow greater latitude than other methods of approval to advance local land use policies in sometimes new and creative ways;
- They allow public agencies greater flexibility in imposing conditions and requirements on proposed projects; and
- They afford project proponents greater assurance that once approved, their projects can be built.

Although these characteristics can be advantageous, they can also present challenges. The purpose of this chapter is to discuss potential advantages and disadvantages of development agreements, from the perspective of both the public agency and project proponent.

Advancing Land Use Policies.....	11
Imposing Conditions	14
Assuring Project Will Be Built	19
Summary	23

ADVANCING LAND USE POLICIES

Because development agreements are themselves ordinances, they may supersede existing land use regulations as long as they are consistent with the general plan and any applicable specific plan.⁵ As a result, they can afford the public agency and project proponent greater latitude concerning allowable land uses in a particular instance. However, there are potential advantages and disadvantages associated with having this flexibility.

⁵ See Cal. Gov't Code § 65867.5.

POTENTIAL ADVANTAGES: THE ABILITY TO BETTER IMPLEMENT PLANNING POLICIES

From a planning perspective, development agreements have been instrumental in allowing creative and award-winning land use projects because the agreements can facilitate projects that would not have been allowed under otherwise applicable zoning regulations. The approval of creative land use concepts — and the construction of resulting projects — have advanced the state of urban planning, and allowed public agencies to better combat the visual and aesthetic impacts of “cookie-cutter” development.

In a similar vein, there are instances in which literal compliance with zoning ordinance provisions can thwart promotion of general plan policies. For example, the general plan may encourage the existence of open space, whereas the applicable zoning district does not allow sufficient density to accommodate the clustering of residential units necessary to accommodate an open space component.

There may also be instances in which the legislative body wishes to promote unwritten policies, such as those involving growth management. As long as the project is consistent with the local planning policies formulated by the legislative body through its general plan, the development agreement can provide greater latitude to incorporate land use concepts and components that are tailored specifically to address particular community concerns.

In each of these cases, the ability to vary from strict adherence to otherwise applicable zoning provisions can help ensure that the public agency’s land use policies are being advanced, in sometimes new and innovative ways. These advantages are shared by the public agency and project proponent alike.

The following example shows how using a development agreement allows the parties to develop a unique land use project to advance the public agency’s land use policies creatively and responsibly through the give-and-take of negotiations, as both parties address their respective needs and desires.

ILLUSTRATION — SPORTS WORLD

Mr. Dee, a developer, wishes to construct a project that will attract people traveling through Grassland on the way to Yosemite. Mr. Dee's "Sports World" will have a combination of attractive components, including a virtual sports center with a simulated ski slope, fairway and rock climb; a gas station; restaurant; hotel; and air strip. If the project succeeds, it will generate substantial profits. Mr. Dee wishes to have his project approved in a manner that will allow him flexibility with respect to both land use and design, so that he can select from a variety of tenants and react to changing market conditions without having to obtain further city approvals. Although the general plan recites the need to attract tourists destined for Yosemite, the zoning ordinance does not allow the particular combination of uses Mr. Dee is proposing.

Cautiously optimistic, the Grassland city council understands that Grassland will benefit from the added sales tax. But the council's concerns are numerous, and include the concern that Mr. Dee may not have the experience to complete the project; that the project may not "pencil out" financially; and that it may not attract the anticipated number of tourists. Finally, the council doesn't know what the project is — what it will look like, what uses will be allowed, and what design standards and architectural controls will govern it. The city council is also concerned about the potential impact of additional traffic on the adjacent freeway overpass.

Given that the zoning ordinance does not allow the proposed project, and the fact that there are a number of council concerns, the parties decide to negotiate a development agreement. As negotiations begin, Mr. Dee initially advocates conceptual development and design standards, while Grassland insists on elevations showing the exact location and type of use for every project component. As the negotiations proceed, the parties approve four alternative plans, each of which will allow Mr. Dee to react to a different market, while also allowing city council to understand what the project is.

In addition, the parties agree that some of the allowable uses for portions of the project will be more generically defined (for example, office/commercial), so that Mr. Dee can select from a number of tenants without first having to obtain additional city approvals. Once a tenant is selected, however, plans and elevations for the site must be submitted to Grassland for architectural review.

In the end, the parties reach agreement on all of the outstanding issues. Planning staff confirms that the final agreement is consistent with and advances the aims of the general plan and associated land use policies, and the project is approved and constructed.

While few things in life go as smoothly as the hypothetical approval of Sports World (above), the process of negotiating development agreements can allow the development of new and creative concepts, address associated issues and concerns unique to a particular project, and ensure adherence to local land use policies in conformance with the general plan.

POTENTIAL DISADVANTAGES: MAY PROMOTE BAD PLANNING

The latitude afforded the parties through use of a development agreement may also have potential disadvantages. For example, the agency's staff and legislative body may become convinced that, in exchange for the significant sales tax revenue the agency is likely to receive from a particular project, or in consideration of the fact that the project proponent is willing to construct a new city park or other significant public amenity, the agency should agree to compromise its planning standards in a manner that could reduce the quality of life in the community. The pressure to compromise may be especially great in the case of a "friendly developer" who has a popular presence in the community.

From the project proponent's perspective, it is possible that the legislative body may decide to disallow uses that would otherwise be allowed, and which are appropriate from a conventional planning perspective.

The suggestions that appear in this manual are intended to help avoid misusing development agreements. They are based on the premise that from the outset, the planning policies and objectives that have been embraced by the community through adoption of the general plan, and those included in any applicable specific plan, should be an integral part of the discussions and negotiations between the parties to a development agreement.

By identifying applicable planning policies early on, and continuing to use them as yardsticks in determining what land uses are appropriate, the parties should be able to avoid unacceptable compromises when negotiating development agreements.

IMPOSING CONDITIONS

Development agreements provide public agencies greater flexibility in imposing requirements on proposed development, such as development conditions, exactions and fees, because constraints and uncertainties that affect a local agency's ability to unilaterally impose such requirements do not apply to mutually agreed upon development agreement provisions.⁶

⁶ See Cal. Gov't Code § 66000(b) (excluding "fees collected under development agreements" from the type of fee covered under the Mitigation Fee Act).

POTENTIAL ADVANTAGES: MORE ENCOMPASSING DEVELOPER REQUIREMENTS MAY BE ENFORCED

Public agencies face the following types of legal constraints and uncertainties that directly affect their ability to regulate development. Such constraints and uncertainties may be overcome, however, through the use of development agreements.

Voter Initiatives. During the past several decades, public agencies have been subjected to a number of fiscal setbacks that have impeded their ability to meet the service and infrastructure needs of their communities. A number of voter initiatives have limited public agencies' revenue raising authority, and questions associated with these initiatives have created legal uncertainties.

ERAF Shift. In 1992, in reaction to a serious deficit, the state enacted legislation that annually shifts some of the financial responsibility for funding education, pursuant to Proposition 98, to local public agencies. Through the intervening the years, the Educational Revenue Augmentation Fund (ERAF) has deprived local agencies of more than \$30 billion.

Since the ERAF shift and passage of initiative measures limiting public agencies' general revenue sources, agencies have increasingly required project proponents to bear the costs to the community associated with development of their projects. Many agencies have adopted development impact fees, for example, that are designed to require project proponents to pay the costs of infrastructure, facilities and public services required to service their projects.

STATUTORY AND CONSTITUTIONAL RESTRICTIONS

Mitigation Fee Act. Commonly referred to as Assembly Bill (AB) 1600, the Mitigation Fee Act was enacted in 1987.⁷ It closely regulates the adoption, levy and collection of development fees, including project-specific fees, imposed by local agencies. The act requires the agency to identify the purpose and use of the fee, and to explain why there is a reasonable relationship between the fee and the development.⁸ Fees may not exceed the estimated reasonable cost of providing the service for which the fee is collected.⁹ These requirements, among other things, have restricted the reach of development impact fees.

⁷ See Cal. Gov't Code § 66000 and following.

⁸ See Cal. Gov't Code § 66001.

⁹ See Cal. Gov't Code § 66005.

School Facility Fees. Local public agencies historically have been responsible for financing schools. In 1998, however, Senate Bill (SB) 50 significantly changed the extent to which agencies can require developers to contribute to the cost of building new schools.¹⁰ SB 50 sets maximum amounts on such fees.¹¹ It also prohibits agencies from imposing other conditions on development to ensure the existence of adequate school facilities.¹²

Each of these constraints and uncertainties limits a local agency's ability to adequately condition new development in a manner that will cover the cost of associated infrastructure, facilities and public services.¹³

Regulatory Takings. The term "regulatory takings" derives from the Takings Clause of the Fifth Amendment to the United States Constitution, which states: "... nor shall private property be taken for public use, without just compensation."¹⁴

A "taking" is any confiscation of private property by a public agency. A "regulatory taking" is an indirect confiscation of private property through government regulation. If a court finds that a challenged regulation constitutes a taking, the public agency must compensate the owner of the property.

In recent years, takings litigation (and the threat of such litigation) has become a significant factor in land use decision-making. Increasingly, project proponents have invoked the Takings Clause in an effort to persuade public agencies to reduce their efforts to require developers to pay various costs associated with infrastructure and public services. Moreover, the courts have displayed a greater inclination to second-guess public officials' decisions—a departure from the traditional deference the courts have afforded decisions of local officials in the past.

The expanding scope of what constitutes a compensable taking is of concern to local agencies because of the potential for being assessed large monetary judgments in connection with the imposition of development requirements.

¹⁰ See Cal. Gov't Code § 65995(a).

¹¹ See Cal. Gov't Code § 65995(b).

¹² See Cal. Gov't Code § 65996(b).

¹³ An overview of SB 50 is available from the League of California Cities. To obtain a copy, League members may contact the League and request "Strauss Opinion on SB 50, January 1999."

¹⁴ To the same effect is article 1, section 19 of the California Constitution: "Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid"

AVOIDING CONSTRAINTS AND UNCERTAINTIES

A public agency can avoid the types of constraints and uncertainties described above by entering into development agreements, since the project proponents agree to fees and requirements. Once the agreement is executed, the project proponent has generally waived his or her right to challenge the fairness or appropriateness of a particular requirement.

For example, the local agency can ask that the project proponent agree to finance public facilities and improvements without the specter of a regulatory takings claim. Similarly, the local agency may ask the project proponent to construct a new school without fear that school facility-fee limitations will be invoked. The project proponent must agree to such requirements, of course, before they may become enforceable.

The local agency may also bargain for completion of facilities and improvements at an earlier stage in the development process. This can result in needed infrastructure and facilities being put in place prior to or concurrently with the development, reducing the development's impact on existing facilities or services. Similarly, the project proponent may agree to pay additional fees to protect the agency and existing residents from any budgetary impacts associated with the development.

For facilities and infrastructure that are funded by multiple projects, the development agreement process can provide a mechanism to ensure that each project proponent pays its fair share in a timely manner.

The project-specificity of the development agreement process offers the public agency the opportunity to design more tailored implementation programs for its planning policies and objectives as they relate to the proposed project. The process of negotiating the agreement can help the agency identify and address issues relating to the project before the agency provides final approval. The agency may also require that the agreement include provisions dealing with identifiable contingencies related to the proposed project.

Finally, the fact that the development agreement is recorded provides a convenient mechanism for binding future owners to the requirements and obligations created by the agreement.¹⁵

¹⁵ See Cal. Gov't Code § 65868.5 ("... the burdens of the agreement shall be binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement").

LEGISLATIVE HISTORY OF DEVELOPMENT AGREEMENT LAW

The Development Agreement Law was enacted in 1979, in response to the *Avco Community Developers, Inc. v. South Coast Regional Commission* decision. See 17 Cal. 3d 785 (1976).

The *Avco* case involved a large development in Orange County, some of which was in the coastal zone. Under the newly enacted Coastal Act, the developer had to obtain a permit from the Coastal Commission unless it had obtained a building permit. The developer had secured a final subdivision map and a grading permit, but did not have a building permit. The developer had already spent a great deal of money on the site.

The court ruled that the developer's project was indeed subject to the Coastal Act's additional requirements and restrictions, reaffirming the rule that property owners acquire a vested right to complete construction only after they have performed substantial work and incurred substantial liabilities in good faith reliance on a permit issued by regulatory authorities. Only at that point can a project be completed free of new restrictions.

The result in *Avco* created great consternation in the development community, which lobbied the Legislature to create a mechanism that would allow developers to know earlier on in the process what requirements would apply to their projects. The development agreement law is a result of this effort.

FINANCIAL INCENTIVES MAY TRIGGER PREVAILING WAGE REQUIREMENT

Effective January 1, 2002, many development projects that involve loans, grants or other forms of assistance from local agencies are classified as “public works” projects.¹⁶ As such, they fall under state requirements for payment of “prevailing wages.”¹⁷ These requirements establish minimum wage levels for public works projects that vary by location.¹⁸ Application of prevailing wage requirements may lead to higher labor costs for development projects that receive certain forms of financial support or incentives from local agencies. Prevailing wages now may apply to otherwise private projects, where a public agency:

- Pays money or its equivalent to or on behalf of a developer¹⁹;
- Performs construction work in execution of the project;²⁰
- Transfers assets at less than fair market value;²¹
- Waives or forgives fees, costs, rents, insurance or bond premiums, loans, or interest rates;²²
- Makes available money to be repaid on a contingent basis;²³ or
- Grants credits applied against repayment obligations.²⁴

Reimbursing a developer for costs that would normally be borne by the public does not trigger the prevailing wage requirement, nor does a subsidy that is de minimis in the context of the project.²⁵

**POTENTIAL DISADVANTAGES: UNREALISTIC
EXPECTATIONS MAY MAKE PROJECT INFEASIBLE**

From the project proponent’s viewpoint, local agencies may expect more encompassing project requirements than are financially feasible. The myriad of issues developers face, including land availability, financing, market considerations and federal, state and local regulatory requirements can make it difficult to propose financially feasible development projects.

Against this back drop, some developers have abandoned development agreements altogether. This avoids the risk of discovering after months of negotiations that the local agency expects the developer to construct an

¹⁶ Cal. Lab. Code § 1720(b).

¹⁷ Cal. Lab. Code §§ 1770; 1771.

¹⁸ Cal. Lab. Code § 1771.

¹⁹ Cal. Lab. Code § 1720(b).

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ Cal. Lab. Code § 1720(c).

expensive public amenity, such as a school or park, in consideration of the benefits the developer will receive from a development agreement.

As further discussed in Chapter 4, one way of avoiding this type of problem is to discuss the parties' expectations at the outset, as a prelude to beginning negotiations. That allows each party to assess early on whether a development agreement will meet each party's needs.

ASSURING PROJECT CAN BE BUILT

One of the challenges project proponents face in the usual regulatory process is that the project must meet the regulatory standards in effect at each stage of the development process. This can result in a proposed project being subject to new regulations even after it has received final approval, and even if the new regulations preclude or prohibit construction of some or all of the project.

As a result, it can be difficult for a project proponent to know at the outset what criteria the project must meet. It is not until the proponent's right to complete the project has "vested," that he or she has the right to build the project without concern that new regulations may apply.

Unforeseen regulatory changes (including those adopted by the voters through the initiative process) can add time and expense to a proposed project. Moreover, a proponent of a large project must typically invest

WHEN DOES ONE ACQUIRE A "VESTED" RIGHT TO PROCEED WITH DEVELOPMENT, FREE FROM ADDITIONAL REGULATORY REQUIREMENTS?

Ordinarily, a project proponent acquires a vested right to complete construction when the proponent has:

- Obtained all permits necessary for the proposed structure;
- Performed substantial work in good faith reliance upon those approvals; and
- Incurred substantial liabilities in good faith reliance upon those approvals. The proponent must, of course, complete the work in accordance with the terms of the permit.²⁶

A project proponent cannot acquire a vested right under an invalid building permit, even if substantial expenditures have been made in good faith.²⁶ The rights that vest through reliance on the building or other permit cannot be greater than those specifically granted by the permit itself.²⁶ For example, perfection of a vested right for one phase of a multiphase project does not create a vested right to build subsequent phases.

substantial amounts of time and money in the project before he or she receives "vested rights" to complete the project as approved.

²⁶ *City of San Jose v. State of California*, 45 Cal. App. 4th 1802, 53 Cal. Rptr. 2d 521 (6th Dist. 1996) *rev. denied* (1996).

On the other hand, a project proponent who is a party to a development agreement receives “vested rights” to complete the project as approved. This occurs immediately upon execution of the agreement, by virtue of the fact that a development agreement “freezes” applicable local land use regulations with respect to the proposed project.²⁷

POTENTIAL ADVANTAGES: FEWER SURPRISES AFTER PROJECT APPROVAL

From a project proponent’s perspective, the added certainty associated with receiving “vested rights” to construct a proposed project without concern that new regulations may apply can be invaluable. It may be especially important to a project proponent worried about a potential ballot measure or a change in the governing body majority that could adversely affect the project. While development agreements are subject to voter referenda,²⁸ an opponent would have to file his or her submittal within 30 days after final approval of the development agreement in order to preserve the right to put the approval of the agreement on the ballot.²⁹ Once the 30-day period is over, the project proponent can safely assume that the project will not be affected by future ballot measures.

There are limits to the degree of assurance that a public agency can offer. For example, additional conditions may be imposed on the project if further environmental analysis is needed under the California Environmental Quality Act (CEQA). Also, a development agreement cannot prevent the application of state or federal regulations, as further discussed below.³⁰

Another advantage from the project proponent’s perspective is limiting the potential for regulatory change. This can be helpful when the proponent seeks financing. It can also be reassuring with respect to large projects that have significant upfront costs.

POTENTIAL DISADVANTAGES: RULES OF ENGAGEMENT ARE LOCKED IN

A development agreement can limit the public agency’s ability to respond to a changing regulatory environment, precisely because it locks in the

²⁷ See Cal. Gov’t Code § 65865.4.

²⁸ See Cal. Gov’t Code § 65867.5.

²⁹ See Cal. Elect Code § 9237.

³⁰ See Cal. Gov’t Code § 65869.5.

regulatory requirements in effect at the time the agreement is approved. If the agency's planning regulations are in need of review or updating, the agency may be subject to criticism if the conditions imposed by the agreement do not sufficiently protect the community's interests. In the absence of a development agreement, and should the need arise, the agency retains the prerogative to change the rules relating to the project, even if that change makes the intended use unlawful.

A development agreement also places a premium on an agency being able at the outset to identify all of the issues presented by a project. Since changes to the agreement require mutual assent, it may be difficult to add conditions or requirements later, should the agency identify the need to do so after the agreement is entered into.

From the proponent's perspective, the project's obligations are also locked in by the agreement. Some elements of market changes—including changes in the project's economics—may not be reflected in the agreement. This can put a premium on a project proponent's ability to anticipate areas of potential change and then negotiate the flexibility to respond to those changes (for example, by negotiating a range of future uses, based on what the market will bear at the time of build out).

Another possible disadvantage is the degree of protection from regulatory change, which is limited to local regulations. The development agreement law specifically provides that a development agreement must be modified if necessary to comply with subsequently enacted state or federal law.³¹ The new state or federal law may prevent or preclude compliance with the provisions of the development agreement. The issue for the project proponent is whether some protection from regulatory change is better than none at all.

³¹ See Cal. Gov't Code § 65869.5.

COMPARISON OF TENTATIVE MAPS, VESTING TENTATIVE MAPS AND DEVELOPMENT AGREEMENTS			
Development agreements are one planning tool. This chart provides a side-by-side comparison of how development agreements compare with tentative subdivision maps and vesting tentative maps.			
	Tentative Maps	Vesting Tentative Maps	Development Agreements
Description	Tentative Subdivision Map (or Tentative Map) – The project proponent’s initial proposal for subdividing land, which is the local agency’s main opportunity to set conditions on the proposed subdivision.	The point in time when a project proponent has the right to proceed without being subject to changes in land use regulations, typically when the last permit necessary for construction of a project (usually a building permit) has been issued and substantial expenditures have been incurred in reliance on the permit. The concept of vested rights is one of the reasons it is important that concerned citizens make their views known as early as possible in the land use decision making process.	A legislatively-approved contract between a jurisdiction and a person having legal or equitable interest in real property within the jurisdiction (California Government Code Section 65865 and following) that typically "freezes" certain rules, regulations, and policies applicable to a project for a specified period of time, usually in exchange for certain concessions by the project proponent.
Application of Conflicting Local Rules in Future	Yes	Only if necessary to prevent situation dangerous to health and safety	Depends on language in agreement
When Requirements Are Locked In/Not Subject to Change	No vested right even at the final map stage Police power requirements can be changed at each stage of the permitting process Vested right conferred when building permits issued and substantial work completed in reliance on those permits	When application is "complete"	At execution of agreement, unless agreement provides otherwise
Fees and Dedications	Subject to statutory and constitutional restrictions	Subject to statutory and constitutional restrictions	Subject to mutual agreement
Phasing	Allowed	Allowed	Allowed
Effect on Other Agencies’ Regulatory Prerogatives	Does not limit	Does not limit	Does not limit
Local Agency Procedures	Agency must adopt	Local agencies may adopt procedures; otherwise, Map Act governs	Local agencies must adopt procedures upon request of applicant
Processing	Mandatory — Local agencies must accept application and process it within statutory time frames	Mandatory — Local agencies must accept application and process it within statutory time frames	Discretionary — Local agencies may chose to use or not
Duration	Specified by statute, which includes both automatic and discretionary extensions	Specified by statute, which includes both automatic and discretionary extensions	Annual review required. County development agreements are time-limited if land is annexed or incorporated (Government Code section 65865.3)
Voter Review	No — approval is an adjudicatory act not subject to referenda	No — approval is an adjudicatory act not subject to referenda	Yes — approval is a legislative act subject to referenda
Time Limit for Challenging	90 day statute of limitations	90 day statute of limitations	90 day statute of limitations
Governing Statutes	Government Code sections 66410 to 66499.37	Government Code sections 66498.1 to 66498.9	Government Code sections 65864 to 65869.5

SUMMARY

This chapter has examined the advantages of the three defining characteristics of development agreements—greater regulatory latitude, flexibility and assurance for project proponents. But these characteristics can also present obstacles for the parties negotiating a development agreement.

Some developers may continue avoiding the use of development agreements because of the potential for expensive project requirements. Some local agency staff may avoid development agreements because of the limitations that development agreements impose on an agency's ability to respond to a changing regulatory environment. Nevertheless, the latitude afforded by development agreements to advance local agencies' planning objectives--in sometimes new and innovative ways--makes the development agreement a useful and viable tool in service to the community in a number of different applications.

For both parties, a development agreement can involve a great deal of time and energy to negotiate and implement. Accordingly, it is important at the outset to carefully evaluate the advantages and disadvantages of using a development agreement in each specific instance.

ACHIEVING LAND USE PLANNING OBJECTIVES THROUGH DEVELOPMENT AGREEMENTS

3 CHAPTER

Development agreements can be used for a wide range of projects, from large mixed-use developments to smaller projects. Moreover, the scope of a development agreement can vary according to the needs of the project in question. Although a development agreement can be comprehensive, detailing every aspect of the project, it can also focus on particular aspects of a project.

This chapter discusses the role that development agreements can play in a local agency's overall planning process. Fundamentally, development agreements are one tool in the local agency's toolbox for achieving the community's long-term planning and development goals.

THE IMPORTANCE OF COMPREHENSIVE PLANNING

In authorizing the use of development agreements, the Legislature emphasized that development agreements are intended to serve as a tool to *strengthen* a community's commitment to comprehensive land use planning.³² The concept behind the use of development agreements is to encourage communities to think ahead, in a comprehensive manner, about the impacts of development within their jurisdiction and the steps necessary to make that development a win-win proposition for both the project proponents and the community.

The Importance of
Comprehensive Planning 25

Uses of Development
Agreements..... 28

Summary 28

³² See Cal. Gov't Code § 65864(a) ("The Legislature finds and declares that: (a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and *discourage investment in and commitment to comprehensive planning* which would make maximum efficient utilization of resources at the least economic cost to the public.") (emphasis added).

**WHAT DOES A
DEVELOPMENT
AGREEMENT
COVER?**

- Permitted uses of the property;
- Density or intensity of use;
- Maximum height and size of proposed buildings;
- Provisions for reservation or dedication of land for public purposes;
- Terms and conditions relating to financing of necessary public improvements, as well as provisions for subsequent reimbursement for that financing, as appropriate;
- Timeframes for commencement and completion of construction, or any phases of construction;
- Subsequent discretionary approval provisions, as long as those approvals do not prevent development of the project as described in the agreement; and
- The duration of the agreement.

A development agreement generally allows a project proponent to proceed with a project that meets the “policies, rules and regulations” in effect at the time the development agreement is approved.³³ A development agreement may also supercede an agency’s existing policies, rules and regulations, as long as the project is consistent with the general plan and any applicable specific plan.³⁴

**THE ROLE OF PLANNING POLICIES IN THE
NEGOTIATION PROCESS**

A helpful starting point is having well-understood planning regulations that reflect the community’s current and anticipated needs. Such policies, when adhered to, facilitate the negotiation process, ensuring that a proposed development agreement reflects the local governing body’s policies. This approach can also address a source of decisionmaker discomfort with the development agreement process, because even though the governing body ultimately approves a development agreement, it also needs a mechanism to provide direction to the negotiation process. Planning policies meet this need.

Typically in a negotiation process, decisionmakers provide their negotiators with parameters on key bargaining issues. It is important that the parameters remain confidential, so the other side does not know how much leeway the negotiators have.

Confidentiality is difficult in the context of development agreement negotiations because the state’s open meeting laws³⁵ do not generally allow an exception for public agency negotiators on development agreements to receive direction from the governing body. There may be aspects of a development agreement—for example, the price and terms of payment for acquisition of property—that can be discussed in closed session. However, only those issues may be discussed in closed session—not the development agreement in general.

The agency’s planning policies, therefore, may serve as the negotiators’ key source of direction in this circumstance. In addition, a local agency may want to consider directing its staff to adopt a different type of negotiating style, where identification of “interests” replaces the need to establish outer

³³ See Cal. Gov’t Code § 65864(b) (“The Legislature finds and declares that: ... (b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development.”) (emphasis added). See also Cal. Gov’t Code § 65866.

³⁴ See Cal. Gov’t Code § 65867.5.

³⁵ See generally Cal. Gov’t Code § 54950 and following (The Ralph M. Brown Act).

“positions” or parameters (see discussion in Chapter 4). If an agency uses an interest-based negotiating strategy, there are fewer strategic disadvantages associated with a governing body’s trying to provide direction in open session.

Well-conceived and up-to-date planning policies can also assist local agencies to avoid having to ask the staff to negotiate in a vacuum, with little or no immediate direction or feedback from decisionmakers. When the agreement is before the legislative body for final approval, it may be difficult for the body to modify aspects of the agreement without, in effect, renegotiating the agreement from the dais to change the terms that the staff negotiated.

DEVELOPMENT AGREEMENTS AND ANNEXATIONS/INCORPORATIONS

The development agreement law provides that cities generally inherit development agreements negotiated by counties for newly incorporated or newly annexed areas. *See* Cal. Gov’t Code § 65865.3(a) (for incorporations, the effective date of the incorporation must be after January 1, 1987). The development agreement must meet the following requirements, however:

- The application for the agreement must have been submitted before the first signature was placed on the petition for annexation or incorporation (or resolution initiating such proceedings);
- The agreement must have been entered into prior to the incorporation/annexation election (or prior to the date on which the conducting authority ordered the annexation); and
- The annexation is initiated by the city (or, if initiated by someone else, the city does not adopt written findings that the development agreement is injurious to the health, safety or welfare of city residents. *See* Cal. Gov’t Code § 65865.3(c) and (d).

The duration of such inherited development agreements is the duration of the agreement or eight years, whichever is shorter. *See* Cal. Gov’t Code § 65865.3(a).

The city may modify or suspend the development agreement’s provisions if the city determines that failure to do so would place the residents of the territory subject to the development agreement (or the residents of the city in general — or both) in a condition dangerous to their health or safety (or both). *See* Cal. Gov’t Code § 65865.3(a).

However, the development agreement law also authorizes cities to enter into development agreements for unincorporated territory within their sphere of influence. *See* Cal. Gov’t Code § 65865(b). The agreement does not become operative until the annexation occurs. *See* Cal. Gov’t Code § 65865(b). The timeframe for the annexation must be specified in the agreement and the annexation must occur within that timeframe. *See* Cal. Gov’t Code § 65865(b). Extensions are possible, however. *See* Cal. Gov’t Code § 65865(b).

**DEVELOPMENT
AGREEMENTS AND
TRANSIT**

Development agreements may be used to implement demonstration programs that test the effectiveness of increasing the density of residential development in close proximity to mass transit stations.³⁶ Local agencies may also require developers to enter into development agreements to implement density-bonus programs in transit village plans³⁷ or within a half-mile radius of mass transit stations.³⁸

**PLANNING POLICIES AS A MECHANISM FOR DEFINING
PROJECT PROPONENT EXPECTATIONS**

An agency's planning documents, including its local development agreement procedures, can provide an important source of guidance for project proponents going into negotiations. By stating in the procedures that the local agency is committed to using development agreements as a tool to promote the community's needs, the agency makes clear that it expects to receive greater community benefits than it could otherwise achieve through the land use regulatory process. This level of understanding can be helpful in setting the proper tone, so both parties have realistic expectations going into the negotiations.

Such an approach also may be helpful in responding to community concerns that the community has not received adequate benefits in the past from development agreements. These concerns may arise, especially when the project proponent has an ongoing relationship with the public agency.

USES OF DEVELOPMENT AGREEMENTS

Local government agencies have successfully used development agreements to facilitate:

- School, park and other facility funding;
- Affordable housing projects;
- Large-scale mixed use projects; and
- Multi-phase commercial projects.

Development agreements can also be a vehicle for addressing concerns among developers about perceived adverse impacts of neighboring projects.

SUMMARY

Used judiciously, development agreements are a useful tool for achieving an agency's land use planning objectives. Well-articulated planning policies

³⁶ Cal. Gov't Code § 14045.

³⁷ Cal. Gov't Code §§ 65460.10, 65460.2.

³⁸ Cal. Gov't Code § 65913.5

may also provide important policy direction to staff in negotiating such agreements.

THE NUTS AND BOLTS OF PROCESSING DEVELOPMENT AGREEMENTS

From a local agency standpoint, the development agreement process begins with the local agency's procedures for development agreements. The development agreement law contemplates the adoption of such procedures by local government agencies.³⁹ If there are none, some must be adopted upon the request of an applicant.⁴⁰ Sample procedures are available online at www.ilsg.org/devtagmt and typically include the following:

- | | | |
|---|--|-----------|
| • A statement of purpose/findings concerning the public benefits of development agreements; | Purpose/Findings | 31 |
| • Application requirements; | Application Process..... | 31 |
| • Notice and hearing procedures; | Public Hearings and Notice | 32 |
| • Planning commission and governing body review; | Decisionmaker Input on Development Agreement and Findings | 36 |
| • Recordation; | Recordation and Other Post-Approval Steps..... | 39 |
| • Amendment and termination; and | Amendment | 40 |
| • Periodic review. | Development Agreements and Accountability | 40 |
| | Summary | 41 |

³⁹ See Cal. Gov't Code § 65865(b) ("Every city, county, or city and county, shall, upon request of an applicant, by resolution or ordinance, establish procedures and requirements for the consideration of development agreements ...").

⁴⁰ See Cal. Gov't Code § 65865(b).

WHO MAY INITIATE THE DEVELOPMENT AGREEMENT PROCESS?

An owner (with legal or equitable title) must apply in accordance with the local agency's procedures. *See* Cal. Gov't Code § 65865(b).

See also National Parks and Conservation Assn v. County of Riverside, 42 Cal. App. 4th 1505 (1996).

Such procedures may be adopted by ordinance or resolution.⁴¹ The development agreement law allows local agencies to recover the direct costs associated with adopting procedures for the agencies' consideration of development agreements.⁴²

This chapter discusses procedures and issues an agency may include in its development agreement procedures resolution or ordinance, as well as the general steps in the process of approving a development agreement.

PURPOSE/FINDINGS

The agency's development agreement procedures provide an opportunity for the local agency to state its goal for considering development agreement requests, which is "...to promote the community's needs and receive greater community benefits than otherwise can be achieved through the land use regulatory process." A goal statement similar to this example can be helpful in setting the tone for negotiations, so that both parties have realistic expectations going into the negotiations.

It is also helpful to refer to the development agreement statute, California Government Code section 65864 and following.

APPLICATION PROCESS

ORDINANCE OR RESOLUTION?

Development agreements are authorized both ways: by ordinance and resolution. Some public agency attorneys recommend resolutions as the more flexible form of authorization.

An application form specifying the type of information an agency needs to process the development agreement request is an efficient way of ensuring that the agency receives all of the information it needs in a timely manner. Some development procedures authorize the agency's planning director to develop a form application for development agreements. A sample form is also available online at www.ilsg.org/devtagmt.

It can also be helpful for an agency's development agreement procedures to authorize the local agency's attorney to develop a form agreement. Having a readily available form agreement saves staff time in reviewing development agreements; it also provides

⁴¹ *See* Cal. Gov't Code § 65865(b).

⁴² *See* Cal. Gov't Code § 65865(d).

greater assurance that the agreement will cover all of the agency's needs. Chapter 6 discusses the content of development agreements. Sample forms are available online at www.ilsg.org/devtagmt.

Some public agencies charge fees to process applications. A local agency's development agreement procedures can specify those fees or cross reference a fee schedule that includes this particular type of fee.⁴³

The local agency will also need to ensure that the environmental analysis requirements under the California Environmental Quality Act (CEQA) have been satisfied.⁴⁴

PUBLIC HEARINGS AND NOTICE

Another important aspect of development agreements is the role of public input. The development agreement law requires a noticed public hearing by both the planning agency and by the local agency's governing body before a development agreement is approved.⁴⁵

DEVELOPMENT AGREEMENTS AND PUBLIC INPUT

Both the project proponent and the local agency have an interest in satisfying community concerns with respect to a development agreement, insofar as development agreements are subject to repeal by voter referendum.⁴⁶ In fact, a development agreement cannot legally take effect until after the 30-day period for such a referendum expires.⁴⁷

There is also a 90-day statute of limitations to challenge the adoption or amendments of any development agreement approved after January 1, 1996.⁴⁸

PROCESSING DEVELOPMENT AGREEMENTS WITH OTHER APPROVALS

Development agreements may be processed with other land use approvals for the same project, such as a conditional use permit or subdivision map, in which case the parties should consider whether it is advantageous to seek simultaneous approvals, or have one approval follow another.

⁴³ See generally Cal. Gov't Code § 66000(b) (excluding "fees collected under development agreements" from the type of fee covered under the Mitigation Fee Act) and following.

⁴⁴ See generally Cal. Pub. Res. Code § 21000 and following.

⁴⁵ See Cal. Gov't Code § 65867.

⁴⁶ See Cal. Gov't Code § 65867.5.

⁴⁷ See Cal. Elect. Code § 9141; *Referendum Committee v. City of Hermosa Beach*, 184 Cal. App. 3d 152 (1986); *Midway Orchards v. County of Butte*, 220 Cal. App. 3d 765 (1990).

⁴⁸ See Cal. Gov't Code § 65009.

As a practical matter, though, it may be advisable to include stakeholders (interested parties such as community groups, business leaders and others interested in the community's development) in the development agreement process. While it may not be practical to allow stakeholders to attend negotiations, it may be possible to consult with them ahead of time, or perhaps

on a
“meet
and
confer”
basis as
negotiations
proceed.

As the
following
example
illustrates,
the
process
of
negotiating
a
development
agreement
is
susceptible
to
“community

backlash” in instances when community members find out after the fact, that public agency staff has agreed to recommend what they perceive as controversial concessions.

ILLUSTRATION — TAXCO

Destination City is looking for a way to increase its general fund. Taxco is a large retail outlet that generates more than \$500,000 worth of sales tax revenue each year for other cities in which it is located. Taxco plans to build a store in the vicinity.

Public agency senior staff meet with Taxco senior staff to discuss the benefits of locating in Destination City. Aware that a neighboring city would also like a Taxco retail outlet, these meetings are kept confidential. Senior staff suggest ways that Destination City may be able to write down land costs, waive development fees and otherwise provide incentives for Taxco to locate in their city. Eighteen months later, a deal is struck and the terms are commemorated in a development agreement, which is to be reviewed by the planning commission and approved by city council.

At this point, Bill Chamber, president of the Downtown Merchants Association, sees the public hearing notice and learns for the first time that the city is considering agreeing to a variety of incentives to entice Taxco to locate in Destination City. Mr. Chamber calls a meeting of the merchants.

During the meeting, merchants express their concerns that the city should not entice Taxco to locate in the city; it is not fair for the city to agree to monetary incentives not offered to other businesses; the city ought to be concerned about the very real threat that Taxco will run other merchants out of town; and the city should focus on business retention rather than attracting new businesses. The group decides to formally oppose approval of the development agreement. They also discuss initiating a recall of the entire city council, for secretly acting against the business community's interests. Unlike the Sports World illustration, these parties do not live happily ever after.

Meeting with stakeholders ahead of time to discuss possible actions, such as attracting a large retail outlet, allows legitimate issues to be aired before serious negotiations begin. After some evaluation, stakeholders may decide their issues can be resolved, or the agency may decide it should re-evaluate its priorities. In the case of the merchants in this illustration, had they been given the opportunity to meet with the agency to learn about the experiences of other cities, they might have concluded that attracting Taxco would actually help business retention.

Meeting and conferring with stakeholders during the negotiation process allows them to provide input on the specific terms and conditions that are being negotiated. Many times, the same underlying goal can be accomplished in a slightly different manner to accommodate stakeholders' needs.

In the Taxco example, city staff needed to keep the negotiations confidential, so that a neighboring city would not undermine their efforts. While the need for confidentiality makes it more difficult to include stakeholders, including them in the process without sharing every detail enables the local agency to be on a firmer community relations footing when it comes to approving the development agreement.

PUBLIC INPUT ON CONSIDERATION OF THE PROPOSED AGREEMENT

The development agreement law specifies what kind of public hearings and notice must be given when an agency gets to the point of considering whether to approve development agreements.⁴⁹ Hearings must be held by the local planning agency and its governing body.⁵⁰ Such hearings are subject to the state's open meetings laws,⁵¹ which require that all interested persons be allowed to attend these meetings⁵² and provide public comment before the planning commission's or governing body's consideration of the development agreement.⁵³ Members of the public are also entitled to request copies of all documents included in the agenda packet.⁵⁴ The state's Public Records Act also may entitle members of the public to request other documents relating to the proposed agreement.⁵⁵

ON CENTRAL RECOVERY OF COSTS

Depending on the nature of the project, negotiating a development agreement can involve significant costs for the public agency in the form of staff time and legal fees. An agency may want to provide for the recovery of some or all of those costs either in its local procedures, as part of the cost of processing a development agreement or as a term of the agreement itself.

The agency will want to ensure that it does not assess the project proponent more than the agency's actual costs. One way is to establish an hourly rate and regularly record staff time.

⁴⁹ See Cal. Gov't Code § 65867.

⁵⁰ See Cal. Gov't Code § 65867.

⁵¹ See Cal. Gov't Code § 54950 and following.

⁵² See Cal. Gov't Code § 54953(a).

⁵³ See Cal. Gov't Code § 54954.3.

⁵⁴ See Cal. Gov't Code § 54954.1.

⁵⁵ See Cal. Gov't Code § 6250 and following. An exception may be preliminary drafts of development agreements if they are not kept in the ordinary course of business. See Cal. Gov't Code § 6254(a).

NOTICE ISSUES

The development agreement law provides notice requirements for hearings related to the potential adoption of a development agreement.⁵⁶ The notice is the same as that required under the planning and zoning law for:

- Plans (publication in at least one newspaper of general circulation or posting in three public places within the jurisdiction if there is no newspaper of general circulation, with special consideration given to drive-through facilities);⁵⁷
- Projects (10-day mailed notice to the property owner, the project proponent, affected local agency service/facility providers; and⁵⁸
- Neighboring property owners within 300 feet, as well as published and posted notice, again with special consideration given to drive-through facilities).⁵⁹ The agency must also give notice to anyone who has requested it.⁶⁰

A NOTE ON DEVELOPMENT AGREEMENTS IN THE COASTAL ZONE

Local agencies in the coastal zone may approve development agreements only if they have a certified local coastal program or if the California Coastal Commission formally approves the development agreement. *See* Cal. Gov't Code § 65869.

The notice must contain:

- The date, time, and place of the hearing;
- The identity of the hearing body;
- A general explanation of the matter to be considered (in other words, the development agreement); and

⁵⁶ *See* Cal. Gov't Code § 65867.

⁵⁷ *See* Cal. Gov't Code § 65090.

⁵⁸ This includes each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected. *See* Cal. Gov't Code § 65091(a)(2).

⁵⁹ *See* Cal. Gov't Code § 65091.

⁶⁰ *See* Cal. Gov't Code § 65092: "When a provision of this title requires notice of a public hearing to be given pursuant to Section 65090 or 65091, the notice shall also be mailed or delivered at least 10 days prior to the hearing to any person who has filed a written request for notice with either the clerk of the governing body or with any other person designated by the governing body to receive these requests. The local agency may charge a fee which is reasonably related to the costs of providing this service and the local agency may require each request to be annually renewed."

- A general description, in text or by diagram, of the location of the property that is the subject of the development agreement, and hence the hearing.⁶¹

To facilitate informed public discussion of the matter, it may be helpful to include a brief explanation of what development agreements are. A sample of such a description is available online at www.ilsg.org/devtagmt.

DECISIONMAKER INPUT ON DEVELOPMENT AGREEMENTS AND FINDINGS

A local agency's development agreement procedures present an opportunity for the governing body to ask the planning commission to make a recommendation on whether to approve the agreement and weigh in on proposed findings.

INVOLVING THE PLANNING COMMISSION EARLY ON

When development agreements are negotiated by staff, subject to planning commission review before final approval by the legislative body, planning commissioners may feel they have been "left out of the loop." This may be especially true if the legislative body is the only one receiving updates as negotiations proceed.

The consequences of the planning commission feeling insufficiently involved may include:

- Bad feelings on the part of individual planning commissioners;
- A lack of planning commission input during negotiations; and

CAN A DEVELOPMENT AGREEMENT BE APPROVED BY INITIATIVE?

Yes. See: *Citizens for Responsible Government v. City of Albany*, 56 Cal. App. 4th 1199 (1997).

WHAT CONSTITUTES ENTRY INTO THE DEVELOPMENT AGREEMENT?

The development agreement law is not entirely clear. A good practice is to secure on the agreement the signature of the person authorized to execute agreements on behalf of the local agency shortly after the adoption of the development agreement ordinance by the governing body.

⁶¹ See Cal. Gov't Code § 65094.

- Less protection of elected officials' interests by appointed commissioners.

One approach to informing the planning commission early on is to schedule the project for discussion at a regular planning commission meeting at the start of negotiations. This provides the planning commission with an opportunity to provide its input to the negotiating team on key policies and objectives to be achieved on behalf of the community through the development agreement.

Another approach is to convene a subcommittee of the planning commission as an adjunct to the negotiation process. If the subcommittee is less than a quorum of the commission, the discussion may occur without the

PRACTICE POINTER

Some practitioners ask the project proponent to sign the proposed agreement before the agreement is introduced for approval.

overlay of open meetings requirements.⁶² While the subcommittee could be made part of the negotiating team, it may be more practical, given the competing demands on planning commissioners' time, for staff to confer with the subcommittee outside of negotiations. This approach allows the negotiating team to benefit from at least some planning commissioners' perspective, while the negotiating team remains

reasonably sized.

PLANNING COMMISSION RECOMMENDATION AND INPUT ON FINDINGS

An agency's development agreement procedures can solicit the planning commission's input both on whether the development agreement should be approved, and on the findings accompanying any approval. Such findings may include whether the agreement:

- Is consistent with the objectives, policies, general land uses and programs specified in the agency's general plan and any applicable specific plan;
- Is consistent with the provisions of the agency's zoning regulations;

⁶² See Cal. Gov't Code §§ 54952.2(a) ("As used in this chapter, 'meeting' includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.") 54952 ("As used in this chapter, 'legislative body' means: ... (b) A ... committee ... of a local agency, whether permanent or temporary, decision-making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, any advisory committee, composed solely of members of the legislative body which are less than a quorum of the legislative body are not legislative bodies ...").

- Promotes the public health, safety, and general welfare;
- Is just, reasonable, fair and equitable under the circumstances facing the agency;⁶³
- Has a positive effect on the orderly development of property or the preservation of neighboring property values; and
- Provides sufficient benefit to the community to justify entering into the agreement.

GOVERNING BODY HEARING AND DECISION ON THE DEVELOPMENT AGREEMENT

As discussed in Chapter 3, well-articulated planning policies and objectives should increase the likelihood that the staff's and planning commission's input to the development agreement negotiation process

produces a satisfactory agreement for the governing body. Adoption of an interest-based negotiation approach may also allow the governing body to provide direction to negotiators early on in the process in open session, consistent with the state's open meeting laws.⁶⁴

Well-conceived and up-to-date planning policies also avoid the prospect of asking staff to negotiate in a vacuum, with little or no immediate direction or feedback from decisionmakers. This maximizes the likelihood that the agreement presented for decision-maker approval reflects their concerns and policy direction. It minimizes the likelihood of having to renegotiate the agreement from the dias. (The downside of which, is inclusion of language in the agreement which may have unintended consequences or not fully protect the agency's interests.)

PRACTICE POINTER

A development agreement typically freezes regulatory requirements in effect at the time the agreement is executed. For that reason, it is helpful to collect all of those regulatory documents and file them with the approved development agreement. This avoids confusion several years afterwards as to what regulatory requirements apply.

Copies should also be provided to the project proponent.

⁶³ See generally *Morrison Homes Corp. v. City of Pleasanton*, 58 Cal. App. 3d 724 (1976) (analyzing the "contracting away the police power" issue in the context of an annexation agreement). See also *Denio v. City of Huntington Beach*, 22 Cal. 2d 589 (1943); *Carruth v. City of Madera*, 233 Cal. App. 2d 688 (1965).

⁶⁴ See generally Cal. Gov't Code § 54950 and following (The Ralph M. Brown Act).

ACTION ON THE AGREEMENT

The governing body must approve a development agreement by resolution or ordinance.⁶⁵ Ordinances must go through a two-reading process, with at least a five-day intervening period.⁶⁶ Changes require an additional five-day waiting period.⁶⁷

RECORDATION AND OTHER POST-APPROVAL STEPS

After a development agreement is approved, the clerk of the governing body must:

- Record a copy of the development agreement within 10 days of the entity's entry into the agreement, along with a description of the land subject to the development agreement,⁶⁸ and
- Publish the ordinance approving the development agreement.⁶⁹

⁶⁵ See Cal. Gov't Code § 65867.5.

⁶⁶ See Cal. Gov't Code §§ 36934 (city requirements), 25131 (county requirements).

⁶⁷ See Cal. Gov't Code §§ 36934 (city requirements), 25131 (county requirements).

⁶⁸ See Cal. Gov't Code § 65868.5.

⁶⁹ A clerk must publish each ordinance (or a summary of it) within 15 days after passage as follows: 1) In a newspaper of general circulation published within the jurisdiction, or 2) If there is none, by posting as required by state law. Cal. Gov't Code §§ 36933 (cities), 25124 (counties) (note that state codes are available online at <http://www.leginfo.ca.gov> by clicking on "California Law"). The publication must include the names of the governing body members voting for and against the ordinance. Cal. Gov't Code §§ 36933(c) (cities), 25124 (counties).

PRACTICE POINTER

Some agencies specify the agencies' annual review procedures in the agency's ordinances and resolutions relating to development agreements. Others specify the annual review procedures in the development agreement itself. The latter approach makes the annual review process part of the negotiations process as it is the subject of negotiation and the resolution of that negotiation memorialized as a term of the development agreement itself.

Other implementation strategies include:

1. Assigning one person to monitor agreement performance.
2. Creating an implementation matrix (cross-referencing the section of the development agreement, the obligation, the trigger/timing, which local agency department has lead responsibility, and the status).

Having a well-thought out implementation strategy helps ensure the agency gets the benefit of its bargain.

In cities and counties, failure to satisfy the publication requirement in a timely manner prevents the ordinance from taking effect or being valid.⁷⁰

AMENDING THE DEVELOPMENT AGREEMENT

After a development agreement has been signed, it may be amended only by mutual agreement of parties.⁷¹ Most development agreement procedures require amendments that are initiated by the project proponent to go through the same process as the initial application for the development agreement. For local agency-initiated amendments, the procedures usually require notice to the project proponent and provision of information about the process that the agency will employ.

DEVELOPMENT AGREEMENTS AND ACCOUNTABILITY

Fundamental to the concept of an enforceable agreement is the notion that each party will do what it promises to do in the agreement. To underscore that notion, the development agreement law requires local agencies to include at least an annual review of the project proponent's compliance with the delineated responsibilities.⁷² The review must require the proponent to demonstrate good faith compliance with the terms of the agreement.⁷³ If a local agency finds, based on substantial evidence, that such compliance has not occurred, the agency may modify or terminate the agreement.⁷⁴

In addition, the development agreement law provides that the development agreement is "enforceable by any party."⁷⁵ A development agreement typically contains provisions specifying procedures for notice and termination in the event of a default by either party.

⁷⁰ Cal. Gov't Code § 36933(b) (cities). Cf. Cal. Gov't Code § 25124(c) (providing failure of county clerk to publish means the ordinance does not take effect for 30 days).

⁷¹ See Cal. Gov't Code § 65868.

⁷² See Cal. Gov't Code § 65865.1.

⁷³ See Cal. Gov't Code § 65865.1.

⁷⁴ See Cal. Gov't Code § 65865.1.

⁷⁵ See Cal. Gov't Code § 65865.4.

SAN DIEGO DATABASE KEEPS DEVELOPMENT AGREEMENTS ON TRACK

The City of San Diego's Development Agreement Monitoring System tracks the status of payments owed by developers to cover the cost of project-related infrastructure, facilities and public services.⁷⁶ In addition to helping city staff monitor compliance with the terms and conditions of development agreements, the system also generates reminders of annual report deadlines and due dates for administrative costs owed to the city.

Before the city developed the system in 1997, several departments shared responsibility for monitoring the status of development agreements. The lack of effective coordination made oversight of the agreements uncertain. If, for example, the city's issuance of a building permit for the 250th unit of a residential project obligated the developer to pay the city \$250,000 for completion of a library, the city had no means to ensure that it requested the funds in a timely manner.

To address this problem, city staff formed an inter-departmental task force called the Development Monitoring Team. The Monitoring Team worked with city Management Information Systems personnel to create the Development Agreement Monitoring System. The system comprises a database containing files for each development agreement. The files list developer obligations and due dates under each agreement.

The monitoring team updates the status of developer obligations and shares this information with appropriate departments on a regular basis. As a result, the city has improved the timeliness of developer invoicing and collection. By February 2000, the Development Agreement Monitoring System helped the city to collect \$17 million in developer obligations, and to track another \$28 million that the city is due to receive by 2005.

SUMMARY

A well-crafted set of development agreement procedures will provide a useful road map to staff and others in shepharding an agreement through the approval process. Such procedures are also useful for considering any amendments to and termination of an agreement.

Important parts of the process include the notice and hearing process, as well as mechanisms for providing decision-maker input.

⁷⁶ City of San Diego, Development Agreement Monitoring System, February 2000 (Submission for League of California Cities Helen Putnam Award for Excellence).

THE ART OF NEGOTIATING DEVELOPMENT AGREEMENTS

5 CHAPTER

The art of negotiation comprises several facets. Fundamentally, it is important to decide *who* is going to negotiate and *how* the parties will reach consensus. This chapter addresses the issues associated with each facet of negotiation.

WHO IS GOING TO NEGOTIATE?

Within the public agency, senior staff or their representatives typically negotiate development agreements. The manager (or representative) should be involved because he or she presumably knows the community, understands the desires of the legislative body and can gauge the agreement's value to the community.

The agency's planning director (or representative) is typically on the negotiating team because of his or her planning background. While the manager may focus on financial benefits to the community, the planning director will be concerned with the impact of the project on land use issues, including its compatibility with surrounding land uses. Engineering or public works staff should be included if infrastructure issues are involved.

The public agency also may want to include the attorney on the negotiating team, rather than just at the agreement's drafting stage, especially if the project proponent is represented by legal counsel. Legal issues will undoubtedly arise during negotiations, and drafting issues may overlap with substantive deal points. Whether or not legal counsel participates in the negotiations, he or she should be fully apprised as the negotiations proceed.

Who Is Going to Negotiate?	43
Reaching Consensus	44
Summary	48

PRACTICE POINTERS

Legislative Body Member Participation. Veterans of the development agreement negotiation process typically advise against including a governing body representative on the negotiating team.

Such involvement can put the elected official in a constrained position when the final agreement goes before the council or board.

Conflicts of Interest Issues. In selecting negotiating team members, keep in mind conflicts of interest issues. For example, the Attorney General opined in 2002 that a senior local agency staff member may not participate in the negotiations and drafting of a development agreement if her spouse is employed by a firm that will provide outreach services for the developer with respect to the project pursuant to a yearly retainer agreement. The Attorney General found that the staff member's participation would violate conflicts of interest laws relating to contracts,⁷⁷ even though the spouse had no ownership interest in the firm, he will not work on the city's project, and his income will not be affected by the outcome of the development agreement or project.

For more information about ethics laws, please See *The Local Official's Guide to Ethics Laws* published by the Institute for Local Self Government.

As for the project proponent, he or she (or a representative with full legal authority to bind the project proponent) should participate in the negotiations. On larger projects, the project proponent may want to assemble a team that includes the project proponent, an architect, planner and land use attorney. Depending on what aspect of the agreement is being negotiated, the project proponent may want to include one or more of the team members in the negotiations.

REACHING CONSENSUS

How parties conduct negotiations may be the best indicator of whether they will achieve consensus. Participants should be trained in the process of negotiations, and have a framework in mind to guide the negotiation process.

KNOWING WHO IS ACROSS THE TABLE

Before negotiations begin, each party should become familiar with the other's background. In addition, the project proponent should become familiar with the local political climate, while local agency staff should learn about the project proponent's reputation in the community, or in other communities where the proponent's developments have been approved. The parties should also determine in advance what they expect to gain through the negotiations, what the other party may need, and what they are willing to give.

SETTING EXPECTATIONS

Once the parties meet, they should frankly discuss their respective expectations. The local agency should emphasize that it expects to gain greater exactions than it could require under its regulatory authority. The project proponent should explain why the particular project requires a development agreement. The parties should agree upon an initial timeframe in which to complete negotiations.

The agency negotiators should explain that they do not have authority to bind the agency—that is the province of the legislative body during final public hearings. The parties may benefit from adopting a “check-off” system so that once they reach a conceptual agreement on deal points, they

⁷⁷ See Cal. Gov't Code § 1090. the Attorney General reached this conclusion even though the spouse had no ownership interests in the firm, he would not work on the agency's project, and his income would not be affected by the outcome of the development agreement or project. The Attorney General's opinion will be published at 85 Cal. Op. Att'y Gen.____(2002), and is available online at <http://caag.state.ca.us/opinions/index.htm>.

do not need to continually renegotiate those points, unless circumstances change.

THE UTILITY OF GROUND RULES

Ground rules for negotiations are very important. Typical ground rules include:

- Who is the spokesperson for each side? To what extent does that person have authority to bind their respective principals?
- Who will take notes and document the points of agreement?
- Where, when and for how long will the negotiators meet? Will telephone negotiations be allowed?
- Are these meetings open to the media and public?
- When and how will issues related to the development be presented to decisionmakers, including individual members of the governing body?
- How will media inquiries be handled?
- What strategies, if any, will be employed if bargaining reaches an impasse?

SAMPLE GROUND RULES FOR NEGOTIATIONS

The following types of ground rules may be adopted prior to negotiating a development agreement, in order to improve the parties’ chances of negotiating mutually acceptable terms and provisions.

The parties agree during negotiations to:

1. Listen to the other party’s needs and desires
2. Discuss mutual “interests” rather than individual “positions”
3. Encourage creative ideas by agreeing there are no stupid suggestions
4. Take into account each other’s needs and desires
5. Use objective standards and criteria to assess interests
6. Use a check-off system to conceptually approve deal points along the way
7. Avoid returning to approved points absent changed circumstances
8. Use a deal point outline rather than iterations of the agreement itself
9. Avoid drafting the agreement itself until all deal points are agreed upon
10. Develop a common understanding of the agency’s land use policies

PRACTICE POINTERS

It can be useful to have a list of what the agency must receive as a condition of agreeing to the development agreement and what the agency is willing to trade for other concessions.

The list should include the various options available to satisfy the agency's objectives (for example, building versus funding an improvement). The list should also include any limits on what the agency can do (for example, waiving a fee that others must pay).

Making such determinations in the heat of negotiations can sometimes be a risky strategy.

Such ground rules should be memorialized in writing.

SETTING PRIORITIES

Each party should be clear on their organization's priority issues going into the negotiations, so each priority can be addressed early on. Reaching agreement on these priority issues is, of course, the key to successful negotiations.

Typical priority issues for local agencies include:

- **Land Use Issues.** What regulations relating to density, design, uses, and construction standards is the agency willing to freeze in place at the time the agreement is executed? On what issues does the agency wish to retain the flexibility to adapt its regulations to changing circumstances and new information?
- **Exaction Issues.** Which public improvements and facilities will be constructed, dedicated or financed by the project proponent? On what schedule? Will there be a reimbursement provision if the project proponent fronts the financing for a facility?
- **Special Issues Relating to State Requirements.** What role will school facilities and affordable housing issues play?

Thinking through these issues and what the local agency will need to make the development agreement a net gain in terms of the public's interest is a key to successful negotiations.

HAVE A STRATEGY

Fundamentally, each party comes to the negotiations with certain priorities and objectives—some of which may be unrealistic. Finding compromise solutions can require a sense of the other party's true objectives (and presenting one's proposals in terms of those objectives) and patience while the other party works through what they had hoped to receive as the result of the negotiations and what they actually can receive. Moreover, negotiations can be stressful; less skilled negotiators may react to such stress with displays of anger and attempts to badger their way into prevailing.

In most instances, it is important for both sides to keep in mind that there is a long-term relationship to be fostered. This relationship is frequently more important than short-term gains or “gotchas” on elements of the deal.

INTEREST-BASED BARGAINING TECHNIQUES

The parties may also agree in advance to use a particular negotiating approach. Historically, the negotiating model has involved a static process of developing positions in advance, based on confidential parameters set by the principals. More recently, professionals have advocated a more dynamic or synergistic approach that involves both parties working together to transcend competing interests.

Advocates of synergistic negotiations suggest that parties should:

- Share interests during negotiations (for example, what they fundamentally wish to accomplish or avoid) rather than pre-determine, then haggle over positions;
- Acquire a real (in other words, empathetic) understanding of what the other party needs;
- Use brainstorming techniques to develop lists of options from which “outside-the-box” solutions can flow; and
- Agree to rely on objective standards or third-party authority to settle differences and overcome obstacles.

Although conducting successful negotiations is a much larger topic than can be adequately addressed here, there are a number of resources that explain the benefits of negotiating in a more dynamic or synergistic fashion.⁷⁸

For the local agency, an interest-based approach works better in light of the constraints of the state’s open meeting law. As a general matter there is no exception to the open meeting laws for local agencies to instruct their negotiating team on the provisions of a development agreement.

⁷⁸ See, for example, *Getting to Yes* by William Ury and Roger Fischer, and *The Seven Habits of Highly Effective People* by Stephen R. Covey.

The following illustrates this approach toward negotiations.

ILLUSTRATION—THE URBAN LIMIT LINE AND BEYOND

Serene Valley is a large unincorporated area with an agricultural past. Much of the area is now built out, and the outlying farmland is seriously threatened by ever-expanding suburban development. As a result, the board of supervisors has established an urban limit line to prevent further sprawl.

Henry House is a project proponent who wishes to construct homes in Serene Valley. He is accustomed to building typical subdivisions projects with little open space, noting the continually increasing need for additional housing.

Mr. House applies for a development agreement to allow him to construct high-density housing beyond the urban limit line. Planning staff advises him that his application is likely to be denied (some would say dead on arrival). Some of his equity partners have owned property beyond the urban limit line for decades, and resent the influence of no-growth advocates who have only recently moved to the area.

As negotiations begin, the (somewhat skeptical) parties adopt a dynamic approach to negotiations, in which they agree to discuss respective interests rather than relative positions. Planning staff explain, for example, that they are interested in preserving the scenic nature of Serene Valley for future generations, rather than taking the position that they will never recommend construction beyond the urban limit line.

In turn, Mr. House explains that he is interested in constructing a project that will pencil out financially, rather than taking the position that the project must be constructed in a certain manner.

The parties eventually reach the conclusion that it is impossible to construct a conventional residential project that will make business sense while also respecting the urban limit line.

Nonetheless, they begin the next step in the process, which is brainstorming to identify mutually acceptable solutions. The parties are careful not to criticize ideas during the process or to dismiss any ideas as unrealistic. Slowly, suggestions emerge, ranging from creative suggestions that homes should not be visible from public streets to building underground homes.

It occurs to planning staff that the county has infill property that could fill out a town center concept envisioned by the specific plan for this part of the county's unincorporated area. Moreover, the county has access to state park bond funds to potentially purchase conservation easements over Mr. House's existing parcel, thereby helping the project pencil out for Mr. House and his partners. The mixed-use development contemplated by the specific plan is also consistent with Mr. House's familiarity with higher density projects. Helping Mr. House acquire the land may even help the county meet its affordable housing goals.

Planning staff also are aware, from a number of workshops the county has held on smart growth issues, that the supervisors are interested in more sustainable forms of development. The negotiators go forward with this concept successfully, creating a win-win situation.

SUMMARY

By preparing in advance, developing a negotiating framework in which to proceed, and adopting ground rules, including how negotiations should be conducted, the parties should be able to create a negotiating environment that will increase the likelihood of reaching consensus.

THE SUBSTANCE OF A DEVELOPMENT AGREEMENT

6 CHAPTER

A number of considerations should be taken into account when drafting a development agreement. For efficiency, many jurisdictions start with a standard form agreement that has already been reviewed and approved by the agency's attorney. It is also helpful for negotiators to have reviewed:

- Current version of the development agreement law;⁷⁹
- Planning policies for the area in question, including fee and dedications requirements and environmental analyses; and
- Agency procedures for processing development agreements.⁸⁰

These steps help those involved in the negotiations identify the issues that will need to be negotiated to protect the public's interests when drafting the agreement. It is also important to think ahead about implementation issues.

This chapter discusses some of the drafting and drafting-process issues that typically arise with development agreements.

WHO WILL DO THE DRAFTING?

A threshold issue is: From whose draft will the parties work? As indicated above, for local agencies expecting to be involved in a number of development agreements, it can be helpful for the agency to begin with a standard development agreement form that covers key and standard issues of concern to the agency. Sample development agreements are available online at www.ilsg.org/devtagmt.

Who Will Do The Drafting?	49
When Should The Drafting Begin?	50
Common Provisions in Development Agreements	50
Summary	67

⁷⁹ See Cal. Gov't Code § 65864 and following (also available online at <http://www.leginfo.ca.gov> by clicking on "California Law").

⁸⁰ See Chapter IV and the sample procedures available online at www.ilsg.org/devtagmt.

**A NOTE ABOUT
CLARITY**

Sometimes it is tempting to use ambiguous language to describe issues on which the parties are having difficulties agreeing. This temptation should be avoided, inasmuch as it only postpones problems.

Moreover, given that the agency will be able to terminate the agreement only upon substantial evidence of noncompliance, *see* Cal. Gov't Code § 65865.1 (there must be substantial evidence the project proponent has not complied in good faith with the agreement), there is a high degree of risk that ambiguities will ultimately be resolved against the public agency.

Of course, the standard form agreement can take negotiators only so far. The next question is which party's attorney will take the first crack at filling in the project-specific elements of the form. Development agreement negotiation veterans typically advise that the public agency's counsel retain this role. In either event, it is not desirable to have both attorneys generating drafts of their own.

WHEN SHOULD THE DRAFTING BEGIN?

It may be tempting to prepare drafts of the development agreement as negotiations proceed. Some participants may derive comfort from having concrete proof that they are actually making progress.

However, the practice of preparing a draft as each of the deal points emerges can be expensive and result in unnecessary rewrites of the agreement. This practice may also afford the opportunity for drafting gamesmanship, in which slight but important changes are attempted beyond the scope of what the negotiators agreed to. The attorneys for each negotiating team must thoroughly review every draft, elevating otherwise avoidable tension in the remaining negotiations. It is preferable to list agreed-upon deal points for the entire agreement, including dates of each proposal and the name of the person who made it. Then, the development agreement can be drafted in close-to-finished form and subjected to final editing and review by all parties. Use of the redline/strikeout computer function simplifies the process.

COMMON PROVISIONS IN DEVELOPMENT AGREEMENTS

THE PARTIES TO THE AGREEMENT

Local agencies may enter into development agreements only with persons who have a "legal or equitable interest" in the real property in question.⁸¹

There may be others who should be parties to the agreement (for example, lenders). The goal is to identify whether there is anyone whose participation is necessary for the local agency to receive the benefit of its bargain, who would not automatically be bound by the agreement by its provisions as a successor-in-interest when the agreement is recorded.⁸²

⁸¹ *See* Cal. Gov't Code § 65865(a). *See also* *National Parks and Conservation Association v. County of Riverside*, 42 Cal. App. 4th 1505 (1996).

⁸² *See* Cal. Gov't Code § 65868.5.

USE OF RECITALS

It is common to include recitals, typically following the first paragraph of the agreement, that identify the parties to the agreement. Many development agreements begin with a recital explaining the advantages offered by this development agreement, and stating that the agreement is entered into pursuant to state development agreement law, Government Code section 65864 and following.

Recitals typically explain:

- Who the parties are;
- What the project is;
- That the project is consistent with the general plan and any applicable specific plan; and
- That the parties have complied with the California Environmental Quality Act.

Recitals may also identify other discretionary land use approvals that are required for the project (for example, approval of a subdivision map or discretionary land use permit), and whether those approvals have previously occurred, will occur simultaneously, or will occur only after the development agreement has been approved.⁸³

On occasion, a recital may address contingencies that will delay the effective date of the agreement, such as the need for property annexation.⁸⁴

TERM

The term must be stated in the body of the agreement.⁸⁵ Larger projects, especially those constructed in phases, may require longer terms. In other instances, planning staff may argue for a shorter term, perhaps five to ten years, to enable the local entity to revisit the property’s zoning and general plan designations sooner rather than later

There is some indication that the term of the agreement — or at least the time during which the agency agrees not to apply changes in land use

⁸³ See Cal. Gov’t Code § 65865.2.

⁸⁴ See generally Cal. Gov’t Code § 65865.3 (development agreements and newly incorporated or annexed areas).

⁸⁵ See Cal.Gov’t Code § 65865.2

PRACTICE POINTER

A good rule of thumb for the term of a development agreement is five to ten years. Any longer may constrain a local agency's ability to impose new regulatory requirements to respond to changing needs and issues in the community.

regulations to the development—is one factor that the courts will evaluate if the development agreement is challenged.⁸⁶

It is generally a good idea to allow the parties to terminate the agreement early in the event of a material breach. (See further discussion concerning default, remedies, and termination, below.)

Note that development agreements for unincorporated territory within cities' sphere of influence must specify a timeframe within which the annexation must occur.⁸⁷ The agreement does not become operative until the annexation occurs.⁸⁸

REQUIRED CONTENTS

A development agreement must specify the:

- Permitted uses of the property;
- Density or intensity of use; and
- Maximum height and size of proposed buildings.⁸⁹

These are also known as the development plan. Because development agreements can and are being used in a variety of applications, the required content outlined above can be addressed more generically or more specifically, depending on the goals of the parties and the degree to which the absence of such specification in the agreement means that the agency's regulations apply.⁹⁰ As a matter of draftsmanship and avoiding a basis for challenge, however, it is useful to address each of the required content elements.⁹¹

For example, the permitted uses can be generically established by reference to a zoning category, such as retail commercial, or specifically established

⁸⁶ See generally *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, 84 Cal. App. 4th 221 (2000) (suggesting such freezes cannot be of unlimited duration and upholding a zoning freeze for five years)

⁸⁷ See Cal. Gov't Code § 65865(b).

⁸⁸ See Cal. Gov't Code § 65865(b).

⁸⁹ Cal. Gov't Code § 65865.2 (contents of development agreements).

⁹⁰ See generally *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, 84 Cal. App. 4th 221 (2000) (finding the fact that the agreement did not mention maximum height and size of proposed buildings was not fatal because the agreement was subject to the county regulations of these variables).

⁹¹ See generally *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, 84 Cal. App. 4th 221 (2000) (adopting a "substantial compliance" approach to these required content elements).

by reference to a site plan detailing every aspect of a proposed project. Likewise, the density and intensity can be generically designated by using a range of possibilities, (six to ten units per acre, for example), or specifically designated (two units per acre). Similarly, the requirement that the maximum size and height of proposed buildings be included does not mean that every development agreement must propose buildings.

PUBLIC BENEFITS

Another required element of a development agreement is the provision for reservation or dedication of land for a public purpose.⁹² A “permissive element” refers to the terms and conditions relating to the project proponent’s financing of necessary public facilities and the subsequent reimbursement of the project proponent for its non-pro rata share over time.

⁹³

In fact, it is a good idea to specify all of the public benefits that will result from the agreement, following a recital explaining that the project proponent recognizes that he or she is being afforded greater latitude in exchange for agreeing to contribute greater public benefits than could otherwise be required, and that the project proponent does so freely and with full knowledge and consent.

ADDRESSING A POTENTIAL POLICE POWER CHALLENGE

Early on, commentators speculated whether adopting a development agreement might constitute an illegal “contracting away” of an agency’s police powers, which, in this context, refers to a local agency’s governing powers. “Police” derives from the Greek word polis, which means city. Cities and counties typically obtain their police powers through the state Constitution.⁹⁴

The California Constitution says, for example: “A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”⁹⁵ These powers afford the local agency latitude in dealing with issues that are local in nature and have not been addressed by the state legislature.

⁹² Cal. Gov’t Code § 65865.2.

⁹³ See generally *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, 84 Cal. App. 4th 221 (2000) (finding the fact that the agreement did not mention maximum height and size of proposed buildings was not fatal because the agreement was subject to county regulations of these variables).

⁹⁴ See Cal. Const. Art. XI, §7.

⁹⁵ Cal. Const. art. XI, § 7.

One thing a public agency *cannot* do is to contract away its police powers by enabling a private body or individual to control the exercise of its governing powers.⁹⁶ In the case of development agreements, the question is whether the “freezing” of applicable land use regulations, so that the public agency cannot change the rules in a way that will prevent the project proponent from constructing or operating the project as approved, constitutes an illegal contracting away of police powers.

There are two ways that freezing of rules and regulations could conceivably constitute an illegal contracting away of police powers.

First, development agreements lock in the right to construct the project as approved once the agreement is in effect. Without a development agreement, the law allows the agency to impose additional requirements on a project up to the point at which the project proponent acquires vested rights by obtaining a building permit and doing substantial construction work in reliance on that permit.⁹⁷

Second, development agreements do not allow the imposition of new rules that conflict with those in existence when the agreement was approved.⁹⁸ Without a development agreement, the agency may change the applicable zoning in a manner that is inconsistent with the project proponent’s vested rights, in which case, the property may acquire what is known as a “nonconforming use status” because the development on the property no longer conforms with the applicable zoning. While vested rights allow the owner to continue building and operating the project as originally approved, there may nonetheless be limitations on how the property can be used, including a prohibition against expanding nonconforming uses.

Whether either of these two aspects of development agreements constitutes an illegal contracting away of police powers may turn on the *extent* to which an agency surrenders all of its control over land use functions, rather than *reserving* most of its police powers except to the limited extent otherwise provided by the agreement.⁹⁹

⁹⁶ See generally *Santa Margarita Area Residents Together v. San Luis Obispo County Board of Supervisors*, 84 Cal. App. 4th 221 (2000) (finding government entity does not contract away its police power unless the contract amounts to a surrender or abnegation of a proper governmental function).

⁹⁷ See *Avco Community Project Proponents, Inc. v. South Coast Regional Commission*, 17 Cal.3d 785 (1976).

⁹⁸ Cal. Gov’t Code § 65865.4.

⁹⁹ See *Morrison Homes Corp. v. City of Pleasanton*, 58 Cal. App. 3d 724 (1976) (holding that an annexation agreement did not constitute an illegal “contracting away” of its legislative authority because it did not contract away all of the agency’s authority).

Accordingly, it is a good idea for the drafters to include a provision in the development agreement explaining the extent to which the property will continue to be subject to the entity’s zoning rules, regulations and policies, as well as a provision explicitly reserving the entity’s police powers unto itself, except as otherwise provided in the agreement.

RECOVERY OF COSTS

Depending on the nature of the project, negotiating a development agreement can involve significant costs for the public agency in the form of staff time and legal fees. The agency may want to provide for the recovery of some or all of those costs, either in its local procedures (as part of the cost of processing a development agreement) or as a term of the agreement itself. If provided for in the agency’s local procedures, the agency will want to ensure that it does not assess the project proponent more than its actual costs. One way is to establish an hourly rate and record the staff’s time spent working on the project.

WHICH REGULATIONS ARE FROZEN?

Three drafting considerations affect which local land use rules and regulations will apply under the terms and conditions of the development agreement.

First, state law says that unless the agreement provides otherwise (see sidebar at right), the rules and land use policies in effect when the development agreement is adopted will apply to the project. The project proponent will be inclined to want language to the effect that the local agency is not allowed to apply rules or land use policies that would effectively nullify its prior approval of the project. In turn, the agency’s attorney will want language that confirms the statute allows the agency to apply new rules in the future, as long as they are not in conflict with the rules and regulations that were in place when the agreement was adopted.

Second, the attorneys need to decide what language to use in the event the parties agree to allow land uses that are inconsistent with the otherwise applicable zoning requirements in existence at the time the development agreement was negotiated. One approach is to include language saying the then-existing zoning ordinance governs, but only to the extent it is not inconsistent with any provisions of the agreement. Depending on the circumstances, the agency attorney may prefer to actually amend the zoning ordinance so that it is consistent with the development agreement, in order to allow other projects to request that zoning in the future.

POSSIBLE EXCLUSIONS FROM THE FREEZE

Local agencies may wish to discuss retaining their discretion to apply changes to the following components of a development agreement:

- Impact fees;
- Uniform codes;
- Processing fees; and
- Procedural regulations.

Third, the development agreement should state that the agency's compliance is subject to later-enacted state and federal regulations.¹⁰⁰

“MILESTONE” REQUIREMENTS

On larger, phased-in projects, it may be useful to include “milestone” requirements so the agency can terminate the agreement if phases of construction have not been completed within a specified timeframe.

The project proponent may resist agreeing to absolute deadlines. In this case, the public agency may want to consider allowing the timeframe to begin with a specified event, such as issuance of building permits. Before doing so, however, the public agency should make sure there are adequate incentives for the project proponent to stay on schedule, and that the decision to begin the next phase is not left entirely to the project proponent's discretion.

DEFAULT, REMEDIES AND TERMINATION

Drafters typically recite that upon the commission of a material breach, the other party may terminate the agreement and exercise other legal remedies that it may have.

Especially with respect to larger projects, parties may be motivated to enter into elaborate provisions concerning default, available remedies and termination, so that in the event of a material breach, the breaching party has a specified time to “cure” the breach, before the other party can terminate the agreement. These provisions may contain what are known as “force majeure” recitals that preclude terminating the agreement, or that extend the term of the agreement when performance is not possible due to war, insurrection, terrorism, strikes and other events that are beyond the control of the parties. Such provisions are generally advantageous to the project proponent, and create potentially lengthy periods in which the agency is unable to apply new land use rules and regulations that may affect the agency's ability to do responsive land use planning.

NON-PERFORMANCE ISSUES

It is important to remember that a development agreement is indeed a contract, the breach of which may be subject to monetary damages. Some local agency attorneys include clauses limiting remedies against the agency to specific performance. Under some circumstances, liquidated damages

¹⁰⁰ Cal. Gov't Code § 65869.5.

clauses may protect the agency from the upside risks associated with damages awards.

The local agency will also find it helpful to consider what kinds of assurances it wants to have available in the event the project proponent defaults on certain obligations. Some of the options local agencies may want to consider include:

- Letters of credit;
- Performance bonds; and
- Withholding certain approvals (for example building permits, until satisfactory performance occurs).

The agency may also want to think through timing issues associated with the project proponent’s performance. In some instances, it may be advisable to specify timeframes for performing aspects of the development agreements and the consequences of not meeting those timeframes.

STATE OR FEDERAL LAWS

The parties may want to include a provision addressing the fact that state and federal regulations are not suspended by a development agreement. If a state or federal regulation is amended in a way that would preclude further performance under the agreement, the affected provisions of the development agreement will be modified or suspended.¹⁰¹

ANNUAL REVIEW

The parties may want to recite their awareness of the requirement for an annual review of the development agreement by the local entity. Recognize, however, that to the extent the parties make it the agency’s contractual obligation to conduct such a review, they may be setting the agency up for a failure to perform.¹⁰² It is preferable to specify the agency’s procedures for conducting its annual review in the agency’s procedures ordinance or by resolution.

¹⁰¹ See Cal. Gov’t Code § 65869.5.

¹⁰² A number of agencies admit to having neglected annual reviews, which is inadvisable. A “tickler” system developed in collaboration with the clerk’s office can be a helpful reminder to hold these hearings once a year.

ENFORCEMENT

The parties may want to include an enforcement provision reciting that the agreement is enforceable notwithstanding any changes to the general plan, specific plan (if any), or the zoning, which alters or amends an ordinance, rule, regulation or policy governing the zoning of the property during the term of the agreement.

RECORDATION

The parties may want to recite their awareness of the requirement that the agreement be recorded within 10 days following execution. Recognize, however, that to the extent the parties make it a contractual obligation of the local agency to timely record the agreement, they may be setting the agency up for a failure to perform.

CERTIFICATE OF SATISFACTION

The project proponent may wish to obtain “certificates of satisfaction” from the agency as phases of construction are completed, reciting that each phase is in full compliance with its obligations under the development agreement. This certificate may be important to potential lenders. To the extent there are ongoing obligations, or obligations that transcend the physical boundaries of a particular phase, it may be difficult for the local agency to make such attestations until the term of the development agreement has fully expired.

INDEMNIFICATION AND HOLD HARMLESS PROVISION

It is not uncommon to have the project proponent hold the local agency harmless from any liability the agency may incur as a result of entering into the agreement. Also helpful is a provision requiring the project proponent to indemnify and defend the agency at the proponent’s cost against any legal action instituted by a third party to challenge the validity of the agreement, including a challenge based on an assertion that the California Environmental Quality Act has not been complied with.¹⁰³

¹⁰³ Such arrangements have received the blessing of the California Attorney General’s Office. See 85 Cal. Op. Att’y Gen. ____ (2002), available online at <http://caag.state.ca.us/opinions/index.htm>.

AMENDMENT OR CANCELLATION

State law provides that a development agreement can be amended or canceled, in whole or in part, by the mutual consent of the parties upon notice of intention to amend or cancel in the form required by Government Code sections 65090 and 65091, and adoption of an ordinance amending the agreement. The ordinance must also be found to be consistent with the general plan and any applicable specific plan, and is subject to referendum, just as the original ordinance adopting the development agreement was. Drafters typically recite these statutory requirements in the agreement for the convenience of the parties.

ASSIGNMENT

Drafters typically include a provision that neither party shall assign or transfer any of its rights, interests or obligations under the agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

The project proponent may want to seek additional language, which states that subsequent purchasers automatically become parties to the agreement upon transfer of ownership.

SUCCESSORS

It is common to include a provision indicating that the obligations imposed by the agreement constitute “covenants running with the land” and that the burdens and benefits bind and inure to all estates and interests created in the subject property and to all “successors-in-interest” of the original parties.

Public agencies have faced difficulties once a number of people become successors-in-interest by virtue of acquiring property governed by the agreement. In some cases, project proponents have gone bankrupt, making it difficult to justify enforcing the agreement against individual owners.

Depending on the circumstances, public agencies may want to require as a condition of approval that project proponents have homeowners (or property owners) associations governed by covenants, conditions, and restrictions (CC&Rs). The CC&Rs should include the development agreement obligations so that the association, as well as individual property owners, is responsible for ensuring performance of the development agreement.

To the extent the provisions of the CC&Rs supersede the development agreement, the association may have the flexibility to amend development

agreement obligations by a vote of less than 100 percent of the association membership. Also, the public agency may be granted enforcement rights under the CC&Rs.

VALIDITY OF PORTIONS OF THE AGREEMENT SEVERABILITY

It is common to include a provision stating that if one aspect of the agreement is held by a court to be illegal, the validity of the remaining provisions are not affected.

ATTORNEYS FEES

In lawsuits involving contracts, the law does not allow a party to recoup its attorneys fees as part of its damages unless the agreement so provides. As a result, many written agreements contain a provision stating that if a lawsuit or other legal action is brought with respect to the agreement, the prevailing party is entitled to recoup reasonable attorneys fees and costs.

GOOD FAITH AND FAIR DEALING

Many agreements recite that the parties expressly acknowledge that any actions they take pursuant to the development agreement will be measured by the “implied covenant of good faith and fair dealing.”

SIGNATURES AND SUBORDINATION

The drafter will want to decide who should sign the development agreement. In addition to the property owner and public agency, some practitioners require lenders, lessees and others with an interest in the property to sign the development agreement. Other attorneys require lenders, lessees and other interested parties to sign subordination agreements, which make their interests in the property subject to the terms and conditions of the development agreement. In the event subordination agreements are balked at, local agencies may want to consider requiring other interested parties to at least sign a written acknowledgment and consent, stating they are aware of the existence of the development agreement and that they understand its terms.

SUMMARY

A number of issues warrant consideration when drafting a development agreement. In the final analysis, a well-drafted development agreement should accurately capture the deal points negotiated by the parties, and anticipate and address potential problems that may arise during implementation of its terms.

The Institute offers a variety of sample development agreements online through its database. The database is accessible through www.ilsg.org/devtagmt. The Institute also welcomes submittals from public agencies of additional samples for this database.

GLOSSARY OF KEY TERMS

Actions By Third Parties Necessary To Implement The Agreement: describes permits or fees required by other agencies such as school mitigation fees, environmental mitigation measures, etc.

Agency Default: describes the instances in which the agency would be in default such as:

- If a material warranty, representation or statement made or furnished by agency to the developer is false or proves to have been false in any material respect
- The agency fails to comply in good faith with a material requirement
- An express repudiation, refusal, or renunciation of the agreement

Agency Default; Developer Remedies: describes the options the developer would have in the event the agency is in default such as:

- To waive the default as not material
- To pursue legal remedies provided for elsewhere in agreement
- To terminate the agreement
- To delay or suspend developer performance which is delayed or precluded by the default of the agency

Agency Obligations: heart of development agreement; describes what the agency is obligated to do such as diligently process further discretionary approvals, provide capacity, construct some improvements, reimburse certain funds advanced by developer, etc.

Amendment Of Agreement: describes how agreement will be amended; standard is that it is amended in same manner in which it was initially adopted (public hearing process through agency) (but see “Operating Memorandum”)

Annual Review: a reminder that there is a state law requirement that there be an annual review of the agreement by the agency

Assignment: sets forth that neither party shall assign or transfer any of its rights, interests or obligations, without the prior written consent of the other, which consent shall not be unreasonably withheld

Attorneys’ Fees And Applicable Law: states that if a lawsuit or other legal action is brought with respect to the agreement, the prevailing party is entitled to reasonable attorney’s fees and costs and identifies that California law will be used to interpret agreement

Bankruptcy: describes what happens in the case of a bankruptcy

Certificate Of Satisfaction: a writing from the agency, as phases of construction are completed, stating that each phase is in compliance with its obligations under the agreement, often important to potential lenders

Consistency With General Plan: required provision which states that the agreement is consistent with agency’s general plan

Cost Recovery: describes the method by which the agency will recover costs of staff time including legal fees for negotiation of the agreement

Covenants Run With The Land: states that the agreement is specific to the property, binds future owners and is not transferable to another property

Default And Remedies: describes what constitutes a default, what notice is required if one party thinks there is a default (generally a material breach), what remedies can be pursued (for ex. damages, injunction, termination)

Delay, Extension Of Times Of Performance: identifies that performance by a party may not be a default if the delays are due to war, strikes, riots, acts of God, or governmental entities other than agency (“see Force Majeur”)

GLOSSARY OF KEY TERMS (CONTINUED),

Developer Default: describes the instances in which the developer would be in default such as:

- If a material warranty, representation, or statement made by the developer to the agency is false or has been false in any material respect
- A finding by the agency that the developer fails to comply in good faith with any other material requirement of the agreement
- An express repudiation, refusal, or renunciation of the agreement

Developer Default; Agency Remedies: describes the options the agency would have in the event developer is in default such as:

- To waive the default as not material
- Refuse processing of a permit, approval, or other entitlement for the project
- To terminate the agreement
- To delay or suspend agency performance which is delayed or precluded by the default of developer
- To cure and charge back costs to the developer in emergency situations posing an immediate danger to public health and safety

Developers' Interest: describes what legal interest the developer has in the property

Developer Obligations: heart of development agreement; describes what property owner/developer is obligated to do, such as what improvements to be constructed and when, property to be dedicated and when, money to be paid and when, etc.

Development Plan: a development agreement must specify the permitted uses of the property, the intensity of use, and the maximum height and size of proposed buildings; because development agreements are being used in a variety of applications, the required content can be addressed more generically or more specifically depending on the goals of the parties and the degree to which the absence of such specification in the agreement would be addressed by the agency's regulations apply. For example, the permitted uses can be generically established by reference to a zoning category such as "retail commercial" or specifically established by reference to a site plan detailing the proposed project. Likewise, the "density and intensity" can be generically designated by using broad possibilities, ("6 to 10 units per acre," for example), or specifically designated at "2 units per acre". Such a requirement that the maximum size and height of proposed buildings be included does not mean that every project must propose buildings

Encumbrances On The Subject Property: identifies subordination and mortgage information regarding the property and obligations including notice of default and right to cure

Entire Agreement: provides that the agreement embodies all the terms of the agreement and no "outside" agreements or amendments are valid

Estoppel Certificate: a written notice that the agreement is in full force and effect, a binding obligation on the parties, and there is not a default

Exhibits: outlines what exhibits are attached and made a part of the agreement

Force Majeure: describes that performance may be excused due to war, terrorism, strikes, and other events beyond the control of the parties

Good Faith And Fair Dealing: sets forth that the parties expressly acknowledge that any actions they take will be measured by the "covenant of good faith and fair dealing"

Hold Harmless And Indemnification: requires the developer to hold the local agency harmless from any claims the agency may incur as a result of entering into the agreement; states that the developer will to indemnify and hold the agency at the developer's cost against any legal action instituted by a third party to challenge the validity of the agreement, including a challenge based on CEQA compliance

GLOSSARY OF KEY TERMS (CONTINUED),

Incorporation Of Recitals: generally states that the recitals which precede the “now therefore” clause are incorporated into the agreement itself.

Insurance: sets forth types and amounts of insurance that the developer is to provide as security for the hold harmless and indemnity requirements

Jurisdiction And Venue: identifies the county in which any litigation should be filed and that the interpretation, validity, and enforcement of the agreement shall be governed by California law

Liquidated Damages: identifies circumstances which would limit remedies against the agency to specific performance (no ability to receive money damages); under some circumstances, liquidated damages clauses may protect the agency from upside risks associated with damages awards. There may be instances in which the agency desires liquidated damages if developer fails to perform (such as failure to dedicate property

Milestones: see Phasing

Notices: describes where and how notices required in the agreement are to be sent

Operating Memorandum: describes instances in which formal amendment to agreement is not needed to implement the agreement such as minor refinements and/or clarifications; should be up to agency’s sole discretion to determine whether amendment or “Operating Memorandum” is appropriate

Parties To The Agreement: identifies the persons having “legal or equitable interest” in the property

Phasing Of Development: describes the “triggers” or “milestones” of the project; may also be known as the “development plan”; on larger, phased projects, it may be useful to include “milestone” requirements so the agency can terminate the agreement if phases have not been completed within a specified time frame

Private Undertaking: identifies that the project is a private development and there is no partnership, joint venture, or other association of any kind between the developer and the agency

Project And Property Subject To This Agreement: describes the project name, street address and references a legal description of the property (generally an exhibit)

Protest Rights: provides for the developer to waive protest rights, and releases the agency from any claims arising out of the calculation, allocation, and use of development mitigation fees (AB 1600 fees)

Public Benefits: this provision is a required element of a development agreement related to the reservation or dedication of land for a public purpose; a permissive element is the terms and conditions relating to the project financing of necessary public facilities and the subsequent reimbursement for the developer’s non-pro rata share over time, and generally includes a description of the public benefits that will result from the agreement, following a recital explaining that the developer recognizes that greater latitude is provided in exchange for agreeing to contribute greater public benefits than could otherwise be required.

Recitals: describes the parties to the agreement; also describes applications and hearing process as well as CEQA review (for example: development agreement application number, general plan amendment application number, type of CEQA review done (if EIR gives state clearinghouse number), also identifies dates of public hearings before planning commission and agency; many development agreements begin with a recital explaining the positive effects of entering into a development agreement, and that the agreement is entered into pursuant to the state development agreement law; a recital may address contingencies that will delay the effective date of the agreement, such as the need for annexation of the property

Recordation: implements state law requirement which requires the agreement to be recorded

GLOSSARY OF KEY TERMS (CONTINUED)

Reserved Discretionary Approvals: describes, generally in some detail, the approvals which are subject to discretion even after the agreement locks in or freezes other regulations; some regulations which may be important to “reserve” are impact fees, uniform codes, processing fees, certain procedural regulations (method of submitting final map – number of copies, Mylar, GIS format, etc.)

Security: describes what the agency will require to assure performance such as letters of credit, performance bonds, or the ability to withhold certain approvals (for example building permits), until performance occurs

Severability; also called Validity: sets forth that if one aspect of the agreement is held by a court to be illegal, the validity of the remaining provisions are not affected

Signatures: identifies who should sign the development agreement; in addition to the property owner and agency, some agencies require lenders, lessees and others with an interest in the property, to sign the development agreement or to sign subordination agreements (see “subordination”).

Subordination: an action by which another entity makes their interests in the property subject to the terms and conditions of the agreement and acknowledges the existence of the agreement

Successors: identifies that the obligations imposed by the agreement constitute “covenants running with the land” and that the burdens and benefits bind all future purchasers

Term: identifies the length of time the agreement (which must be stated in the agreement); larger projects, especially those constructed in phases, may require 10, 15 or 20 year terms

Termination (upon completion of development): provides that upon sale of individual lots all obligations of developer are discharged with respect to lots upon final inspection and issuance of certificates of occupancy

Vested Components: describes, generally in some detail, the existing development regulations, etc. that are “frozen” or “locked in” by the agreement

Waivers: states that a waiver of one breach is not a waiver of any other breach

CONCLUSION

7 CHAPTER

Development agreements can be a useful tool in land use planning, creating win-win opportunities for both project proponents and local agencies when dealing with uncertainties associated with the regulatory environment.

The goal of this manual is to help local agencies in understanding development agreements and to provide them with practical tools to assist them in using development agreements within their jurisdiction.

Did the manual succeed in achieving this goal? The Institute and its financial supporters are very interested in local agency feedback. Please fill out the form at the end of this publication to let the Institute know whether this material was useful and how it could be improved.

Feedback Form..... 67

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INDEX

A-B

AB 1600.....65
 Affordable housing.....28
 Amendment 16, 30, 59, 62
 Annual review22
 Application 18, 22, 30, 31
 Application Process30, 31
 Assignment59, 62
 Attorneys fees60
 Brown Act.....26, 37, 45

Building permit 17, 19, 22, 41,
 54, 56, 57, 67

C-E

California Environmental Quality
 Act (CEQA)..... 20, 32, 51, 58
 Cancellation..... 59
 Certificate of satisfaction..... 58
 Challenge, statute of limitations
 for..... 17, 22, 23, 32, 54
 Coastal zone..... 17, 35

Conditional use permit9, 32
 Confidentiality, see also Brown
 Act26
 Covenant of good faith and fair
 dealing 17, 19, 40, 50, 60, 62,
 64
 Covenants, conditions and
 restrictions (CC&Rs).....59
 Default, remedies and
 termination.....56, 62, 64
 Density26, 52

Development Agreement:

Act,22 ,31, 51
 Law, Legislative history..2,
 4, 17, 21, 26, 27, 30, 31, 32, 34,
 36, 40, 49, 51, 54, 65

Development Agreement
(continued)

Checklist of common
 provisions50

Defined22, 31, 51

Maximum height and size of
 proposed buildings26, 52, 64

Permitted uses of property.4,
 16, 17, 26, 35, 48, 50, 51, 52,
 5458, 59, 60, 62, 64,65, 67

Purpose..11, 15, 26, 30, 31,
 53 ,65

Recitals.....51, 65

Required Contents52

Term....9, 10, 19, 26, 27, 34,
 34, 40, 41, 45, 47, 52, 53, 55, 58,
 60, 60, 64, 65, 67

Termination....30, 40, 41, 52,
 56, 62, 67

Accountability40

Compared to vesting tentative
 map.....22

Statute of limitations...17, 22,
 23, 32, 54

Effect of annexation and
 incorporation.....27, 51, 52, 65

Fees ...14, 15, 17, 17, 18, 22,
 32, 33, 34, 62, 67

Findings.....27, 30, 31, 36, 37

Recordation.....30, 39, 58, 65

Statutory authority for ..15,
 22, 59

Subordination.....60, 64, 67

Successors.....59, 67

Development impact fees.....
15, 55, 67

Development plan.52, 64, 65

Educational Revenue

Augmentation Fund (ERAF) 15

Enforcement 58, 60, 65

Exactions..... 14, 44, 47

F-K

Findings..... 27, 30, 31, 36, 37

“Frozen” regulations..... 55, 67

General plan 9, 11, 13, 13, 14,
 26, 37, 51, 58, 59, 62, 65

Growth management 12

Indemnification 58, 64

L-N

Lenders..... 50, 58, 60, 62, 67

Letters of credit..... 57, 67

Liquidated damages 56, 65

“Milestone” requirements... 56,
 65

Mitigation Fee Act... 15, 14, 32

Negotiating team37, 43, 44, 47,
 50

Negotiations10, 12, 13, 14, 18,
 26, 28, 31, 33, 33, 36, 40, 43, 44,
 45, 46, 47, 48, 49, 50

Non-performance issues 56

Notice issues 35

O-R

Open meeting law 26, 38, 47

Open space 12, 48

Parties to the agreement9, 50,
 51, 59, 65

Performance bonds..... 57, 67

Planning Commission... 30, 33,
 34 ,36, 37, 65

Police power 22, 38, 53, 54

“police power” challenge 53

Prevailing wage requirement.. 18

Proposition 98 15

Public benefits..... 30, 53, 65

Public hearings 32, 34, 44, 65

Public input..... 32, 34

Public Records Act34

Recovery of costs34, 55

Referendum.....32, 59

Regulatory takings2, 16

S-T

Sales tax13, 33

SB 5016

School facility fees16

Specific plan9, 11, 14, 26, 37,
 48, 51, 58, 59

Sphere of influence27, 52

Stakeholders.....33, 34, 34

U-Z

Unincorporated territory .27, 52

Urban limit line48

Vested right....17, 20, 20, 22, 54

Zoning9, 12, 13 ,35, 37, 51, 52,
 54, 55, 58, 64

5 Key Aspects of the Development Agreement Process

1. Evaluating the **advantages and disadvantages** of using development agreements;
2. Understanding the role development agreements can play in **achieving local agency land use planning objectives**;
3. Knowing the **procedural issues** related to development agreements;
4. Incorporating the **necessary substantive provisions** in development agreements; and
5. Mastering the **art of negotiating development agreements**.

All explained in one handy and easy-to-read manual.

Development Agreement Manual: Collaboration in Pursuit of Community Interests

SKU: 1170 Price: \$20.00



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September 16, 2022

VIA E-MAIL

Mr. Cyrus Abhar
City Manager
City of Rancho Cordova
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Rancho Cordova, CA 95670
cabhar@cityofranchocordova.org

Re: Dermody Industrial Properties – Scheduling of Hearing Regarding Mather
Blvd. Project on November 7, 2022, City Council Meeting Agenda; DR
PLND-1021-0015

Dear Mr. Abhar:

Miller Starr Regalia represents Dermody Properties (“Dermody”) in connection with its application to develop the Mather Boulevard modern logistics center located northwest of the intersection at North Mather Boulevard and Bear Hollow Drive in the city of Rancho Cordova (the “Project”). The Project requires City Council approval of a Major Design Review application and has vested rights to develop pursuant to the 2003 Villages of Zinfandel Development Agreement (“Development Agreement”) and approved Zinfandel Special Planning Area (“ZSPA”). After eleven months of processing and the incorporation of numerous Project modifications, the Project is ready for hearing. To ensure the city abides by its obligations in the Development Agreement to act on the application in a timely manner, Dermody requests the city schedule this Project for hearing on the Council’s November 7, 2022, agenda.

I. The Project Application is Complete and Ready for Hearing.

Dermody submitted its Project application on October 25, 2021. Dermody then: submitted multiple detailed responses to the City’s application incompleteness letters, and received a completeness determination on January 12, 2022; held two interactive community meetings on November 16, 2021 and September 7, 2022; engaged in numerous meetings and discussions with City staff; and presented the Project before the City Council at its April 18 and July 18, 2022, meetings.

In response to comments and input received from city staff, decisionmakers, and the community, Dermody incorporated the following modifications to the Project’s design:

Cyrus Abhar, City Manager
 September 16, 2022
 Page 2

- Added a twelve-foot-tall tilt up concrete wall along the section of Bear Hollow that borders the truck court for purposes of noise and view screening.
- Added a “pop out” feature on the building to further shield the truck court.
- Added articulation on the north and east elevations of the building, stepped the parapet tops, revised the west end of the north elevation to add more articulation including an additional recessed panel, and added horizontal canopies to add more horizontal projection.
- Revised proposed tree species and increased sizes of tree plantings.
- Changed the driveway orientation for right-turn in and out by trucks and added medians to Mather Boulevard and Bear Hollow Drive to direct arriving automobile drivers to the driveway on Mather Boulevard rather than Bear Hollow Drive.
- Added vertical window elements.
- Reduced lighting in parking areas to ensure that photometrics read below four footcandles.

This Project will introduce a vibrant modern logistics center that compliments the California Automobile Association building and new Coast Guard building immediately adjacent to the site. The Project has been refined in a manner that is sensitive to community concerns and is compatible with surrounding uses.

II. The Development Agreement Requires the City to Act on the Application in a Timely Fashion.

The Development Agreement requires the city to cooperate in good faith by timely processing the Project application and a failure to do so is an actionable default.

Specifically, the Development Agreement requires the City to “cooperate with [Dermody] in securing all permits, licenses, approvals or other entitlements necessary to develop the Project.” (Development Agreement, at § 4.3.) The city must do so in a timely and reasonable manner:

4.4 Timely Processing. Subject to compliance with submittal of information required...to deem an application complete...the [city] shall perform any environmental review and approval process for such application on a timely basis.

4.5 Good Faith. **The [city] agrees that it shall, in good faith, accept for processing and review, and take action upon all complete applications for...entitlements for use of the Property in accordance with the [ZSPA] and this Agreement.**

Cyrus Abhar, City Manager
 September 16, 2022
 Page 3

The [city] also agrees to act upon such applications in a timely and reasonable manner.

(Development Agreement, at §§ 4.4-4.5, emph. added.) A failure by the city to timely process the Project application is a clear default under the Agreement:

6.1. Default, Breach; Notice; Opportunity to Cure; Remedies. Failure or **delay by either party to perform any term of th[e] Agreement shall constitute a default....**In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than sixty (60) days' notice in writing specifying the nature of the alleged default....**After notice of expiration of the sixty (60) day period, the party alleging default, at its option, may institute legal proceedings pursuant to the Agreement....**

6.3. Default by [City]. In the event [city] does not accept, review, **approve or issue necessary development permits** or entitlements for use **in a timely fashion** as defined by this Agreement....

(Development Agreement, at § 6.1, emph. added.)

Either party may bring legal action to cure, correct, or remedy a default of the Agreement and a prevailing party in such action is entitled to recover their attorneys' fees, costs, and expenses. (Development Agreement, at §§ 6.4, 8.13.)

In sum, the Project application is complete and in a position to be considered and approved by the City Council pursuant to the Developer's vested rights at the November 7th public hearing. Dermody has spent nearly a year modifying the Project to thoughtfully respond to and address staff and community input as appropriate and feasible. The Project is consistent with the ZSPA and the terms and conditions of the Development Agreement, which now obligates the city to act on the application in a timely manner.

We look forward to working with the city to bring the Project to hearing at the City Council's November 7, 2022, meeting. Should you have any questions regarding the foregoing, please do not hesitate to contact me directly.

Cyrus Abhar, City Manager
September 16, 2022
Page 4

Very truly yours,

MILLER STARR REGALIA

Arthur F. Coon

Arthur F. Coon

AFC:tz

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November 29, 2022

VIA E-MAIL

Mayor Terry, Vice Mayor Budge, and
City Councilmembers
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
Email:
CityClerk@cityofranchocordova.org

Re: Dermody Properties – City’s Legal Obligations Under the Development
Agreement Benefiting LogistiCenter at Rancho Cordova (Bear Hollow)
Major Design Review Project No. PLND-1021-0015

Dear Mayor Terry, Vice Mayor Budge, and Honorable Members of the City Council:

This firm represents Dermody Properties (“Dermody”) in its application to develop a modern, approximately 155,077 square foot logistics center and related improvements (“Project”), located northwest of the intersection of North Mather Boulevard and Bear Hollow Drive in the City (“Project Site”). As discussed in more detail below, the Project proposes a light industrial use that is permitted by right, which has a development density and intensity that complies with the applicable objective development standards and is consistent with the applicable subjective design guidelines.

The Project, as an important job-generating use, will help to implement the overall land use vision for this area of the City, which has been planned for nearly two decades. Despite the fact this light industrial land use has been approved and in place for almost twenty years, opponents have sought to undermine or dismantle it during the Project’s design review process. The City, however, is contractually prohibited from changing course at this point. This is because the Project, as proposed, is protected against such vagaries pursuant to the 2003 “Villages of Zinfandel Development Agreement” (“Development Agreement”), which vests important contractual and property rights for Dermody’s benefit that are enforceable in court.

As explained more fully herein, in exchange for a developer commitment to make significant investments in infrastructure and other improvements in the vicinity and on the Project Site to facilitate implementation of the Villages at Zinfandel Special

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 2

Planning Area (“ZSPA”), the Development Agreement, inter alia, vests Dermody’s right to develop the Project Site in accordance with the rules and regulations that were in place in 2003.

It is true the Development Agreement allows the City to require that Dermody undertake subsequent discretionary approvals to implement the Project – here, this involves consideration and approval of a Major Design Review application. However, in conducting this review, the Development Agreement expressly prohibits the City from denying the Project and also from imposing any design condition or restriction – based on a strained interpretation of a subjective design guideline, non-existent CEQA mandates,¹ or otherwise – which would prevent or restrict development of permitted uses at the Project Site at the allowed density and intensity provided for in the ZSPA or that would otherwise be contrary to Dermody’s vested rights under the Development Agreement.

Dermody has worked diligently and in good faith with the City and the broader community for nearly a year, in an effort to address concerns raised. Dermody has voluntarily gone well above and beyond – at significant expense in terms of time and money – accommodating numerous requests to redesign Project elements and include additional off-site improvements.

It is now time for the City to adhere to its obligations under the Development Agreement and to approve the Project as proposed. To do otherwise would subject the City to litigation for violating Dermody’s vested rights, including City exposure to potential monetary damages and payment of attorneys’ fees and costs. Accordingly, we respectfully request the City Council to approve the Project as proposed at its December 5th hearing.

I. The City is Bound by Its Obligations in the Development Agreement, and Legal Recourse is Available to Dermody if the City Fails to Honor Those Obligations.

A. Legislatively Approved Development Agreements Establish Enforceable Vested Rights.

Comprehensively planned developments like those contemplated by the ZSPA often take decades to complete and require significant early and ongoing investment by developers to come to fruition. To provide certainty to developers that a local agency will not “change the rules” mid-course, thereby wasting such investment and

¹ Please see my letter dated October 3, 2022, which details the limited discretion, with the concomitant constraints on CEQA review, which are imposed on the City pursuant to applicable laws and regulations in connection with the Project’s design review process. As detailed therein, the City has no legal authority to request or mandate any additional mitigation measures on the Project in a purported attempt to address environmental concerns.

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 3

preventing implementation of the planned vision, state law expressly authorizes local agencies to enter into development agreements that:

[a]llow a developer who needs additional discretionary approvals to complete a long-term development project as approved, regardless of any intervening changes in local regulations.

(*City of West Hollywood v. Beverly Towers, Inc.* (1991) 52 Cal.3d 1184, 1194; Gov. Code, § 65864(b).)

A project protected by a development agreement may be developed over a period of numerous years “in accordance with existing policies, rules and regulations, and subject to conditions of approval . . .” even if generally applicable rules and regulations change. (Gov. Code, § 65864(b).) In exchange for granting these vested rights, development agreements provide local agencies with the opportunity to help ensure long-term planning efforts can be implemented. Furthermore, development agreements enable local agencies to negotiate for significant benefits in the form of direct monetary contributions as well as the funding and construction of infrastructure and improvements for the benefit of the broader community, which the local agencies would otherwise not be permitted to mandate under the law.

In other words, a “legislatively approved development agreement gives both parties vested contractual rights.” (*Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth* (2010) 191 Cal.App.4th 435, 443-444 [court held “a legislatively approved development agreement gives both parties contractual rights” and upheld \$30 million damages award in favor of developer against Town for anticipatory breach of contract]; *North Murrieta Community v. City of Murrieta* (2020) 50 Cal.App.5th 31, 43-44 [holding “[development] agreement is binding on both the City and the developer” (citing Gov. Code, § 65865.4), and observing: “The law says development agreements are contracts, enforceable like normal contracts.”]; *Center for Community Action & Environmental Justice v. City of Moreno Valley* (2018) 26 Cal.App.5th 689, 696-697 [“A development agreement ‘is an enforceable contract between the municipality and the developer.’”]; *Oakland Bulk & Oversize Terminal, LLC v. City of Oakland* (9th Cir. 2020) 960 F.3d 623 [holding development agreement entered into between city and commercial marine terminal developer pursuant to California law is enforceable under contract principles with no deference to city’s administrative hearing findings or interpretations of agreement’s provisions or what they require].)

A local agency that violates a development agreement is liable for breach of contract and, if it fails to appropriately process and approve applications for a protected project, can be held liable for significant damages under specified circumstances. For example, in *Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes*, the Court of Appeal upheld a \$30 million damages award against the Town of Mammoth for its failure to process in good faith a development application in contravention of its obligations under a development agreement. Like

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 4

the instant Development Agreement, the agreement in *Mammoth Lakes* required the Town to process, consider and take actions on subsequent discretionary project approvals “reasonably, in good faith, and in a timely manner.” (*Id.*, at 446.) However, several years after execution of that development agreement, the Town changed its priorities and refused to cooperate in timely advancing necessary project approvals. This failure to cooperate with the developer amounted to an actionable repudiation and anticipatory breach of the agreement resulting in the significant award of monetary damages to the developer. (*Id.*, at 462-70.)

B. Dermody Has Enforceable Vested Rights to Develop the Project as Proposed Under the Development Agreement.

As evinced by the foregoing authorities, legislatively approved development agreements entered into pursuant to California’s statutory Development Agreement Law create solemn, legally binding vested rights and contractual obligations on the part of the parties thereto, which rights and obligations courts take quite seriously and do not hesitate to enforce in the event of breach or repudiation by a party.

Similar to the project in *Mammoth Lakes*, the Project here benefits from the protections of a legislatively approved development agreement that requires the City to timely process an entitlement application and to comply with its contractual terms. On May 28, 2003, the original property owner and developer of the Villages of Zinfandel project entered into the Development Agreement with the County of Sacramento, which established contractual vested rights and obligations for the signatories and their respective successors in interest.

The Development Agreement relates to the entire approximately 671.39-acre ZSPA and has a term of twenty (20) years from its effective date of June 28, 2003.² Its purpose is to facilitate the phased development of the comprehensively planned ZSPA, including a complementary mix of residential, light industrial, business professional (including industrial office parks), and commercial uses. Consistent with the broad legislative purpose, the Development Agreement seeks to provide certainty to, and to reduce the economic risks incurred by, the developer(s) within the ZSPA, and to provide contractual rights for the benefit of the County (now City) to help implement the ZSPA’s planned uses and establish the planned infrastructure and improvements necessary to support this land use vision, which was anticipated to take several decades. (See DA, Recitals A, C.)

² The City formally incorporated on July 1, 2003. However, the time limits set forth in Government Code section 65865.3 on the effectiveness of development agreements (8 to 15 years) from the date of incorporation of affected land into a new city do not apply because the election on incorporation of the City in November 2002 occurred before the parties entered into the Development Agreement in June 2003. (See Gov. Code, § 65865.3 (c)(2).)

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 5

Among other things, the Development Agreement vests Dermody's rights to develop the Project Site pursuant to the "Existing Land Use Regulations" in effect as of the effective date of the Development Agreement,³ which are primarily set out in the ZSPA document that provides a comprehensive development vision for the approximately 671.39 acres within the ZSPA boundaries, which includes the Project Site.

Specifically, the Development Agreement vests Dermody's right to develop the Project Site with those uses allowed under the ZSPA, as well as its right to develop those permitted uses at the "density and intensity" of development contemplated therein:

The permitted uses of the Property, the density and intensity of use, maximum height and size of proposed buildings, timing or phasing of development, zoning, provisions for reservation or dedication of land for public purposes, and the location and size of major transportation, sewer, drainage and water facilities and improvements shall be those set forth in the [ZSPA], [Mitigation, Monitoring, and Reporting Program set forth in the EIR for the ZSPA], and the [Villages of Zinfandel Public Facilities Financing Plan]

(DA, § 2.1.)

The Development Agreement further provides that:

[b]y entering into this Agreement, [the City] hereby grants to Developer (and successors in interest) a vested right to proceed with the development of the Property in accordance with the terms and conditions of [the] Agreement. Developer's vested right to proceed with the project shall be subject to any subsequent discretionary approvals required in order to complete the project, ***provided that any subsequent approvals shall not prevent, or impose further conditions, requirements or restrictions on development of the land for uses and to the density or intensity of development or rate of timing of development set forth in [the] Agreement and the [ZSPA],*** and provided Developer is not in default under this Agreement.

(DA, § 4.1, emph. added.)

³ Such "Existing Land Use Regulations" include the "ordinances, resolutions, codes, rules, regulations, official policies, the General Plan, the Cordova Community and the [ZSPA] governing the permitted uses of land, rate of development, density, design, improvements and construction standards and specifications adopted by the [County] and in effect on the effective date." (DA, § 1.2(m).)

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 6

While the Development Agreement recognizes that subsequent discretionary approvals may be required to implement the Project, the City must exercise its discretion in accordance with Dermody's vested rights and thus such discretionary approvals "shall not prevent, or impose further conditions, requirements or restrictions on, development of the land for the uses and to the density or intensity of development set forth in the [Development] Agreement and the [ZSPA]." (*Id.*, § 2.2.)

The Development Agreement also requires the City to cooperate with Dermody in securing "all permits, licenses, approvals, or other entitlements necessary to develop the Project Site which the [City] may require." (DA, §§ 4.2, 4.3.) Further, the City must process applications for any subsequent approvals on a "timely basis" and shall "take action upon all complete applications" for subsequent approvals in accordance with the Development Agreement. This includes an obligation to act upon such applications in a "timely and reasonable manner." (DA, §§ 4.4-4.5.)

The City is bound by the above enforceable obligations as it processes and considers Dermody's design review application. In addition, the City is bound by the covenant of good faith and fair dealing, which is implied by California in all such contracts and also is expressly set forth in the Development Agreement. (*Id.* at § 8.5 ["Neither party shall do anything which shall have the effect of harming or injuring the right of the other party to receive the benefits of this Agreement; each party shall refrain from doing anything which would render its performance under this Agreement impossible; and each party shall do everything which this Agreement contemplates that such party shall do to accomplish the objectives and purposes of this Agreement."].)

The Development Agreement contemplates a broad, cumulative, and non-exhaustive list of remedies for its breach, including the institution of legal action to remedy any default and enforce any covenant or agreement in it. Notably, it does not expressly or impliedly prohibit a monetary damages remedy for uncured defaults and breaches, and, in fact, expressly provides that the exercise of one or more of its expressly enumerated remedies does not waive or preclude "any other available remedy." (DA, § 6.4.) Further, the prevailing party in any action brought to enforce rights and remedies under the Development Agreement will be entitled to its reasonable attorneys' fees, expert fees, and costs and expenses of litigation in any judgment. (DA, § 8.13.)

C. In Exchange for Securing Its Vested Rights, Developer Has Been Required to Incur and Continues to Incur Significant Costs.

In exchange for the County's (now the City's) agreement to adhere to the obligations referenced above and detailed more fully in the Development Agreement in favor of Dermody, the Development Agreement imposes obligations with respect to significant developer investments. For example, the Development Agreement recognizes that it:

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 7

requires major investment by Developer in public facilities, substantial pre-development investment in onsite and offsite improvements, and substantial commitment of the resources of Developer to achieve the public purposes and benefits of the Project for the [City].

(DA, Recital M.)

These required investments in public improvements, facilities, and services are set forth in the Villages of Zinfandel Public Facilities and Financing Plan ("PFFP"), with which Dermody is mandated to comply, and which will benefit the entire ZSPA. Among other requirements, Dermody is also mandated to adhere to all applicable conditions of approval set forth in the ZSPA, PFFP, and the applicable mitigation measures adopted in the corresponding EIR. (See DA, §§ 3.1-3.3.)

The foregoing developer obligations reflect the benefit of the bargain contemplated by the Development Agreement that the City and the broader community receive with the Project; i.e., to help ensure the cohesive and comprehensive buildout of the ZSPA with the long-planned land use vision that reflects a mix of uses as well as thoughtful coordination of infrastructure and improvements.

Dermody has complied and will continue to comply with all of its obligations under the Development Agreement as it develops the Project to ensure the City receives the benefit of this contemplated investment.

In addition to adhering to its obligations with respect to future investment, Dermody has already expended significant monies in reliance on the City abiding by its contractual obligations including, without limitation, monies spent acquiring the Project Site (with the concomitant carrying costs) and more than \$800,000 on architectural, engineering and other technical consultant services to design the Project in compliance with applicable objective development standards and subjective design guidelines and then to redesign Project elements in an effort to accommodate additional requests made by the City and members of the public. Furthermore, Dermody has volunteered to fund and install several off-site improvements for the benefit of the broader community in its ongoing effort to work cooperatively with the City and neighbors.⁴

Dermody desires to continue to work collaboratively with the City and the community to proceed with the Project at this point. However, if forced to do so because of the City's improper delay or denial of the Project as proposed or the City's imposition of design conditions or restrictions that conflict with Dermody's vested rights, Dermody would have no choice but to pursue all available legal avenues, including, if

⁴ It goes without saying that no such voluntary off-site improvements would continue to be offered and implemented if Dermody is required to enforce its vested rights in court.

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 8

successful, the right to recover monetary damages as well as its attorneys' fees, costs, and expenses. (DA, §§ 6.4, 8.13.)

II. The Project Proposes a Use Permitted by Right under the ZSPA at the Allowed Density and Intensity Pursuant to the Objective Development Standards and is Consistent with the Subjective Design Guidelines.

The Project proposes a use that is permitted by right at the Project Site, and reflects a density and intensity that complies with the applicable provisions of the ZSPA as reflected in its objective development standards. The Project also is consistent with the applicable subjective design guidelines. Accordingly, the City has no legal authority to deny the Project as proposed.

The Project Site has a General Plan land use designation of Office Mixed Use, is within the jurisdictional boundaries of the ZSPA, and is zoned Business and Professional Office Zinfandel Special Planning Area ("BP ZSPA"). The ZSPA sets out the applicable land use controls and objective development standards for the Project Site and other areas within the ZSPA boundaries, as well as sets forth subjective design guidelines that may be considered.

A. The Project Proposes a Use that is Permitted By Right.

Within the Project Site's BP ZSPA designation, permitted uses are the same as those in the 2003 CZO's Business and Professional Office (BP), and Industrial – Office Park (MP) zones.⁵ (ZSPA, § 512-204 (D).) Within the referenced MP zone, the 2003 CZO permits by right a wide range of "research, service, and light industrial uses in an area containing visual and operational amenities." (2003 CZO, § 230-040.) With relevance to the Project, the 2003 CZO expressly permits Wholesaling and Warehousing, Delivery Service, Messenger Service, and Warehousing and Storage Uses. (2003 CZO, § 230, Table IV; § 225, Table II.) Although the 2003 CZO does not expressly define these permitted uses, they have common and well-understood meanings and clearly align with the logistics center use proposed by the Project.

The Project's proposed use is exactly the type of warehouse and/or delivery use that the ZSPA contemplates at the Project Site and is indisputably permitted by right. Thus, regardless of whether nearby neighbors or other members of the public disagree with the land use vision set forth in the ZSPA, this type of job-generating use has long been planned for this area and the City is prohibited under the Development Agreement from denying the proposed light industrial uses.

⁵ "Permitted uses within the BP Areas as shown in Section 512-215 are those permitted in the Business and Professional Office (BP), as listed in Zoning Code Section 225, and Industrial-Office Park (MP) Zone, as listed in Zoning Code Section 230. Public and institutional uses described above in Section 512-204 (B) (2) shall be permitted within the BP Area." (ZSPA, § 512-204 (D).)

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 9

B. The Project Complies with the Applicable Objective Development Standards.

Development proposals within the ZSPA must comply with the applicable objective development standards. The ZSPA's development standards "supersede the standards of the Zoning Code." However, "[i]f the [ZSPA] . . . Development Standards do not provide direction regarding specific standards, the Provisions of Title I, II, III, and IV of the [2003 CZO] shall apply as appropriate." (ZSPA, at §§ 512-205.)

The ZSPA sets out the following objective development standards for the relevant BP ZSPA zone:

- Setbacks: Front, min. 25 feet with 10 feet of landscaped area; Interior Side, min. 20 feet; Street Side, min. 25 feet; Rear, min. 25 feet.
- Height: 24-40 feet (Note: relevant 2003 County zoning standards incorporated by reference in the ZSPA provide that in the BP ZSPA zone, the maximum height "shall be . . . 40 feet" on property which is not "contiguous to parcels zoned for [agricultural, agricultural-residential or residential purposes]." This contrasts with the 24-foot maximum height (which may be increased in certain circumstances through approval of a conditional use permit) that applies to property located within 100 feet or contiguous to parcels zoned for agricultural and/or residential uses. (2003 CZO, § 325-04 (b).)
- Lot Area: Min. 10,000 square feet.
- Parking: Min. 1 parking space for every 2,000 square feet of gross floor area for warehouse uses.
- Walls and Fencing: Min. 6-foot masonry wall required for areas adjacent to residential areas; Min. 2.5-foot masonry wall required for areas adjacent to street ROW.

(ZSPA, §§ 512-214.)

Particularly with respect to height, in the BP ZSPA zone, the maximum height for buildings on properties that are not contiguous to agricultural or residential zoned parcels – such as the Project Site – is 40 feet. (2003 CZO, § 325-04 (b).)⁶

⁶ Here, the Project Site is contiguous with: BP zoned parcels to the north, northwest, and northeast; a road and open space parcel to the east; and an airport use to the south.

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 10

The Project fully conforms to and complies with each of the above objective development standards. In fact, the Project has been designed (and redesigned) not only to be compliant with but to exceed applicable minimum setback, landscape, screening and buffer standards in an effort to accommodate neighbor concerns, as follows:

- Minimum front setbacks of 110 feet, with at least 42 feet of landscaped area (well exceeds ZSPA minimum standards of 25 feet and 10 feet, respectively).
- Minimum interior side setbacks of 72 feet, 6 inches (well exceeds ZSPA minimum standard of 10 feet).
- Minimum street side setbacks of 35 feet (well exceeds ZSPA minimum standard of 25 feet) and includes a 25-foot pedestrian/landscape easement.
- Minimum rear setbacks of 138 feet (well exceeds ZSPA minimum standard of 25 feet).
- Lot area is approximately 469,364 square foot lot (well exceeds ZSPA minimum standard of 10,000 square feet).
- Includes a total of 93 parking spaces (well exceeds ZSPA minimum of 78 spaces).
- Includes a 12-foot-high concrete wall in those areas adjacent to Bear Hollow Drive and Mather Boulevard (well exceeds ZSPA minimum standard of a 2.5-foot masonry wall).

Particularly with respect to height, we understand that some opponents are pressing the City to substantially reduce the height of the Project. Based on numerous statements reflected in the administrative record to date, these comments appear to be a thinly concealed attempt to pressure the City into denying the Project outright or through the imposition of improper development constraints that effectively prevent the Project from proceeding. However, even if these efforts are cloaked within the purported objective of trying to reduce the overall building mass, they remain impermissible since the City has no discretion in this regard because the Project complies with all objective development intensity standards, including the maximum height limit. At a maximum height of 39 feet, the Project fully complies with and is less than the 40-foot height maximum applicable to the Project Site.

Accordingly, the City has no legal authority to deny the Project as proposed or to condition approval on Dermody's agreement to reduce the building height. Just as the City does not have the discretionary authority as part of the design review process to impose more stringent requirements with respect to, for example, objective parking, lot area, or setback standards, it has no discretion here to change

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 11

the height of the Project so long as it complies with the relevant objective development intensity standard.

In summary, the Project does not exceed the maximum height of 40 feet and proposes development at the density and intensity provided for in the ZSPA in accordance with its vested rights under the Development Agreement, and the City's limited discretion under design review does not extend to changing objective development standards, such as height.

Accordingly, the Project proposes a development configuration, density, and intensity that complies fully with the applicable objective development standards set out in the ZSPA. The City has no legal authority to change the rules now and impose other development standards to appease neighbors and other opponents. To do so would be unfair, illegal, and expose the City to substantial liability.

1. **The Project Is Consistent with All Applicable Subjective ZSPA Design Guidelines.**

The ZSPA's Design Guidelines provide that they "shall be used to evaluate consistency of proposed projects to the objectives stated in the intent section of the SPA ordinance." These are "intended to provide design guidance" for developers and City staff in the "planning, review and approval of individual development projects within the ZSPA." (ZSPA Design Guidelines, at p. 1.)

It is with these subjective design guidelines where the City has the opportunity to exercise its limited discretion. Nevertheless, this limited discretion may only be exercised in a manner that is in accordance with its broader obligations in the Development Agreement and Dermody's vested rights thereunder. In other words, the City cannot apply or otherwise interpret any of its subjective design guidelines in a manner that would "prevent, or impose further conditions, requirements or restrictions on, development of the land for the uses and to the density or intensity of development set forth in the [Development] Agreement and the [ZSPA]." (DA, § 2.2.)

For illustrative purposes, we note for the administrative record that the Project is entirely consistent with the numerous flexible design guidelines for building orientation for non-residential uses. Examples include the following:

- To the maximum extent feasible, entries to office and public space, whether in the Village Core or the outlying business parks, should orient to streets, parks, plazas, and pedestrian corridors/pathways. Secondary entrances may orient to parking lots or garages.
- Where location of a parking area or lot directly adjacent to a public street cannot be avoided, cars will be screened from view by berms, walls, hedges, density of plant materials, or a combination of these.

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 12

- Buildings should be sited such that they complement adjacent buildings and landscape. New structures should not clash with existing structures and sites.
- Building orientation and architecture should protect the privacy of adjacent developments. Landscape buffers and walls are required between residential and non-residential uses where backyards and parking or loading areas abut. Pedestrian access through parking lots should be provided. If the development abuts a residential neighborhood street access should be provided to/from the street.

(ZSPA Design Guidelines, at pp. 16-17.)

The record is also clear that the Project is consistent with design guidelines that encourage the following considerations regarding building form and massing:

- The bulk of building massing generally should be minimized especially where residential character predominates.
- Buildings should maintain a scale compatible with residential neighborhoods. Building masses should be mitigated by elements such as canopies or trellises designed to focus attention to smaller-scaled elements of the building. Indentations, or other means of articulation, should be used to avoid a monolithic effect.
- Building form should avoid proportionally long, flat surfaces.
- Building elevations must be attractively designed on all four sides. Walls at interior property lines or project phase lines must be given specific design attention, with color, physical relief, and/or landscaping. Backs and sides of buildings visible from public streets should incorporate window and door openings.
- Roofing materials should be architectural composition, shingle, clay tile, concrete tile, slate, or metal standing seam.
- Variation in the shape, color and texture of roof structures should be used to create diversity and interest. Use of composition shingles shall be limited to architectural, thick dimension, or random-cut types that provide relief and texture. Flat, monotonous surfaces shall be avoided.
- Non-residential uses adjacent to residential uses should consider the use of pitched roof elements.

(*Id.*, at pp. 23-25.)

Mayor Terry, Vice Mayor Budge, and City Councilmembers
November 29, 2022
Page 13

As noted above, we acknowledge the City has some limited amount of discretion in its design review process to take into appropriate consideration the above guidelines and to work with Dermody to make feasible design modifications to the Project. This has occurred here in spades, with extensive design modifications being voluntarily made in an effort to be responsive to City and public input. For example, and as more fully detailed in our September 16, 2022, letter, Dermody has made substantial design changes – at great cost in terms of money and time – to accommodate City and community input. These changes involve, among others, the following:

- Adding a twelve-foot-tall tilt up concrete wall along the section of Bear Hollow that borders the truck court for purposes of noise and view screening.
- Adding a “pop out” feature on the building to further shield the truck court.
- Adding articulation on the north and east elevations of the building, stepped the parapet tops, revised the west end of the north elevation to add more articulation including an additional recessed panel, and adding horizontal canopies to add more horizontal projection.
- Revising the proposed tree species and increased sizes of tree plantings.
- Changing the driveway orientation for right-turn in and out by trucks and addition of medians to Mather Boulevard and Bear Hollow Drive to direct arriving automobile drivers to the driveway on Mather Boulevard rather than Bear Hollow Drive.
- Adding vertical window elements.
- Reducing lighting in parking areas to ensure that photometrics read below four footcandles.

The City, however, has no legal authority to interpret subjective design guidelines in a manner that conflicts with Dermody's vested rights through the imposition of design conditions or restrictions that would limit or prohibit development of permitted uses that comply with the density and intensity of development contemplated in the ZSPA.

One such condition or restriction would be a requirement to reduce the maximum height of the Project to below the 40-foot height limit or to otherwise impose massing restrictions. As Dermody has communicated to the City on multiple occasions and as set forth in the administrative record, based on the nature of their operations, modern logistics and distribution tenants demand building heights in the range of those proposed by the Project and cannot feasibly operate in shorter

Mayor Terry, Vice Mayor Budge, and City Councilmembers
 November 29, 2022
 Page 14

buildings.⁷ Accordingly, any conditions that would change the height, FAR, massing, or site orientation beyond what is currently being proposed would render the building and site plan functionally obsolete and infeasible for the permitted and planned use. This would be an effective denial of the Project, thus violating the City's obligations in the Development Agreement.

III. Conclusion.

Based on the foregoing, Dermody has the vested right to proceed with the Project as proposed, and in doing so will be developing a high-quality, thoughtfully designed, job-generating use, thereby helping to bring the long-planned ZSPA land use vision to fruition. For these reasons, and because the City Council is contractually obligated to timely consider and approve the Project as proposed, we respectfully request that the City Council do so at its December 5th hearing.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

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⁷ For example, the Commercial Real Estate Development Association notes that to support modern logistics uses, buildings of 150,000 square feet and greater should provide 36-foot interior clearance, which requires an exterior height of approximately 40 feet. (See Rules of Thumb for Distribution/Warehouse Facilities Design, Commercial Real Estate Development Association, at 33.)



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December 14, 2022

VIA E-MAIL

Mayor Terry, Vice Mayor Budge, and City
Councilmembers
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
Email: CityClerk@cityofranchocordova.org

Re: Dermody Properties – LogistiCenter at Rancho Cordova (Bear Hollow)
Major Design Review Project No. PLND-1021-0015

Dear Mayor Terry, Vice Mayor Budge, and Honorable Members of the City Council:

Miller Starr Regalia represents Dermody Properties in its application for design review approval of the LogistiCenter Project on Bear Hollow Drive (“Project”) in the City, an application that has been pending before the City for more than one year. At our most recent December 5 hearing, Council Members and the City Attorney made several comments we found both confusing and concerning, which appeared to indicate a refusal to respect the City’s legal obligations under the Development Agreement. This is because these obligations, which, along with the legal limitations on the City’s approval authority in the design review process, strictly circumscribe the City’s discretion to deny or impose further conditions or restrictions on the Project. The basis for this position is explained in great detail in my letters to this Council dated October 3, 2022 and November 29, 2022, and raises significant questions as to whether the City intends to act in good faith and honor its obligations in this regard.

Please be advised that we intend to submit in advance of the January 17 Council hearing a subsequent letter that details the legal and factual issues at hand from our perspective. That said, we believe it would be beneficial for a positive resolution to highlight now just a few examples of statements made at the Council hearing that gave us great pause. For instance, it appeared the Council may believe it has the legal right to require further CEQA review of the Project to address alleged air quality and traffic impacts (including based on alleged new PM 2.5 emissions, which have been a well-known environmental issue since the 1990’s), and that it may seek to apply a supposed but nonexistent 1,000-foot statewide warehouse setback standard. We are hopeful the City Attorney will clarify for the Council before the January 17 hearing that it has no such legal authority under CEQA. To further clarify

Mayor Terry, Vice Mayor Budge, and City Councilmembers
December 14, 2022
Page 2

this point, we respectfully direct the Council to review our prior correspondence on this matter and we intend to submit further evidence to be included in the Project's administrative record in this regard.

In addition, the Council requested that Dermody Properties return on January 17 with new visual simulations and significant "design" changes¹ that would effectively kill the Project through a demand for modifications that are not allowed to be imposed under the express terms of the Development Agreement, and at the same time, rendering it infeasible. Whether it is by intention or fiat, this would violate the City's obligations thereunder.

We understand the Council's desire to be responsive to its constituents and thus perhaps the Council believes it can fashion an acceptable "compromise" as indicated at its December 5 hearing. Unfortunately, however, attempting to impose unlawful conditions and/or improper additional environmental review will only result in litigation against the City for its failure to adhere to its obligations under the Development Agreement. In so doing, the City would have substantial exposure for monetary damages as well as payment of attorneys' fees and costs.

The Development Agreement substantially limits the City's approval authority in the design review process, strictly limiting its discretion to deny or impose further conditions or restrictions on the Project. The Project already fully complies with all applicable use, density, intensity and design standards of the VOZSPA and 2003 County Code.

The Development Agreement now requires the Council to approve the Project without further delay. Dermody Properties has worked for more than a year incorporating extensive design modifications responsive to community and City comments, and further has conditionally committed to spend a significant sum of money on off-site improvements that are extremely beneficial to the City, but which are unrelated and have no nexus to any actual Project impacts.² Dermody

¹Among other things, the Council requested that Dermody Properties: incorporate significant reductions in building height – an objective intensity standard protected by the DA – that would make the Project unmarketable to tenants; plant decades old / fully grown trees at the site; make aesthetic changes to "all four sides" of the Project's elevations, yet at the same time somehow add screening to make the Project fully "invisible" to all surrounding uses; and re-configure the Project to somehow match someone's never codified or contractually expressed subjective conception of what a "warehouse" looked like twenty years ago, thereby entirely disregarding the clear and objective density and intensity standards of the VOZSPA and Code.

² The Development Agreement does not require Dermody Properties to make these off-site improvements, the City has no legal authority to require them. Accordingly, our client reserves all its rights not to move forward with any of these voluntary off-site improvements if the City fails to meet its contractual obligations by approving the Project at the next January 17, 2023 Council hearing.

Mayor Terry, Vice Mayor Budge, and City Councilmembers
December 14, 2022
Page 3

Properties has voluntarily offered such public amenities in good faith, based on the assumption that the City would comply with its obligations under the Development Agreement.

Because we are only months away from the end of the Development Agreement's term, the Project's design review application has been pending for well over a year, and the Council's conduct is raising serious concerns about whether it is proceeding (and will proceed) in good faith with respect to its obligation to timely process and act on the Project, it is imperative that the matter promptly be brought to closure. By the date of the January 17 continued hearing, the Council will most certainly have all the information relevant to making whatever decision it ultimately chooses to make.

We therefore respectfully request that City staff prepare alternate resolutions, to be considered by the Council on January 17, 2023, approving, and denying the Project as currently proposed, and that the Council make a decision — one way or another — at this hearing.

Thank you for your prompt attention to those important issues.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

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January 10, 2023

VIA EMAIL

Mayor Budge, Vice Mayor Sander, and City
Councilmembers
City of Rancho Cordova
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Re: Dermody Properties - LogistiCenter at Rancho Cordova (Bear Hollow)
Major Design Review Project No. PLND-1021-0015

Dear Mayor Budge, Vice Mayor Sander, and Honorable Members of the City
Council:

As you know, this firm represents Dermody Properties ("Dermody") in its design review application for the LogistiCenter Project on Bear Hollow Drive ("Project") in the City. As we expressed in my December 14, 2022 letter, we are concerned with the City's ongoing misinterpretation of its legal obligations under the Development Agreement. As has repeatedly been made clear in our past correspondence to the City on this topic, these obligations strictly limit your ability to deny or impose further conditions on the Project during the design review process. The City has reviewed the Project application for more than a year, during which time Dermody has made several costly and thoughtful refinements to respond to City and community input. Dermody did so in good faith and with the reasonable expectation that the City would honor its obligations under the Development Agreement.

As described in our prior letters to the City sent on October 3, November 29, and December 14, 2022, and also as reflected in my comments to the Council at the December 5, 2022 hearing, the Project's design, configuration, proposed use, density, and intensity all comply with the applicable objective standards set out in the VOZSPA and 2003 County Code. The Development Agreement now mandates that the Council approve the Project with no further conditions, restrictions, or requirements. Unfortunately, based on its recent comments and actions made during the December 5, 2022 hearing, the Council appears to be poised to violate the Development Agreement by making new unreasonable and unwarranted requests for design changes that would contravene Dermody's vested rights under it and, if ever implemented, also would result in an inferior, outdated, and likely failed project. At this point, with the expiration of the Development Agreement just a few

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 10, 2023
Page 2

months away, it is imperative that the Council make a decision on the Project at the close of its January 17, 2023, hearing. We remain hopeful that the Council will adhere to its obligation under the Development Agreement to approve the Project as proposed and avoid the prospect of litigation with the risk of incurring significant monetary damages and attorneys' fees as expressly provided for thereunder.

In the interest of further augmenting the administrative record, we provide additional comments to the Council below.

I. The City Cannot Impose Further Conditions or Restrictions on the Project without Violating the Development Agreement.

As detailed in our November 29, 2022 letter, the Project proposes a permitted use that complies with all objective development standards included in the VOZSPA.¹ The Project proposes a use at the density and intensity of development set forth in the Development Agreement and the City cannot impose any further conditions, requirements, or restrictions on its development. (DA, § 4.1; see my November 29, 2022, letter at pages 4-6.) Unfortunately, the Council has apparently ignored our prior communications on this point.

Regarding building height, the Council has demanded that the Project be redesigned at a height significantly below the VOZSPA's only applicable objective intensity standard – a 40-foot height limit on property that is not contiguous to agricultural or residentially zoned property. This appears to be a misguided attempt by the Council to mollify neighbor concerns but lacks any support under either the Development Agreement or any Existing Land Use Regulations it incorporates. As we already discussed in detail, such a reduction in height is not permitted under the law; just as the City would be prohibited from changing other objective development standards to impose more onerous requirements (e.g., the City could not demand that more parking spaces be installed than required under the applicable development standard), the City is prohibited from changing the objective development intensity standard as it relates to height. Moreover, such a height restriction would effectively render the Project infeasible since the building could not physically accommodate the type of use that Class A tenants require; this de facto denial of the proposed use also conflicts with Dermody's vested rights. Both of the foregoing serve as separate, independent legal reasons that the Council is prohibited from imposing a more stringent height limitation on the Project.

Furthermore, doing so would have a tremendously damaging practical impact on the community. As Dermody has already explained at length, a shorter building cannot physically accommodate a high-quality light industrial tenant's use because the additional height is necessary to conduct its operations. Therefore, even assuming that Dermody acquiesced – which, to be clear, Dermody will not do – the end result

¹ As detailed in the November 29, 2022 letter, the Project complies with all applicable objective setback, height, lot area, parking, and fencing standards. (VOZSPA, § 512-214.)

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 10, 2023
Page 3

would be an inferior, functionally obsolete building that could not be leased in an economically viable manner. Realistically, this would then mean that this building would likely sit vacant for all or much of the time (or be periodically leased to lower quality tenants, at best). The end result: rather than a high-quality, aesthetically pleasing, substantially landscaped, well-maintained modern structure that could accommodate a Class A industrial tenant use that is consistent with the VOZPA's long-held vision for the site, the City would be forcing the landowner to build an economically inviable project, which would inevitably turn to blight. Such a shortsighted approach to land use would only disserve the community, both in the short- and long-term.

As to the Council's many other new or contemplated requests, these are entirely arbitrary and capricious, relating to no identifiable standards in the VOZPA, Development Agreement, or elsewhere. For example, at the December 5th hearing the Council requested or "suggested" that Dermody make the following major changes to the Project, among others:

- Plant decades-old and fully grown trees at the Project site, giving the appearance that a "forest" surrounds the Project building.
- Make aesthetic changes to "all four sides" of the Project building. Some of these included a request to add several large faux windows to the side of an industrial building to give it an "office like" or "retail like" appearance.
- Somehow add screening to make the Project fully invisible to all surrounding uses.
- Reconfigure the Project to somehow match an ambiguous, undefined, uncoded, and subjective understanding of what a generic "warehouse" looked like when the Development Agreement was executed in 2003.

Each of the above items departs from the Development Agreement's concrete, express and objective terms and vested rights, and deviates into the realm of the Council's unrealistic, shifting, and subjective preferences that are impermissible and unenforceable under the Development Agreement and applicable law. Despite this, and although it is not required to do so, Dermody has acted in good faith to address the City's numerous prior design requests to the extent reasonable, with many of these efforts detailed in our November 29, 2022 letter to the Council. After the December 5th hearing, Dermody further updated the exterior paint colors (including a "Tuscan" color theme, based on Council direction) and added 64 more mature trees (28 in 36" boxes and 36 in 48" boxes, with 18 total new trees for a total of 205) to further screen the Project building from public vantage points.² The Development

² Dermody also previously voluntarily agreed to invest a significant sum of money on off-site improvements that have no nexus to anticipated Project impacts, and thus are not contractually or otherwise required. However, Dermody continues to reserve all its rights not to move forward with any of these voluntary off-site improvements if the City fails to meet its

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 10, 2023
Page 4

Agreement does not require Dermody to make any further design changes; any continued demands that Dermody do so or that it reduce the Project's already fully-compliant intensity or density violate the Development Agreement in multiple ways.

II. The Project is Not Required to Match Someone's Uncodified and Subjective Idea of What a Generic Warehouse Looked Like in 2003.

Regarding the final bullet point above, on December 5, the City Attorney made a troubling statement that Dermody's vested rights under the plain language of the Development Agreement are somehow limited by a supposed (albeit sub silentio and unwritten) requirement that Dermody construct a warehouse that matches a never codified or contractually expressed idea of what a generic warehouse looked like in 2003. There is nothing in the Development Agreement, the VOZSPA, or any other law that remotely supports this highly subjective and legally baseless notion. The Development Agreement clearly and expressly vests Dermody's right to develop the Project site with those uses allowed under the VOZPA at the codified "density and intensity" of development. Nothing requires Dermody to build a project that is "downsized" from the expressly permitted objective density and intensity standards, or somehow constructed to meet obsolete market demands or other circumstances that may have existed and influenced warehouse designs two decades ago.

In fact, this would not only be illogical and violative of the Development Agreement's express terms, but it would be entirely counterproductive and harmful for the City (as well as Dermody). Dermody is proposing an innovative modern use with high-quality design amenities and site improvements. The quality of these design components and improvements far exceeds those typically required or expected from warehouse development 20 years ago.

We note that even assuming arguendo the Project were required to look like someone's subjective idea of what a typical or generic warehouse looked like in 2003, that would still not allow the City to circumvent its obligations under the Development Agreement because, in actual fact, there are many pre-2003 warehouses in Sacramento County with heights and size, i.e. density and intensity, quite similar in relevant respects to the Project. A non-exhaustive list of such buildings includes:

- 6003 88th Street, constructed in 2002, 127,249 square feet, 32-foot interior clearance (i.e. same clearance height as proposed by the Project).
- 6350 Sky Creek Road, constructed in 2001, 108,956 square feet, 32-foot interior clearance.

contractual obligations by approving the Project as proposed at the January 17, 2023 Council hearing.

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 10, 2023
Page 5

- 6271 Florin Perkins, constructed in 2002, 57,000 square feet, 32-foot interior clearance.

Despite their construction in the circa 2003-timeframe, the City would surely not desire Dermody's LogistiCenter Project to emulate any of these examples, none of which incorporate the same high-quality landscaping, screening, and design that Dermody's LogistiCenter Project proposes. Attached as **Exhibit A** are photographs of each of the above examples, which demonstrate this point.

III. There is No Statewide 1,000-Foot Setback Requirement.

During the December 5th hearing, the Council also appeared to seriously entertain the completely false notion that a 1,000-foot statewide warehouse setback standard exists in some applicable law, and that such a "standard" should be imposed on the Project. It is unfortunate that the Council's misapprehension was not remedied during the hearing. We therefore take the opportunity to do so now. To confirm in no uncertain terms, no such standard exists or has ever existed and the Council has no legal authority to impose such a nonexistent "standard" on the Project.

In support of the supposed standard, reference was made to a 2022 settlement agreement among the Sierra Club, the California Attorney General, and the City of Fontana in CEQA litigation that challenged Fontana's approval of a warehouse project. Obviously, a litigation settlement agreement among such parties related to a local approval did not – and could not – result in any statewide 1,000-foot setback standard for warehouse uses. But even beyond that, the local standard agreed upon by the City in that settlement was far more limited. Indeed, the warehouse ordinance (Ordinance 1891) adopted by Fontana as result of this settlement includes the following minimum buffer and setback standards, all of which Dermody's Project easily complies with and, in fact, far exceeds:

- For any warehouse building larger than 50,000 square feet: a ten-foot wide landscaping buffer, measured from the property line of all adjacent sensitive receptors.
- For any warehouse building larger than 400,000 square feet in size: a twenty-foot landscape buffer, measured from the property line of all adjacent sensitive receptors.
- For any warehouse building larger than 400,000 square feet in size: the building's loading docks shall be located a minimum of 300 feet away, measured from the property line of the sensitive receptor to the nearest dock door which does not exclusively serve electric trucks.

(See City of Fontana, Ordinance No. 1891, approved and adopted on April 12, 2022, at § 9-71. A copy of the Stipulation for Entry of Final Judgment on Consent resulting from this settlement, including the text of said Ordinance No. 1891, is attached hereto as **Exhibit B**.)

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 10, 2023
Page 6

Even if the above requirements formed the basis for a statewide standard – which, to reiterate, they do not – the instant Project would readily satisfy and far exceed them. Here, the Project proposes a warehouse of approximately 155,076 square feet and has no adjacent sensitive receptors. As verified by your own staff's report, and as I personally pointed out to the Council at the December 5, 2022 hearing, the nearest property lines associated with sensitive residential uses lie 790 feet distant to the north and 930 feet distant to the east, as measured from the Project's property line (not loading docks), thus far exceeding the 300-foot setback requirement from loading docks actually adopted by City of Fontana ordinance for much larger warehouse projects.

We note that in 2022, Attorney General Rob Bonta issued a guidance document entitled "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act" ("Warehouse Guidance Document"). This Warehouse Guidance Document does not establish any enforceable legal standards, but notably it does reference the setback standards from the Fontana Ordinance as "an example [for cities] to review and build upon." (Warehouse Guidance Document, at p. 4, attached hereto as **Exhibit C**.)

In summary and contrary to the false assertions being urged upon and entertained by the Council at the December 5th hearing, there is no enforceable statewide standard requiring a 1,000-foot setback between warehouse uses and nearby sensitive uses. Notwithstanding this, the Project's proposed setback and landscaping buffers significantly exceed all applicable legal requirements and even the examples cited by the state Attorney General as "best practices" for warehouse projects. The fact that the Council spent considerable time discussing ways in which this nonexistent standard could be imposed on the Project is further evidence of a lack of good faith and fair dealing in the Council's treatment of the Project and its view of the City's obligations under the Development Agreement.

IV. There is No Justification for Requiring Further CEQA Review.

During the December 5th hearing, it also appeared the Council may believe it has the legal right to require further CEQA review of the Project to address alleged air quality and traffic impacts. It does not. As we detailed in our attached letter to the City Manager dated October 3, 2022, it is entirely proper to adopt a CEQA Guidelines section 15183 partial exemption and streamlined CEQA review of this Project as staff proposes. (See October 3, 2022, letter attached hereto as **Exhibit D**.) A CEQA Guidelines section 15183 partial exemption is appropriate in situations such as this one where a proposed project is consistent with the densities and intensities established by existing and CEQA-reviewed zoning, community plan, or general plan. (See **Exhibit D**, pages 5-6.)

Here, there is simply no justification or legal basis for requiring any further CEQA review of the Project. The City already prepared and certified a comprehensive Environmental Impact Report ("EIR") fully analyzing potential environmental impacts resulting from buildout of the VOZSPA. Following preparation and certification of an EIR, CEQA places strict limitations on conducting subsequent CEQA review of a

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 10, 2023
Page 7

project and prescribes no “expiration date” for an EIR. None of the very limited circumstances that would permit subsequent environmental review under CEQA are present here. (See **Exhibit D**, pages 6-7.)

On a related note, discussions at the December 5th hearing regarding the possible need for subsequent review of air quality impacts associated with the allegedly “new issue” of PM 2.5 emissions were also woefully wrong and misguided, with no correction by the City Attorney or opportunity for correction provided to Dermody’s counsel. First, PM 2.5 emissions have been a well-known environmental issue since at least the 1990s and the proper time for the public or anyone to have raised objections regarding the VOZPA EIR’s air quality analysis regarding these impacts was prior to or at the time that the County certified the EIR in 2002. (See, e.g., 62 Fed. Reg. 38652 *et seq.* (July 18, 1997) (U.S. EPA adding two new PM 2.5 standards to 40 CFR Part 50, National Ambient Air Quality Standards for Particulate Matter).) Further, in this vein, it is well established that environmental issues known or knowable at the time the EIR was certified cannot constitute “significant new information” or “changed circumstances” justifying subsequent CEQA review. (See, e.g., *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 806-808 [new regulatory requirement did not constitute significant new information, nor did “potential environmental impact of greenhouse gas emissions [which] has been known since the 1970’s.”]; *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 531-532 [“SEIR is not required absent new information, and . . . information on the effect of greenhouse gas emissions on climate was known long before the City approved the 1994 FEIR”].)

Second, as detailed in our October 3, 2022, letter to the City Manager, because the only discretionary approval required for the Project is design review, the City fundamentally lacks authority to address non-design related effects, such as alleged effects related to air quality. (See, e.g., *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2019) 31 Cal.App.5th 80 [city’s limited discretion under local design review ordinance did not extend to addressing environmental effects and thus did not implicate or trigger CEQA]; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924 [limited scope of city’s discretion in reviewing construction plans for conformity to urban design guidelines’ aesthetic criteria did not give it ability to address GHG/climate change impacts so as to trigger CEQA].)

Appropriately, and consistent with the applicable legal authorities, use of the CEQA Guidelines section 15183 partial exemption and streamlined review has been the City’s CEQA approach for similar projects requiring design review in the VOZSPA. (See **Exhibit D**, pages 2-3; see also March 2, 2020, letter from City Attorney (Meyers Nave) to M. R. Lozeau regarding GLP Stores, LLC Warehouse, attached hereto as **Exhibit E**.)

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 10, 2023
Page 8

V. **Conclusion.**

Outright denial of the Project is a clearly untenable option that is foreclosed by the Development Agreement. As detailed herein and otherwise in the administrative record, a Council decision that seeks to impose illegal restrictions as a condition of Project approval is equally unlawful. The Council here must recognize that no matter what illegal conditions it may attempt to impose on the Project, it will never please or placate the Project's dedicated opponents; the vehemence of this small group of citizens will not be assuaged regardless. Instead, such a decision will make no one happy and will instead simply expose the City to litigation and substantial risk of monetary damages and attorneys' fees.

Again, we are only months away from the end of the Development Agreement's term. At this juncture, the Council can no longer require Dermody to make design changes without violating the Agreement. It is therefore imperative that the matter promptly be brought to closure before this Council, one way or another. At the conclusion of the January 17, 2023, hearing, the Council will have all the information needed to decide on the Project. ***Again, to bring this matter to a final decision – one way or another – at the administrative level, we request that City staff prepare alternate resolutions, to be considered by the Council on January 17, 2023, approving and denying the Project as currently proposed.***

In conclusion, city councils do what is best for their community; they keep their word, act within their legal authority, and fulfill their contractual obligations and commitments; they make financially reasonable and prudent decisions, and avoid unnecessary risk to the public fiscal health. While city councils represent their constituents' best interests, they also make factually and legally informed decisions for their community as a whole and are not swayed by the "clamor of the mob." They educate their constituents to the facts and governing law when there is a need to do so. We are hopeful the Council will demonstrate sound leadership here and approve the Project as proposed.

Thank you for your anticipated attention to the foregoing issues.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

AFC:tzb
encls.

cc: Micah Runner, City Manager (mrunner@cityoffranchocordova.org)

ITEM 18.1.**ATTACHMENT 10**

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 10, 2023
Page 9

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George Condon, Dermody Properties (gcondon@dermody.com)
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Michelle Smira, MMS Strategies (michelle@mmsstrategies.com)
Nadia L. Costa, Esq., Miller Starr Regalia (Nadia.Costa@msrlegal.com)
Travis A. Brooks, Esq., Miller Starr Regalia (Travis.Brooks@msrlegal.com)

EXHIBIT A

6003 88th Street



ITEM 18.1.



6350 Sky Creek Road

6271 Florin Perkins Road



6271 Florin Perkins Road



ATTACHMENT 10

EXHIBIT B

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 Email: abby@socalceqa.com

Attorney for Sierra Club

**Exempt from Filing Fees pursuant to
 Government Code section 6103**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SIERRA CLUB, Petitioner, v. CITY OF FONTANA, Respondent.	Case Nos.: CIVSB2121605, CIVSB2121829 Assigned to: Hon. Donald Alvarez Dept.: S23 Actions Filed: July 23, 2021 STIPULATION FOR ENTRY OF FINAL JUDGMENT ON CONSENT [CEQA CLAIM]
PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. CITY OF FONTANA, Respondent.	(Code of Civ. Proc., § 664.6)
DUKE REALTY CORPORATION, Real Party in Interest.	

Petitioners Sierra Club and People of the State of California (collectively, “Petitioners”), Respondent, City of Fontana (“Respondent”), and Real Party in Interest, Duke Realty Corporation (“Real Party”) (collectively “the Parties”), stipulate as follows:

RECITALS

WHEREAS, on July 23, 2021, Petitioners each filed a Petition for Writ of Mandate (“Petition”) alleging that Respondent violated the California Environmental Quality Act (“CEQA”) in its approval of the Slover & Oleander Industrial/Duke Realty Project (“the Project”); and,

WHEREAS, the Parties have engaged in settlement discussions. In these discussions, Sierra Club was represented by Abigail Smith of the Law Office of Abigail Smith, the People of the State of California were represented by the Office of the Attorney General of the State of California, the City of Fontana was represented by Alisha Winterswyk and Sarah Owsowitz of Best Best & Krieger LLP and Duke Realty Corporation was represented by Jonathan Shardlow of Allen Matkins Leck Gamble Mallory & Natsis LLP.

WHEREAS, the Parties have arrived at an agreement to resolve all of Petitioners’ claims.

STIPULATION

In light of the foregoing recitals, the Parties stipulate and agree that:

1. The Parties stipulate to the terms of the [Proposed] Final Judgment on Consent (“[Proposed] Final Judgment”). A copy of the [Proposed] Final Judgment is attached to this Stipulation as Exhibit 1. The Parties consent to the entry of the [Proposed] Final Judgment by this Court without hearing or adjudication of any fact or law herein. The Parties waive their rights to a hearing on the matters alleged in the Petitions. The Parties agree that the [Proposed] Final Judgment is a fair and reasonable resolution of the matters alleged in the Petitions and avoids the expense and uncertainty of litigation over the matters alleged in the Petitions.
2. The Parties agree that if the Court does not enter the [Proposed] Final Judgment, this Stipulation and the [Proposed] Final Judgment shall have no legal force and effect, the Parties are not bound by the terms of this Stipulation or the [Proposed] Final Judgment, and each Party

reserves any and all rights as to any issue or cause of action raised in the Petitions filed in this matter.

3. The undersigned have the authority to enter into this Stipulation on behalf of each of their respective clients.

4. The undersigned each acknowledge and represent that they have read this Stipulation and [Proposed] Final Judgment in their entirety, understand all of its terms and provisions, and sign this Stipulation voluntarily and of their own free will, knowing that it is a legally binding document and with the intent to be bound hereby.

5. The undersigned each acknowledge and represent that they are effecting this compromise and settlement and are executing this Stipulation (i) after they and their respective legal counsel had the opportunity to and did conduct an independent investigation of the relevant facts; and (ii) without relying on any representation made by the other Party or the other Party's attorney(s).

6. This Stipulation may be executed in counterparts and all such counterparts, when executed, including via electronic signature, shall constitute a valid and binding agreement.

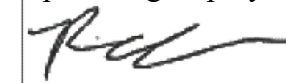
Dated: April 14, 2022

LAW OFFICE OF ABIGAIL SMITH

By: Abigail Smith
Abigail Smith
Attorney for Petitioner, *Sierra Club*

Dated: April 14, 2022

ROB BONTA
Attorney General of California
CHRISTIE VOSBURG
Supervising Deputy Attorney General



ROBERT SWANSON
Deputy Attorney General

Attorneys for Petitioner, *People of the State of California*

1 Dated: April 14, 2022

BEST BEST & KRIEGER LLP

2
3 By: Sarah E. Owsowitz
4 Alisha Winterswyk
5 Sarah E. Owsowitz
6 Tiffany M. Michou
7 Attorneys for Respondent, *City of Fontana*

8 Dated: April 14, 2022

9 ALLEN MATKINS LECK GAMBLE
10 MALLROY & NATSIS LLP

11 By: Jon Shardlow
12 Jonathan Shardlow
13 Attorneys for Real Party in Interest, *Duke*
14 *Realty Corporation*
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EXHIBIT 1

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Attorney for Sierra Club

**Exempt from Filing Fees pursuant to
 Government Code section 6103**

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

SIERRA CLUB, Petitioner, v. CITY OF FONTANA, Respondent.	Case Nos.: CIVSB2121605, CIVSB2121829 Assigned to: Hon. Donald Alvarez Dept.: S23 Actions Filed: July 23, 2021 [PROPOSED] FINAL JUDGMENT ON CONSENT [CEQA CLAIM]
PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. CITY OF FONTANA, Respondent.	(Code of Civ. Proc., § 664.6)
DUKE REALTY CORPORATION, Real Party in Interest.	

Having reviewed the Parties' Stipulation for Entry of Final Judgment on Consent ("Stipulation"), and good cause appearing, it is hereby **ORDERED** that:

1. **DEFINITIONS.**

- a. "Sierra Club" refers to the Sierra Club and its related and or affiliated entities, respective past and present officers, directors, employees, agents, partners, members, managers, representatives, predecessors, successors, parents, subsidiaries, shareholders, executors, administrators, trustees, heirs, attorneys, insurers, and assigns.
- b. The "People of the State of California," "People of California," or "People" refer to the People of the State of California, acting by and through the Attorney General of the State of California.
- c. "City of Fontana" or "City" refers to the City of Fontana, California, and its related and or affiliated entities, respective past and present officers, directors, employees, agents, partners, members, managers, representatives, predecessors, successors, parents, subsidiaries, shareholders, executors, administrators, trustees, heirs, attorneys, insurers, and assigns.
- d. "Duke" or "Developer" refers to Duke Realty Corporation, an Indiana corporation, and its related and affiliated entities, respective past and present officers, directors, employees, agents, partners, members, managers, representatives, predecessors, successors, parents, subsidiaries, shareholders, executors, administrators, trustees, heirs, attorneys, insurers, and assigns.
- e. "Parties" refers to Sierra Club, the People, the City, and Duke. "Party" refers to any one of Sierra Club, the People, the City, and Duke.
- f. "Petitions" refers to the Petitions for Writ of Mandate filed by Sierra Club and the People in the above-captioned matter on July 23, 2021.
- g. The "Ordinance" refers to an Ordinance Of The City Council Of The City Of Fontana, California Amending Chapter 9 Of The Fontana Municipal Code To

Revise Article V For Modifications And Clarification To Buffering And Screening Requirements, Methods To Improve Traffic Circulation, Requirements For Alternative Energy, And Improvements To Construction Requirements As It Relates To Industrial Commerce Centers Throughout The City, which is attached hereto as Exhibit A and incorporated into this Final Judgment on Consent (“Final Judgment”).

- h. The “Project” refers to the City of Fontana Master Case No. 20-072 for Tentative Parcel Map Number 20367 (TPM Number 20-018), and Design Review Number 20-027, the proposed development of an approximately 205,949 square-foot logistics and distribution facility at the southwest corner of Slover and Oleander Avenues in Fontana, California.
- i. The “Development Approvals” refers to the City of Fontana Planning Commission’s approval on April 20, 2021, of the Project and adoption of an Initial Study/Mitigated Negative Declaration pursuant to the California Environmental Quality Act (CEQA) for the Project.
- j. “Project-Specific Provisions/Measures” refers to the terms to which the Parties have agreed in Exhibit B, which is attached hereto and incorporated into this Final Judgment.

2. **JURISDICTION AND VENUE.** This Court has subject matter jurisdiction over the matters alleged in the Petitions and personal jurisdiction over the Parties, and venue in this Court is proper.

3. **APPLICABILITY.** The Stipulation and this Final Judgment shall apply to and be binding on Sierra Club, the People, the City of Fontana, and Duke.

4. **MATTERS COVERED AND RESERVED CLAIMS.**

- a. “Claims” refers to all claims arising out of the Development Approvals that were brought or could have been brought in the Petitions or Answers to the Petitions.
- b. As to Sierra Club, the Stipulation and this Final Judgment is a final and binding resolution and settlement of all Claims. Sierra Club also agrees not to file any

litigation challenging the Development Approvals, any current or future approvals necessary to construct the Project, including building or other site development permits, or current or future approvals necessary to implement this Final Judgment. Sierra Club further agrees not to file litigation challenging approvals for future modifications or iterations of the Project that would not trigger environmental review pursuant to CEQA.

- c. As to the People, the Stipulation and this Final Judgment is a final and binding resolution and settlement of all Claims. The People also agree not to file any litigation challenging the Development Approvals, any current or future approvals necessary to construct the Project, including building or other site development permits, or current or future approvals necessary to implement this Final Judgment. The People further agree not to file litigation challenging approvals for future modifications or iterations of the Project that would not trigger environmental review pursuant to CEQA.
- d. As to the City, the City covenants not to sue the People or Sierra Club regarding any circumstance, thing or event alleged, related, or pertaining to the Project. The City also agrees to forever release any and all claims it may have against the People or the Sierra Club arising out of any circumstance, thing or event alleged, related, or pertaining to the Project.
- e. As to Duke, Duke covenants not to sue the People or Sierra Club regarding any circumstance, thing or event alleged, related, or pertaining to the Project. Duke also agrees to forever release any and all claims it may have against the People or the Sierra Club arising out of any circumstance, thing or event alleged, related, or pertaining to the Project.
- f. All claims other than those listed above are reserved. The Parties affirm that nothing in this Final Judgment in any way affects the People's or Sierra Club's rights, claims, or defenses in any past, present, or future lawsuit or dispute against the City related to any project other than the Project. Additionally, except as

expressly provided herein, nothing in this Final Judgment is intended nor shall be construed to limit the People from taking appropriate enforcement actions or otherwise exercising their authority under any law.

- g. The Parties specifically waive their rights under California Civil Code section 1542 only as they pertain to claims under the State Planning and Zoning Law and the California Environmental Quality Act. Section 1542 provides as follows: "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party." With this provision, the People do not waive or extinguish any criminal liability.

Sierra Club	People	Duke	City
Initials: <u>Ac</u>	Initials: <u>SD</u>	Initials: <u>JS</u>	Initials: <u>PS</u>

- h. Paragraphs 4.b and 4.c are subject to the condition that the Project is implemented in accordance with all terms of this Final Judgment, including the Project-Specific Provisions/Measures identified in Exhibit B. If the Project is not implemented in accordance with the terms of this Final Judgment, Paragraphs 4.b and 4.c are null and void.
- i. Nothing in this Final Judgment shall limit any party from enforcing the terms of this Final Judgment.

5. INJUNCTIVE TERMS.

City of Fontana:

- a. In consideration of the terms of this Final Judgment, the City has enacted the Ordinance, Exhibit A to this Final Judgment.
- b. The City shall defend all terms of the Ordinance against legal challenge, including appeal of any loss to any court at which appeal by right is available, unless written consent to non-defense is provided by Sierra Club and the People. The City may

settle any legal challenge to the Ordinance without written consent by Sierra Club and the People, subject to Paragraph 5.c.

- c. The City shall enforce compliance with the Ordinance consistent with its general enforcement of other City laws and ordinances.
- d. The City shall abide by all terms and obligations set forth in Exhibit B that expressly apply to the City and shall enforce the Project Mitigation Measures applicable to Duke identified therein.

Duke:

- a. Duke shall comply with the terms of this Final Judgment, including the injunctive obligations set forth in Exhibit B to this Final Judgment.

6. **COMPROMISE OF DISPUTED CLAIMS.** This Final Judgment is a compromise of disputed claims and shall never at any time or for any purpose be considered an admission of any liability or responsibility on the part of any Party; nor shall the furnishing of any consideration for the execution of this Final Judgment constitute or be construed as an admission of any liability whatsoever by any Party.

7. **COMPLIANCE WITH APPLICABLE LAW.** Nothing in this Final Judgment shall excuse the City or Duke from meeting any requirements that may be imposed by applicable law or by changes in the applicable law.

8. **NO LIABILITY OF THE PEOPLE.** The People or any agency of the State of California shall not be liable for any injury or damage to persons or property resulting from acts or omissions by the City or Duke, or other persons acting in concert or participating with the City or Duke, in carrying out activities pursuant to this Final Judgment, nor shall the People be held as a party to or guarantor of any contract entered into by the City or Duke, or other persons acting in concert or participating with the City or Duke, in carrying out the requirements of this Final Judgment.

9. **COSTS AND ATTORNEYS' FEES.** Except to the extent provided herein, in Exhibit B, or in any separate indemnification agreement, each Party shall bear their own costs and

attorneys' fees, and no Party is a "prevailing party" for purposes of claiming either costs or attorneys' fees.

10. **CAPTIONS.** Paragraph titles and captions contained in this Final Judgment are inserted as a matter of convenience and for reference, and are not a substantive part of this Final Judgment.

11. **INTEGRATION.** This Final Judgment constitutes the entire agreement between the Parties with respect to all Claims related to the Development Approvals and may not be amended or supplemented except as provided for herein. No oral representations have been made or relied on, and this Final Judgment supersedes any and all other agreements whether oral or written between the Parties.

12. **JOINT PREPARATION.** This Final Judgment has been jointly drafted. No presumptions or rules of interpretation based upon the identity of the party preparing or drafting the Final Judgment, or any part thereof, shall be applicable or invoked.

13. **AMENDMENTS AND MODIFICATIONS.** This Final Judgment may only be amended or modified on a noticed motion by one of the Parties with subsequent approval by the Court, or upon written consent by all of the Parties and the subsequent approval of the Court. No provision of this Final Judgment, or breach of any provision, can be waived except in writing. Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or of any subsequent breach of the same or other provision.

14. **TIME OF THE ESSENCE.** Time is expressly declared to be of the essence in this Final Judgment, and of every provision in which time is an element, if any.

15. **BENEFIT AND BURDEN.** The Parties agree that this Final Judgment is freely assignable and that this Final Judgment shall be binding upon and inure to the benefit of the Parties and their heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, employees, and representatives.

16. **DUKE AS APPLICANT.** The Parties understand and agree that although Duke was the applicant of the Project, an affiliate or successor-in-interest to Duke may develop and/or build

the actual Project. Duke shall notify and provide a copy of this Final Judgment in full to any affiliate or successor-in-interest, and the obligations set forth in Exhibit B will be carried out by whichever entity actually develops the Project, and, with the exception of item 25 (“Attorney’s Fees”), only if the Project is actually built.

17. **NO ASSIGNMENT.** Each Party represents and warrants that it has not assigned or transferred any claims released herein, and that it is the sole owner of that claim.

18. **NO BROADER APPLICATION.** The Parties agree that Exhibit B does not apply to any other development projects proposed by Duke or approved by the City, or that may be proposed or approved in the future by Duke or the City, respectively. This paragraph does not apply to any modifications or iterations of the Project.

19. **SEVERABILITY.** Even if a court holds one or more parts of this Final Judgment ineffective, invalid, or void, all remaining provisions shall remain valid.

20. **RETENTION OF JURISDICTION.** The Parties agree that this Court has continuing jurisdiction to interpret and enforce the provisions of this Final Judgment and to address any other matters arising out of or regarding this Final Judgment.

21. **VALIDITY OF FINAL JUDGMENT.** All Parties agree that this Final Judgment is valid and enforceable and waive any collateral attack on this Final Judgment or other assertion that this Final Judgment is contrary to law.

22. **ENFORCEMENT OF FINAL JUDGMENT.** No action for breach of this Final Judgment shall be brought or maintained until: (a) the non-breaching Party provides written notice to the breaching Party which explains with particularity the nature of the claimed breach, and (b) within thirty (30) calendar days after receipt of said notice, the breaching Party fails to cure the claimed breach or, in the case of a claimed breach which cannot be reasonably remedied within a thirty (30) day period, the breaching Party fails to commence to cure the claimed breach within such thirty (30) day period, and thereafter diligently complete the activities reasonably necessary to remedy the claimed breach.

23. **NOTICES.** Any notice, request, or communication required to be given to the Parties under this Final Judgment shall be given in writing and shall be personally delivered or

mailed by prepaid registered or certified mail to the addresses below. Notice shall also be delivered by e-mail at or before the time of personal or mail delivery. Notices shall be deemed received on the date of personal delivery or facsimile transmission; on the date shown on a signed return receipt or acknowledgment of delivery; or, if delivery is refused or notice is sent by regular mail, seventy-two (72) hours after deposit. Until a Party gives notice of a change, notices shall be sent to:

FOR SIERRA CLUB:

Sierra Club
Sierra Club San Gorgonio Chapter Chair
P. O. Box 5425
Riverside, CA 92517
chair@sangorgonio.sierraclub.org

WITH A COPY TO:

Abigail Smith, Esq.
Law Office of Abigail Smith
2305 Historic Decatur Road, Suite 100
San Diego, CA 92106
abby@socalceqa.com
Attorney for Sierra Club

FOR DUKE:

Allen Matkins Leck Gamble Mallory & Natsis LLP
Jonathan E. Shardlow
1900 Main Street, 5th Floor
Irvine, CA 92614-7321
jshardlow@allenmatkins.com
Attorney for Duke

AND A COPY TO:

Duke Realty
Attn: Joe Hawkins
8711 River Crossing Boulevard
Indianapolis, IN 46240
Joe.Hawkins@dukerealty.com

FOR THE PEOPLE:

Robert Swanson
Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Robert.Swanson@doj.ca.gov

FOR THE CITY OF FONTANA:

City of Fontana
Attn: Phillip Burum, Deputy City Manager
8353 Sierra Ave

Fontana, CA 92335
pburum@fontana.org

AND A COPY TO:

Best Best & Krieger, LLP
Ruben Duran, City Attorney
2855 E. Guasti Rd.
Suite 400
Ontario, CA 91761
Ruben.Duran@bbklaw.com

24. **CHOICE OF LAW AND CHOICE OF FORUM.** This Final Judgment shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Final Judgment, its performance, and its interpretation shall be the Superior Court of California, County of San Bernardino.

25. **DAMAGES.** The Parties agree that the sole and exclusive remedy for breach of this Final Judgment shall be an action for specific performance or injunction. In no event shall any Party be entitled to monetary damages for breach of this Final Judgment.

26. **EFFECTIVE DATE.** This Final Judgment is effective as of the date on which the Court enters this Final Judgment on the Court's docket.

IT IS ORDERED THAT THE FINAL JUDGMENT BE ENTERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

ITEM 18.1.**ATTACHMENT 10****ORDINANCE NO. 1891**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA AMENDING CHAPTER 9 OF THE FONTANA MUNICIPAL CODE TO REVISE ARTICLE V FOR MODIFICATIONS AND CLARIFICATION TO BUFFERING AND SCREENING REQUIREMENTS, METHODS TO IMPROVE TRAFFIC CIRCULATION, REQUIREMENTS FOR ALTERNATIVE ENERGY, AND IMPROVEMENTS TO CONSTRUCTION REQUIREMENTS AS IT RELATES TO INDUSTRIAL COMMERCE CENTERS THROUGHOUT THE CITY.

WHEREAS, the City of Fontana (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, on or about May 7, 2021, the governing board of the South Coast Air Quality Management District (“SCAQMD”) adopted Rule 2305, the Warehouse Indirect Source Rule (“Rule 2305”); and

WHEREAS, Rule 2305 requires warehouses greater than 100,000 square feet to directly reduce nitrogen oxide and diesel particulate matter emissions, or to otherwise facilitate emission and exposure reductions of these pollutants in nearby communities; and

WHEREAS, SCAQMD has also adopted Rule 402 prohibiting emissions that cause injury and/or annoyance to a substantial number of people, including odors; Rule 403 requiring dust control measures during construction; Rule 1113 requiring the use of low Volatile organic compounds (“VOC”) paints and coatings; Rule 1186 requiring use of SCAQMD certified street sweepers; and Rule 2202 requiring establishment of rideshare programs for facilities employing more than 250 employees; and

WHEREAS, the California Air Resources Board (“CARB”) adopted Rule 2485 restricting diesel engine idling to five minutes or less; and

WHEREAS, California Building Standards Commission adopted Part 11, Title 24 of the California Code of Regulations, known as CALGreen, which generally requires low energy use features, low water use features, all-electric vehicle (“EV”) parking spaces and charging facility accommodation, carpool/vanpool parking spaces, and short-term and long-term bicycle parking facilities; and

WHEREAS, the City of Fontana currently regulates industrial commerce centers in Specific Plans, Chapter 30 of the Zoning and Development Code, and in Chapter 9, and Article V (Industrial Commerce Centers Sustainability Standards) of the Municipal Code. Furthermore, Ordinance No. 1879 that established Article V in Chapter 9 of the Municipal Code was adopted by City Council on February 8, 2022; and

ITEM 18.1
Ordinance No. 1891**ATTACHMENT 10**

WHEREAS, the City initiated Municipal Code Amendment (AMD) No. 21-001R1 amend Chapter 9 (Environmental Protection and Resource Extraction) of the Municipal Code to modify Article V to revise Industrial Commerce Centers Sustainability Standards, which includes modifications and clarification to buffering and screening requirements, methods to improve traffic circulation, requirements for alternative energy, and improvements to construction as it relates to industrial commerce centers throughout the city; and

WHEREAS, December 21, 2021, the City Council held the second reading and adopted Ordinance No. 1879 for Municipal Code Amendment (AMD) No. 21-001 to add Article V to establish sustainability standards for industrial commerce centers throughout the city; and

WHEREAS, On March 22, 2022, the City Council held a duly noticed public hearing on Municipal Code Amendment (AMD) No. 21-001R1, and the supporting documents in evidence, the City Council found that the Municipal Code Amendment is in conformance with General Plan and does not change any of the Land Use Designation of any properties and it is consistent with the General Plan and furthers Action B of Goal 3 in Chapter 12 to promote renewable energy programs for government, Fontana businesses, and Fontana residences; and

WHEREAS, a notice of the public hearing was published in the local *San Bernardino County Sun* newspaper on Saturday, March 12, 2022 and posted at City.

THE CITY COUNCIL OF THE CITY OF FONTANA DOES ORDAIN AS FOLLOWS:

Section 1. The above recitals are true and correct and are fully incorporated herein.

Section 2. Article V of Chapter 9 of the Fontana Municipal Code is hereby amended and renumbered follows:

ARTICLE V. – Industrial Commerce Centers Sustainability Standards

Sec. 9-70. – Applicability.

This Article is applicable to all Warehouse uses throughout the city, as defined in Section 30-12 of Chapter 30, Article 1, Division 4; and as listed as a type of “Warehousing Use” in Table No. 30-530 and includes all warehouse uses in Specific Plans. The following sections shall supersede any existing requirements in the Municipal Code and Specific Plans.

Sec. 9-71. – Buffering and Screening / Adjacent uses.

- (1) For any Warehouse building larger than 50,000 square feet in size, a ten-foot-wide landscaping buffer shall be required, measured from the property line of all adjacent sensitive receptors. For any Warehouse

ITEM 18.1
Ordinance No. 1891**ATTACHMENT 10**

building larger than 400,000 square feet in size, a twenty-foot-wide landscaping buffer shall be required, measured from the property line of all adjacent sensitive receptors. The buffer area(s) shall include, at a minimum, a solid decorative wall(s) of at least ten feet in height, natural ground landscaping, and solid screen buffering trees, as described below, unless there is an existing solid block wall. For any Warehouse building equal to or less than 50,000 square feet in size, a solid decorative wall(s) of at least ten feet in height shall be required when adjacent to any sensitive receptors. Sensitive receptor shall be defined as any residence including private homes, condominiums, apartments, and living quarters, schools, preschools, daycare centers, in-home daycares, health facilities such as hospitals, long term care facilities, retirement and nursing homes, community centers, places of worship, parks (excluding trails), prisons, and dormitories.

- (2) Trees shall be used as part of the solid screen buffering treatment. Trees used for this purpose shall be evergreen, drought tolerant, minimum 36-inch box, and shall be spaced at no greater than 40-feet on center. The property owner and any successors in interest shall maintain these trees for the duration of ownership, ensuring any unhealthy or dead trees are replaced timely as needed.
- (3) All landscaping shall be drought tolerant, and to the extent feasible, species with low biogenic emissions. Palm trees shall not be utilized.
- (4) All landscaping areas shall be properly irrigated for the life of the facility to allow for plants and trees to maintain growth.
- (5) Trees shall be installed in automobile parking areas to provide at least 35% shade cover of parking areas within fifteen years. Trees shall be planted that are capable of meeting this requirement.
- (6) Unless physically impossible, loading docks and truck entries shall be oriented away from abutting sensitive receptors. To the greatest extent feasible, loading docks, truck entries, and truck drive aisles shall be located away from nearby sensitive receptors. In making feasibility decisions, the City must comply with existing laws and regulations and balance public safety and the site development's potential impacts to nearby sensitive receptors. Therefore, loading docks, truck entries, and drive aisles may be located nearby sensitive receptors at the discretion of the Planning Director, but any such site design shall include measures designed to minimize overall impacts to nearby sensitive receptors."
- (7) For any Warehouse building larger than 400,000 square feet in size, the building's loading docks shall be located a minimum of 300 feet away, measured from the property line of the sensitive receptor to the nearest

ITEM 18.1
Ordinance No. 1891**ATTACHMENT 10**

dock door which does not exclusively serve electric trucks using a direct straight-line method.

Sec. 9-72. – Signage and Traffic Patterns.

- (1) Entry gates into the loading dock/truck court area shall be positioned after a minimum of 140 feet of total available stacking depth inside the property line. The stacking distance shall be increased by 70 feet for every 20 loading docks beyond 50 docks. Queuing, or circling of vehicles, on public streets immediately pre- or post-entry to an industrial commerce facility is strictly prohibited unless queuing occurs in a deceleration lane or right turn lane exclusively serving the facility.
- (2) Applicants shall submit to the Engineering Department, and obtain approval of, all turning templates to verify truck turning movements at entrance and exit driveways and street intersection adjacent to industrial buildings prior to entitlement approval. Unless not physically possible, truck entries shall be located on Collector Streets (or streets of a higher commercial classification), and vehicle entries shall be designed to prevent truck access on streets that are not Collector Streets (or streets of a higher commercial classification), including, but not limited to, by limiting the width of vehicle entries.
- (3) Anti-idling signs indicating a 3-minute diesel truck engine idling restriction shall be posted at industrial commerce facilities along entrances to the site and in the dock areas and shall be strictly enforced by the facility operator.
- (4) Prior to issuance of certificate of occupancy facility operators shall establish and submit for approval to the Planning Director a Truck Routing Plan to and from the State Highway System based on the City's latest Truck Route Map. The plan shall describe the operational characteristics of the use of the facility operator, including, but not limited to, hours of operations, types of items to be stored within the building, and proposed truck routing to and from the facility to designated truck routes that avoids passing sensitive receptors, to the greatest extent possible. The plan shall include measures, such as signage and pavement markings, queuing analysis and enforcement, for preventing truck queuing, circling, stopping, and parking on public streets. Facility operator shall be responsible for enforcement of the plan. A revised plan shall be submitted to by the Planning Director prior to a business license being issued by the City for any new tenant of the property. The Planning Director shall have discretion to determine if changes to the plan are necessary including any additional measures to alleviate truck routing and parking issues that may arise during the life of the facility.

ITEM 18.1
Ordinance No. 1891**ATTACHMENT 10**

- (5) Signs and drive aisle pavement markings shall clearly identify the on-site circulation pattern to minimize unnecessary on-site vehicular travel.
- (6) Facility operators shall post signs in prominent locations inside and outside of the building indicating that off-site parking for any employee, truck, or other operation related vehicle is strictly prohibited. City may require facility operator to post signs on surface or residential streets indicating that off-site truck parking is prohibited by City ordinance and/or the Truck Routing Plan.
- (7) Signs shall be installed at all truck exit driveways directing truck drivers to the truck route as indicated in the Truck Routing Plan and State Highway System.
- (8) Signs shall be installed in public view with contact information for a local designated representative who works for the facility operator and who is designated to receive complaints about excessive dust, fumes, or odors, and truck and parking complaints for the site, as well as contact information for the SCAQMD's on-line complaint system and its complaint call-line: 1-800-288-7664. Any complaints made to the facility operator's designee shall be answered within 72 hours of receipt.
- (9) All signs under this Section shall be legible, durable, and weather-proof.
- (10) Prior to issuance of a business license, City shall ensure for any facility with a building or buildings larger than 400,000 total square feet, that the facility shall include a truck operator lounge equipped with clean and accessible amenities such as restrooms, vending machines, television, and air conditioning."

Sec. 9-73. – Alternative Energy.

- (1) On-site motorized operational equipment shall be ZE (zero emission).
- (2) All building roofs shall be solar-ready, which includes designing and constructing buildings in a manner that facilitates and optimizes the installation of a rooftop solar photovoltaic (PV) system at some point after the building has been constructed.
- (3) The office portion of a building's rooftop that is not covered with solar panels or other utilities shall be constructed with light colored roofing material with a solar reflective index ("SRI") of not less than 78. This material shall be the minimum solar reflective rating of the roof material for the life of the building."

ITEM 18.1
Ordinance No. 1891**ATTACHMENT 10**

- (4) On buildings over 400,000 square feet, prior to issuance of a business license, the City shall ensure rooftop solar panels are installed and operated in such a manner that they will supply 100% of the power needed to operate all non-refrigerated portions of the facility including the parking areas.
- (5) At least 10% of all passenger vehicle parking spaces shall be electric vehicle (EV) ready, with all necessary conduit and related appurtenances installed. At least 5% of all passenger vehicle parking spaces shall be equipped with working Level 2 Quick charge EV charging stations installed and operational, prior to building occupancy. Signage shall be installed indicating EV charging stations and specifying that spaces are reserved for clean air/EV vehicles. Unless superior technology is developed that would replace the EV charging units, facility operator and any successors in interest shall be responsible for maintaining the EV charging stations in working order for the life of the facility.
- (6) Unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide chilled, cooled, or freezer warehouse space, a conduit shall be installed during construction of the building shell from the electrical room to 100% of the loading dock doors that have potential to serve the refrigerated space. When tenant improvement building permits are issued for any refrigerated warehouse space, electric plug-in units shall be installed at every dock door servicing the refrigerated space to allow transport refrigeration units (TRUs) to plug in. Truck operators with TRUs shall be required to utilize electric plug-in units when at loading docks.
- (7) Bicycle racks are required per Section 30-714 and in the amount required for warehouse uses by Table 30-714 of the Zoning and Development Code. The racks shall include locks as well as electric plugs to charge electric bikes. The racks shall be located as close as possible to employee entrance(s). Nothing in this section shall preclude the warehouse operator from satisfying this requirement by utilizing bicycle parking amenities considered to be superior such as locating bicycle parking facilities indoors or providing bicycle lockers.

Sec. 9-74. – Operation and Construction.

- (1) Cool surface treatments shall be added to all drive aisles and parking areas or such areas shall be constructed with a solar-reflective cool pavement such as concrete.

ITEM 18.1
Ordinance No. 1891**ATTACHMENT 10**

- (2) To ensure that warehouse electrical rooms are sufficiently sized to accommodate the potential need for additional electrical panels, either a secondary electrical room shall be provided in the building, or the primary electrical room shall be sized 25% larger than is required to satisfy the service requirements of the building or the electrical gear shall be installed with the initial construction with 25% excess demand capacity.
- (3) Use of super-compliant VOC architectural and industrial maintenance coatings (e.g., paints) shall be required.
- (4) The facility operator shall incorporate a recycling program.
- (5) The following environmentally responsible practices shall be required during construction:
 - a. The applicant shall use reasonable best efforts to deploy the highest rated CARB Tier technology that is available at the time of construction. Prior to permit issuance, the construction contractor shall submit an equipment list confirming equipment used is compliant with the highest CARB Tier at the time of construction. Equipment proposed for use that does not meet the highest CARB Tier in effect at the time of construction, shall only be approved for use at the discretion of the Planning Director and shall require proof from the construction contractor that, despite reasonable best efforts to obtain the highest CARB Tier equipment, such equipment was unavailable.
 - b. Use of electric-powered hand tools, forklifts, and pressure washers.
 - c. Designation of an area in any construction site where electric-powered construction vehicles and equipment can charge.
 - d. Identification in site plans of a location for future electric truck charging stations and installation of a conduit to that location.
 - e. Diesel-powered generators shall be prohibited except in case of emergency or to establish temporary power during construction.
- (6) A Property Maintenance Program shall be submitted for review and approval by the Planning Director or his/her designee prior to the issuance of building permits. The program shall provide for the regular maintenance of building structures, landscaping, and paved surfaces in good physically condition, and appearance. The methods and maximum intervals for maintenance of each component shall be specified in the program.

ITEM 18.1
Ordinance No. 1891**ATTACHMENT 10**

- (7) Property owner shall provide facility operator with information on incentive programs such as the Carl Moyer Program and Voucher Incentive Program and shall require all facility operators to enroll in the United States Environmental Protection Agency's SmartWay Program.

Section 3. Based on the foregoing, the City Council determines that the project is categorically exempt from further review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(B)(3) (the common-sense exemption) and, alternatively, pursuant to CEQA Guidelines Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment), and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA, as implementation of this Ordinance is to improve the environment. The Council hereby directs staff to prepare, execute and file with the San Bernardino County Clerk a notice of exemption within five working days after the adoption of this Ordinance.

Section 4. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The people of the City of Fontana hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5. This Ordinance shall take effect thirty (30) days after the date of its adoption.

Section 6. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Fontana. The City Clerk is the custodian of records for this Ordinance and the records are available at 8353 Sierra Avenue, Fontana CA 92335.

APPROVED AND ADOPTED 12th day of April, 2022.

READ AND APPROVED AS TO LEGAL FORM:

DocuSigned by:

Ruben Duran

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City Attorney

I, Germaine McClellan Key, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance

ITEM 18.1
Ordinance No. 1891

ATTACHMENT 10

adopted by the City Council and was introduced at a regular meeting on the 22nd day of March, 2022, and was finally passed and adopted not less than five days thereafter on the 12th day of April, 2022, by the following vote to wit:

AYES: Mayor Warren, Mayor Pro Tem Garcia, Council Members, Cothran, Roberts and Sandoval

NOES: None

ABSENT: None

ABSTAIN: None

DocuSigned by:

Germaine McLellan Key

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City Clerk of the City of Fontana

DocuSigned by:

Reguanetta Warren

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Mayor of the City of Fontana

ATTEST:

DocuSigned by:

Germaine McLellan Key

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City Clerk

ITEM 18.1.**NOTICE OF EXEMPTION****ATTACHMENT 10**

PTO: Clerk of the Board of Supervisors
 County of San Bernardino
 385 N. Arrowhead Avenue, 2nd Floor
 San Bernardino, CA 92415-0130

FROM: City of Fontana
 Planning Department
 8353 Sierra Avenue
 Fontana, CA 92335

1. Project Title: **Municipal Code Amendment (MCA) No. 21-001R1 for an Amendment to Chapter 9 of the Municipal Code to Modify Article V to Revise Sustainability Standards for Industrial Commercial Centers throughout the City.**
2. Project Location - Specific: **Citywide**
3. (a) Project Location - City: **Fontana**
 (b) Project Location - County: **San Bernardino**
4. Description of nature, purpose, and beneficiaries of Project: **The proposed Municipal Code Amendment (MCA) No. 21-001R1 is for the amendment of Chapter 9 of the Municipal Code to modify Article V to revise industrial commerce centers sustainability standards. That includes modifications and clarification to buffering and screening requirements, clarification on building orientation, requirements for alternative energy, and improvements to construction as it relates to industrial commercial centers throughout the city.**
5. Name of Public Agency approving project: **City of Fontana**
6. Name of Person or Agency carrying out project: **City of Fontana**
7. Exempt status: (Check one)
 - (a) _____ Ministerial project.
 - (b) _____ Not a project.
 - (c) _____ Emergency Project.
 - (d) **X** Categorical Exemption. State type and class number Sections 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment) and Section No. 3.22 of the Local 2019 Guidelines for Implementing the CEQA.
 - (e) _____ Declared Emergency.
 - (f) _____ Statutory Exemption. State Code section number: _____
 - (g) **X** Other. Explanation: **15061(B)(3) (the common-sense exemption)**

Reason why project was exempt: The Ordinance includes additional more restrictive standards and clarification of existing standards for industrial commerce centers to improve environmental quality and does not include the construction of any structures. All new projects involving construction of industrial commerce centers will continue to be subject to an Administrative Site Plan/Design Review, where a project-specific analysis based on location and project details will be conducted, subject to CEQA review/documentation. Therefore, all industrial commerce center projects will be subject to CEQA, standard Conditions of Approval, and all other State/Federal/Local requirements.

8. Contact Person: Rina Leung, Senior Planner Telephone: (909) 350-6566

Date Received for Filing:

 DiTanyon Johnson
 Principal Planner

(Clerk Stamp Here)

ATTACHMENT NO. 2

ITEM 18.1.**ATTACHMENT 10**

NOTICE OF PUBLIC HEARING

SI DESEA INFORMACION EN ESPAÑOL REFERENTE A ESTA NOTIFICACION O PROYECTO, FAVOR DE COMUNICARSE AL (909) 350-6728.

In compliance with Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132) and the federal rules and regulations adopted in implementation thereof, the Agenda will be made available in appropriate alternative formats to persons with a disability. Should you need special assistance to participate in this meeting, please contact the City Clerk's Department by calling (909) 350-7602 or email at clerks@fontana.org. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

A PUBLIC HEARING HAS BEEN SCHEDULED BEFORE THE CITY COUNCIL OF THE CITY OF FONTANA FOR THE FOLLOWING:

Municipal Code Amendment (MCA) No. 21-001R1 for an Amendment to Chapter 9 of the Municipal Code to Modify Article V to Revise Sustainability Standards for Industrial Commerce Centers throughout the City

Municipal Code Amendment (MCA) No. 21-001R1 to amend Chapter 9 of the Municipal Code to modify Article V revise sustainability standards that includes modifications and clarification to buffering and screening requirements, methods to improve traffic circulation, requirements for alternative energy, and improvements to construction as it relates to industrial commerce centers throughout the city.

Environmental Determination:

This project qualifies for a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15061(B)(3) (the common-sense exemption) and, alternatively, pursuant to CEQA Guidelines Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment), and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA, as implementation of this Ordinance is to improve the environment.

Location of Property:

Citywide

Date of Hearing:

March 22, 2022

Place of Hearing:

City Hall Council Chambers
8353 Sierra Avenue
Fontana, CA 92335

ITEM 18.1.



ATTACHMENT 10

**Time of
Hearing:**

7:00 pm

Should you have any questions concerning this project, please contact, **Rina Leung**, at (909) 350-6566 or rleung@fontana.org

ANY INTERESTED PARTY MAY PROVIDE INFORMATION BY LETTER OR EMAIL WHICH MAY BE OF ASSISTANCE TO THE CITY COUNCIL. A COPY OF THE ENVIRONMENTAL DOCUMENTATION IS AVAILABLE FOR INSPECTION. PLEASE CONTACT THE PLANNER LISTED ABOVE.

IF YOU CHALLENGE IN COURT ANY ACTION TAKEN CONCERNING A PUBLIC HEARING ITEM, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE TO THE CITY AT, OR PRIOR TO, THE PUBLIC HEARING.

Publish:
¼ Page

**ITEM 18.1.****ATTACHMENT 10**8353 Sierra Avenue
Fontana, CA 92335

City of Fontana
Action Report
City Council Meeting

File #: 21-1256**Agenda #:** B.**Agenda Date:** 3/22/2022**Category:** Public Hearing**FROM:**

Planning Department

SUBJECT:

Municipal Code Amendment (MCA) No. 21-001R1 for an Amendment to Chapter 9 of the Municipal Code to Modify Article V to Revise Sustainability Standards for Industrial Commerce Centers throughout the City

RECOMMENDATION:

Read by title only and waive further reading of and introduce **Ordinance No.____**, an Ordinance of the City Council of the City of Fontana, approving Municipal Code Amendment (MCA) No. 21-001R1 for an amendment to Chapter 9 of the Municipal Code to modify Article V to revise sustainability standards for industrial commerce centers throughout the city, and the reading of the title constitutes the first thereof.

COUNCIL GOALS:

- To promote economic development by pursuing business retention, expansion and attraction.
- To promote economic development by establishing a quick, consistent development process.

DISCUSSION:

The City of Fontana currently regulates industrial commerce centers in Specific Plans, Chapter 30 of the Zoning and Development Code, and in Chapter 9, and Article V (Industrial Commerce Centers Sustainability Standards) of the Municipal Code. Ordinance No. 1879 that established Article V in Chapter 9 of the Municipal Code was adopted by City Council on February 8, 2022.

The proposed Municipal Code Amendment (MCA) No. 21-001R1 is for the amendment of Chapter 9 of the Municipal Code to modify Article V to revise industrial commerce centers sustainability standards. That includes modifications and clarification to buffering and screening requirements, methods to improve traffic circulation, requirements for alternative energy, and improvements to construction as it relates to industrial commerce centers throughout the city.

The following is a brief summary of the revised standards that shall apply to all industrial commerce centers in the City of Fontana (a detailed comprehensive list of all the requirements is located in the Ordinance, Attachment No. 1):

1. Additional requirements for larger buildings over 400,000 square feet:
 - a. A 20-foot wide landscaping buffer adjacent to sensitive receptors;
 - b. A minimum of 300 feet separation of the building's loading dock from a sensitive receptor; and
 - c. A requirement to include a truck operator lounge.

ITEM 18.1.**File #:** 21-1256**Agenda #:** B.**ATTACHMENT 10****Agenda Date:** 3/22/2022**Category:** Public Hearing

2. An additional requirement for parking lot trees to provide at least 35% shade cover of parking areas within fifteen years.
3. Clarification on orientation of loading docks and truck entries.
4. Additional alternative energy improvements to require the office portion that is not covered with solar panels or utilities to include light colored roofing with a solar reflective index of not less than 78.
5. Revision of VOC paints to be super-compliant instead of low.
6. Clarification of documentation requirements in utilizing the available highest rated CARB Tier technology during construction.

ENVIRONMENTAL FINDING:

This project is exempt per the California Environmental Quality Act (CEQA) pursuant to Guidelines Section 15061(B)(3) (the common-sense exemption) and, alternatively, pursuant to CEQA Guidelines Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment), and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA, as implementation of this Ordinance is to reduce potential impacts to air and environmental quality.

FISCAL IMPACT:

None

MOTION:

Approve staff's recommendation

ATTACHMENTS:

1. City Council Ordinance
2. Notice of Exemption
3. Public Hearing Notice

Certificate Of Completion

Envelope Id: 440205DFA28145CBBF15211C45B14006

Status: Completed

Subject: URGENT Please DocuSign: Ordinance 1891

Source Envelope:

Document Pages: 14

Signatures: 4

Envelope Originator:

Certificate Pages: 5

Initials: 0

City Clerk

AutoNav: Enabled

8353 Sierra Avenue

Envelopeld Stamping: Enabled

Fontana, CA 92335

Time Zone: (UTC-08:00) Pacific Time (US & Canada)

clerks@fontana.org

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Record Tracking

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Holder: City Clerk

Location: DocuSign

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clerks@fontana.org

Signer Events

Signature

Timestamp

Ruben Duran

ruben.duran@bbklaw.com

Security Level: Email, Account Authentication
(None)

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Signed using mobile

Electronic Record and Signature Disclosure:

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ID: db602b4-daf0-4fac-94ee-91f20b9558f7

Acquanetta Warren

awarren@fontana.org

Security Level: Email, Account Authentication
(None)

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ID: 502d94e8-da6b-4b13-86e8-e6617b288e64

Germaine McClellan Key

gkey@fontana.org

Security Level: Email, Account Authentication
(None)

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In Person Signer Events

Signature

Timestamp

Editor Delivery Events

Status

Timestamp

Agent Delivery Events

Status

Timestamp

ITEM 18.1

ATTACHMENT 10

Intermediary Delivery Events	Status	TimeStamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Evelyne Ssenkoloto essenkol@fontana.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 10/13/2021 04:17 PM ID: e7145250-7347-428b-af51-3066469cc29f	COPIED	Sent: 4/13/2022 04:59 PM
Kathy Kasinger kkasinger@fontana.org Records Coordinator Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 4/12/2022 07:28 AM ID: 6bf6d243-6517-4841-a35f-dcf0ba649302	COPIED	Sent: 4/13/2022 04:59 PM
Susana Gallardo sgallardo@fontana.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 4/13/2022 04:59 PM
Brittany Medrano bmedrano@fontana.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 4/13/2022 04:59 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	4/13/2022 12:23 PM
Certified Delivered	Security Checked	4/13/2022 04:58 PM
Signing Complete	Security Checked	4/13/2022 04:59 PM
Completed	Security Checked	4/13/2022 04:59 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Fontana (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Fontana:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: ctejeda@fontana.org

To advise City of Fontana of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at ctejeda@fontana.org and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Fontana

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to ctejeda@fontana.org and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Fontana

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to ctejeda@fontana.org and in the body of such request you must state your e-mail, full name, US Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	•Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Fontana as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Fontana during the course of my relationship with you.

EXHIBIT B

PROJECT-SPECIFIC PROVISIONS/MEASURES

(Duke Obligations)

1. Solar Power

- a. **Solar Capability.** Developer shall construct all Project buildings to accommodate a solar array that accommodate the maximum coverage of PV panels in the future.
- b. **Solar Power.** Developer shall install Photo Voltaic (“PV”) system(s) on the roof(s) of the building(s) and/or in Project parking areas with a capacity of at least 100 kWdc electrical power.
- c. The installation of the PV system shall be completed, fully operational, and have its permit to operate from the appropriate utility prior to the issuance of the certificate of occupancy permit. At either Petitioner’s request, Developer shall notify the requesting Petitioner of the completion of installation of the PV system and provide Petitioner with proof of completion by mail. Developer shall be responsible for maintaining the PV system(s) at not less than 80% of the rated power for 20 years.

2. Restrictions/Additions on Southern Boundary.

- a. The drive aisle on the Project’s southern boundary shall be restricted to emergency vehicles only.
- b. Project shall be constructed to include appropriate gate barrier to prohibit non-emergency vehicles from using southern drive aisle.
- c. No shipping containers shall be stored on the Project’s southern boundary within the drive aisle.
- d. No trash compactors or trash or recycling receptacles shall be located on the Project’s southern boundary.
- e. The two truck trailer stalls on the southwest corner of the Project as indicated on current site plans shall be removed and replaced with landscaping.

3. Roof Material. Any building roof areas not covered by solar panels shall be constructed with materials with an initial installation Solar Reflective Index Value of not less than .29. This material shall meet the minimum solar reflective rating of the roof material for the life of the Project.**4. LEED Design.** The building shall be certified to the LEED Silver standard under the most current version of LEED in place at the time of this Final Judgment. A copy of that the LEED certification letter shall be furnished to Petitioners’ counsel within three months of the issuance of the first certificate of occupancy.**5. Concrete Parking Areas.** Developer shall use concrete instead of asphalt in all Project parking lots. Concrete shall have an initial solar reflectance value of at least .29 as determined in accordance with American Society for Testing and Materials (ASTM) Standards E1980 or E1918.**6. Skylights.** Developer shall incorporate sky lights in worker areas interior to the Project buildings, and Developer shall use best efforts to design and construct the Project buildings in a manner to make optimal use of natural daylight in worker areas in interior spaces.**7. Lighting.** No outdoor light poles shall exceed 34-feet on the Project site. No outdoor light poles shall exceed 34-feet on the southern elevation. Only low-emitting sodium or LED light bulbs shall be permitted on outdoor light poles.

8. **Outdoor Public Address System.** The use of an outdoor PA system shall be prohibited between the hours of 7 p.m. and 7 a.m., unless necessary for emergency purposes.
9. **Construction Fleet.** Developer shall encourage construction contractors to apply for South Coast AQMD “SOON” funds. The “SOON” program provides funds to applicable fleets for the purchase of commercially available low-emission heavy-duty engines to achieve near-term reduction of NOx emissions from in-use off-road vehicles.
10. **Construction Hours.** Construction activities shall comply with the City of Fontana Municipal Code, Chapter 18, Art. II, Sec. 18-63 (7).
11. **Construction Recycling.** Developer shall recycle a minimum of 75% of the Project’s “construction waste materials” as that term is defined by CalGreen.
12. **Truck Idling and Signage.**
 - a. Truck idling shall be limited to no more than three minutes (total) at the Project site.
 - b. All truck and trailer parking areas shall provide permanent, large lettered, reflective signs that (i) truck idling is limited to a period of three minutes total while at the Project site; (ii) trucks must turn off headlights once docked; (iii) idling of Auxiliary Power Units (APUs) for more than three minutes total is prohibited while at the Project site; (iv) trucks with transport refrigeration units (TRUs) are required to plug-in. These signs shall be printed in both English and Spanish, be readily visible from truck cabs and posted at prominent locations in all parking areas. Signs shall not be blocked or obscured by trucks parked on site. Signs shall be placed near truck docks and on all interior walls that are visible from truck docks including approximately every 40-feet along the boundary walls in truck parking areas, and signs shall be visible from truck cabs. All signs shall remain posted and be maintained for the life of the Project.
13. **Truck Routes, Circulation, and Parking/Tenant Leases.**
 - a. Leases with tenants shall state that tenants shall not permit any parking by its employees, agents, subtenants, customers, invitees, concessionaires or visitors on the streets surrounding the Project site, including overnight truck parking, in violation of any ordinances or postings by any public authorities having jurisdiction. Leases with tenants shall also state that tenants agree to cooperate with Developer and the City with respect to enforcing truck route and parking restrictions, and shall answer and address complaints from the public regarding violations of these restrictions.
 - b. Developer shall make all reasonable efforts, including but not limited to installation of signage, to ensure that Project trucks shall not idle or park, including any overnight parking, on residential streets.
 - c. At the time of Project construction, Developer shall seek City approval to install, and shall install signage on the Project boundary, if approved by the City, in prominent locations which are visible from truck cabs stating that truck parking including overnight parking, or idling on any residential street is prohibited.
 - d. Developer shall post signs in prominent locations inside and outside of the building indicating that off-site parking for any employee, truck, or other operation-related vehicle is strictly prohibited.
14. **APU Electricity**

- a. Trucks with diesel APUs shall not be permitted to idle its diesel APU for a period of longer than 3 minutes (total) while at the Project site.
- b. Developer shall install, at the time of building construction, appropriate infrastructure, in sufficient quantity, to allow for the charging of electric APUs.

15. Electrified and Non-diesel Equipment

- a. Upon and following occupancy of the Project by any tenant, all on-site forklifts and yard trucks (a.k.a. yard goats or yard hostlers) shall be zero emission. For purposes of this agreement, “zero emission” does not include natural gas or propane powered equipment.
- b. Developer shall encourage use of electric sweepers with high-efficiency particulate air (HEPA) filters during Project operation when commercially available in the southern California market.
- c. Developer shall require that yard maintenance/landscaping crews shall utilize only electric equipment or equipment certified to the highest current California Air Resources Board (CARB) standards in all Project areas now and in the future for the life of the Project. Developer shall contract only with a yard maintenance crew which is capable of meeting this requirement, and yard maintenance contracts shall specify this requirement for the life of the Project.
- d. With the exception of any emergency equipment, there shall be no diesel-powered generators allowed on the site.

16. Cold Storage. Developer agrees that the Project will not be used for cold storage for a period of 20 years. If/when tenant improvement building permits are issued for any refrigerated warehouse space, electric plug-in units shall be installed at every dock door servicing the refrigerated space to allow TRUs to plug in. Truck operators with TRUs shall be required to utilize electric plug-in units when at loading docks.

17. Landscaping.

- a. Trees shall be installed in automobile parking areas to provide 35% shade cover of parking areas within fifteen years. Trees shall be planted that are capable of meeting this requirement.
- b. All landscaping shall be drought tolerant, and to the extent feasible, species with low biogenic emissions. Palm trees shall not be utilized.
- c. All landscaping areas shall be properly irrigated for the life of the facility to allow for plants and trees to maintain growth. All trees shall be allowed to grow to full height without undue pruning.

18. On-Site Circulation. Signs and drive aisle pavement markings shall clearly identify the on-site circulation pattern to minimize unnecessary on-site vehicular travel.

19. Bike Lockers. Bike lockers, carpool/vanpool parking stalls, and electric vehicle parking stalls shall be provided and be placed as close to entrance as possible. Bike lockers shall be provided with locking mechanisms.

20. Construction Practices. The following shall be required during Project construction.

- a. Developer shall deploy the highest rated CARB Tier technology that is available at the time of construction. Prior to permit issuance, the construction contractor shall submit an equipment list confirming equipment used is compliant with the highest CARB Tier at the time of construction. Equipment proposed for use that does not meet the highest CARB Tier in effect at the time of construction, shall only be approved for use at the discretion of the Planning Director and shall

require proof from the construction contractor that, despite reasonable best efforts to obtain the highest CARB Tier equipment, such equipment was unavailable.

- b. Use of electric-powered hand tools, forklifts, and pressure washers.
- c. Designation of an area in any construction site where electric-powered construction vehicles and equipment can charge.
- d. Diesel-powered generators shall be prohibited except in case of emergency or to establish temporary power during construction.
- e. Use of super-compliant (as defined by the South Coast Air Quality Management District) VOC architectural and industrial maintenance coatings (e.g., paints) shall be required.

21. Information on Incentive Programs. Developer shall provide facility operator with information on incentive programs such as the Carl Moyer Program and Voucher Incentive Program.

22. Site Maintenance.

- a. Developer agrees to perform maintenance at the Project site on a monthly or as needed basis, or more frequently as needed, to remove any graffiti from Project walls, on both sides, and to remove trash/litter from the Project site including in landscaped areas, or areas between walls/fences.
- b. Developer shall remove graffiti and trash/litter within 72 hours upon being notified of the issue.
- c. Developer shall provide a phone number with voicemail enabled for neighbors to report graffiti, trash/litter, idling, and off-site parking issues associated with the Project. The phone number shall be posted on a prominent sign near the main entrance(s) to the Project site. The sign shall be visible from the street and the sign's text shall be readable from a distance of 20 feet. The permanent, weather-resistant sign shall remain posted for the life of the Project, and the sign shall be replaced as necessary. Developer shall designate an employee to answer complaints, and all complaints shall be answered in a reasonable time frame.

23. Tenant Lease Agreements. Developer is responsible for all ongoing obligations in this Exhibit unless Developer passes the obligation to a tenant or facility operator by including the corresponding provision in a current and binding tenant lease agreement. If a tenant or facility operator is in violation of a provision in this Exhibit that Developer has passed to a tenant or facility operator via a tenant lease agreement, Developer is responsible for enforcing the tenant lease agreement.

24. Community Benefit Fund. Developer shall provide \$210,000.00 to benefit the immediate community, to be distributed and spent as follows:

- a. \$50,000 to the Fontana Unified School District, to be used to enhance landscaping along the northern boundary of the Jurupa Hills High School property. The enhanced landscaping shall include mature, evergreen trees that can reach a height of 45 feet, and that shall be staggered, if feasible.
- b. \$140,000 to the City of Fontana for the distribution of air filters to residents of southern Fontana. Specifically:
 - i. The funds shall be used only for the purchase of air filters, and not for program administration;
 - ii. The City shall distribute the air filters free of charge;
 - iii. The air filters shall be rated MERV 13 or higher;

- iv. Air filters shall be made available to residents of southern Fontana, defined as Fontana residents with a household address located south of Interstate Highway 10;
 - v. Each household shall receive a maximum of 10 air filters;
 - vi. Until all funds have been expended, the City shall promote the availability of free air filters on its website, including information stating how eligible residents can receive the benefit;
 - vii. Until all funds have been expended, the City shall report to Sierra Club and the People annually, by January 1 each year, the following: the amount spent on air filters, the number of air filters that have been distributed, the number of households that have received air filters, and the amount of funds remaining. The City shall maintain receipts, invoices, and/or any other proof of expenditures; applications received; and any proof of distribution of the air filters; until one year after the City provides its final annual report.
 - viii. If funds remain after a fifth annual report, households that had previously received air filters shall be eligible for up to 10 additional air filters.
- c. \$20,000 to the City of Fontana as an administrative fee for the distribution of air filters as set forth above.
25. **Attorney's Fees.** Developer shall pay Sierra Club's attorney's fees in the amount of \$80,750 within 20 calendar days of submission by the parties of the Stipulation for Entry of Final Judgment on Consent to the Superior Court. Payment shall be made and sent to the Law Office of Abigail Smith, A Professional Corporation.
26. **Certification of Compliance.** Developer shall submit by mail and email a letter certifying compliance to Sierra Club and the People when all Project Mitigation Measures described herein are complete.

PROOF OF SERVICE VIA U.S. MAIL AND E-MAIL

At the time of service, I was over 18 years of age and not a party to this action.

My business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, California 94244-2550.

On **April 14, 2022**, I served the following document(s):

STIPULATION FOR ENTRY OF FINAL JUDGMENT ON CONSENT;**[PROPOSED] FINAL JUDGMENT ON CONSENT**

By United States mail. I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below, and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Sacramento, CA.

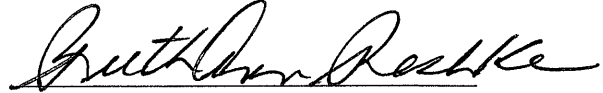
AND

By email or electronic transmission. Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

ALISHA WINTERSWYK alisha.winterswyk@bbklaw.com SARAH E. OWSOWITZ sarah.owsowitz@bbklaw.com TIFFANY M. MICHOU tiffany.michou@bbklaw.com BEST BEST & KRIEGER LLP 3390 University Avenue, 5th Floor P.O. Box 1028 Riverside, California 92502 <i>Attorneys for Respondent City of Fontana</i>	JONATHAN SHARDLOW jshardlow@allenmatkins.com Allen Matkins Leck Gamble Mallory & Natsis LLP 1900 Main Street, 5th Floor Irvine, CA 92614-7321 <i>Attorney for Real Party in Interest Duke Realty Corporation</i>
ABIGAIL SMITH abby@socalceqa.com Law Office of Abigail Smith 2305 Historic Decatur Road, Suite 100 San Diego, CA 92106 <i>Attorney for Petitioner Sierra Club</i>	

1 I declare under penalty of perjury under the laws of the State of California that the above
2 is true and correct.

3 Executed on April 14, 2022, at Sacramento, CA.

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5 RuthAnn Reshke
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EXHIBIT C



ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act

Table of Contents

I.	Background	1
II.	Proactive Planning: General Plans, Local Ordinances, and Good Neighbor Policies	3
III.	Community Engagement	4
IV.	Warehouse Siting and Design Considerations	5
V.	Air Quality and Greenhouse Gas Emissions Analysis and Mitigation	7
VI.	Noise Impacts Analysis and Mitigation	10
VII.	Traffic Impacts Analysis and Mitigation	11
VIII.	Other Significant Environmental Impacts Analysis and Mitigation	12
IX.	Conclusion	13

In carrying out its duty to enforce laws across California, the California Attorney General's Bureau of Environmental Justice (Bureau)¹ regularly reviews proposed warehouse projects for compliance with the California Environmental Quality Act (CEQA) and other laws. When necessary, the Bureau submits comment letters to lead agencies regarding warehouse projects, and in rare cases the Bureau has filed litigation to enforce CEQA.² This document builds upon the Bureau's work on warehouse projects, collecting information gained from the Bureau's review of hundreds of warehouse projects across the state.³ It is meant to help lead agencies pursue CEQA compliance and promote environmentally-just development as they confront warehouse project proposals.⁴ While CEQA analysis is necessarily project-specific, this document provides information on feasible best practices and mitigation measures, nearly all of which have been adapted from actual warehouse projects in California.

I. Background

In recent years, the proliferation of e-commerce and rising consumer expectations of rapid shipping have contributed to a boom in warehouse development.⁵ California, with its ports, population centers, and transportation network, has found itself at the center of this trend. In 2020, the Ports of Los Angeles, Long Beach, and Oakland collectively accounted for over 34% of all United States international container trade.⁶ The Ports of Los Angeles and Long Beach alone generate about 35,000 container truck trips every day.⁷ Accordingly, the South Coast Air Basin now contains approximately 3,000 warehouses of over 100,000 square feet each, with a total warehouse capacity of approximately 700 million square feet, an increase of 20 percent over the last five years.⁸ This trend has only accelerated, with e-commerce growing to

¹ <https://oag.ca.gov/environment/justice>.

² <https://oag.ca.gov/environment/ceqa>; *People of the State of California v. City of Fontana* (Super. Ct. San Bernardino County, No. CIVSB2121829); *South Central Neighbors United et al. v. City of Fresno et al.* (Super. Ct. Fresno County, No. 18CECG00690).

³ This September 2022 version revises and replaces the prior March 2021 version of this document.

⁴ Anyone reviewing this document to determine CEQA compliance responsibilities should consult their own attorney for legal advice.

⁵ As used in this document, "warehouse" or "logistics facility" is defined as a facility consisting of one or more buildings that stores cargo, goods, or products on a short- or long-term basis for later distribution to businesses and/or retail customers.

⁶ Data from the Bureau of Transportation Statistics, Container TEUs (Twenty-foot Equivalent Units) (2020), <https://data.bts.gov/stories/s/Container-TEU/x3fb-aeda/> (Ports of Los Angeles, Long Beach, and Oakland combined for 14.157 million TEUs, 34% of 41.24 million TEUs total nationwide) (last accessed September 18, 2022).

⁷ U.S. Dept. of Transportation, Federal Highway Administration, *FHWA Operations Support – Port Peak Pricing Program Evaluation* (2020), available at <https://ops.fhwa.dot.gov/publications/fhwahop09014/sect2.htm> (last accessed September 18, 2022).

⁸ South Coast Air Qual. Mgmt. Dist., *Final Socioeconomic Assessment for Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program and Proposed Rule 316 – Fees for Rule 2305*, at 7-8, 41 (May 2021).

13% of all retail sales and 2021 being a second consecutive record year for new warehouse space leased.⁹ The latest data and forecasts predict that the next wave of warehouse development will be in the Central Valley.¹⁰

When done properly, these activities can contribute to the economy and consumer welfare. However, imprudent warehouse development can harm local communities and the environment. Among other pollutants, diesel trucks visiting warehouses emit nitrogen oxide (NO_x)—a primary precursor to smog formation and a significant factor in the development of respiratory problems like asthma, bronchitis, and lung irritation—and diesel particulate matter (a subset of fine particular matter that is smaller than 2.5 micrometers)—a contributor to cancer, heart disease, respiratory illnesses, and premature death.¹¹ Trucks and on-site loading activities can also be loud, bringing disruptive noise levels during 24/7 operation that can cause hearing damage after prolonged exposure.¹² The hundreds, and sometimes thousands, of daily truck and passenger car trips that warehouses generate contribute to traffic jams, deterioration of road surfaces, and traffic accidents.

These environmental impacts also tend to be concentrated in neighborhoods already suffering from disproportionate health impacts and systemic vulnerability. For example, a comprehensive study by the South Coast Air Quality Management District found that communities located near large warehouses scored far higher on California’s environmental justice screening tool, which measures overall pollution and demographic vulnerability.¹³ That

⁹ U.S. Census Bureau News, Quarterly Retail E-Commerce Sales 4th Quarter 2021 (February 22, 2022), https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf (last accessed September 18, 2022); CBRE Research, *2022 North America Industrial Big Box Report: Review and Outlook*, at 2-3 (March 2022), available at <https://www.cbre.com/insights/reports/2022-north-america-industrial-big-box#download-report> (last accessed September 18, 2022).

¹⁰ CBRE Research, *supra* note 9, at 4, 36; New York Times, *Warehouses Are Headed to the Central Valley, Too* (Jul. 22, 2020), available at <https://www.nytimes.com/2020/07/22/us/coronavirus-ca-warehouse-workers.html>.

¹¹ California Air Resources Board, Nitrogen Dioxide & Health, <https://ww2.arb.ca.gov/resources/nitrogen-dioxide-and-health> (last accessed September 18, 2022) (NO_x); California Air Resources Board, Summary: Diesel Particulate Matter Health Impacts, <https://ww2.arb.ca.gov/resources/summary-diesel-particulate-matter-health-impacts> (last accessed September 18, 2022); Office of Environmental Health Hazard Assessment and American Lung Association of California, Health Effects of Diesel Exhaust, <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf> (last accessed September 18, 2022) (DPM).

¹² Noise Sources and Their Effects, <https://www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm> (last accessed September 18, 2022) (a diesel truck moving 40 miles per hour, 50 feet away, produces 84 decibels of sound).

¹³ South Coast Air Quality Management District, “Final Socioeconomic Assessment for Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program and Proposed Rule 316 – Fees for Rule 2305” (May 2021), at 4-5.

study concluded that, compared to the South Coast Air Basin averages, communities in the South Coast Air Basin near large warehouses had a substantially higher proportion of people of color; were exposed to more diesel particulate matter; had higher rates of asthma, cardiovascular disease, and low birth weights; and had higher poverty and unemployment rates.¹⁴ Each area has its own unique history, but many of these impacts and vulnerabilities reflect historic redlining practices in these communities, which devalued land and concentrated poverty, racial outgroups, and pollution into designated areas.¹⁵

II. Proactive Planning: General Plans, Local Ordinances, and Good Neighbor Policies

To systematically guide warehouse development, we encourage local governing bodies to proactively plan for logistics projects in their jurisdictions. Proactive planning allows jurisdictions to prevent land use conflicts before they materialize and direct sustainable development. Benefits also include providing a predictable business environment, protecting residents from environmental harm, and setting consistent expectations jurisdiction-wide.

Proactive planning can take many forms. Land use designation and zoning decisions should channel development into appropriate areas. For example, establishing industrial districts near major highway and rail corridors but away from sensitive receptors¹⁶ can help attract investment while avoiding conflicts between warehouse facilities and residential communities. Transition zones with lighter industrial and commercial land uses may also help minimize conflicts between residential and industrial uses.

In addition, general plan policies, local ordinances, and good neighbor policies should set minimum standards for logistics projects. General plan policies can be incorporated into existing economic development, land use, circulation, or other related general plan elements. Many jurisdictions alternatively choose to consolidate policies in a separate environmental justice element. Adopting general plan policies to guide warehouse development may also help

¹⁴ *Id.* at 5-7.

¹⁵ Beginning in the 1930s, federal housing policy directed investment away from Black, immigrant, and working-class communities by color-coding neighborhoods according to the purported “riskiness” of loaning to their residents. In California cities where such “redlining” maps were drawn, nearly all of the communities where warehouses are now concentrated were formerly coded “red,” signifying the least desirable areas where investment was to be avoided. See University of Richmond Digital Scholarship Lab, Mapping Inequality, <https://dsl.richmond.edu/panorama/redlining/#loc=12/33.748/-118.272&city=los-angeles-ca> (Los Angeles), <https://dsl.richmond.edu/panorama/redlining/#loc=13/32.685/-117.132&city=san-diego-ca> (San Diego), <https://dsl.richmond.edu/panorama/redlining/#loc=11/37.81/-122.38&city=oakland-ca> (Oakland), <https://dsl.richmond.edu/panorama/redlining/#loc=13/37.956/-121.326&city=stockton-ca> (Stockton), <https://dsl.richmond.edu/panorama/redlining/#loc=12/36.751/-119.86&city=fresno-ca> (Fresno) (all last accessed September 18, 2022).

¹⁶ In this document, “sensitive receptors” refers to residences, schools, public recreation facilities, health care facilities, places of worship, daycare facilities, community centers, or incarceration facilities.

jurisdictions comply with their obligations under SB 1000, which requires local government general plans to identify objectives and policies to reduce health risks in disadvantaged communities, promote civil engagement in the public decision making process, and prioritize improvements and programs that address the needs of disadvantaged communities.¹⁷

Local ordinances and good neighbor policies that set development standards for all warehouses in the jurisdiction are a critical and increasingly common tool that serve several goals. When well-designed, these ordinances direct investment to local improvements, provide predictability for developers, conserve government resources by streamlining project review processes, and reduce the environmental impacts of industrial development. While many jurisdictions have adopted warehouse-specific development standards, an ordinance in the City of Fontana provides an example to review and build upon.¹⁸ Good neighbor policies in Riverside County and by the Western Riverside Council of Government include additional measures worth consideration.¹⁹

The Bureau encourages jurisdictions to adopt their own local ordinances that combine the strongest policies from those models with measures discussed in the remainder of this document.

III. Community Engagement

Early and consistent community engagement is central to establishing good relationships between communities, lead agencies, and warehouse developers and tenants. Robust community engagement can give lead agencies access to community residents' on-the-ground knowledge and information about their concerns, build community support for projects, and develop creative solutions to ensure new logistics facilities are mutually beneficial. Examples of best practices for community engagement include:

- Holding a series of community meetings at times and locations convenient to members of the affected community and incorporating suggestions into the project design.
- Posting information in hard copy in public gathering spaces and on a website about the project. The information should include a complete, accurate project description, maps and drawings of the project design, and information about how the public can provide input and be involved in the project approval process. The

¹⁷ For more information about SB 1000, see <https://oag.ca.gov/environment/sb1000>.

¹⁸ <https://oag.ca.gov/system/files/attachments/press-docs/Final%20Signed%20Fontana%20Ordinance.pdf> (last accessed September 18, 2022).

¹⁹ For example, the Riverside County policy requires community benefits agreements and supplemental funding contributions toward additional pollution offsets, and the Western Riverside Council of Governments policy sets a minimum buffer zone of 300 meters between warehouses and sensitive receptors. <https://www.rivcocob.org/wp-content/uploads/2020/01/Good-Neighbor-Policy-F-3-Final-Adopted.pdf> (last accessed September 18, 2022) (Riverside County); <http://www.wrcog.cog.ca.us/DocumentCenter/View/318/Good-Neighbor-Guidelines-for-Siting-Warehouse-Distribution-Facilities-PDF?bidId=> (last accessed September 18, 2022) (Western Riverside Council of Governments).

information should be in a format that is easy to navigate and understand for members of the affected community.

- Providing notice by mail to residents and schools within a certain radius of the project and along transportation corridors to be used by vehicles visiting the project, and by posting a prominent sign on the project site. The notice should include a brief project description and directions for accessing complete information about the project and for providing input on the project.
- Providing translation or interpretation in residents' native language, where appropriate.
- For public meetings broadcast online or otherwise held remotely, providing for access and public comment by telephone and supplying instructions for access and public comment with ample lead time prior to the meeting.
- Partnering with local community-based organizations to solicit feedback, leverage local networks, co-host meetings, and build support.
- Considering adoption of a community benefits agreement, negotiated with input from affected residents and businesses, by which the developer provides benefits to the affected community.
- Creating a community advisory board made up of local residents to review and provide feedback on project proposals in early planning stages.
- Identifying a person to act as a community liaison concerning on-site construction activity and operations, and providing contact information for the community liaison to the surrounding community.
- Requiring signage in public view at warehouse facilities with contact information for a local designated representative for the facility operator who can receive community complaints, and requiring any complaints to be answered by the facility operator within 48 hours of receipt.

IV. Warehouse Siting and Design Considerations

The most important consideration when planning a logistics facility is its location. Warehouses located in residential neighborhoods or near sensitive receptors expose community residents and those using or visiting sensitive receptor sites to the air pollution, noise, traffic, and other environmental impacts they generate. Therefore, placing facilities away from sensitive receptors significantly reduces their environmental and quality of life harms on local communities. The suggested best practices for siting and design of warehouse facilities does not relieve lead agencies' responsibility under CEQA to conduct a project-specific analysis of the project's impacts and evaluation of feasible mitigation measures and alternatives; lead agencies' incorporation of the best practices must be part of the impact, mitigation and alternatives analyses to meet the requirements of CEQA. Examples of best practices when siting and designing warehouse facilities include:

- Per California Air Resources Board (CARB) guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors.²⁰
- Providing adequate amounts of on-site parking to prevent trucks and other vehicles from parking or idling on public streets and to reduce demand for off-site truck yards.
- Establishing setbacks from the property line of the nearest sensitive receptor to warehouse dock doors, loading areas, and truck drive aisles, and locating warehouse dock doors, loading areas, and truck drive aisles on the opposite side of the building from the nearest sensitive receptors—e.g., placing dock doors on the north side of the facility if sensitive receptors are near the south side of the facility.
- Placing facility entry and exit points from the public street away from sensitive receptors—e.g., placing these points on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.
- Ensuring heavy duty trucks abide by the on-site circulation plans by constructing physical barriers to block those trucks from using areas of the project site restricted to light duty vehicles or emergency vehicles only.
- Preventing truck queuing spillover onto surrounding streets by positioning entry gates after a minimum of 140 feet of space for queuing, and increasing the distance by 70 feet for every 20 loading docks beyond 50 docks.
- Locating facility entry and exit points on streets of higher commercial classification that are designed to accommodate heavy duty truck usage.
- Screening the warehouse site perimeter and onsite areas with significant truck traffic (e.g., dock doors and drive aisles) by creating physical, structural, and/or vegetative buffers that prevent or substantially reduce pollutant and noise dispersion from the facility to sensitive receptors.
- Planting exclusively 36-inch box evergreen trees to ensure faster maturity and four-season foliage.
- Requiring all property owners and successors in interest to maintain onsite trees and vegetation for the duration of ownership, including replacing any dead or unhealthy trees and vegetation.
- Posting signs clearly showing the designated entry and exit points from the public street for trucks and service vehicles.
- Including signs and drive aisle pavement markings that clearly identify onsite circulation patterns to minimize unnecessary onsite vehicle travel.
- Posting signs indicating that all parking and maintenance of trucks must be conducted within designated on-site areas and not within the surrounding community or public streets.

²⁰ CARB, Air Quality and Land Use Handbook: A Community Health Perspective (April 2005), at ES-1. CARB staff has released draft updates to this siting and design guidance which suggests a greater distance may be warranted in some scenarios. CARB, Concept Paper for the Freight Handbook (December 2019), available at https://ww2.arb.ca.gov/sites/default/files/2020-03/2019.12.12%20-%20Concept%20Paper%20for%20the%20Freight%20Handbook_1.pdf (last accessed September 18, 2022).

V. Air Quality and Greenhouse Gas Emissions Analysis and Mitigation

Emissions of air pollutants and greenhouse gases are often among the most substantial environmental impacts from new warehouse facilities. CEQA compliance demands a proper accounting of the full air quality and greenhouse gas impacts of logistics facilities and adoption of all feasible mitigation of significant impacts. Although efforts by CARB and other authorities to regulate the heavy-duty truck and off-road diesel fleets have made excellent progress in reducing the air quality impacts of logistics facilities, the opportunity remains for local jurisdictions to further mitigate these impacts at the project level. Lead agencies and developers should also consider designing projects with their long-term viability in mind. Constructing the necessary infrastructure to prepare for the zero-emission future of goods movement not only reduces a facility's emissions and local impact now, but it can also save money as demand for zero-emission infrastructure grows. In planning new logistics facilities, the Bureau strongly encourages developers to consider the local, statewide, and global impacts of their projects' emissions.

Examples of best practices when studying air quality and greenhouse gas impacts include:

- Fully analyzing all reasonably foreseeable project impacts, including cumulative impacts. In general, new warehouse developments are not ministerial under CEQA because they involve public officials' personal judgment as to the wisdom or manner of carrying out the project, even when warehouses are permitted by a site's applicable zoning and/or general plan land use designation.²¹
- When analyzing cumulative impacts, thoroughly considering the project's incremental impact in combination with past, present, and reasonably foreseeable future projects, even if the project's individual impacts alone do not exceed the applicable significance thresholds.
- Preparing a quantitative air quality study in accordance with local air district guidelines.
- Preparing a quantitative health risk assessment in accordance with California Office of Environmental Health Hazard Assessment and local air district guidelines.
- Refraining from labeling compliance with CARB or air district regulations as a mitigation measure—compliance with applicable regulations is required regardless of CEQA.
- Disclosing air pollution from the entire expected length of truck trips. CEQA requires full public disclosure of a project's anticipated truck trips, which entails calculating truck trip length based on likely truck trip destinations, rather than the distance from the facility to the edge of the air basin, local jurisdiction, or other truncated endpoint. All air pollution associated with the project must be considered, regardless of where those impacts occur.

²¹ CEQA Guidelines § 15369.

- Accounting for all reasonably foreseeable greenhouse gas emissions from the project, without discounting projected emissions based on participation in California's Cap-and-Trade Program.

Examples of measures to mitigate air quality and greenhouse gas impacts from construction are below. To ensure mitigation measures are enforceable and effective, they should be imposed as permit conditions on the project where applicable.

- Requiring off-road construction equipment to be hybrid electric-diesel or zero-emission, where available, and all diesel-fueled off-road construction equipment to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Prohibiting off-road diesel-powered equipment from being in the "on" position for more than 10 hours per day.
- Using electric-powered hand tools, forklifts, and pressure washers, and providing electrical hook ups to the power grid rather than use of diesel-fueled generators to supply their power.
- Designating an area in the construction site where electric-powered construction vehicles and equipment can charge.
- Limiting the amount of daily grading disturbance area.
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than three minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees.

Examples of measures to mitigate air quality and greenhouse gas impacts from operation include:

- Requiring all heavy-duty vehicles engaged in drayage²² to or from the project site to be zero-emission beginning in 2030.

²² "Drayage" refers generally to transport of cargo to or from a seaport or intermodal railyard.

- Requiring all on-site motorized operational equipment, such as forklifts and yard trucks, to be zero-emission with the necessary charging or fueling stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than three minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the local air district, and the building manager.
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity that is equal to or greater than the building's projected energy needs, including all electrical chargers.
- Designing all project building roofs to accommodate the maximum future coverage of solar panels and installing the maximum solar power generation capacity feasible.
- Constructing zero-emission truck charging/fueling stations proportional to the number of dock doors at the project.
- Running conduit to designated locations for future electric truck charging stations.
- Unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide refrigerated warehouse space, constructing electric plugs for electric transport refrigeration units at every dock door and requiring truck operators with transport refrigeration units to use the electric plugs when at loading docks.
- Oversizing electrical rooms by 25 percent or providing a secondary electrical room to accommodate future expansion of electric vehicle charging capability.
- Constructing and maintaining electric light-duty vehicle charging stations proportional to the number of employee parking spaces (for example, requiring at least 10% of all employee parking spaces to be equipped with electric vehicle charging stations of at least Level 2 charging performance)
- Running conduit to an additional proportion of employee parking spaces for a future increase in the number of electric light-duty charging stations.
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, air filtration systems at sensitive receptors within a certain radius of facility for the life of the project.
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the facility for the life of the project, and making the resulting data publicly available in real time. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality or avoid exposure to unhealthy air.
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel.
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of

trucks.

- Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking.
- Designing to LEED green building certification standards.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.
- Posting signs at every truck exit driveway providing directional information to the truck route.
- Improving and maintaining vegetation and tree canopy for residents in and around the project area.
- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants who own, operate, or hire trucking carriers with more than 100 trucks to use carriers that are SmartWay carriers.
- Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

VI. Noise Impacts Analysis and Mitigation

The noise associated with logistics facilities can be among their most intrusive impacts to nearby sensitive receptors. Various sources, such as unloading activity, diesel truck movement, and rooftop air conditioning units, can contribute substantial noise pollution. These impacts are exacerbated by logistics facilities' typical 24-hour, seven-days-per-week operation. Construction noise is often even greater than operational noise, so if a project site is near sensitive receptors, developers and lead agencies should adopt measures to reduce the noise generated by both construction and operation activities.

Examples of best practices when studying noise impacts include:

- Preparing a noise impact analysis that considers all reasonably foreseeable project noise impacts, including to nearby sensitive receptors. All reasonably foreseeable project noise impacts encompasses noise from both construction and operations, including stationary, on-site, and off-site noise sources.
- Adopting a lower significance threshold for incremental noise increases when baseline noise already exceeds total noise significance thresholds, to account for the cumulative impact of additional noise and the fact that, as noise moves up the decibel scale, each decibel increase is a progressively greater increase in sound

pressure than the last. For example, 70 dBA is ten times more sound pressure than 60 dBA.

- Disclosing and considering the significance of short-term noise levels associated with all aspects of project operation (i.e. both on-site noise generation and off-site truck noise). Considering only average noise levels may mask noise impacts sensitive receptors would consider significant—for example, the repeated but short-lived passing of individual trucks or loading activities at night.

Examples of measures to mitigate noise impacts include:

- Constructing physical, structural, or vegetative noise barriers on and/or off the project site.
- Planning and enforcing truck routes that avoid passing sensitive receptors.
- Locating or parking all stationary construction equipment as far from sensitive receptors as possible, and directing emitted noise away from sensitive receptors.
- Verifying that construction equipment has properly operating and maintained mufflers.
- Requiring all combustion-powered construction equipment to be surrounded by a noise protection barrier
- Limiting operation hours to daytime hours on weekdays.
- Paving roads where truck traffic is anticipated with low noise asphalt.
- Orienting any public address systems onsite away from sensitive receptors and setting system volume at a level not readily audible past the property line.

VII. Traffic Impacts Analysis and Mitigation

Warehouse facilities inevitably bring truck and passenger car traffic. Truck traffic can present substantial safety issues. Collisions with heavy-duty trucks are especially dangerous for passenger cars, motorcycles, bicycles, and pedestrians. These concerns can be even greater if truck traffic passes through residential areas, school zones, or other places where pedestrians are common and extra caution is warranted.

Examples of measures to mitigate traffic impacts include:

- Designing, clearly marking, and enforcing truck routes that keep trucks out of residential neighborhoods and away from other sensitive receptors.
- Installing signs in residential areas noting that truck and employee parking is prohibited.
- Requiring preparation and approval of a truck routing plan describing the facility's hours of operation, types of items to be stored, and truck routing to and from the facility to designated truck routes that avoids passing sensitive receptors. The plan should include measures for preventing truck queuing, circling, stopping, and parking on public streets, such as signage, pavement markings, and queuing analysis and enforcement. The plan should hold facility operators responsible for violations of the truck routing plan, and a revised plan should be required from any new tenant that occupies the property before a business license

is issued. The approving agency should retain discretion to determine if changes to the plan are necessary, including any additional measures to alleviate truck routing and parking issues that may arise during the life of the facility.

- Constructing new or improved transit stops, sidewalks, bicycle lanes, and crosswalks, with special attention to ensuring safe routes to schools.
- Consulting with the local public transit agency and securing increased public transit service to the project area.
- Designating areas for employee pickup and drop-off.
- Implementing traffic control and safety measures, such as speed bumps, speed limits, or new traffic signs or signals.
- Placing facility entry and exit points on major streets that do not have adjacent sensitive receptors.
- Restricting the turns trucks can make entering and exiting the facility to route trucks away from sensitive receptors.
- Constructing roadway improvements to improve traffic flow.
- Preparing a construction traffic control plan prior to grading, detailing the locations of equipment staging areas, material stockpiles, proposed road closures, and hours of construction operations, and designing the plan to minimize impacts to roads frequented by passenger cars, pedestrians, bicyclists, and other non-truck traffic.

VIII. Other Significant Environmental Impacts Analysis and Mitigation

Warehouse projects may result in significant environmental impacts to other resources, such as to aesthetics, cultural resources, energy, geology, or hazardous materials. All significant adverse environmental impacts must be evaluated, disclosed and mitigated to the extent feasible under CEQA. Examples of best practices and mitigation measures to reduce environmental impacts that do not fall under any of the above categories include:

- Appointing a compliance officer who is responsible for implementing all mitigation measures, and providing contact information for the compliance officer to the lead agency, to be updated annually.
- Creating a fund to mitigate impacts on affected residents, schools, places of worship, and other community institutions by retrofitting their property. For example, retaining a contractor to retrofit/install HVAC and/or air filtration systems, doors, dual-paned windows, and sound- and vibration-deadening insulation and curtains.
- Sweeping surrounding streets on a daily basis during construction to remove any construction-related debris and dirt.
- Directing all lighting at the facility into the interior of the site.
- Using full cut-off light shields and/or anti-glare lighting.
- Requiring submission of a property maintenance program for agency review and approval providing for the regular maintenance of all building structures, landscaping, and paved surfaces.
- Using cool pavement to reduce heat island effects.

- Planting trees in parking areas to provide at least 35% shade cover of parking areas within fifteen years to reduce heat island impacts.
- Using light colored roofing materials with a solar reflective index of 78 or greater.
- Including on-site amenities, such as a truck operator lounge with restrooms, vending machines, and air conditioning, to reduce the need for truck operators to idle or travel offsite.
- Designing skylights to provide natural light to interior worker areas.
- Installing climate control and air filtration in the warehouse facility to promote worker well-being.

IX. Conclusion

California's world-class economy, ports, and transportation network position it at the center of the e-commerce and logistics industry boom. At the same time, California is a global leader in environmental protection and environmentally just development. The guidance in this document furthers these dual strengths, ensuring that all can access the benefits of economic development. The Bureau will continue to monitor proposed projects for compliance with CEQA and other laws. Lead agencies, developers, community advocates, and other interested parties should feel free to reach out to us as they consider how to guide warehouse development in their area.

Please do not hesitate to contact the Environmental Justice Bureau at ej@doj.ca.gov if you have any questions.

EXHIBIT D



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October 3, 2022

VIA E-MAIL

Mr. Cyrus Abhar
City Manager
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
Email: cabhar@cityofranchocordova.org

Re: Dermody Industrial Properties – Appropriate Scope of CEQA Review for the Mather Blvd. Design Review Project

Dear Mr. Abhar:

As you know, this firm represents Dermody Properties in connection with its design review application for an approximately 155,077 square foot logistics center on a site located within the Zinfandel Special Planning Area ("ZSPA"), northwest of the intersection at North Mather Boulevard and Bear Hollow Drive ("Design Review Project"). As you are also well aware, the Design Review Project now before the City is fully consistent with the type, density and intensity of land use and development contemplated and authorized in the ZSPA planning document, and a Final Environmental Impact Report has been certified by the lead agency pursuant to CEQA that fully analyzed potential environmental impacts resulting from development within the ZSPA ("ZSPA FEIR").

The Design Review Project requires the City's approval of a "Major Design Review" application; therefore, given the limited scope and type of discretionary authority that the City is authorized to exercise at this stage of development under its local design review ordinance, we concur with the City's determination that the Design Review Project qualifies for a streamlining exemption under CEQA Guidelines Section 15183.

We write to further augment the administrative record with respect to the appropriate scope of City's environmental review of the Design Review Project under the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) and the CEQA Guidelines (CCR, Tit. 14, Div. 6, Chap. 3) (collectively, "CEQA"), which is strictly limited under the law to those design-related environmental effects that the City is authorized by its ordinance to address during its Major Design Review process. Here, the City's Major Design Review process expressly limits the City's

Cyrus Abhar, City Manager
 October 3, 2022
 Page 2

discretion to deny or condition approval of the Design Review Project based solely on the effects of its *design* components, not other effects of the previously authorized uses and density and intensity of those uses at the site. In other words, the City is not at liberty to use its limited design review authority to revisit environmental issues previously analyzed and laid to rest by the prior certified ZSPA EIR.

Accordingly, it is entirely appropriate – and, indeed, to the extent that the City conducts any further CEQA review, legally required – for the City to apply CEQA Guidelines section 15183, which provides for a partial exemption and streamlined CEQA review of the Design Review Project. As explained in more detail below, and just as it has done for other similar recent design review projects, the City's determination to rely upon Section 15183 for the Design Review Project is proper under the law, and furthermore any analysis conducted thereunder must be limited to any potential design-related effects peculiar to the Design Review Project that were not studied or analyzed in the ZSPA EIR.

I. **For CEQA Purposes, The City May Only Analyze Those Potential Impacts Which It Has Authority And Discretion Under Its Design Review Ordinance To Meaningfully Address.**

CEQA review is only triggered for “discretionary” projects, which are those that require a local agency to exercise meaningful judgment or deliberation in deciding whether or how to approve a proposed activity. The “touchstone” in determining whether a project is discretionary for CEQA purposes is “whether the approval process involved allows the government to shape the project in any way” which could meaningfully respond to environmental concerns recognized by CEQA. (CEQA Guidelines, § 15357; *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80; *Friends of Juana Briones House v. City of Palo Alto* (2010) 190 Cal.App.4th 286.) “CEQA does not apply to an agency decision simply because the agency may exercise some discretion in approving the project or undertaking. Instead [,] to trigger CEQA compliance the discretion must be of a certain kind; it must provide the agency with the ability and authority to mitigate... environmental damage to some degree.” (*Sierra Club v. County of Sonoma* (2017) 11 Cal.App.5th 11, 23, quoting *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 934.) As our state Supreme Court recently stated, a project only requires CEQA review if the:

relevant approval process...allows the government to shape the project in any way by requiring modifications which could respond to any of the concerns which might be identified by environmental review.

(*Protecting Our Water and Environmental Resources v. County of Stanislaus* (2020) 10 Cal.5th 479, 493 (“POWER”); see also *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 270 [CEQA review would be wasteful and meaningless exercise if decision maker lacks relevant discretion under applicable

Cyrus Abhar, City Manager
 October 3, 2022
 Page 3

law to deny or shape project through conditions to address environmental concerns revealed by the review].)

Where CEQA-triggering discretion exists, the scope of environmental review is limited to analyzing those environmental impacts that a local agency may actually address in its approval process. (*McCorkle, supra*, 31 Cal.App.5th at 89-90.) As the court in *McCorkle* noted:

the [CEQA] Guidelines recognize that the application of CEQA to a local ordinance is dependent upon the scope and interpretation of the local ordinance, rather than vice versa.

(*Id.* at 92.)

With regard to design review approvals like the instant one, where a city's design review ordinance prevents it from disapproving or conditioning approval of a project for "non-design related reasons," it lacks discretion to address non-design related effects through CEQA. (*Id.*; see also *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1010-15.) Relatedly, it is fundamental that CEQA does not confer independent power or authority on an agency to impose mitigation requirements or conditions on a project approval. Rather, when acting to mitigate or avoid a project's significant effects on the environment, an agency may only exercise those express or implied powers provided by law other than CEQA, subject to the express or implied constraints or limitations of the other law. (Pub. Res. Code, § 21004; see, e.g., *Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700 [scope of agency's discretion, and hence scope of required CEQA review, is limited by constraints and obligations of other law].)

II. The City's Discretion Here Is Limited To Considering The Project's Design Components.

As is apparent from review of the above-cited authorities, determining the existence and scope of an agency's discretionary authority with respect to approval of a particular project requires careful analysis of the statute or ordinance authorizing and providing controls over the agency's action. (*Sierra Club v. Napa County Bd. of Sup'rs* (2012) 205 Cal.App.4th 162; *Sierra Club v. County of Sonoma, supra*, 11 Cal.App.5th 11.) Here, the City's review and approval of a Major Design Review application is governed by Chapter 23.141 of the City's Municipal Code, which limits the City's review of such applications to design-related issues.¹ For projects requiring it, the purpose of the City's design review process is to review "additional site and design considerations beyond conformance with minimum standards of the zoning code." The intent of design review is "to promote orderly and harmonious

¹ As will be discussed more fully in a letter sent by Miller Starr Regalia to the City under separate cover, the City's ability to exercise discretion is also governed and further constrained by the vested rights granted to Dermody under the Development Agreement.

Cyrus Abhar, City Manager
 October 3, 2022
 Page 4

growth within the City.” (RCMC, § 23.141.010.) The City Council “may approve or approve with conditions” an application for major design review upon making the following findings:

- A. The proposed project is consistent with the objectives of the General Plan, complies with applicable zoning regulations, Specific Plan provisions, and special planning area provisions, and is consistent with the applicable Rancho Cordova design guidelines.
- B. The proposed architecture, site design, and landscape are suitable for the purposes of the building and the site and will enhance the character of the neighborhood and community.
- C. The architecture, including the character, scale, and quality of the design, relationship with the site and other buildings, building materials, screening of exterior appurtenances, exterior lighting and signing, and similar elements, establishes a clear design concept and is compatible with the character of existing or anticipated buildings on adjoining and nearby properties.
- D. The proposed project will not create conflicts with vehicular, bicycle, or pedestrian transportation modes of circulation.

(RCMC, § 23.141.070.)

The City’s ability to require modifications to project plans, or to condition approval of a Major Design Review application, is expressly limited to addressing a project’s design features:

The council may require modifications to plans in whole or in part and may condition the major design review application ***to ensure specific design features, construction materials, and conformance with all applicable [design review provisions].***

(RCMC, § 23.141.080, *emph. added.*)

Pursuant to the above provisions, the City’s Major Design Review approval provisions constrain the City’s discretion and authority, and preclude its ability to deny or condition the Design Review Project to address environmental effects that are not related to its design. The City therefore lacks discretion to consider or impose conditions addressing the Design Review Project’s potential non-design related impacts, such as, for example, those involving greenhouse gas emissions, transportation, biological resources, and/or air quality impacts. (See, e.g., *San Diego Navy Broadway Complex Coalition v. City of San Diego*, *supra*, 185 Cal.App.4th 924 [city’s approval of construction plans for waterfront development was ministerial where approval required only determination whether plans were

Cyrus Abhar, City Manager
 October 3, 2022
 Page 5

consistent with aesthetic criteria in urban design guidelines established in connection with redevelopment project reviewed and approved under earlier EIR; limited scope of city's discretion in reviewing plans for conformity to guidelines' aesthetic criteria did not give it ability to meaningfully respond to GHG and climate change impacts raised by project opponent]; *McCorkle, supra*, 31 Cal.App.5th at 94 [rejecting project opponent's argument "that because the City had discretion to conduct design review the entire project was discretionary and subject to CEQA"]; *Sierra Club v. County of Sonoma, supra*, 11 Cal.App.5th 11 [vineyard development permit was ministerial where applicable regulations conferred no meaningful discretion to mitigate environmental damage].)

III. To the Extent Limited CEQA Review Is Required Here, The Design Review Project Qualifies For A Guidelines Section 15183 Partial Exemption And Streamlined Review.

As noted above, to the extent that CEQA applies to the Design Review Project, it qualifies for a CEQA Guidelines Section 15183 partial exemption for projects that are consistent with the densities/intensities established by the existing zoning, community plan, or general plan. Because an EIR was prepared and certified by the lead agency in accordance with CEQA, which covered full development of the Project site with the type and intensity of uses authorized when it adopted the ZSPA, the City's additional CEQA review of the Design Review Project here must be narrowly limited to analysis of only the design review-related environmental effects of the Design Review Project (if any).

Moreover, any such CEQA review is further limited under Guidelines Section 15183 as follows:

- (1) to those environmental effects that the city determines are peculiar to the project and were not studied in the EIR for the zoning, community plan, or general plan;
- (2) to those environmental effects of the project that were not analyzed as significant effects in the EIR prepared for the general plan (or zoning action, or community plan);
- (3) to potentially significant off-site impacts and cumulative environmental impacts of the project which were not discussed in the prior EIR prepared for the general plan (or zoning action or community plan); or
- (4) to previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

Here, the Design Review Project involves a land use that the ZSPA permits by right at the proposed density and intensity (also fully consistent with the ZSPA) — and for

Cyrus Abhar, City Manager
October 3, 2022
Page 6

which Dermody has vested rights under the Development Agreement to proceed — and all environmental impacts of such use, density and intensity were fully disclosed, analyzed and mitigated as required under CEQA in the certified ZSPA FEIR. Thus, in addition to the legal limitations on the application and scope of CEQA inherent in the Major Design Review process itself, the application of a Guidelines Section 15183 exemption is also entirely appropriate and is exactly the CEQA compliance pathway that the City has followed for similar recent projects in the ZSPA.²

With regard to any potential design-related environmental effects peculiar to the Design Review Project, we note that the applicant has already prepared a thoughtful noise study to confirm that it would not have any new significant and/or peculiar noise impacts not already analyzed in the ZSPA FEIR. The Project will also be required to – and will – comply with all applicable mitigation measures under the ZSPA MMRP, which further ensures that the Design Review Project will not result in any peculiar or more severe impacts than already discussed in the ZSPA FEIR. Among other things, the MMRP includes measures to mitigate any potentially significant biological impacts, air quality impacts, water quality impacts, and noise impacts.

Finally, we note that following the preparation and certification of an EIR, CEQA places strict limitations on conducting subsequent CEQA review of a project (the conditions for which are not met here), and prescribes no “expiration date” for an EIR (or for any relevant type CEQA document, for that matter). (See Pub. Res. Code, § 21166 and CEQA Guidelines § 15162 [setting forth the limited situations where subsequent or supplemental review may be required after an EIR has been prepared]; see also *Latinos Unidos v. City of Napa* (2013) 221 Cal.App.4th 192 [upholding city’s reliance on decades-old general plan EIR when approving a new housing element and determining no new EIR was required]; *Committee for Re-Evaluation of T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1254 [16-year old EIR held adequate CEQA compliance for light rail line project]; *Snarled Traffic Obstructs Progress v. City and County of San Francisco* (1999) 74 Cal.App.4th 793 [nearly decade-old negative declaration held adequate CEQA compliance for parking structure project].)

In sum, here it is entirely appropriate to apply the Guidelines Section 15183 partial exemption and streamlined CEQA review to the Design Review Project based on

² Within the ZSPA, the Project site has a land use designation of Business and Professional Office where the proposed warehousing, delivery, and distribution type use *is permitted by right*, not requiring approval of a conditional use permit. (ZSPA, § 512-204 (D).) The Design Review Project at issue here has also been carefully designed so as to ensure that the height and size of the proposed building, setbacks, and site improvements are consistent with the development standards set forth in the ZSPA. (See, e.g., Development Agreement, at § 2.1; ZSPA, § 512-204 (D); 2003 Zoning Ordinance at § 230, Table IV.)

ITEM 18.1.**ATTACHMENT 10**

Cyrus Abhar, City Manager
October 3, 2022
Page 7

the extensive CEQA review already conducted in the certified ZSPA FEIR, which is now final, beyond legal challenge, and conclusively presumed to be adequate. To require any more extensive or repetitive review would violate fundamental principles of CEQA that seek to promote the finality of EIRs and avoid and prohibit meaningless, duplicative, wasteful, and/or unnecessary environmental review.

Your anticipated attention to the above information is greatly appreciated, and we hope it is helpful to you. Should you have any questions regarding the foregoing, please do not hesitate to contact the undersigned directly.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

AFC:tzk/klw

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EXHIBIT E



March 2, 2020

Michael R. Lozeau
 Paige Fennie
 Lozeau Drury LLP
 1939 Harrison Street, Suite 150
 Oakland, CA 94612

**Re: Project DD9903: GLP Stores, LLC Warehouse on APN 072-2860-033-0000
 Request for Review under the California Environmental Quality Act (“CEQA”)**

Dear Mr. Lozeau and Ms. Fennie:

The City of Rancho Cordova (“City”) is in receipt of your letter dated February 18, 2020 concerning Project DD9903: GLP Stores, LLC Warehouse on APN 072-2860-033-0000 (“Project”). The City Attorney’s Office has had the opportunity to review your letter and has the following responses to the allegations and assertions made therein.

In your letter, you claim that the City is in violation of the California Environmental Quality Act (“CEQA”) for relying on CEQA Guidelines section 15183 to conclude that the Project is in compliance with the City’s General Plan and no further environmental review is required. Your letter further asserts that the CEQA requires the City to examine the Project’s potential impacts to human health from toxic air contaminants (“TAC”), (pp. 3-4), impacts from the Project’s greenhouse gas emissions, (p. 4-5), the Project’s consistency with the General Plan (p. 5-6), and the Project’s impacts to biological resources, (p. 5-8).

The Project seeks Major Design Review approval for a 164,149 square-foot light industrial office warehouse and associated office space building that includes parking, lighting, and landscaping for the applicant GLP Stores, LLC. The Project is located within the Villages of Zinfandel Special Planning Area (“ZSPA”). The Special Planning Area was approved in 2002 by Sacramento County. The ZSPA includes residential, commercial, business professional, light industrial, park, bike trails, and open space uses. A Final Environmental Impact Report was certified for the Special Planning Area in 1998 by Sacramento County and a Mitigation Monitoring Program was adopted. Under the City’s General Plan and the ZSPA, the Project site has a designation of Light Industrial, which allows for limited industrial uses. Similarly, under the City’s Zoning Code, the Project site is zoned Light Industrial Villages of Zinfandel Special Planning Area (LI ZSPA) which allows for industrial/retail flex and manufacturing and warehousing uses.

The Project site has had previous entitlements that were approved as follows:

April 2006: Tentative Parcel Map that included the light industrial zoned area to the west and south. Divided 3 parcels into 93 parcels.

May 2007: Tentative Subdivision Map, Creekside Commerce Center, to divide 28 acre parcel into 16 parcels. The project also included a design review for 16 buildings.

Feb 2009: A Tentative Subdivision Map Amendment, Creekside Commerce Center, that reduced the subdivision map from 16 parcels to 8 parcels and reduced 16 buildings to 7 buildings.

March 2017: A Tentative Subdivision Map, Creekside Commerce Center, Extension to February 2020.

Oct 2018: Final Map recorded.

Oct 2019: Lot Line Adjustment to combine 3 lots into 1 lot (subject property).

The Project is a permitted use and does not require a conditional use permit. Rather, the Project requires only approval of Major Design Review. Pursuant to the City's Code, Chapter 23.141, the City Council "may approve or approve with conditions an application for major design review after finding all of the following"

"A. The proposed project is consistent with the objectives of the General Plan, complies with applicable zoning regulations, Specific Plan provisions, and special planning area provisions, and is consistent with the applicable Rancho Cordova design guidelines.

B. The proposed architecture, site design, and landscape are suitable for the purposes of the building and the site and will enhance the character of the neighborhood and community.

C. The architecture, including the character, scale, and quality of the design, relationship with the site and other buildings, building materials, screening of exterior appurtenances, exterior lighting and signing, and similar elements, establishes a clear design concept and is compatible with the character of existing or anticipated buildings on adjoining and nearby properties.

D. The proposed project will not create conflicts with vehicular, bicycle, or pedestrian transportation modes of circulation." (City Code, § 23.141.070.)

The City Council may only condition approval of a Major Design Review application "to ensure specific design features, construction materials, and conformance with all applicable provisions of this chapter." (City Code, § 23.141.080.)

Michael R. Lozeau
March 2, 2020
Page 3

“A city is not, pursuant to general law, required to have a design review ordinance. Accordingly, where, as here, a city chooses to impose such an additional level of review, it is for the city to determine the scope that such review will entail.” (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1014 (“*Friends of Davis*”).) “The Guidelines recognize that the application of CEQA to a local ordinance is dependent upon the scope and interpretation of the local ordinance, rather than vice versa. ... The Guidelines note[d] that CEQA does not grant an agency new powers independent of the powers granted by other laws. (Guidelines, § 15040, subd. (a).) Rather, the exercise of an agency’s authority under a particular law must be within the scope of the agency’s authority provided by that law and must be consistent with express or implied limitations provided by other laws.” (*Id.* at pp. 1014–1015.) Where a city’s own ordinance prevents it from disapproving or conditioning a project “for non-design related matters,” it lacks “discretion to address environmental effects” and, thus, the city’s ability to apply CEQA review to a project is limited to design-related issues. (*McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Ca.App.5th 80, 91-95.)

Therefore, under CEQA, the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from TAC’s, greenhouse gas emissions, and impacts to biological resources. That said, pursuant to the General Plan and the ZSPA, the Project will be required to comply with the mitigation monitoring and reporting program for the ZSPA, which includes measures designed to mitigate the impacts from air pollutant emissions and impacts to biological resources in the area. Moreover, the Project has undertaken a trip generation analysis that concludes that the Project’s traffic trips are consistent with the analysis and findings of the ZSPA EIR. As such, no further CEQA review of this Project is required.

If you have any further questions regarding this Project, please do not hesitate to contact myself or the City.

Best Regards,



Edward Grutzmacher

cc (email only): Adam Lindgren
Frank Splendorio
Cyrus Abhar
Darcy Goulart
Stacy Leitner
June Cowles

3489253.1



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January 25, 2023

VIA EMAIL

Mayor Budge, Vice Mayor Sander, and City
Councilmembers
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
Email: CityClerk@cityofranchocordova.org

Re: **Dermody Properties' Notice of City of Rancho Cordova's Breach of and Default Under Development Agreement and 60-Day Period to Cure; LogistiCenter Project at Corner of N. Mather Blvd./Bear Hollow Drive (APN 072-2360-041-000), File No. PLND-1021-0015**

Dear Mayor Budge, Vice Mayor Sander, and Honorable Members of the City Council:

This firm represents Dermody Properties ("Dermody"), as successor-in-interest to original master developer Elliott Homes, Inc. under that certain "Villages of Zinfandel Development Agreement" entered into as of May 28, 2003, and adopted by County Ordinance No. SZC-2003-0011, which became effective June 28, 2003 (the "Development Agreement" or "DA"), with respect to Dermody's above-referenced real property located within the 671.39± acre site governed by the DA.

This letter constitutes Dermody's written notice pursuant to Section 6.1 of the Development Agreement that the City of Rancho Cordova (the "City"), which is successor-in-interest to the County of Sacramento under the DA, has materially breached and is in default of its legal obligations under the DA to timely and in good faith process and approve Dermody's Major Design Review application for the above-referenced LogistiCenter project located on Dermody's approximately 10-acre parcel at the corner of North Mather Boulevard and Bear Hollow Drive in the City (the "Design Review Project" or "Project").

The Project is located within the Villages of Zinfandel Special Planning Area (VOZSPA), an 823± acre area within the Cordova community that transitioned from heavy industrial (surface mining) use and zoning to a comprehensively planned and entitled mixed-use development in the late 1990's and early 2000's when the County of Sacramento approved extensive development entitlements for the area, including general plan and zoning amendments, an amended community plan, a

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 2

public facilities financing plan, and the subject DA. The VOZSPA's potential environmental impacts were also comprehensively analyzed under the California Environmental Quality Act ("CEQA"; Pub. Resources Code, § 21000 et seq) through a Final Environmental Impact Report ("FEIR") certified by the County on March 25, 1998, as supplemented through a Final Supplemental EIR ("FSEIR") certified by the County on April 26, 2000. The DA was approved by Ordinance No. SZC-2003-0011, which was adopted on May 28, 2003, and has a 20-year term.

Dermody submitted its Design Review Project application on October 25, 2021, and the City determined the application to be complete on January 12, 2022, over a year ago. The City was required to determine within 30 days of that date, or by November 24, 2021, whether an EIR or negative declaration would be required for the Project. (Pub. Resources Code, §§ 21080.1(a), 21080.2.) Even assuming that the Project is not exempt – which it is – such that a CEQA document of some kind would be necessary, all possible statutory deadlines for the City to have completed its CEQA review of the Design Review Project have now expired without the City Council having completed or adopted any CEQA document or findings. (See Pub. Resources Code, § 21151.5(a), (1)(A), (B); CEQA Guidelines, § 15107 [if negative declaration is to be prepared, lead agency must complete and adopt same within 180 days after date application is complete, and if EIR is to be prepared, agency must complete and certify same within one year].) The City's staff and attorneys have consistently advised the Council that the Project is exempt from CEQA under CEQA Guidelines, § 15183. (See Pub. Resources Code, § 21083.3.)

For many months Dermody and the City's own planning staff have advised and reminded the Council of (1) its obligations under the DA, (2) its very limited discretion to conduct CEQA review in the Major Design Review process, and (3) that the Project should be reviewed and found exempt from further environmental analysis under the exemption/streamlined review provisions of CEQA Guidelines section 15183, which the City has applied to similar projects. The Council's failure to timely complete its CEQA review of the Project in the more-than-one-year period of time that has elapsed since the Project application was determined to be complete, in and of itself, constitutes a bad faith failure to timely process and approve the Project as required by the DA.

The City's failure to timely process the Project not only violates CEQA and the DA, as explained further below, but has deprived Dermody of legal rights that should also rightfully have accrued to it under the Permit Streamlining Act ("PSA"; Gov. Code, § 65920 et seq). The PSA provides that a CEQA lead agency must act to approve or disapprove a project within 60 days after a negative declaration is adopted or an exemption determination made. (Gov. Code, § 65950(a)(4), (5).) The City should have completed its CEQA analysis and exemption determination for this Project by the Spring of 2022, at the latest, and acted to approve or disapprove it not later than June 2022 – over six months ago – assuming it had been acting in compliance with CEQA and the PSA, and even setting aside its further legal obligations under the DA.

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 3

In fact, the Project should have been processed to an approval decision even earlier than last summer because – in addition to the basic requirements of CEQA and the PSA – Dermody has vested property and contractual rights under the DA requiring the City’s timely processing of and approval action on its Design Review Project application, and the City’s full and good faith cooperation to enable Dermody to obtain the full benefits of the DA. These DA rights of Dermody, and the City’s corresponding DA obligations, have previously – and repeatedly – been explained to the City in detail, with abundant supporting citations to relevant DA provisions, in prior correspondence from Dermody’s counsel including: (1) Nadia Costa’s July 18, 2022 letter to the City Attorney, copied to the City Manager and Deputy City Manager; (2) my September 16, 2022 letter to City Manager Cyrus Abhar, copied to the City Attorney and Community Development Director; (3) my November 29, 2022 letter to the City Council, copied to the City Manager, Deputy City Manager, and City Attorney; (4) my December 14, 2022 letter to the City Council, copied to the City Manager, Deputy City Manager, and City Attorney; and (5) my January 10, 2023 letter to the City Council, copied to the Community Development Director and City Attorney.¹

Despite Dermody’s extensive correspondence repeatedly bringing the City’s attention to its legal obligations under the DA and applicable law, the City Council has ignored and failed even to acknowledge these obligations. Instead, it has repeatedly continued and delayed hearings on the Project beginning in April 2022. After a half year delay, the City refused to set a hearing for Project approval in November 2022 as Dermody requested. After delays of well over a year from the date of Dermody’s submitted application, and almost a year from the application being deemed complete, the City finally set a December 5, 2022 hearing to consider the Project, but then further continued that hearing without taking action to January 17, 2023. On the latter date, the Council finally closed the public hearing following presentations by City staff and Dermody, and after hearing public comment on the Project, but then refused to discuss, deliberate or take action on Dermody’s Project application, and instead further continued that portion of the hearing to January 30, 2023. The Council voted to further delay a decision on Dermody’s Project so that it could first further consult with the City Attorney (who was present at the January 17 hearing) in closed session concerning an 8-page, single-spaced “late hit” CEQA comment letter submitted by an attorney hired by project opponents which was not received until well after commencement of the January 17 hearing.

Unfortunately, but consistent with the Council’s previous public discussions indicating either a profound misunderstanding of or a heedless intent to exceed its lawful discretion in its consideration of the Project, the Council’s most recent action

¹ The foregoing correspondence, and all exhibits thereto, are already part of the Administrative Record in the City’s administrative proceedings on Dermody’s Design Review Project and are fully incorporated by reference in the instant written notice of City’s breach and default under the DA.

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 4

was again taken in bad faith disregard of its DA obligations to timely process and approve the Project. As but one example, when I, as counsel for Dermody, was asked by the Council to come to the podium and respond at the January 17 hearing to the just-received CEQA comment letter and began my response by accurately characterizing it as a typical (and meritless) “late hit” CEQA comment letter, I was interrupted and chided by the Council not to “editorialize.” I found this to be an extremely surprising rebuke since the Council, like the California courts, is surely “aware that the practice of allowing [CEQA] objectors to withhold objections, which could have been raised earlier in the environmental review process, until the last possible moment **must be strongly disapproved.**” (*Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120, emph. Added, citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.) As noted by our Supreme Court in the above-cited case:

“We cannot, of course, overemphasize our disapproval of the tactic of withholding objections, which could have been raised earlier in the environmental review process, solely for the purpose of obstruction and delay. As one federal court has aptly stated: “[T]he NEPA requirement of studying alternatives may not be turned into a game to be played by persons who – for whatever reasons and with whatever depth of conviction – are chiefly interested in scuttling a particular project. [citation.]”

(*Goleta Valley, supra*, 52 Cal.3d at 568, emph. added, citation omitted; see also, e.g., *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316 [lengthy “late hit” comment letter from project opponent’s attorney delivered at beginning of Board hearing on project resulted in Board continuing hearing for over a month to respond]; cf. *Save North Petaluma River and Wetlands v. City of Petaluma* (2022) 86 Cal.App.5th 207 [notwithstanding project opponent’s late hit comment letter submitted on afternoon of hearing, City Council proceeded with hearing and after considering detailed staff memo covering project’s history, public comments, the real party’s public outreach, and numerous responsive project revisions, and the revised project’s satisfaction of the previously expressed planning commission concerns, and after several hours of deliberation and public comment at the hearing, City Council took action as publicly noticed and scheduled and voted to certify FEIR and approved zoning amendments for project].)

While Dermody will respond by separate letter to the substance – or, more accurately, the lack thereof – of the Project opponents’ lawyer’s late-hit CEQA comment letter, the above is included for present purposes simply to augment Dermody’s showing as to the City’s continuing bad faith breaches and disregard of its DA obligations. Here, the City Council not only refused to “strongly disapprove” the Project opponents’ “late hit” CEQA tactic, but actually rewarded it with a further two-week delay. By contrast, a council acting in good faith would have quickly and roundly condemned and rejected the Project opponents’ well-recognized and judicially-disapproved abusive CEQA “late-hit” tactic, and would have reminded the Project opponents of the lengthy processing process Dermody has endured to date,

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 5

the numerous project amendments and concessions it has voluntarily made and offered to address public concerns, and Dermody's vested legal and contractual rights to timely processing and approval of its Major Design Review application under the DA. But the Council did not. Instead, it chose to praise the project opponents, as "informed and articulate" and not "typical NIMBYs," further underscoring its willful disregard for Dermody's DA and other legal rights to timely and good faith processing of and an approval decision on its Project.² In other words, for whatever reason, the Council members are continuing to unnecessarily delay their decision on this Project and are publicly praising Project opponents who are vilifying Dermody, encouraging further dilatory City action in processing the Project approvals, and blatantly encouraging the City to repudiate its binding DA obligations. Such conduct is the polar opposite of the good faith required under the DA and applicable law.

In sum, the only conclusion that can be drawn from the record in this matter is this: the City has violated and breached the Development Agreement and Dermody's vested rights thereunder by attempting to subject Dermody's Design Review Project to improper and inapplicable requirements and procedures, and by failing to act in good faith to timely process, act on, and approve the Project. Dermody can no longer wait or give the City Council the benefit of the doubt by assuming that it will ultimately choose to comply with its legal obligations under the DA – the term of which will expire in Summer 2023 – and Dermody has therefore been compelled to now provide this formal notice of default.

As provided in the DA, the City can cure its default and avoid the institution of legal proceedings seeking remedies for its DA breaches, by making a final decision on and approving Dermody's Project, as the Project was fully presented at the January 17, 2023 meeting, by not later than 60 days from the date of this letter. (DA, § 6.1.)

² It bears noting that the same Project opponents praised by council members offered comments characterizing my client (or, perhaps, me) as a "playground bully" (for insisting that Dermody's vested rights be respected) and urging the council to "continue the process as long as needed" (Troy Fennel). The opponents even stated: "There are ways out of this contract [the DA], and you know what they are." (Greg Mylenberg.) Stuningly, the Council did nothing to correct such misapprehensions or acknowledge its binding obligations under the DA.

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 6

Thank you for your anticipated attention to these matters.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

AFC:dly/klw

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January 25, 2023

VIA EMAIL

Mayor Budge, Vice Mayor Sander, and City
Councilmembers
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, CA 95670
Email: CityClerk@cityofranchocordova.org

Re: **January 17, 2023 Letter to City Council from Attorney Gloria D. Smith
Concerning CEQA Review of LogistiCenter Project at N. Mather
Blvd./Bear Hollow Drive (APN 072-236—041-000) Within Villages of
Zinfandel Special Planning Area, File No. PLND-1021-0015**

Dear Mayor Budge, Vice Mayor Sander, and Honorable Members of the City
Council:

This office represents Dermody Properties (“Dermody”) in connection with the City Council’s ongoing Major Design Review approval process for the above-referenced warehouse project (the “Project”). This letter addresses contentions raised in the above-referenced January 17, 2023 letter to the Council from San Francisco attorney Gloria D. Smith (the “Smith letter”), which was written on behalf of certain Project opponents calling themselves “Stone Creek Residents for Smart Growth.”

The Smith letter makes numerous assertions about the California Environmental Quality Act (“CEQA”; Pub. Resources Code, § 21000 et seq) and its alleged applicability to the City’s design review of the Project. Based thereon, the Smith letter urges this Council to reject the analysis and well-supported conclusions of City’s expert planning staff that: (1) “the [P]roject is exempt and no environmental document pursuant to CEQA is required” and (2) “the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from toxic air contaminants, greenhouse gas emissions, and impacts [to] biological resources.” (Staff Memorandum from Associate Planner Nicholas Sosa to City Council re January 17, 2023 Meeting Agenda Item 18.1, at page 8; see *also* Staff Memorandum from Sosa to Council re December 5, 2022 Meeting Agenda Item 22.1, at pp. 12-13 [reaching same conclusions].) As explained in more detail below, the City staff’s analysis and determinations are legally and factually correct, and it is the Smith letter that is in error and should be rejected.

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 2

I. **CITY'S STAFF HAS CORRECTLY DETERMINED THAT THE DESIGN REVIEW PROJECT BEFORE THE COUNCIL IS CEQA-EXEMPT UNDER GUIDELINES SECTION 15183 BECAUSE IT IS STATUTORILY EXEMPT FROM CEQA UNDER THAT GUIDELINE'S AUTHORIZING STATUTE, PUBLIC RESOURCES CODE SECTION 21083.3**

The City's staff has correctly analyzed the Project's exemption from CEQA as follows:

The Logisticenter at Rancho Cordova Major Design Review would be exempt from CEQA review under CEQA State Guidelines Section 15183. This exempts from CEQA projects that are consistent with the development density established by existing zoning, community plan, or general plan policies for which an Environmental Impact Report (EIR) was certified, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. The project is located within the Villages of Zinfandel Special Planning Area (VOZSPA). An EIR was certified by the Sacramento County Board of Supervisors in 1998 for the VOZSPA. Additionally, a Supplemental EIR was prepared and certified by the Sacramento County Board of Supervisors in 2002 for the plan area.

The Logisticenter at Rancho Cordova Major Design Review involves development of a 155,040 square foot industrial shell building with parking and loading docks. The development also includes landscaping, drainage, and required screening/fencing for a loading dock area. The business and professional park (BP) site was identified in the Villages of Zinfandel Special Planning Area EIR and uses contemplated within the BP designation include those use[] listed in the Sacramento County Zoning Code under the BP and MP (Industrial Office Park) use tables located in Chapter 25 and Chapter 30. Warehousing is a permitted by right use[s] as listed in Table IV I.3.

Additional supplemental technical studies were prepared to further support that no additional project related impacts would occur as a result of the proposed project. These technical studies include additional traffic analysis, as well as a noise study. The traffic analysis results were summarized under the Traffic Improvements section of the December 5th staff report. The noise study that was completed concluded that noise levels associated with the project generated onsite operations would satisfy the General Plan noise criteria at the nearest existing residential uses. This is due in part to existing solid noise barriers in the vicinity, as well as overall on-site operational practices.

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 3

As this Major Design Review is consistent with the Special Planning Area and the environmental documentation prepared for the Special Planning Area, it is exempt from CEQA review. So long as the project does not have any project-specific significant effects peculiar to the Major Design Review and not identified in the previous environmental documentation, the project is exempt and no environmental document pursuant to CEQA is required. The project applicant is requesting approval of a Major Design Review for the proposed project. ***Additionally, under CEQA, the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from toxic air contaminants, greenhouse gas emissions, and impacts of biological resources.***

(1/17/23 Meeting Staff memo at pp. 7-8, emph. added.)

While the Smith letter attacks Dermody's past correspondence and positions regarding CEQA, mischaracterizing many of them in the course of doing so (Smith letter, at pp. 2-3, 6), it fails to acknowledge that the City's own planning staff (and City Attorney) have independently concluded – in full agreement with Dermody's counsel – that the Design Review Project now before the Council for approval is exempt from CEQA. That conclusion is fully supported by the law and the record.

Indeed, and as the Smith letter also fails to recognize, the Design Review Project is clearly ***statutorily exempt*** under Public Resources Code section 21083.3, which is part of CEQA itself, and which states in relevant part:

(a) If a parcel has been zoned to accommodate a particular density of development or has been designated in a community plan to accommodate a particular density of development and an environmental impact report was certified for that zoning or planning action, the application of this division [CEQA] to the approval of any subdivision map or other project that is consistent with the zoning or community plan shall be limited to effects upon the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.

(b) If a development project is consistent with the general plan of a local agency and an environmental impact report was certified with respect to that general plan, the application of this division [CEQA] to the approval of that development project shall be limited to effects on the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 4

in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report.

(Pub. Resources Code, § 21083.3(a), (b).) This section of CEQA – which the Smith letter fails to mention – is the relevant statutory authority that CEQA Guidelines § 15183 cites and on which it is based.

A leading CEQA treatise describes the scope and operation of this statutory exemption as follows:

When Pub. Res. C. § 21083.3 applies, CEQA review of a later project is limited to significant environmental impacts that are [1] “peculiar to” the affected parcel or project and [2][a] that were not addressed as significant impacts in the previous EIR or [b] that substantial new information shows will be more significant than described in the previous EIR, [3] together with significant off-site and cumulative impacts that were not discussed in the prior EIR. [citations]
Section 21083.3 is worded as a CEQA *exemption* and not as a procedure for streamlining subsequent environmental review. [¶]
As originally enacted in 1981, [section] 21083.3 applied only to residential development projects. It was amended in 1992 to remove the residential limitation, so that it now applies to industrial and commercial projects as well as mixed-use projects.

(1 Kostka & Zischke, *Practice Under the California Environmental Quality Act* (CEB 2d ed., 2022 Update), § 10.33, pp. 10-35 – 10-36, citations omitted, *emph. in orig., bracketed text added.*)

Accordingly, while there are statutory limits (as enumerated in the above passage) on its application, the Smith letter’s contention that CEQA Guidelines “§ 15183 is not a true exemption” (Smith letter, at p. 3) is simply incorrect. The interpretive Guideline is in relevant part based wholly on the statutory CEQA exemption set forth in Public Resources Code § 21083.3, and as a regulatory interpretive aid it must be applied in a manner consistent with that authorizing statutory exemption in order to be valid. (E.g., 8 Miller & Starr, *California Real Estate* 4th (2022 Update), § 26:3, pp. 26-18 – 26-19, and cases cited [“guideline that is clearly unauthorized or inconsistent with CEQA is invalid”].) Further, because it is a *statutory* CEQA exemption enacted by the Legislature for policy reasons, rather than a *categorical* CEQA exemption based on a regulatory determination of the Secretary of Resources, the exemption is not to be narrowly construed, but, rather, must be broadly construed to achieve its statutory purpose of exempting the covered actions from CEQA review. (E.g., *County of Ventura v. City of Moorpark* (2018) 24 Cal.App.5th 377, 386-387 [observing it would be incorrect to assume a harmony exists between CEQA’s general purposes and those of its statutory exemptions, which, on the contrary, reflect a variety of policy goals promoting interests deemed important enough to justify foregoing the benefits of CEQA review;

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 5

further stating, in upholding application of CEQA's emergency exemption, that courts "do not balance the policies served by the statutory exemptions against the goal of environmental protection" and "the self-evident purpose of the exemption is to provide an escape from the EIR requirement despite a project's clear, significant impact"].)

II. THE SMITH LETTER CONCEDES THAT THE STATUTORY EXEMPTION OF PUBLIC RESOURCES CODE § 21083.3/CEQA GUIDELINES § 15183 APPLIES TO THE DESIGN REVIEW PROJECT, AND IS WRONG IN ARGUING THAT ANY OF THE STATUTE'S LIMITATIONS REMOVE THE PROJECT FROM THE SCOPE OF THE EXEMPTION; ITS ATTEMPT TO INVOKE CEQA'S SUBSEQUENT REVIEW RULES ALSO FAILS

The Smith letter does *not* contest – and thus *concedes* – that section 21083.3 applies to the project since (1) the parcel on which it is proposed has been zoned and planned to accommodate a particular density of development, (2) an EIR was certified for that zoning and planning action, and (3) the Project is consistent with the zoning and plan for the area.

The Smith letter nonetheless argues the Project is removed from the coverage of the statutory exemption because there are allegedly impacts "peculiar to the project" that "were not analyzed as significant effects in [the] prior EIR on the zoning action" or "which substantial new information [not known at the time the EIR was certified] shows will be more significant [or severe] than described in the prior [EIR]." (See Pub. Resources Code, § 21083.3(a); Smith letter at p. 3, citing CEQA Guidelines, § 15183.) The Smith letter also appears to argue that the Project will have potentially significant cumulative impacts that were not discussed in the prior EIR. (Smith letter, at pp. 3-5; Pub. Resources Code, § 21083.3(c).)

The Smith letter's first argument fails as a factual matter because there is absolutely no evidence that it points to showing that *any* of the allegedly significant and unanalyzed environmental impacts with which it professes concern are "peculiar to the parcel or to the project" as required by the statute to limit the scope of the exemption. (Pub. Resources Code, § 21083.3(a), (b).) Even assuming *arguendo* that the warehouse project would have significant GHG, particulate matter, ozone, NOx, or other air quality impacts as the Smith letter suggests (at p. 4), these impacts are not peculiar to Dermody's Project or parcel. Indeed, they are the same as or similar to the air quality impacts of any other warehouse or distribution center built on any other parcel authorized by applicable zoning for such use; they are *not* impacts caused by any "peculiar" aspect of either the parcel or the Project, but are generic to the authorized use itself. To the extent the Smith letter tries to argue that the statutory limit on the exemption does not require that the alleged significant impacts be "peculiar" to the parcel or project, it simply misreads the statute.

To the extent the Smith letter argues that CEQA contains some uncoded requirement to "keep information fresh" by updating allegedly "stale" EIRs whenever "new information" becomes available (Smith letter, pp. 3-4, citing CEQA Guidelines,

Mayor Budge, Vice Mayor Sander, and City Councilmembers
 January 25, 2023
 Page 6

§ 15162[(a)] (3)), it is wrong as a matter of law and either fundamentally misunderstands – or intentionally mischaracterizes – the CEQA subsequent review rules it tries to invoke. (See also Pub. Resources Code, § 21083.1 [“It is the intent of the Legislature that courts ... shall not interpret this division [CEQA] or the state guidelines ... in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.”].) In either event, its arguments lack merit. CEQA’s “subsequent review” rules (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15163) are designed to balance promoting environmental review with finality and efficiency interests, and they therefore *limit* a lead agency’s authority to require additional CEQA review after an EIR has been certified. (See, *Friends of College of San Mateo Gardens v. San Mateo Community College Dist.* (2016) 1 Cal.5th 937, 949.) To avoid an “intractable” agency decision-making process (*ibid.*), CEQA establishes a strong presumption *against* further environmental review after an EIR is certified. (*Committee for Reevaluation of the T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237, 1246; *Save Our Heritage Organization v. City of San Diego* (2018) 28 Cal.App.5th 656, 666; *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 805.)

Thus, under the subsequent review CEQA rules the Smith letter tries to invoke, once an EIR for a project has been prepared, the agency may not require a subsequent or supplemental EIR except in specific circumstances. An SEIR is required only if “[s]ubstantial changes are proposed in the project” or “occur with respect to the circumstances” of the project or if “[n]ew information” becomes available which “will require major revisions of the [EIR]” “due to the involvement of new significant environmental effects or substantial increase in the severity of previously identified significant effects.” (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162(a), 15163(a); *T-Line Loop*, *supra*, 6 Cal.App.5th at 1246.) Moreover, “new information” is that “which was not known and could not have been known” when the EIR was originally “certified as complete” (§ 21166(c)), and it must be “of substantial importance,” for example because it shows “[s]ignificant effects ... will be substantially more severe than shown in the previous EIR.” (CEQA Guidelines, § 15162(a)(3).)

The Smith letter falls woefully short of pointing to any substantial evidence showing that a subsequent or supplemental EIR could be required for the Project under these standards. The Project does not modify, but is concededly fully consistent with, the general plan and zoning standards reviewed under the 1998 FEIR and 2000 FSEIR for the VOZSPA entitlements.

Moreover, there are no “changed circumstances” and no “significant new information” that was not known or knowable at the time those EIRs were certified. It was *always* known and, indeed, *planned* that commercial and light industrial uses (such as warehouses and distribution centers) could be developed in locations within the VOZSPA that included the Project parcel, and that such locations were near to other VOZSPA locations where residences would be built. To the extent the Smith letter claims that air quality issues, including those related to GHGs or toxic

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 7

diesel particulate matter (whether PM10 or PM2.5) constitute “new information” that was unknown or unknowable in 1998 or 2000 (see Smith letter at pp. 4-5), it is wrong as a matter of both fact and law, for reasons pointed out in prior correspondence. (See 1/10/23 Coon to Council letter, at p. 7, and legal authorities cited therein.) To the extent the Smith letter (at pp. 4-5) argues that post-EIR changes in laws, or regulatory standards for categorizing, analyzing or assessing the significance of project impacts constitute “significant new information” or “changed circumstances” requiring subsequent CEQA review, it is again wrong as a matter of law. (*Citizens Against Airport Pollution, supra*, 227 Cal.App.4th at 807-808; *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1318-1320.) Further, information anticipated by an EIR is not significant new information. (E.g., *Citizens Committee to Complete the Refuge v. City of Newark* (2021) 74 Cal.App.5th 460, 478 [“REIR anticipated the new information that appellants rely on”]; *T-Line Loop, supra*, 6 Cal.App.5th at 918 [“FEIR anticipated an increase in residential use and other development and analyzed the impacts of constructing and operating light rail in residential areas....”].)

Similarly, and contrary to the Smith letter’s contentions, there is no CEQA statute or rule declaring a project EIR “stale” after any particular time period; as seen above, whether CEQA’s subsequent review rules require a supplemental EIR depends on whether substantial changes in the project or surrounding circumstances or significant new information require major revisions to a previously certified EIR (or other adopted CEQA document) due to the involvement of new or substantially more severe environmental impacts – not the mere passage of time or any vague or subjective notions of “freshness.” (E.g., *T-Line Loop, supra*, 6 Cal.App.5th at 1254 [holding use of 16-year old EIR was adequate CEQA compliance for light rail line project and noting absence of “any authority holding that mere delay in completing construction constitutes a substantial change in a project under section 21166”]; *Snarled Traffic Obstructs Progress v. City and County of San Francisco* (1999) 74 Cal.App.4th 793 [9-year old negative declaration was adequate CEQA compliance for revived parking structure project and SEIR not required].) The very fact that the County entered into a CEQA-reviewed 2003 Development Agreement with a 20-year term evinces that it had thoroughly analyzed the environmental impacts of long-term development and build-out of the VOZSPA.

In short, the Smith letter fails to negate the application of CEQA’s Section 21083.3 statutory exemption because it points to no facts or evidence of any environmental impacts that are **peculiar** to the Project or site **and** that were not analyzed as significant impacts in the prior VOZSPA EIR or shown by substantial new information to be more significant than previously described. Nor does the Smith letter point to any substantial evidence supporting any of the grounds for conducting further review under CEQA’s subsequent review rules. Nor does the Smith letter demonstrate or point to evidence of any significant cumulative impacts (as to air quality or otherwise) that were not discussed as such in the prior EIR.

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 8

III. **AS A SEPARATE AND INDEPENDENT GROUND FOR REJECTING ITS CEQA ARGUMENTS, CITY STAFF HAS CORRECTLY INTERPRETED CITY'S MAJOR DESIGN REVIEW PROCESS AS LIMITING CITY'S DISCRETION SUCH THAT IT CANNOT ADDRESS THE AIR QUALITY IMPACTS OF WHICH THE SMITH LETTER COMPLAINS**

It is fundamental that when addressing a project's significant effects, an agency may *only* exercise those express or implied powers provided by *law other than CEQA*, subject to the other law's express or implied limitations. (Pub. Resources Code, § 21004; CEQA Guidelines, § 15040(b) ["CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws."].) The City's Major Design Review ordinance is the "other law" that provides the express or implied powers the Council may exercise in acting on the Project design review application that is now before it. The City Council is bound by and must comply with its own Design Review Ordinance, including that local law's restrictions on its discretion. As the Court of Appeal recently explained in the context of applying CEQA to a housing project, "where a legal obligation limits an agency's discretion, the scope of environmental review likewise is limited" and "adjusts in relation to the amount of discretion[.]" (*Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700.)

While the Smith letter spends two pages desperately attempting to distinguish relevant case law based on insignificant, irrelevant and immaterial alleged factual differences (at pp. 6-7), it fails to grapple with the main and dispositive issue, which is that ***the City here has consistently interpreted its own design review ordinance not to permit it to address the types of environmental issues the letter raises.*** (See e.g., City Staff memos for 1/17/23 meeting and 12/5/22 meeting; see also 3/2/20 letter from Meyers Nave attorney Ed Grutzmacher written on behalf of the City to Michael Lozeau, attached hereto as Exhibit 1 [explaining in detail why design review of zoning-compliant warehouse project in VOZSPA limits City's discretion such that it cannot "consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from TAC's, greenhouse gas emissions, and impacts to biological resources."].) Mr. Grutzmacher, a quite knowledgeable CEQA attorney who is a partner at a well-respected law firm, cited in support of the City's position on this issue the very same cases that Dermody did, and which the Smith letter unpersuasively tries to distinguish – *Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1014-1015 and *McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 91-95.

The point is that CEQA does not independently confer power or discretion, and simply does not apply where agency discretion to deny or require project modifications to mitigate *environmental* impacts does not exist. The Smith letter fails to cite any provision of the City's Major Design Review ordinance that would allow the City to exercise CEQA-triggering discretion to address the non-design-related environmental issues the letter raises.

Mayor Budge, Vice Mayor Sander, and City Councilmembers
January 25, 2023
Page 9

IV. CONCLUSION

The City's design review ordinance does not vest it with CEQA-triggering discretion to address the non-design-related air quality/public health issues the Smith letter raises. The Project before the City is also CEQA-exempt under Public Resources Code § 21083.3 and CEQA Guidelines § 15183. Further, CEQA's subsequent review rules furnish no authority to revisit or supplement the prior certified EIRs for the VOZSPA, with which the Project is fully consistent. The City should therefore reject the Smith letter's meritless arguments regarding CEQA, and follow its staff's correct analysis and recommendations, and its own prior consistent interpretations.

Thank you for your attention to the foregoing important issues.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

AFC:dly/klw
encl.

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March 2, 2020

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 Oakland, CA 94612

**Re: Project DD9903: GLP Stores, LLC Warehouse on APN 072-2860-033-0000
 Request for Review under the California Environmental Quality Act ("CEQA")**

Dear Mr. Lozeau and Ms. Fennie:

The City of Rancho Cordova ("City") is in receipt of your letter dated February 18, 2020 concerning Project DD9903: GLP Stores, LLC Warehouse on APN 072-2860-033-0000 ("Project"). The City Attorney's Office has had the opportunity to review your letter and has the following responses to the allegations and assertions made therein.

In your letter, you claim that the City is in violation of the California Environmental Quality Act ("CEQA") for relying on CEQA Guidelines section 15183 to conclude that the Project is in compliance with the City's General Plan and no further environmental review is required. Your letter further asserts that the CEQA requires the City to examine the Project's potential impacts to human health from toxic air contaminants ("TAC"), (pp. 3-4), impacts from the Project's greenhouse gas emissions, (p. 4-5), the Project's consistency with the General Plan (p. 5-6), and the Project's impacts to biological resources, (p. 5-8).

The Project seeks Major Design Review approval for a 164,149 square-foot light industrial office warehouse and associated office space building that includes parking, lighting, and landscaping for the applicant GLP Stores, LLC. The Project is located within the Villages of Zinfandel Special Planning Area ("ZSPA"). The Special Planning Area was approved in 2002 by Sacramento County. The ZSPA includes residential, commercial, business professional, light industrial, park, bike trails, and open space uses. A Final Environmental Impact Report was certified for the Special Planning Area in 1998 by Sacramento County and a Mitigation Monitoring Program was adopted. Under the City's General Plan and the ZSPA, the Project site has a designation of Light Industrial, which allows for limited industrial uses. Similarly, under the City's Zoning Code, the Project site is zoned Light Industrial Villages of Zinfandel Special Planning Area (LI ZSPA) which allows for industrial/retail flex and manufacturing and warehousing uses.

Michael R. Lozeau
March 2, 2020
Page 2

The Project site has had previous entitlements that were approved as follows:

April 2006: Tentative Parcel Map that included the light industrial zoned area to the west and south. Divided 3 parcels into 93 parcels.

May 2007: Tentative Subdivision Map, Creekside Commerce Center, to divide 28 acre parcel into 16 parcels. The project also included a design review for 16 buildings.

Feb 2009: A Tentative Subdivision Map Amendment, Creekside Commerce Center, that reduced the subdivision map from 16 parcels to 8 parcels and reduced 16 buildings to 7 buildings.

March 2017: A Tentative Subdivision Map, Creekside Commerce Center, Extension to February 2020.

Oct 2018: Final Map recorded.

Oct 2019: Lot Line Adjustment to combine 3 lots into 1 lot (subject property).

The Project is a permitted use and does not require a conditional use permit. Rather, the Project requires only approval of Major Design Review. Pursuant to the City's Code, Chapter 23.141, the City Council "may approve or approve with conditions an application for major design review after finding all of the following"

"A. The proposed project is consistent with the objectives of the General Plan, complies with applicable zoning regulations, Specific Plan provisions, and special planning area provisions, and is consistent with the applicable Rancho Cordova design guidelines.

B. The proposed architecture, site design, and landscape are suitable for the purposes of the building and the site and will enhance the character of the neighborhood and community.

C. The architecture, including the character, scale, and quality of the design, relationship with the site and other buildings, building materials, screening of exterior appurtenances, exterior lighting and signing, and similar elements, establishes a clear design concept and is compatible with the character of existing or anticipated buildings on adjoining and nearby properties.

D. The proposed project will not create conflicts with vehicular, bicycle, or pedestrian transportation modes of circulation." (City Code, § 23.141.070.)

The City Council may only condition approval of a Major Design Review application "to ensure specific design features, construction materials, and conformance with all applicable provisions of this chapter." (City Code, § 23.141.080.)

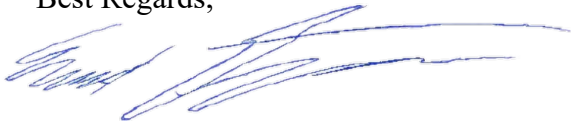
Michael R. Lozeau
March 2, 2020
Page 3

“A city is not, pursuant to general law, required to have a design review ordinance. Accordingly, where, as here, a city chooses to impose such an additional level of review, it is for the city to determine the scope that such review will entail.” (*Friends of Davis v. City of Davis* (2000) 83 Cal.App.4th 1004, 1014 (“*Friends of Davis*”).) “The Guidelines recognize that the application of CEQA to a local ordinance is dependent upon the scope and interpretation of the local ordinance, rather than vice versa. ... The Guidelines note[d] that CEQA does not grant an agency new powers independent of the powers granted by other laws. (Guidelines, § 15040, subd. (a).) Rather, the exercise of an agency’s authority under a particular law must be within the scope of the agency’s authority provided by that law and must be consistent with express or implied limitations provided by other laws.” (*Id.* at pp. 1014–1015.) Where a city’s own ordinance prevents it from disapproving or conditioning a project “for non-design related matters,” it lacks “discretion to address environmental effects” and, thus, the city’s ability to apply CEQA review to a project is limited to design-related issues. (*McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Ca.App.5th 80, 91-95.)

Therefore, under CEQA, the City lacks the discretion under the Major Design Review approval process to consider environmental effects not related to the design of the Project, including, but not limited to human health impacts from TAC’s, greenhouse gas emissions, and impacts to biological resources. That said, pursuant to the General Plan and the ZSPA, the Project will be required to comply with the mitigation monitoring and reporting program for the ZSPA, which includes measures designed to mitigate the impacts from air pollutant emissions and impacts to biological resources in the area. Moreover, the Project has undertaken a trip generation analysis that concludes that the Project’s traffic trips are consistent with the analysis and findings of the ZSPA EIR. As such, no further CEQA review of this Project is required.

If you have any further questions regarding this Project, please do not hesitate to contact myself or the City.

Best Regards,



Edward Grutzmacher

cc (email only): Adam Lindgren
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Darcy Goulart
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June Cowles

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February 6, 2023

VIA EMAIL

Mayor Budge, Vice Mayor Sander,
and City Councilmembers
City of Rancho Cordova
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Re: January 27, 2023, Second Letter to City Council from Attorney Gloria D. Smith Concerning CEQA Review of and Land Use Compliance for LogistiCenter Project at Corner of N. Mather Blvd./Bear Hollow Drive (APN 072-2360-041-000), File No. PLND-1021-0015

Dear Honorable Mayor Budge, Honorable Vice Mayor Sander, City Councilmembers:

We submit this letter on behalf of Dermody Properties ("Dermody") in response to the above-referenced letter to the Council from attorney Gloria D. Smith (the "second Smith letter"), regarding the LogistiCenter Project ("Project"). We will be submitting another letter prior to the Council's final hearing on the Project that will respond in greater detail to each contention raised in the second Smith letter, but for now, as a preliminary matter, we will briefly point out its fundamental flaws in the text that follows.

In brief summary, the second Smith letter urges the City to violate state law and its obligations under the May 28, 2003 "Villages of Zinfandel Development Agreement" (the "Development Agreement") based on a clear mischaracterization of state law and a misunderstanding of – or failure to acknowledge – the relevant underlying facts. Indeed, the letter goes so far as to urge the City to deny the very existence of the Development Agreement – a position that, if adopted by the City, would constitute the bad faith denial of the existence of a binding contract, which is the epitome of a breach of the covenant of good faith and fair dealing. Contrary to the second Smith letter's unsupported assertions, the Development Agreement remains fully in effect and binding on the City until June of 2023. As we have repeatedly advised, if the City ignores its obligations under the Agreement, it will expose itself to significant monetary damages and attorneys' fees as expressly provided for in the Agreement. The second Smith letter also raises meritless claims regarding alleged (but non-existent) obligations of the City to apply its current general plan and/or to

Mayor Budge, Vice Mayor Sander,
and City Councilmembers
City of Rancho Cordova
February 6, 2023
Page 2

update its general plan whenever the state adopts new laws or regulations, and also re-states Smith's previous arguments that the Supplemental EIR for the Zinfandel Special Plan Area ("ZSPA") is somehow "stale." Ultimately, the second Smith letter is yet another eleventh-hour attempt to further obstruct and delay the Project, but it lacks any merit whatsoever and fails to state any valid basis for the City to further delay its final decision and approval of the Project as presented to the Council on January 17, 2023.

I. **The Development Agreement Continues in Effect Until June 28, 2023.**

Contrary to the claims in the second Smith letter, the Development Agreement was not somehow automatically invalidated when the City incorporated in 2003. State law quite clearly provides that, once recorded, the benefits and burdens of a development agreement accrue to and are binding on all successors in interest to the original parties. As a successor in interest to the County, the City is bound by the obligations in the Agreement that we have previously discussed in detail until June of 2023.

Government Code section 65865.3, invoked by the second Smith letter, places time limits on the term of a limited set of development agreements to which it applies. *Nothing* in Section 65865.3 states that a development agreement between a county and a developer automatically becomes null and void if a subject property becomes incorporated or is annexed into a city. Instead, a careful reading of the statute's plain language, in the context of the Development Agreement statute as a whole, makes clear that when the Legislature enacted Section 65865.3 in 1986, it presumed that development agreements between a county and a developer would continue in effect after a subject property was incorporated or annexed into a city – in other words, Section 65865.3 does not (as the second Smith letter appears to argue) provide the exclusive basis by which a development agreement between a developer and county binds a successor city. As noted in my November 29, 2022 letter to the Council, the election on the incorporation of the City occurred prior to May 28, 2003, when the County (the City's predecessor in interest) and Elliot Homes (Dermody's predecessor in interest) executed the Development Agreement. This means that the Development Agreement does not meet the condition set forth in subdivision (c) of Section 65865.3, that the county "enter[] into the agreement with the applicant prior to the date of the election on the question of incorporation or annexation..." As a result, Section 65865.3 and the limitations on a development agreement's duration set forth in its subpart (a) do not apply by the statute's own terms. Nothing in Section 65865.3 says that the Development Agreement became void when the City incorporated, and other provisions of the Development Agreement statute make clear that after its recordation it continued in existence as a valid agreement binding upon the City as a successor in interest.

Mayor Budge, Vice Mayor Sander,
and City Councilmembers
City of Rancho Cordova
February 6, 2023
Page 3

Numerous actions taken by the City, the County, and other public agencies with jurisdiction over the ZSPA also confirm and demonstrate a clear recognition that the Development Agreement remained fully in effect and legally binding on the City following the City's incorporation. For example, in 2002 when the Sacramento Local Agency Formation Commission ("LAFCO") approved the resolution authorizing the City to proceed with the incorporation, it adopted a condition *expressly requiring* the City to honor development agreements entered into between the County and development project applicants prior to the effective date of the City's incorporation. Nothing in LAFCO resolution – which was never challenged and is now beyond legal challenge – allowed the City to invalidate or refuse to recognize or honor development agreements that did not meet the requirements of subdivision (c) of Section 65865.3.

Further, since 2003, the City itself has repeatedly recognized that the Development Agreement has continued and still continues in effect as a binding agreement; more specifically, the City so acknowledged when it negotiated, and the City Council approved, three separate amendments to the Agreement. Each of these amendments conferred benefits and burdens on the City and each acknowledged that, except as amended, the terms and conditions of the Development Agreement remained in full force and effect. The first amendment, dated August 2, 2004, shortened the term of the Development Agreement to 15 years, adjusted the general plan land use and zoning designations for a residential subdivision in the ZSPA, and established a special police tax and park renovation fee for some development within the ZSPA. The most recent amendment, executed in August of 2016, changed the land use and zoning designations for another residential subdivision and *re-extended the term of the Agreement to 20 years from its original effective date – to June of 2023*. The August 2016 amendment was approved by the Council and duly recorded by the County Clerk, and was never objected to or judicially challenged by anyone. The statute of limitations to challenge the 2016 amendment and its re-extension of the Agreement to June of 2023 has, of course, obviously long since expired and that amendment is now (like the LAFCO incorporation resolution) well beyond any legal challenge and therefore conclusively presumed to be valid. Project opponents thus have no basis to challenge that amendment or its re-extension of the Development Agreement term at this late date.

In summary, the Development Agreement remains in full force and effect. In contending otherwise, the second Smith letter – like the first – fails to properly analyze the applicable law and fails to account for the material facts discussed above, apparently based on sheer willful ignorance stemming from a failure to investigate the facts or the public record that would readily disclose such facts. But, as recent precedent in the CEQA context has amply underscored, a failure to investigate the facts, coupled with a misreading of the clear law, does not excuse the assertion of untenable legal positions completely lacking in probable cause. If the City were to deny the existence of or otherwise ignore its obligations under the Agreement, as the second Smith letter recklessly proposes, it would (as we have already repeatedly advised) be exposing itself to litigation with the risk of incurring

Mayor Budge, Vice Mayor Sander,
and City Councilmembers
City of Rancho Cordova
February 6, 2023
Page 4

significant monetary damages and attorneys' fees as expressly provided for in the Development Agreement.

II. The Remaining Claims in the Second Smith Letter Lack Merit.

In addition to the above, the second Smith letter argues that the "City's general plan does not adequately address current state laws and standards" and repeats the argument that the EIR for the ZSPA is "unlawfully stale." Both arguments lack any legal support.

Regarding alleged deficiencies with City's General Plan, we note that the second Smith letter's arguments in that regard fail, first and foremost, because their arguments against the Development Agreement's validity lack any merit; because the Development Agreement remains in effect, the Project is only subject to those applicable development standards in the County's General Plan, ZSPA, and incorporated zoning standards in effect in 2003. Putting that aside, courts have also repeatedly held that cities are not required to update their general plans at any given interval or in connection with any given event. State law certainly does not require a city to update its general plan every time the Legislature adopts a new law or every time a state agency adopts a new regulation. The overwhelming burdens this would place on cities throughout the state are obvious. Further, if project opponents wish to challenge the City's General Plan as inadequate, the proper time to have done so or to do so was at the time the General Plan language in question was adopted or when such language was or is amended in the future, and any challenges not timely brought after such trigger dates are time-barred by the applicable statute of limitations.

Finally, the second Smith letter repeats arguments from the first letter that the Supplemental EIR for the ZSPA is somehow "unlawfully stale". As set out in detail in my January 25, 2023 letter to the Council, the claim that CEQA contains some uncoded requirement that an allegedly stale EIR be updated when new information becomes available is wrong as a matter of law and fundamentally misunderstands CEQA's subsequent review rules. As previously demonstrated, CEQA establishes a strong presumption *against* further environmental review after an EIR is certified, and no such further environmental review is warranted here.

III. Conclusion

Similar to the first Smith letter, the City should reject the second Smith letter's meritless arguments regarding the Development Agreement, which – quite clearly under the relevant law and material facts – remains fully binding on the City. The second Smith letter's additional arguments fail as well. The City must abide by its obligations under the Development Agreement and make a final decision on and

Mayor Budge, Vice Mayor Sander,
and City Councilmembers
City of Rancho Cordova
February 6, 2023
Page 5

approving the Project as it was presented at the Council's January 17, 2023 meeting.

Very truly yours,

MILLER STARR REGALIA



Arthur F. Coon

AFC:tz/b/klw

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February 28, 2023

Linda Budge, Mayor
 City Council, City of Rancho Cordova
 2729 Prospect Park Dr.
 Rancho Cordova, CA 95670

Re: LogistiCenter Project (APN 072-2360-041-000), File No. PLND-1021-0015

Dear Hon. Mayor Budge and Hon. Councilmembers:

Our firm has been engaged by the City of Rancho Cordova ("City") to evaluate two primary questions relating to the above-referenced LogistiCenter Project ("Project"):

1. Is the 2003 Development Agreement between the County of Sacramento and the Project Applicant's predecessor in interest¹ (the "Elliott DA") valid and enforceable?
2. Is the Project exempt from further project-specific environmental review under the California Environmental Quality Act ("CEQA;" Pub. Resources Code, § 21000 et seq.) and the State CEQA Guidelines ("Guidelines;" Cal. Code Regs., tit. 14, § 15000 et seq.)?

For the reasons discussed below, our legal analysis has concluded that the Elliott DA is valid and enforceable, and that the Project is exempt from further CEQA review.

1. Overview of Our Process for Analyzing the Questions Presented and Overview of Legal Team

As noted above, our firm was engaged to conduct an independent assessment of the two questions presented. I assembled a team of subject matter experts to review and assess answers to these two questions. The team was comprised of the following members:

- **Kristina Lawson:** Kristina is Hanson Bridgett's managing partner and the immediate past leader of the firm's Real Estate + Environment Section. She is an expert in complex California entitlement, land use, environmental/natural resources and municipal matters, and a respected statewide authority on CEQA compliance and strategy. She is the former mayor of Walnut Creek, California.
- **Michael Conneran:** Michael is a partner in Hanson Bridgett's Government Section. He is a highly respected municipal law attorney with over three decades of experience representing public agencies in matters involving real estate and environmental law. He is the leader of Hanson Bridgett's Municipal and Public Agency Practice Group. Michael

¹ The applicant's predecessor in interest was Elliott Homes, Inc.

Linda Budge, Mayor
February 28, 2023
Page 2

currently serves as general counsel to the Livermore Amador Valley Transit Authority and the Tri-Valley—San Joaquin Valley Rail Authority. He has also served as the principal assistant to the city attorney of a Bay Area municipality, where he is responsible for zoning, land use, and environmental compliance.

- **Andrew Bassak:** Andrew is a partner in Hanson Bridgett's Litigation Section. With more than 25 years of experience in executing comprehensive legal strategy, Andrew has helped both public agencies and private-sector clients navigate complex land use and real estate litigation in state and federal courts. Andrew has served as president of the Board of Governors of the Association of Business Trial Lawyers and has been honored with several awards, including California Lawyer Magazine's California Lawyer of the Year award.
- **Sean Marciniak:** Sean is a partner in Hanson Bridgett's Real Estate + Environment Section, and he serves as the leader of the firm's Land Use Practice Group. Sean and his team have helped entitle millions of square feet of development in California, including a number of large-scale logistics, warehousing, and distribution facilities. Sean regularly advises clients regarding complex issues involving CEQA, California's Planning and Zoning Law, development agreements, and other related legislation.
- **Ellis Raskin:** Ellis is a senior counsel in Hanson Bridgett's Real Estate + Environment Section. Ellis' work has involved a range of large-scale development projects in high-stakes administrative proceedings, and he regularly advises clients on all aspects of litigation strategy for CEQA and other land use matters. He has served as an expert consultant for a broad range of real estate and land use matters involving potential challenges to local government approvals. Ellis currently serves as Vice-Chair of the Santa Monica Planning Commission.

2. Legal Analysis

a. The Elliott DA is Valid and Enforceable

The County of Sacramento and Dermody Properties' predecessor in interest entered into the Elliott DA on May 28, 2003 (shortly after the City's incorporation process was initiated). In its resolution approving the City's incorporation, the Local Agency Formation Commission ("LAFCO") included a provision stating that "[a]ny and all development agreements entered into between the County of Sacramento and any development project applicant . . . shall remain valid and enforceable between the applicant and the new City of Rancho Cordova, subject to Government Code Section 65865.3, subdivisions (a) and (b)."²

² Government Code section 65865.3 provides, *inter alia*, that a city will be bound by a development agreement after its incorporation if: (1) the application for the agreement was submitted to the county prior to the date that the first signature was affixed to a petition for incorporation or annexation, or the adoption of a resolution; (2) the county entered into the agreement prior to the date of the election for incorporation or annexation, or if there was an annexation without an election, prior to the date the applicable authority ordered the annexation; and (3) the annexation proposal was initiated by the city. (Gov. Code, § 65865.3, subd. (c)(1)-(3).)

Linda Budge, Mayor
February 28, 2023
Page 3

It appears that this term in the LAFCO resolution had the effect of making all prior DAs initially binding on Rancho Cordova, including the Elliott DA. Therefore, the subsequent actions by the City to extend the Elliott DA are valid, in that they were amendments to an existing and enforceable DA.

If the City did not want to accept the Elliott DA, it could have taken action to object to or challenge the LAFCO resolution (which it did not). Instead of taking action to have the Elliott DA declared non-binding or invalid, the City has a 20+ year history of actions in furtherance of the Elliott DA, which establish that the City believed the Elliott DA to be both binding and valid. Indeed, the Elliott DA was amended on three occasions following the City's incorporation (in 2004, 2009, and 2016). The most recent amendment extended the term of the Elliott DA to June 2023.

Regarding whether Government Code section 65865.3 places a time limitation on the Elliott DA, we believe that the terms of that statute which impose durational limitations are not applicable to the Elliott DA because the development agreement approval process was initiated after the incorporation process was started. Without the relevant context here, it would appear this creates an anomalous result whereby a late-approved development agreement (the type the law did not make binding on cities) is not subject to any durational limits. However, based on the theory that only the Legislature has the ability to limit the ability of cities to enter into development agreements, it appears to be the correct conclusion. This is particularly true here because the City adopted amendments that extended the term of the Elliott DA that were not challenged within the statute of limitations applicable to such amendments.

b. The Project is Exempt from Further CEQA Review

Public Resources Code section 21083.3 established a procedure for streamlined CEQA review for projects that are consistent with development densities established by an existing community plan for which an EIR was previously certified. (Pub. Resources Code, § 21083.3, subd. (a); see also Guidelines, § 15183;³ *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 279 [upholding approval of an ordinance based on Guidelines section 15183], disapproved of on another ground in *Hernandez v. City of Hanford* (2007) 41 Cal.4th 279, 297.) In these instances, CEQA review "shall be limited to effects upon the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report." (Pub. Resources Code, § 21083.3, subd. (a).)

Here, the Project is located within the Villages of Zinfandel Special Planning Area ("VOZSPA"). An environmental impact report ("EIR") for this Special Planning Area was certified by the

³ CEQA Guidelines section 15183 was promulgated on the authority of Public Resources Code section 21083.3, which provides, *inter alia*, that "[i]f a parcel has been zoned to accommodate a particular density of development or has been designated in a community plan to accommodate a particular density of development and an environmental impact report was certified for that zoning or planning action, the application of this division to the approval of any subdivision map or other project that is consistent with the zoning or community plan shall be limited to effects upon the environment which are peculiar to the parcel or to the project and which were not addressed as significant effects in the prior environmental impact report, or which substantial new information shows will be more significant than described in the prior environmental impact report." (Pub. Resources Code, § 21083.3, subd. (a).)

Linda Budge, Mayor
February 28, 2023
Page 4

Sacramento County Board of Supervisors in 1998. Additionally, a Supplemental EIR was prepared and certified by the Sacramento County Board of Supervisors in 2002. The Project is consistent with the development densities established in the VOZSPA.

Technical studies have not identified any project-specific environmental effects that were not analyzed in the VOZSPA EIR. As summarized in the City's December 5, 2022 City Council Staff Report:

Additional supplemental technical studies were prepared to further support that no additional project related impacts would occur as a result of the proposed project. These technical studies include additional traffic analysis, as well as a noise study. The traffic analysis results were summarized under the Traffic Improvements section of this staff report. The noise study concluded that noise levels associated with the project generated on-site operations would satisfy the General Plan noise criteria at the nearest existing residential uses. This is due in part to existing solid noise barriers in the vicinity, as well as overall on-site operational practices.

We have not identified any other project-specific factors that would require further environmental review under Section 21083.3 and Guidelines Section 15183.

While the Project will undergo a Major Design Review, it is not anticipated that the project design will implicate any new environmental effects, and in any event, the scope of any CEQA review and analysis will be limited to the environmental effects that fall within the scope of the City's design review ordinance. (*McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 94-95.)

3. Conclusion

In summary, the Elliott DA is valid and enforceable, and the Project is exempt from further CEQA review.

Our team is available to answer any further questions you may have.

Very truly yours,



Kristina D. Lawson
Managing Partner

KDL:EFR

cc: City Manager
City Attorney