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May 29, 2008

City Clerk
City Council
City of Sacramento
915 I Street
Sacramento, CA 95814

RE: Appeal of Planning Commission Approval for the Metropolitan Project (P05-205)
Approval Date: May 22, 2008

Dear Members of the City Council and City Clerk:

On May 22, 2008, the Planning Commission of the City of Sacramento took the following actions with regard to the Metropolitan Project (P05-205) to be located at 921 10th Street:

- A. Certified the Environmental Impact Report for the Metropolitan Project;
- B. Adopted a mitigation monitoring plan;
- C. Approved a tentative map to designate the parcel for condominium purposes;
- D. Approved a special permit for a major project of 75,000 square feet or more in the Central Business District's Special Planning District (C-3-SPD) Zone;
- E. Approved a special permit for 320 condominium units or special permit for 190 condominium units/190 hotel rooms in the Central Business District's Special Planning District (C-3-SPD) Zone;
- F. Approved a special permit to allow tandem parking;
- G. Approved a variance to reduce parking maneuvering area from 26 feet to 25 feet within the parking garage;
- H. Adoption of City Planning Commission Record of Decision Findings of Fact and Conditions or Approval of the Metropolitan Project (P05-205) including adopting Statement of Overriding Considerations.

Gene Moe, Karl H. Mindermann, and Jeffrey S. Linn, all residents of the City of Sacramento, and Sacramento Citizens of the Down Town, a California Unincorporated Association, hereby appeal all of the above actions by the Planning Commission to the City Council of the City of

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Sacramento. We have attached to this appeal the appeal fee of \$298.00, in the event the City does not provide to us the credit we are owed. We have determined the appropriate fee from the City of Sacramento website. The appeal is based on all the issues in Petitioners' letter of May 21, 2008, which is attached to this letter, and all of the previous letters submitted, including Mr. Daniel Smith's letter dated October 24, 2007, the letter of Mr. Daniel Smith dated August 17, 2007, and the letter of Mr. Marshall Hunt dated October 23, 2007. Mr. Moe, Mr. Mindermann, Mr. Linn, and Sacramento Citizens of the Down Town appeal the action of the City Council based upon the following grounds:

1. The EIR is inadequate because it fails to consider feasible mitigation measures to reduce the Project's energy use and also reduce greenhouse gases.

2. The City failed to follow CEQA procedures. The Final Environmental Impact Report was improperly circulated. The City noticed the availability of the Final Environmental Impact Report on May 2, 2008. A notice was mailed by the City of Sacramento, Department of Developmental Services to the Offices of William D. Kopper on May 12, 2008, and received on May 13, 2008. Contrary to the Notice, the Final Environmental Impact Report had not yet been prepared and was not available at the City offices. The Final Environmental Impact Report was only prepared on May 19, 2008, and at that time posted on the City website, three days before the hearing on the FEIR. The Final Environmental Impact Report did not comply with CEQA Guidelines §15132(b) because it did not include all the comments. It was later posted on May 20, 2008. The City failed to comply with CEQA in that it did not provide responses to comments to agencies and individuals who commented on the Project 10 days prior to the hearing on the Final Environmental Impact Report.

3. The City failed to respond to comments that were labeled in the Final Environmental Impact Report as M-3 and M-11. The comments suggested that the second parallel alley, which composes part of the motor court, had not been analyzed in a traffic study. The expert evidence indicated that because of the size of the hotel, including a large restaurant and kitchen and banquet facilities, it was likely that during conferences and major events the motor court and second parallel alley would not accommodate all of the hotel traffic. The lack of adequate capacity would cause hotel traffic to queue out of the alley into the surrounding streets, with associated traffic impacts. The Environmental Impact Report failed to consider these impacts or to complete a level of service analysis of the intersection between the alley and 10th Street.

4. The Project EIR fails to include a reasoned and good faith analysis related to rejection of feasible energy conservation measures. The Project EIR erroneously takes the position that the Project will have no impact on energy consumption. This position is clearly incorrect in light of the report of Mr. Charles Erlich and Mr. Marshall Hunt.

5. The Project EIR fails to include adequate information about storm water flows from the Project and how storm water flows and waste water flows will be mitigated if the CSS is not expanded by the time the Project is constructed.

6. The Project EIR fails to include an updated traffic analysis. The Downtown Traffic Study was updated for the Township 9 Project and Railyards Project. Subsequently, all new projects

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were based upon the updated Downtown Traffic Study. The Project EIR fails to include the updated Downtown Traffic Study, even though commenters have repeatedly indicated that the EIR was based upon the outdated 2006 Downtown Traffic Study. Both Mr. Daniel Smith and Caltrans pointed out when the Draft Environmental Impact Report was first circulated that the 2006 Downtown Traffic Study was based on outdated information.

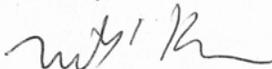
7. The Project does not include adequate parking for the condominiums, the hotel rooms, the restaurant, the banquet facilities, and the conference facilities. The calculation of the parking requirements for the Project does not comply with the City Zoning Ordinance. The Project is under parked according to the standard of significance of the City Zoning Ordinance, and there will be accompanying traffic impacts related to the lack of sufficient parking. The Project EIR fails to address these traffic impacts related to inadequate parking.

8. The traffic study was not updated for the combined Hotel/Condominium Project. The traffic study for the Hotel/Condominium Project includes no trip generation figures for the restaurant or for the convention facilities. The trip generation rates related to the revised Project, including the 2030 cumulative conditions, are vastly understated.

9. The Project EIR fails to include an analysis of the impacts of the truck loading facilities in the alley. The use of the truck loading facilities will be greatly increased due to the mixed use hotel option. However, the EIR assumes that truck loading will be the same as for the condominium option. This assumption is not realistic and is not based on fact. The analysis does not comply with CEQA.

10. The Project EIR should complete an updated traffic study that addresses the impacts of the hotel on traffic in the alley way.

Sincerely,



WILLIAM D. KOPPER
Attorney at Law

WDK/wrn
enclosures

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May 21, 2008

Planning Commission
City of Sacramento
915 I Street
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RE: The Metropolitan Project Final Environmental Impact Report

Dear Members of the Planning Commission:

I represent Gene A. Moe, Karl H. Mindermann, and Jeffrey S. Linn, and Sacramento Citizens for Downtown, a California Unincorporated Association. These are their comments on the Final Environmental Impact Report for The Metropolitan Project ("FEIR"). We incorporate the comments of all other individuals into these comments. My clients oppose the Project. In addition to the comments included in this letter, we incorporate the traffic comments prepared by Daniel Smith, which are attached. Our comments are as follows:

1. Failure to Follow CEQA Procedures.

On May 2, 2008, the City of Sacramento issued the attached Public Notice stating in part, "A copy of the [Final Environmental Impact Report for The Metropolitan Project] may be reviewed or obtained at the Development Services Department, 300 Richards Boulevard, 3rd Floor, Sacramento, California." This Notice was mailed by the City of Sacramento Department of Development Services to my office on May 12, 2008, ten days after the Notice was prepared. The Notice arrived in the Law Offices of William D. Kopper on May 13, 2008. On the same day, I sent our courier, Mr. George Ortiz, to the Department of Development Services at 300 Richards Boulevard in order to retrieve a copy of the Final Environmental Impact Report for The Metropolitan Project. (See Exhibit B.) When Mr. Ortiz arrived at the office of Development Services, he was informed that the Final Environmental Impact Report was not yet prepared, but would be posted on the City of Sacramento website. (See Exhibit B.) The Final Environmental Impact Report was finally posted on the City's website on May 19, 2008, three days before the hearing on the FEIR. The Final Environmental Impact Report lacked letters I-M. In accordance with CEQA Guidelines §15132(b) the Final Environmental Impact Report is required to have all of the comments. (See Exhibit C.) Finally on May 20, 2008, two days before the hearing, it appears that the City's website was updated to include the comments in the website version of the Final Environmental Impact Report.

The City's conduct in noticing and circulating the Final Environmental Impact Report does not comply with the requirements of CEQA. The cases interpreting CEQA have stated that the

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Legislative intent of CEQA is as follows: "Full compliance with the letter of CEQA is essential to the maintenance of its important public purpose." (*Environmental Protection Information Center, Inc. v. Johnson* (1985) 170 Cal.App.3d 604, 622.) Further, "[W]e must be satisfied that [administrative] agencies have fully complied with the procedural requirements of CEQA, since only in this way can the important public purposes of CEQA be protected from subversion. At least, when these particular provisions go to the heart of the protective measures imposed by the statute, failure to obey them is generally prejudicial; to rule otherwise would be to undermine the policy in favor of the statutes strict enforcement." (*Id.* at pages 622-623.) Depriving the public of the opportunity to comment "thwarts the Legislative intent underlying CEQA." (*Ultramar Inc. v. South Coast Air Quality Management District* (1993) 17 Cal.App.4th 689, 700.) In the *Ultramar* case the South Coast Air Quality District circulated an incomplete Draft Environmental Impact Report. The court held that there was no compliance with CEQA's notice provisions because the Draft Environmental Impact Report was incomplete. In this case, the City chose to give notice of the Final Environmental Impact Report and make it available prior to the City taking action on the Final Environmental Impact Report. However, the Notice provided was false and misled the public as to the availability of the FEIR. Moreover, the City posted an incomplete FEIR on the City's website. Attorney William D. Kopper specifically asked Jennifer Hagman, Senior Planner, to renounce the hearing on the Final Environmental Impact Report so that members of the public would have a complete FEIR and the time set forth in the original Notice (20 days) to review the FEIR. Ms. Hagman refused to renounce the hearing on The Metropolitan Project FEIR. These actions violated CEQA. Once the City undertook to provide notice and to furnish the public with the FEIR, the City was not entitled to provide false, unclear, and confusing notices and documents.

2. Failure to Respond to Comments.

The written responses to comments must describe the disposition of any "significant environmental issue" raised by the commenters. (Public Resources Code §21091(d)(2)(B); CEQA Guidelines §15088(c).) The response must be detailed and must provide a reasoned, good faith analysis. (CEQA Guidelines §15088(c).) The responses to comments on a draft EIR must state reasons for rejecting suggestions and comments on major environmental issues. "Conclusory statements unsupported by factual information" are not an adequate response; questions raised about significant environmental issues must be addressed in detail. (CEQA Guidelines §15088(c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348.)

In *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 722-732, the court rejected responses to comments in an FEIR because the FEIR failed to quantify how much water the Department of Water Resources could deliver in wet years, average years, and periods of drought. The court concluded that "the requirement of a detailed analysis in response [to comments] ensures that stubborn problems or serious criticism are not swept under the rug." (*Id.* at page 723.)

Specific, detailed responses, supported by a reasoned analysis, are particularly important when the EIR's impact and analysis is criticized by experts or other agencies with expertise in the area. At a minimum, the final EIR must acknowledge the conflicting opinions and explain why suggestions made in the comments have been rejected, supporting its statements with relevant data. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th

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1344, 1367, 1371.) In light of these standards, the FEIR fails to adequately respond to comments.

A. Comments M-3 and M-11. Comments M-3 and M-11 address whether the “motor court” and second parallel alley will function adequately and not cause cars accessing the hotel to cue out into the alley and surrounding streets causing traffic impacts. Further, these comments state that the RDEIR did not analyze the needs of “short term hotel reception and hotel function room parking near the main hotel entrance.” In comment M-11 Mr. Dan Smith, a certified traffic engineer, and one of the founding partners of DKS Associates, commented that:

The proposed hotel includes an 11,000 square foot restaurant including a 4,000 foot kitchen that appears scaled to also service the 23,300 square foot function rooms. Although the RDEIR is deficient in failing to provide any potential occupancy statistics for these public spaces, we estimate the restaurant could seat in excess of 300 diners and that the function rooms could accommodate over 750 persons for meetings or banquets.

Neither the RDEIR nor the environmental documents that preceded it has provided any analysis of whether or not the approximately 72 feet of short-term parking (equivalent to about 3.5 parking spaces) in the approximately 110 feet of passenger loading zone (equivalent to about 5.5 parking spaces) that are incorporated into mixed use hotel option are adequate to meet the needs of residents, hotel guests plus the surge of traffic of others dining at the restaurant or attending meetings and banquets in the hotel function rooms. The RDEIR is deficient until such an analysis is performed.

In response to comment M-3 the FEIR states “The City’s Development Engineering and Finance Department reviewed and approved the proposed site plan.” The comment shows that there was no traffic engineering completed to determine whether in fact the motor court proposal would be adequate to address the much larger flow of traffic during peak periods associated with the hotel. In response to comment number M-11, the Final EIR cites the revised DEIR which states “trip distribution patterns would be the same as the proposed project.” The City further states “the traffic study prepared specifically for the mixed-use hotel option included an analysis of the anticipated traffic generated by the restaurant.” This statement is clearly false. The trip generation calculations were included in Appendix B, which is reproduced as attachment D. Table 1 of Appendix B includes the land use assumptions for the trip generated calculations. The original Project is assumed to have 13,000 square feet of retail space and 320 condominium units. The revised Project is assumed to have no retail space and 190 condominium units and 190 hotel rooms. The traffic engineers did not calculate any traffic related to a restaurant use or conference room use. The remainder of Appendix B includes intersection calculations that were completed in 2006 prior to the first disclosure of the hotel option in the Final Environmental Impact Report draft dated July 30, 2007. The Final Environmental Impact Report fails to address a real concern about creating a severe traffic impact by placing a hotel ingress and egress on a small narrow alley in a building that will have a large restaurant and conference facilities. The authors of the EIR were required to complete traffic engineering to show that such a design would not have significant impacts on traffic, and if