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February 25, 2010

BY HAND

The Honorable Mayor Helene Schneider and
Members of the City Council
Santa Barbara City Hall
735 Anacapa Street
Santa Barbara, California 93101

Re: **Appeal of Planning Commission Certification of the Final EIR and Approval of
the Sandman Redevelopment Project on December 17, 2009 (MST 2007-00 591)**

Dear Mayor Schneider and Members of the City Council:

The undersigned has been requested to join the team who is representing the Applicant with respect to the subject Appeal of the Planning Commission's 6 to 0 decision to certify the Final EIR for the Project and the 6 to 0 approval of the Project, subject to the Conditions of Approval.

The discussion below will address the issues raised by the Appellants in their January 7, 2010 Appeal Letter.

BACKGROUND

I. Project Background

The Sandman redevelopment project was originally commenced in 2003. It consists of a proposed redevelopment of 4.58 acres on Upper State Street. The improvements currently consist of a 113 room motel and a 216 seat restaurant. The project originally proposed by the Applicant was a 112 room hotel (which was subsequently reduced to a 106 room hotel) and 73 residential units, eleven of which are affordable (the "Proposed Project"). The Proposed Project's hotel was comprised of 63,455 square feet of improvements and a 112 space below ground parking lot.

During the consideration of the Proposed Project, the City adopted the Upper State Street Study. In response to that study, the applicant proposed modifications to the Proposed Project. These modifications eliminated the 63,455 square foot hotel and replaced it with a 15,790 square foot office building and the number of residential units remained at 73 (the "Applicant's Alternative"). Both the Proposed Project and the Applicant's alternative are analyzed in detail in the EIR.

Prior to the hearing on the draft EIR, the applicant presented the Applicant's Alternative to the Architectural Board of Review (ABR) and received comments. In conjunction with the Planning Commission hearing on the draft EIR, the Proposed Project and the Applicant's Alternative were the subject of a Planning Commission Conceptual Review hearing. In response to the comments received at ABR and the Conceptual Review hearing, the Applicant further refined the Applicant's Alternative to be responsive to the comments received. With respect to the refinements, they included a reduction in the size of the office building and the addition of two commercial condominiums for a net increase of 358 square feet, and the reduction of the bedroom count in the residential project by 6 bedrooms ("December '09 Project" or "Approved Project").

The December '09 Project received unanimous positive comments at a November 16, 2009 ABR hearing, including statements from ABR members such as "Fabulous Project", "Great Job", "Hats off to the Team" and "Really Nailed It". The December '09 Project received unanimous approval by the Planning Commission on December 17. The Planning Commission also unanimously certified the Final EIR at the December 17 hearing.

II. Project Perspective.

The EIR concludes, after a thorough analysis of the Proposed Project and the Applicant's Alternative, that there are no significant and unavoidable environmental impacts of either alternative. In fact, the analysis shows that both the Proposed Project and the Applicant's Alternative have far fewer impacts than the existing hotel and restaurant uses on the property. Traffic is reduced, other impacts are reduced, views, landscaping and architecture are vastly improved, and pedestrian circulation (public and private) is enhanced. Below is a table of some of the significant reductions in impacts by the proposals:

Reduced Impact	Description
Traffic	852 less average daily vehicle trips
Views	View corridors opened, buildings frame instead of block views
Public Space	Sidewalks widened, public plazas provided
Pedestrian Connectivity	Links to Northerly neighbours provided
Enhanced landscaping	Preservation of existing street trees, net increase of 239 trees
Surface Parking	Substantially replaced with below-ground parking and ground level landscaping and walkways
Open Space	Provides on-site open space
Non-conforming Setbacks	Eliminates all failures of the set back to conform to current standards; requests no modifications (other than a single affordable housing unit)

III. Finding of Environmental Superiority

The Applicant wants to emphasize to Council what all acknowledge – that the Approved Project has less environmental impacts than the existing improvements on the Property, the Proposed Project or the Applicant’s Alternative. CEQA does not provide a mechanism to establish a formal designation of an environmentally preferred alternative in this case for the reasons stated below. However, the Planning Commission made a specific finding that the Approved Project is environmentally superior. The Applicant urges the City Council to make a similar finding.

IV. Appeal.

Notwithstanding the substantial environmental benefits resulting from the Approved Project, the Appellants have appealed the approval of the FEIR. Although the subject of this Appeal is an EIR, it is very important that the City Council, on appeal, appreciate the fact that neither the Proposed Project, the Appellants’ Alternative, the Approved Project, nor any of the alternatives studied in the Final EIR would result in any significant and unavoidable (Class I) impacts (see pages 10.8 and 10.9 of Final EIR). Because there are no significant and unavoidable (Class I) impacts, the Proposed Project was subjected to the maximum CEQA level of review, even if ultimately shown not to be warranted by its actual environmental impacts. In fact, the City has considered major projects in the Upper State Street area - Whole Foods/Circuit City (negative declaration) and Berkus (categorically exempt from environmental review) - without requiring an EIR. However, because it initially appeared that it was possible that environmental impacts could exist, the applicant was willing to incur the cost and delay of an EIR, and therefore the EIR was prepared.

Once the EIR concluded that there were no significant (Class I) impacts, the balance of the EIR (such as the alternative analysis) was essentially gratuitous. See CEQA Guidelines Section 15126.b(b) which provides that “... the alternatives shall be limited to ones that would avoid or substantially lessen any of the significant effects of the project.” [Emphasis added.]

Appellants apparently take issue with the straightforward and logical conclusion set forth in the EIR Executive Summary at page 1.0-1 which states as follows:

“The environmental review process for the Sandman Inn Redevelopment Project provides a co-equal level of analysis for the proposed project and the applicant’s alternative. The proposed project includes a hotel and residential condominium complex while the applicant’s alternative replaces the proposed hotel with two office buildings. The co-equal level of analysis provides the same level of detail and analysis for both the proposed project and the applicant’s alternative for each of the issues that were determined in the Initial Study to have the potential for significant impacts. **By completing the environmental review on both, this final EIR provides flexibility to the City in approving either proposal without necessitating additional environmental review.**” [Emphasis added.]

DISCUSSION OF ISSUES

I. Further Improvements to the Project Not Discussed in the EIR

The first issue raised by the Appellants is that while the EIR was being finalized for the Planning Commission hearing, the Applicant further refined and mitigated the Project as embodied in the Approved Project. As mentioned above, the net effect of these refinements on the scope of the project were an increase of 358 square feet of commercial area and a decrease in the number of bedrooms in the project by six. There was no change in the residential unit count or any other material factor which could increase the project’s environmental impacts analyzed in the FEIR.

The Appellants seem to be arguing that no changes (no matter how much they improve the Project) can be made to the Project unless those changes are discussed in the Final Certified EIR. This proposition is of course contrary to the City’s process of Design Review Board, Planning Commission and Council review. The changes from the Applicant’s Alternative to the Approved Project were the direct result of comments made at ABR hearings and the Planning Commission Conceptual hearing, some of which comments were made by Appellants themselves¹. Appellant’s assertion literally would mean that the Planning Commission, the City Council on Appeal and the applicable design review boards (ABR or HLC) could not change or improve upon the Project in the review process. Appellants seem to argue that the environmental document is a straightjacket which prevents this process.

Contrary to the implications raised by the Appellants, under *Pub Res C. §21166*, once an EIR has been completed, the lead agency or a responsible agency may not require a subsequent or supplemental EIR unless:

- Substantial changes are proposed in the project that will require major revisions of the EIR;

¹ CPA letter dated December 15, 2009: “We are pleased that some recommendations made by the Citizens Planning Association (CPA) and others (e.g. providing more open space and moving the open space to a more useable location) have been implemented.”
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- Substantial changes occur in the circumstances under which the project is being undertaken that will require major revisions in the EIR; or
- New information of substantial importance to the project that was not known and could not have been known at the time the EIR was certified as complete becomes available ...”.
(Kosta and Zische, *Practice Under the California Environmental Quality Act* Section 19.2.)

The Appellants have not demonstrated how or why the changes reflected in the Approved Project meet any of the standards set forth above which require a subsequent or supplemental EIR. In fact, the reduction of six bedrooms and the increase in commercial area by 358 square feet cannot be interpreted under any stretch of the imagination as justifying a subsequent or supplemental EIR under CEQA.

II. Failure to Designate the Applicant's Alternative as the Environmentally Superior Alternative

The second issue raised by the Appellants is the failure of the EIR to identify which of the alternatives is the “environmentally superior alternative.” The Appellants assert essentially two arguments in support of its appeal on this point. First, Appellants state that the identification of an environmentally superior alternative is required by CEQA and proceed to say that “it is improper to withhold this fundamental conclusion ...”. Second Appellants argue that the lack of this conclusion somehow limited public comment. The first assertion is a misstatement of CEQA requirements. Both of these assertions are unsupported by the record.

A. CEQA Does Not Require Designation if there are no Class 1 Impacts.

CEQA and the CEQA Guidelines do not require the designation of an environmentally superior alternative. Appellants' position is without any support in CEQA, its regulations or significant case law interpreting CEQA. The designation of an “environmentally superior alternative” is not mandated except if the “no project alternative” is “environmentally superior” to all other alternatives. If it is, the EIR must identify which of the others, as among themselves, causes the least environmental damage.” (14 *Cal. Code Regs.* §15126.6(e)(2).)

In the subject EIR, the “no-project alternative” was not environmentally superior to either the Proposed Project or the Applicant's Alternative. In fact, as stated above, the ‘no project alternative’, which would leave the existing hotel and restaurant uses in operation, has substantially greater on-going environmental impacts than either the Proposed Project, the Applicant's Alternative or the Approved Project.

Notwithstanding that CEQA does not provide for the finding that Appellants erroneously insist is required, it is apparent that the Applicant's Alternative has substantially less environmental impacts than the Proposed Project. It is also apparent that the Approved Project has even fewer impacts than the Applicant's Alternative.

The Planning Commission responded to the concerns of the Appellants with respect to this issue by including in its findings, which were adopted in connection with the Planning Commission's approval of the Approved Project, the following:

"The Planning Commission finds the project plans dated December 3, 2009 to be environmentally superior in terms of relative environmental impacts to all other alternatives evaluated in the EIR."

B. Appellant's Participation In the Process Was Not Limited by Lack of Designation of an Environmentally Superior Designation.

Appellant's argument that the failure of the EIR to make a designation not required by CEQA inhibited public comment is also contrary to the record. The Sandman project has been reviewed by the Architectural Board of Review and the Planning Commission a total of eleven times. The potential for development impacts on the Sandman property have been analysed in the Upper State Street Study. The vast benefits of the redesigned Applicant's Alternative and the even more refined Approved Project were the direct result of comments received through the public review process, including comments of Appellants.

The Appellants and other members of the public were active participants in the review and approval of the Sandman project. They provided comments at the EIR scoping hearing. They provided comments at the Draft EIR hearing. They provided comments at the Planning Commission Conceptual Review hearing. And of course they provided comments at the project approval hearing. Contrary to statements in the appeal letter, the public, specifically including the applicants, were deeply and vocally involved in all aspects of the review and certification of the Sandman EIR and approval of the Approved Project itself.

Many of the Appellants' comments were incorporated into the Approved Project and made it better. This is actually a case where the public involvement in the process has been embraced by the Applicant, public comments have been incorporated into the Project, and the environmental impacts of the Sandman Inn redevelopment have been further reduced as a result.

Appellant's argument that somehow the failure to designate an environmentally superior alternative limited public comment is disproved on its face by Appellants own participation in the process. Appellant's provided three separate letters to the Environmental Scoping hearing. These letters contained numerous comments with respect to the scoping of the EIR². Appellants also provided detailed comments to the Draft EIR³. Notably CPA stated that it was 'delighted that the applicant decided to propose a more attractive and far more sustainable alternative', the Applicant's Alternative. CPA then went on to extol the environmentally superior aspects of the Applicant's Alternative. CPA's comment letter dated May 21, 2009 specifically identified no less

² CPA Letters dated June 8, 2008 and June 24, 2008, and Allied Neighborhood Alliance's e-mail dated June 26, 2008, contained in Volume II of the FEIR.

³ See CPA letters dated May 10, 2009 (FEIR page 12.0-11) and May 21, 2009 (FEIR page 12.0-46) and Allied Neighborhood Alliance letter dated May 12, 2009 (FEIR page 12.0-22).

than six significantly reduced environmental impacts of the Applicant's Alternative⁴. CPA further provided two additional comment letters to the Planning Commission prior to the December 17, 2009 hearing, one setting forth comments with respect to the FEIR and the other providing comments with respect to the Applicant's Alternative and the December 2009 Project⁵.

It defies logic to argue that public comment was somehow limited when all of these environmental benefits were set forth in the DEIR and FEIR, were apparent to the public (including Appellants) and the decision makers as evidenced by comment letters and discussions at hearing and were emphasized by Appellants and other members of the public in at least three public hearings before the Planning Commission⁶.

Appellants acknowledge that the analysis of alternatives is at the heart of the EIR process. But this does not then require a finding not contemplated by CEQA. The FEIR "provides a co-equal level of analysis" with "the same level of detail and analysis for both the Proposed Project and the Applicant's Alternative for each of the issues that were determined in the Initial Study to have the potential for significant impacts". The Approved Project is very similar to the Applicant Alternative, only with less environmental impacts, largely as a result of public comment. The Planning Commission recognized this fact with its finding quoted above.

Appellants raise the spectre that the Applicant could switch to another version of the Project and that somehow the failure to designate the Applicant's Alternative as the environmentally superior alternative enables this. Neither the Proposed Project nor the Applicant's Alternative was approved by the Planning Commission. Neither is before the City Council. The Applicant has devoted substantial time, energy, creativity and financial resources in refining the Sandman redevelopment project into the Approved Project. It has no intention to

⁴ "Explicitly or implicitly, the DEIR presents ample evidence for the environmental superiority of the Applicant's Alternative over the original Project. For example:

1. Less impact on mountain views and neighborhood character.
2. Less water and sewer usage, as well as less solid waste generation, by the Alternative's commercial component –
Water: 7.44 acre feet per year versus 19.53 afy
Sewer: 6.63 afy versus 16.94 afy
Solid Waste: 18.98 tons per year versus 84.80 tpy
The respective total impact figures, which include the impact of the 73 residences as well, are of course much higher.
3. Less traffic congestion (about 40% fewer average daily trips and 20% fewer parking spaces for the two parcels).
4. Less exposure of the residents to traffic noise and air pollution (2 instead of 7 dwelling units requiring closed windows and air conditioning for indoor noise mitigation).
5. Less exposure of the public to air and noise pollution during the period of demolition and construction (24 months instead of 29 months).
6. Less risk of water run-off to other properties and of eventual discharge into two nearby creeks, as well as into the drinking water well located near their confluence. The resulting increase in the on-site retention of storm-water would help protect the floodplain south of Highway 101. This is especially important should conditions outstrip the "25-year storm event" referenced in the DEIR."

⁵ See CPA letters dated December 14, 2009 and December 15, 2009.

⁶ The May 14, 2009 DEIR Comment Hearing, the May 14, 2009 Concept Review Hearing and the December 17, 2009 FEIR Certification and Project Approval Hearing.
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change course and seek approval of the Applicant's Alternative or the Proposed Project. If for any reason Applicant were to seek any such approvals, they would be subject to full public hearings, ample opportunity for public comment, and subject to analysis under Pub. Res. C. §211.66 to determine whether further environmental review is required in the form of an Addendum to the EIR or a subsequent or supplemental EIR.

Appellants express concern that there is an implication that the Proposed Project is still under consideration. To address that concern, the Applicant hereby expressly withdraws the Proposed Project from continued consideration, as it has been superseded by, first, the Applicant's Alternative and, finally, by the Approved Project. [Emphasis added.]

The Applicant has determined that the best project for the Applicant is the December 2009 Approved Project and that is the project they want to develop. To further confirm this conclusion, the Applicant requests that City Council make a finding similar to the finding made by the Planning Commission and quoted above. This will acknowledge the uncontested fact that the Approved Project is environmentally superior in terms of relative environmental impacts to any alternative evaluated by the EIR.

III. Commentary on City Process

On page 2 of the Appellants' Appeal Letter, the Appellants criticize the CEQA practices of the Community Development Department. The Applicant does not see why this critical commentary is necessary. It clearly does not serve as a basis for appealing the Approved Project.

IV. Requested Condition

At the top of page 3 of Appellants' Appeal Letter, Appellants request the imposition of a condition that requires enhanced public and decision-maker review of any changes to the description of the Approved Project. There is no justification for this enhanced review of the Approved Project. There is simply no merit in imposing additional unspecified review burdens on a project like the Approved Project. If anything, the Approved Project's review should be streamlined in light of the extremely positive comments it has received in public hearings as a model project for a redevelopment that substantially reduces existing environmental impacts.

Further, as a long-time land use practitioner in the City of Santa Barbara, I believe this requested condition would be redundant. Every project in Santa Barbara which has raised public interest receives "enhanced public and decision maker review." Finally, such a condition would be difficult to enforce or interpret since it has no standard by which satisfaction of the condition can be tested or evaluated.

V. Lack of Clarity and Directives in Illustrating the Environmental Superiority

CEQA requires that an EIR be prepared with a sufficient degree of analysis to provide decision makers with information that enables them to review possible environmental consequences intelligently. The courts have not looked for perfection but for adequacy, completeness and a good faith effort at full disclosure. The FEIR is a complete, objective and

through analysis of the Proposed Project and several alternatives, one of which is the Applicant's Alternative. All potentially significant environmental impacts identified through the scoping process have been explored in detail.

The subject of the two-volume EIR for the Proposed Project and the Applicant Alternative which concludes there are no Class I impacts, clearly satisfies this standard of adequacy. The contents of the EIR may not be organized or presented exactly the way the Appellants wish them to be but it clearly satisfies a high standard of thoroughness and completeness. The content, analysis and format of the FEIR clearly satisfy the legal requirements of CEQA.

VI. Limitations of Natural and Infrastructural Resources

Appellants raise issues related to limitations of natural and infrastructural resources. These issues are identical to issues raised by Appellants in their comments on the DEIR. They were specifically addressed in the FEIR⁷. Without more credible or expert evidence in the record to support an expansion of the environmental impact discussion to include these subjects, these comments are simply the Appellants' unsupported opinion.

VII. Job/Housing Balance

The Appellants assert that the addition of market rate housing to the community will increase the Jobs/Housing imbalance in the community. Appellants' assertion has no merit. Appellants' (and others) comments regarding the jobs/housing imbalance issues were raised in conjunction with the review of the DEIR and were thoroughly addressed in the FEIR⁸.

The City currently provides 1.7 jobs per residential unit. The existing Sandman Inn and restaurant provides approximately 130 jobs, with no housing units; the Applicant's Alternative will generate approximately 57 jobs while supplying 73 housing units. The net effect is that the Applicant's Alternative (and therefore the Approved Project) will create over an eighty percent reduction in jobs on the site and a reduction in the City's jobs housing imbalance⁹. However, under any circumstances, the issue of Jobs/Housing imbalance, its causes and consequences, is an economic/policy issue and is not an environmental issue which should be addressed in the FEIR.

VIII. Hitchcock and State Street Traffic

The Appellants have raised an issue with respect to traffic at Hitchcock and State as a consequence of the recent "change of use" of the Circuit City facility to a Whole Foods market.

In making this request, the Appellants ignore CEQA Guidelines section 15125, which provides that the baseline for assessing impacts will be the "environmental setting" for the Project at the time of issuance of a Notice of Preparation or the date of commencement of environmental

⁷ See FEIR Response to Comments 3-7 and 3-8, page 12.0-13.

⁸ See FEIR Response to Comment 2-4, pages 12.09-10

⁹ Id.

review. CEQA mandates inclusion of pending projects identified at that time. CEQA does not allow for re-analysis of other projects as they come to fruition or mature.

At the time of commencement of environmental review for this Project, there was a pending project before the City to remodel the Circuit City site to provide not only for a Circuit City store but also a Whole Foods store and housing. This pending project was evaluated as part of the baseline for the EIR and not simply the "change of use" for the Whole Foods market. As a result the traffic impacts of the recently opened Whole Foods store were thoroughly analyzed in the FEIR. Any further review of the traffic generated by the existing Whole Foods market would doubtless show much lower impacts than the traffic impacts of the much larger Whole Foods/Circuit City project included in the FEIR's cumulative project study.

Traffic in the area of the Project, including the Whole Foods, Circuit City project has been studied exhaustively. The Applicant provided its independent traffic study for the Proposed Project and the Applicant's Alternative. The Whole Foods/Circuit City project provided its own independent traffic study. The City undertook a third independent traffic study, including both the Whole Foods and Circuit City projects in conjunction with the recently adopted Upper State Study. Finally, the EIR consultant obtained a fourth independent traffic study in which both projects were included. The analysis of the traffic impacts in the area has been thorough, exhaustive and complete.

The most important traffic issue related to the Approved Project is that it represents an 852 reduction in average daily traffic trips on Upper State Street¹⁰. The Applicant's Alternative, and therefore the Approved Project, will reduce by almost half the number of daily trips attributable to the property, as shown by the following:

<u>Project</u>	<u>Average Daily Trips</u>	<u>Reduction from Existing</u>
Existing Site	1751	--
Proposed Project	1535	216 (88% of existing)
Applicant's Alternative	899	852 (51% of existing)

IX. Crosswalks.

The Appellants place a great emphasis on the FEIR's misstatements about the description of bike lanes on Hitchcock and the omission of comments on crosswalks on Hitchcock. But the real question which must be asked is whether the misstatements or omission were prejudicial and would have a "material effect" on informed decision making or informed public information? (*Al Larson Boat Shop v Board of Harbor Commissioners*, 18 Cal.App.4th 729.) The court added to its conclusion that "We are also mindful of the Supreme Court's caution that 'rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic or recreation development and advancement.'" (*Id.* at 749 (quoting *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 576.)

¹⁰ See FEIR Table 7.0-8, Page 7.0-29
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X. Residential Density Calculation.

Appellants raise concerns regarding the calculation of the density of the residential project, disingenuously labelling it "double-dipping". Appellant's concern was specifically addressed by Staff and by the FEIR¹¹. The Applicant could have easily proposed to merge the two lots and create a condominium parcel for the commercial portions if it desired, which would have obviated this issue.

City staff has determined that the calculation is entirely appropriate because the Approved Project is essentially a mixed use development of the entire site. Additionally, the Planning Commission has approved this calculation methodology as entirely appropriate. Further, the number of residential units resulting from this calculation is entirely consistent with the General Plan's housing element policies¹². This consistency is expressly validated by the FEIR¹³.

Appellants' objective (stated in its appeal letter) is to reduce the density of the Approved Project. This objective is not supported by any material facts. A reduction would be contrary to the housing policies encouraging housing. Reduced density would also make the underground parking, which enhances the liveability of the project and reduces its view impacts, unaffordable. Reducing density would also negatively impact the jobs housing imbalance and the influx of non-resident commuters because by definition, the project would provide less housing. For these reasons among others, the "objective" urged by Appellants should be rejected.

In evaluating the issues discussed above as the basis for not reducing the density of the residential units, the Council should also be aware of *Government Code* section 65589.5(j). Under *Government Code* section 65589.5(j), the density of a proposed housing project that complies with the applicable objective general plan and zoning standards and criteria in effect when the application is determined to be complete (which the Approved Project does) cannot be reduced, or the project disapproved, unless the agency makes specific written findings supported by substantial evidence showing a need to do so to avoid adverse health or safety effects. To deny the project, or to approve it conditioned on a reduction in density, the agency must find that the proposed project would have a specific, adverse impact on the public health or safety unless it is disapproved or the density is reduced. A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

¹¹ See FEIR Response to Comment 3-9, page 12.0-16.

¹² **Policy 3.1** requires the City to make every effort to meet Santa Barbara's fair share of the regional housing need, including supporting infill residential projects and bonus density projects where appropriate

Policy 4.1 encourages the construction of new affordable housing opportunities for owners and renters, specifically encompassing three bedroom homes for first time and middle income buyers.

Policy 4.3 requires the City to concentrate its housing efforts on the redevelopment of opportunity sites in commercial and

residential zones with priority for commercial and mixed-use development. The only identified opportunity site on Upper State Street is the Sandman Project site.

Policy 5.2 recommends that the City implement flexible standards for housing projects.

¹³ See FEIR Response to Comment 15-4 and Appendix 5.0, Supplemental Policy Consistency.

(Govt.C. §65589.5(j)(1). The FEIR makes absolutely clear that the Approved Project does not create or contribute to any adverse health or safety effects and does not support the reduction of the density.

XI. Approved Project's Addition of Two Commercial Condominiums.

Appellants assert that the implications of adding two commercial condos were not evaluated in the FEIR. Appellants deliberately overlook the fact that the office building proposed in the Applicant's Alternative was substantially reduced in size in order to accommodate the two commercial condos. The net square footage of commercial uses proposed in the Applicant's Alternative was 14,254, all in one office building. The net commercial square footage proposed in the Approved Project is 14,612, consisting of the two commercial condos and the reduced size office building. The difference is an increase in only 358 net square footage of commercial space.

XII. Reservation of Rights to Raise Additional Issues.

Appellants "reserve the right to make additional arguments" in support of their appeal.

The Applicant finds this request to be indicative of the goals of the Appellants. The Appellants have followed this Project throughout the entire review Project. Unlike other appeals, because of the City's holidays, furloughs, etc., the Appellants had a total of twenty-one days after the Planning Commission approval of the Approved Project to formulate their appeal issues.

Appellants' own letters state that they have been following and commenting on the project for over six years. Appellants have written eight letters to the Planning Commission on the project in the past two years alone. Appellants have also appeared and presented their comments at numerous hearings on the Project and its environmental review. The Appellants' position has been fully considered by the decision makers and the EIR consultant. The time has passed for Appellants to add new arguments. The unanimous decision of the Planning Commission was correct. We believe that this City Council should deny the appeal.

XIII. Impact of Approval of Appeal.

Appellant's appeal would reverse the Planning Commission certification of the FEIR and its approval of the Project. Such a result would be tantamount to the express approval of the 'No Project Alternative', which the FEIR, the Applicant, Planning Commission and even Appellants agree has substantially greater environmental impacts than the Approved Project. In essence, the Appellants urge the adoption of the no project alternative set forth in the FEIR.

In essence, by pursuing this appeal, Appellants are asking the City Council to retain improvements consisting of acres of asphalt surrounding, less than sterling '60's architecture, and generating far more environmental impacts than the Approved Project.

Appellants desire your Council to approve blocking views of the mountains, narrowing public sidewalks, reducing pedestrian connectivity, eliminating public plazas and placitas, preventing the construction of a new bus stop, eliminating new affordable housing in Santa

Barbara -- all of which are directly contrary to the Upper State Street Study, the General Plan and the developing Plan Santa Barbara.

Appellants would also have your Council support maintaining 852 daily vehicle trips on upper State Street the Approved Project would eliminate, and prevent the planting of more than 266 new trees on what is now a sea of asphalt. Appellants would have your Council support maintaining modest accommodations for out of town visitors over the creation of seventy-three environmentally friendly, high quality of life, and transit oriented homes for Santa Barbara residents.

The adverse results of granting Appellants appeal clearly demonstrate that Appellants' objective to oppose every project is outmoded and inappropriate. An environmentally sensitive redevelopment project, carefully crafted to be responsive to seven years of public input, resulting in vastly reduced environmental impacts over the current use of the property, should receive as much support from self-appointed spokespersons for the community as it has from the ABR and the Planning Commission.

A true citizen's "planning" association should be in support of the Approved Project. A true neighbourhood association would be allied behind the Approved Project because the reduced environmental impacts benefit all neighbours.

Appellants are appealing the approval of a project representing an improvement over the "Proposed Project" with which they were "delighted"¹⁴ and "pleased with the direction of" ... and they were willing to "applaud the direction of"¹⁵. Many of the refinements of the Approved Project over the Applicant's Alternative were the direct result of comments made by Appellants in their comments to the DEIR and at the Planning commission Conceptual hearing. These include elimination of a proposed left turn into the project, increased open space internal to the project, buffering the residential units more from State Street impacts, increased protection of existing trees and planting additional new trees.

¹⁴ CPA DEIR and Conceptual Review Letter dated May 10, 2009.

¹⁵ Allied Neighborhoods Association DEIR Comment Letter dated May 12, 2009.
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Granting the Appellants' appeal would subvert the entire public comment and approval process in which this project has been involved for almost seven years. We urge you to look through the unsupported issues raised by the Appellants and focus your attention on all of the environmental, social, planning and policy benefits of the Approved Project. We urge you to deny the appeal and approve the Planning Commission's certification of the FEIR and approval of the Approved project.

Sincerely,

A handwritten signature in black ink that reads "Douglas E. Fell". The signature is written in a cursive style with a large initial "D" and a long, sweeping underline.

Douglas E. Fell

DEF:jmg

Cc: Mr. Greg Parker
Steven Wiley, City Attorney
Scott Vincent, Assistant City Attorney
Paul Casey, Community Development Director
Ms. Allison Debusk
Ms. Debra Andoloro