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June 4, 2024

City Council
City of Eureka
531 K Street
Eureka, CA 95501

Re: June 4, 2024 Council Meeting
Agenda Item E.1 – EaRTH Center CEQA and Disposition and Development Agreement (DDA) with Danco

Members of the City Council:

This firm represents Citizens for a Better Eureka ("CBE"), which is a coalition of Eureka citizens, community groups, and businesses advocating for smart downtown planning and a vibrant local economy. This letter concerns the Council's June 4, 2024 Public Hearing agenda item E.1 – *EaRTH Center CEQA and Disposition and Development Agreement (DDA) with Danco*. CBE requests that the City postpone any action on this item given the considerations outlined below.

CBE understands the City is under significant pressure to comply with state regional housing allocation requirements. To be clear, CBE supports the responsible development of housing that is accessible to City residents at all income levels. With regard to the above-referenced action, however, the City has failed to provide any transparency into the process behind the project's apparent transformation from a public-private partnership in which the City would retain, at least for a period of years, ownership and a share of revenue from the project to a no-bid, no-consideration giveaway of the City-owned property at 3rd Street between G and H Streets to a private developer.

Should the City proceed with the proposed action, the City will do so in violation of its own General Plan public bid requirements. We strongly urge the City Council to postpone the proposed action, and to follow the same public bid process that the City has followed for the City-owned parking lots at 5th and D Streets and 6th and L Streets, and for the vacant City-owned lots between C and F Streets. The public bid process exists for a reason – to provide a transparent, public process for the disposition of City-owned property, and to ensure that the City receives the greatest value and consideration for such property.

1. Procedural Background

The following provides a complete procedural background regarding the EaRTH Center.

Date	Description of Action
November 16, 2021	The City Council approved a Memorandum of Understanding ("MOU") with the Humboldt Transit Authority ("HTA") concerning the development, construction and operation of an intermodal transit center on City-owned parking lots between G and H Streets and 3rd and 4th Streets. The MOU allocated various roles and responsibilities as between the City and HTA to further develop the project. The MOU did not approve any particular project, and the City made no CEQA determination concerning the project.

February 1, 2022	The City Council adopted a resolution finding the City-owned parking lots between G and H Streets and 3rd and 4th Streets to be exempt surplus land slated for housing development under Government Code §§ 54221 and 37364. The City made no CEQA determination in connection with this action.
February 9, 2022	The City Council adopted a resolution to lease and develop the City-owned parking lot located on 3rd Street between G and H Streets through a public-private partnership between the City, HTA, and Servitas, Cal Poly Humboldt's student housing development partner. The resolution required the City and Servitas to negotiate and enter into a Pre-Development Agreement within 90 days. The resolution also stated that the City would be solely responsible for compliance with CEQA. The agenda materials for this action included an informational flyer that stated, among other things, that "the EaRTH Center will be financed with a combination of a State of California grant secured by the HTA and private matching funds from a tax-exempt bond. The City of Eureka will retain ownership of the land and will receive all excess cash flows. The project will be owned by a non-profit until the project debt is paid off; then ownership is conveyed to the City."
October 18, 2022	The City Council authorized the City Manager to negotiate an agreement with the California State University Trustees ("CSU Trustees") related to revenue sharing from the EaRTH Center. Contrary to the City's representation to the public in February 2022, the City for the first time proposed that the project and property would be transferred to the CSU Trustees at the conclusion of the 35 years required for affordable housing instead of the City retaining ownership.
May 1, 2024	The HTA adopted a resolution approving a TIRCP grant commitment of up to $10 million to Danco Communities ("Danco") for the purpose of constructing the intermodal transit center the City-owned parking lot located on 3rd Street between G and H Streets. The resolution, among other things, states that "pursuant to its rules and procedures, the City of Eureka selected Danco Communities, a California Corporation ("Danco") to own, develop, and manage deed-restricted affordable housing on the Property, and anticipates entering into a Disposition and Development Agreement with Danco through which Eureka will transfer Property ownership to Danco in exchange for Danco's commitment to construct and manage affordable housing on the Property".
June 4, 2024	The City Council proposes to adopt a resolution finding the property exempt from CEQA and authorizing the City Manager to enter into a Disposition and Development Agreement ("DDA") with Danco for development of the project.

As the foregoing shows, and as acknowledged in the Staff Report, at some point after October 18, 2022, the CSU Trustees and Servitas withdrew from the project. No public information, however, explains at what point the City "selected" Danco to develop the project. It is clear, however, from the HTA's May 1, 2024 agenda materials that the City and HTA were aware of the City's intent to contract with Danco at some time prior to the HTA's May 1 meeting. The City's shift from partnering with the CSU Trustees and Servitas to contracting with Danco also marks another important change in the project – the project will not remain in City ownership as originally represented to the public, nor in CSU Trustee ownership, as represented in late 2022, but will instead be given to Danco. The exact terms of the City's agreement are not known because the City has not made public the proposed Disposition and Development Agreement ("DDA") with Danco.

<u>2. Failure to Comply with Public Bid Requirements</u>

The City is required under the 2040 General Plan to utilize a Request for Proposal ("RFP") process prior to entering into contracts with developers to develop affordable housing on City-owned parcels.

The City's Housing Element Implementation Program IMP H-34 states as follows:

> *<u>The vacant, non-vacant and City-owned parcels listed in Tables 63, 64, and 65 of the Technical Appendix, provide appropriately zoned parcels to accommodate the 952 dwelling units required by the City of Eureka's share of RHNA for 2019-2027. In an effort to help alleviate our local housing crisis, the City intends to utilize an RFP process over the course of the Housing Element</u>*, with a goal of contractually requiring developers to construct at least 330 deed-restricted units on City-owned parcels.
>
> City-owned parcels present an excellent opportunity to create affordable housing. They afford a local agency the greatest degree of control to guide development in a way that meets community housing needs. Typically, an agency will release a Request for Proposals (RFP) which effectively puts the property "up for sale/lease" to an affordable housing developer. The sale or lease is subject to conditions placed on the project. For example, a property could be sold on the condition at least 20 units of affordable housing be built on the site. Staff conducted a detailed site inventory looking for parcels that might be suitable for this purpose. The City-owned parcels currently identified are listed in Table 65 in the Technical Appendix.
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> 2022 update: In July 2020, the City released an RFP for the first three parking lot sites: Site City - 1 at Myrtle and Sunny, Site City - 2 at 8th and G Streets and Site City - 3 at 6th and M Streets. In September 2020, the City received a total of three RFP responses, and eventually, Linc Housing was awarded the projects. See the 2022 update under Sites City - 1, - 2, and - 3 below for additional information about the status of those sites.
>
> As the City prepared to release the second round of RFPs for July 2021, the City held three community meetings in April, 2021, via Zoom, to invite property and business owners to ask questions and provide comments to help shape the RFP before its release in July, 2021. More than 65 (two meetings) and 74 (one meeting) participants (including Staff and several Councilmembers) joined the meeting each night. While there was definitely some support for the developments on each site, the majority of the participants vehemently expressed their concerns about safety and reductions in available parking, believing these issues could or would impact both tenants and surrounding businesses and offices and would result from the development of housing on these three sites.
>
> However, following the April meetings, local citizens and business owners scoured the City to find parcels that could support the same number of units required by Sites 5, 6, 7, and 9 with the idea the citizen or business would then acquire the new parcel(s), and the new parcels would then be traded for one or more of the four City-owned parking lots intended for development along the Highway 101 corridor. The City would then own and have site-control of the new parcels and use them for development of affordable housing to meet the Housing Element requirements, and the parking lot uses could continue under private ownership, which would then resolve the public's concerns related to the loss of parking, and safety for residents.
>
> There are a number of key housing objectives the City intends to accomplish with this program:
> ...
> **Award RFPs to Developers to create 327 Deed-Restricted Affordable Housing Units on City-owned Parcels by 2028**. *<u>Utilize an RFP process which will specify a minimum number and type of affordable units to be included in the proposal. All deed restrictions will be recorded. Within six months of HCD's certification of the City of Eureka Housing Element, and in accord with the Surplus Lands Act process as required, an RFP will be issued for all City-owned parcels in Table 65 not already contracted either through a previous RFP process, a contractual agreement between the City and a private developer to provide affordable housing on a listed site, or through the sale of a City-owned parcel to a developer.</u>*

(City of Eureka 2040 General Plan, 2019-2027 Housing Element, at pp. 65-72 (emphasis added).) The City has repeatedly acknowledged that the 2040 General Plan requires the City to utilize the RFP process to develop affordable housing on City-owned properties. For example, in the CEQA Notice of Exemption filed by the City for the project proposed on the City-owned property located at the northwest corner of 5th and D Streets, the City stated:

> The City of Eureka's 2019-2027 Housing Element, Housing Element Implementation Project *IMP H-34: Affordable Housing on City-owned Properties*, requires the City to release Requests for Proposal (RFPs) with the goal of developing at least 330 deed-restricted affordable units on 14 City-owned properties by 2028, in order to meet the goals of the 2019-2027 Housing Element.

(CEQA Notice of Exemption, dated April 5, 2023, Project Title: Parking Assessment District Parking Reduction or Removal [emphasis in original].)

Housing Element Implementation Program IMP H-34 and the Technical Appendix Table 65 identify the City-owned parking lot proposed for development of the EaRTH Center as one of the "14 City-owned properties" subject to the IMP H-34 RFP requirement. Moreover, none of the exceptions to this RFP requirement specified in IMP H-34 (previous RFP, existing contractual agreement; existing sale to developer) apply here.

3. Failure to Inform the Public Of the Project Changes

At the City's last substantive public hearing concerning the project, on February 9, 2022, the City distributed an informational sheet that described the proposed project in detail. Among other project attributes, the project described on February 9 included a total of 31 housing units, comprised of 12 workforce apartments, 15 student apartments, and four apartments for traveling nurses and doctors. Further, the project site at that time was slated to be owned by the City, and the City would also receive a share of project revenue.

The Staff Report for the present action now describes the project as including "up to 99 apartment-style housing units" above the first floor. Unlike the project as previously described to the public, the project would now be "own[ed], develop[ed], and manage[d]" by Danco, a for-profit private developer, and, based on information the City has made available, the City would not retain a share of revenue from the project. In short, the newly-proposed project would result in a significantly more intense development than previously disclosed to the public, and would also provide no residual economic benefit to the City. These are material changes that the City should disclose to and discuss with the public prior to taking any action to further.

4. Conclusion

The City's proposed action violates the clear requirement in the 2040 General Plan that the City utilize and RFP process to award development rights to City-owned properties. The City also has improperly withheld from the public information concerning the project changes discussed above. For these reasons, the City should postpone any action on the project until it has fully disclosed the new project to the public and followed the required RFP process to select a project developer.

Sincerely,

Bradley B. Johnson, Esq.
Everview Ltd.

Materials Incorporated by Reference:

- City of Eureka City Council Agenda and Agenda Item L.1. materials, November 16, 2021
- City of Eureka City Council Agenda and Agenda Item H.1. materials, February 1, 2022
- City of Eureka City Council Agenda and Agenda Item B.1. materials, February 9, 2022
- City of Eureka City Council Agenda and Agenda Item I.2. materials, October 18, 2022
- Humboldt Transit Authority Agenda and Agenda Item H.3. materials, May 1, 2024
- City of Eureka City Council Agenda and Agenda Item E.1. materials, June 4, 2024