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LAND USE, ENVIRONMENTAL & MUNICIPAL LAWYERS

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February 15, 2024

VIA EMAIL:

City Planning Commission, City of Santa Cruz
c/o Planning Office (cityplan@santacruzca.gov)

RE: Item 2, Planning Commission Hearing (2/15/24);
Santa Cruz Hotel (302 Front Street); Project No. CP21-0051

Dear Chair Conway and City Planning Commissioners:

On behalf of UNITE HERE Local 19 ("**Local 19**"), this office respectfully provides the following comments[1] to the City of Santa Cruz ("**City**") regarding the proposed demolition of a commercial building and construction of a six-story, 232-room hotel with ground floor retail, banquet and conference space, restaurant and bar ("**Project**") located on a combined six-parcels site located at 302-328 Front Street ("**Site**"). Three of the six parcels are owned by the City, two of which would be sold to the SCFS Venture LLC ("**Applicant**") to be incorporated into the hotel Project, while the remaining third parcel would be retained by the City and used as a public paseo.

In furtherance of the Project, the Applicant is seeking various project approvals under the Santa Cruz Municipal Code ("**SCMC**" or "**Code**") under Case No. CP21-0051, including: (a) a Coastal Development Permit ("**CDP**"), which is also subject to the California Coastal Act ("**CCA**" or "**Act**"); (b) a Non-Residential Demolition Authorization Permit; (c) a Design Permit; (d) a Boundary Line Adjustment; (e) a Special Use Permit; (f) an Administrative Use Permit; (g) a Revocable License for an Outdoor Extension Area; and (h) a Heritage Tree Removal Permit (collectively "**Entitlements**"). Additionally, for the purposes of the California Environmental Quality Act ("**CEQA**"),[2] the City is considering a class 32 In-fill Development Categorical Exemption ("**CatEx**").

In short, after review of the above-referenced item's Staff Report and associated attachments,[3] Local 19 has serious concerns about the Project's compliance with the SCMC, Coastal Act, and CEQA—especially as it relates to Project utilizing land otherwise available for affordable housing, the bare minimum of affordable housing in-lieu fees, and the lack of any lower cost hotel set aside or in-lieu fees. So too, we question the use of a Class 32 CatEx in light of the lack of any noise analysis to nearby residents and the failure to conduct a City-compliant analysis of vehicle miles traveled ("**VMT**").

Local 19 represents more than 8,000 workers employed in hotels, restaurants, airports, sports arenas, and convention centers throughout the Central Coast, Silicon Valley, the Central Valley, and the Sierra Nevada—including *roughly two hundred members who live and/or work in the City.* Local 19's members live and/or work in the vicinity of the Project Site, suffer the consequence of lack of affordable housing, lower-cost accomodations, traffic congestion, and other

[1] Herein, page citations are either the stated pagination (i.e., "**p. #**") or PDF-page location (i.e., "**PDF p. #**")
[2] Including "**CEQA Guidelines**" codified at 14 Cal. Code. Regs. § 15000 et seq.
[3] https://ecm.cityofsantacruz.com/OnBaseAgendaOnline/Meetings/ViewMeeting?id=2255&doctype=1#.

environmental impacts of the Project unless it is properly analyzed and mitigated. Additionally, Local 19 is committed to ensuring responsible development in the City, that local land-use rules and Coastal Act policies are followed, and informed decision-making by public officials regarding projects that may significantly impact the environment and affordable housing in the City of Santa Cruz.

For these reasons, Local 19 *respectfully asks the City Planning Commission to stay action on the Entitlements and CatEx* (collectively "**Project Approvals**") until the various errors are cured in a CEQA-compliant environmental review that incorporates additional mitigation for noise and traffic, and inclusion of greater affordable housing fees and on-site lower-cost hotel accommodations. The remainder of this comment outlines the following live questions involving this Project.

1. ***Why is the City not Considering two of the City-owned properties for Housing?***

The Project Site includes three City-owned parcels, including the southernmost parcel (along Laurel St.) and the two northern parcels (along Front St.). (Staff Report, p. 7.) The Staff Report states that the City-owned parcels are to be sold to the Applicant (i.e., all of the parcels except for the most northern parcel proposed as a public paseo) and meet the definition of *exempt surplus property*. (Staff Report, p. 28.) However, the two northern parcels are *contiguous*, owned by the City, total roughly 8,500 square feet,[4] and appear to be usable for a *residential building*. (See former Gov. Code § 54221.) Local 19 questions the City's determination that the property should be deemed exempt from the Surplus Land Act because they were under 5,000 square feet and not contiguous. It also questions the failure to consider these two northern lots for affordable housing, especially in light of the seemingly low amount of in-lieu affordable housing fees received (discussed below) and the City's clear need for housing. The City's Regional Housing Needs Allocation ("**RHNA**") obligation under its current Housing Element is new 3,736 units—57 percent or 2,130 units being affordable at moderate income levels or lower—to be built by 2031.

2. ***Why is the City considering the least amount of affordable housing in lieu of fees?***

Staff Report states that the Project is subject to Condition 29, requiring a minimum of $5.00 per square foot ($227,500 total) as an in-lieu fee requirement for the additional height granted to non-residential projects. (Staff Report, p. 14.) The Staff Report does not provide adequate evidence that this amount is sufficient, especially in light of the opportunity cost to the City for not building affordable housing on the two northern City-lots. Local 19 questions whether the bare minimum fee (i.e., $5 per square foot) is adequate in light of the loss of opportunity for housing and the lack of any lower-cost hotel accommodations here (discussed below).

3. ***Why are there no lower-cost accommodations for hotels set aside or fees included?***

The Coastal Act states, "Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred." (Pub. Res. Code § 30213.) Similarly, the City's Local Coastal Plan ("LCP") ensures and protects lower and moderately priced accommodation. (See e.g., LCP policies 3B-1.7 & 3B-4.5.) Despite the Coastal Commission's precedent of requiring a set aside lower-cost

[4] Santa Cruz GIS system (see APNs 005-151-35 and -34), https://gis.santacruzcounty.us/gisweb/.

accommodations (or an in-lieu fee) in new hotel construction,[5] the Project does not include any set aside lower-cost rooms or require an in-lieu fee. This runs counter to Pub. Res. Code § 30213 to encourage lower-cost accommodations where feasible. Local 19 also questions the unsubstantiated claims that set-aside or in-lieu fees would make the project infeasible and is concerned about the negative precedent this Project as proposed would establish for future hotel developments.[6]

4. ***Why does the noise study fail to consider impacts to nearby residents?***

The Project relies on a 2022 noise study, which is inadequate given that it did not establish baseline conditions in the evening or consider the impacts on residents located across the street in the Laurel Front Pacific mixed-use project.[7] (See Noise Study.) Nor does the study identify the sensitive receptors that are located roughly 50 feet from the proposed Project and potentially impacted by construction and operational noise (e.g., outdoor activities, large public gatherings, elevated noise from alcohol-charged patrons, potential for amplified music, etc.). These defects run counter to the specific findings required for a Class 32 CatEx. (CEQA Guidelines § 15332.)

5. ***Why is the Project not conducting a proper VMT analysis consistent with the City's Guidelines?***

The City's VMT Guidelines establish a quantifiable VMT threshold, such as 15 % lower than a county average (e.g., VMT/employee, VMT/customer) or a no net increase in VMT for retail and other land uses. (Traffic Study,[8] p. 53.) Here, the Project would likely increase overall VMTs and thus exceed an applicable threshold and warrant VMT mitigation (e.g., shuttle service to nearby attractions, subsidized public transit for employees/patrons, robust ridesharing program, guaranteed ride home program, etc.). However, the Project relies on a traffic study that claims—without substantial evidence—that the hotel's VMT should be considered less than significant because it is not a resort hotel, and the Project would merely shift trips (replacing existing traveler trips to other nearby hotels). (Id., at p. 55.) Additionally, there is no quantified analysis, travel demand model, or any other type of quantification showing that VMTs will merely shift.[9] Also, the Project would include numerous amenities similar to a resort (e.g., ballroom, retail, restaurant, bar, café, pool, spa, etc.) and, according to the Applicant, be the first new downtown hotel in 90 years.

Furthermore, the traffic study suggests that any development within a Transit Priority Area ("**TPA**") can be presumed to have a less than significant VMT impact. (Id., at p. 54.) However, as explained by the *OPR Technical Advisory* (referenced by the traffic study), that is merely a presumption that only applies to "certain projects" like residential, retail, office, or a mix of said uses—nothing mentions hotels.[10] So, too, that presumption may not be appropriate in light of

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[5] As acknowledged by the Applicant Letter dated 11/13/23, p. 4. (See https://documents.coastal.ca.gov/reports/2023/12/F12a/F12a-12-2023-corresp.pdf.)
[6] The Applicant places too much weight on a single eight-year-old staff report cited for the proposition that a set-aside or in-lieu fees are unwarranted here. (Ibid., p. 5.)
[7] https://www.cityofsantacruz.com/Home/Components/BusinessDirectory/BusinessDirectory/63/3930.
[8] https://ecm.cityofsantacruz.com/OnBaseAgendaOnline/Documents/ViewDocument/TRANSPORTATION%20STUDY.PDF.pdf?meetingId=2255&documentType=Agenda&itemId=37401&publishId=57062&isSection=false.
[9] Such as a model proposed under the County of Santa Cruz VMT analysis. (See https://sccoplanning.com/Portals/2/County/Planning/policy/Transportation/SantaCruzCounty_VMTGuidelines_051121.pdf.)
[10] Technical Advisory, p. 13, https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf.

project-specific or location-specific information. This new hotel Project will attract more employees and patrons, which must be analyzed and mitigated consistent with the City's VMT guidelines and not given an ad hoc exemption from a proper VMT analysis. These defects run counter to the specific findings required for a Class 32 CatEx. (CEQA Guidelines § 15332.)

In sum, Local 19 is concerned with the Project's compliance with the Code and Coastal Act—particularly as it relates to the adequacy of affordable housing fees and the lack of on-site lower-cost accommodations. So, too, we are concerned with the potentially significant impact on noise and VMTs—which makes a Class 32 CatEx inapplicable. Thus, Local 19 respectfully asks the City to stay action on the Project Approvals until the various errors are cured in a CEQA-compliant environmental review, such as a mitigated negative declaration ("**MND**"), with noise/VMT mitigation and consideration of on-site lower-cost accommodation rooms and more affordable housing in-lieu fees.

Local 19 reserves the right to supplement this appeal justification at future hearings and proceedings for this Project. (See *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120 [CEQA litigation not limited only to claims made during EIR comment period].) This Office requests, to the extent not already on the notice list, all notices of CEQA actions and any approvals, Project CEQA determinations, or public hearings to be held on the Project under state or local law requiring local agencies to mail such notices to any person who has filed a written request for them. (See Pub. Res. Code §§, 21092.2, 21167(f) and Gov. Code § 65092.) Please send notice by electronic and regular mail to Jordan R. Sisson, Esq., 801 S. Grand Avenue, 11th Floor, LA, CA 90017 (jordan@gideonlaw.net).

Thank you for consideration of these comments. We ask that this letter be placed in the administrative record for the Project.

Sincerely,

LAW OFFICE OF GIDEON KRACOV

Jordan R. Sisson