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February 27, 2017

Mayor Michael Tubbs and Honorable Members of the Stockton City Council

City of Stockton

425 North El Dorado Street, City Hall

Stockton, California 95202

Ré: Sierra Club letter of January 13, 2017

Dear Mayor Tubbs and Honorable Members of the Stockton City Council:

The Building Industry Association of the Greater Valley (BIA) respectfully responds to the 18-page January 13 Sierra Club letter.¹ The BIA has approximately 125 members and these members provide employment opportunities for approximately 850 people in the local area. Of course, prior to the Great Recession the number of BIA members and number of direct and indirect jobs created by these members was substantially greater.

We respectfully ask the City Council to keep in mind the purposes and objectives of a general plan. Boiled to its very essence a general plan represents a reasonable accommodation between the rights² of the individual to exercise constitutional protected property rights and the reasonable exercise of the police power³ to regulate health and welfare. In balancing these competing interests Stockton should be mindful that "Individual freedom finds tangible expression in property rights." *United States v. James Daniel Good Real Property* (1993) 510 U.S. 43, 61.

In summary we have eight specific points of disagreement with the Sierra Club:

¹ We observe the Sierra Club most recently sued the Stockton Port District to thwart the Port's efforts to create family wage jobs. *Sierra Club v. Port of Stockton* Case No. STK-CV-UWM-2015-0005688. The Sierra Club is trying to bar the Port from using reconstructed railroad track intended to improve the movement of cargo across the Port's docks.

² *United States Constitution Fifth Amendment; Nollan v. California Coastal Commission* (1987) 483 US 825,833 n.2 ["But the right to build on one's own property -- even though its exercise can be subjected to legitimate permitting requirements -- cannot remotely be described as a "governmental benefit."].

³ Calif. Constitution Art. XI Sec. 7.

- 1) The Sierra Club ignores the state mandated legal requirements found in the Housing Element and constitutionally protected property rights.
- 2) The Sierra Club ignores the inadequate level of housing production to meet new demand.
- 3) The Sierra Club ignores the economics of infill development.
- 4) The Sierra Club ignores the free market nature of housing choices and the vast difference between consumers of single family housing and the consumers of multi-family housing.
- 5) The Sierra Club ignores the lengthy process necessary to make raw land a buildable lot.
- 6) The Sierra Club has erroneously interpreted the Attorney General Settlement suggesting a required amount of core development where none exists.
- 7) The Sierra Club erroneously assumes all approved lots are imminently buildable.
- 8) The Sierra Club participated in a settlement agreement which left intact the existing sphere of influence but did offer concessions to the Sierra Club. The Sierra Club is now asking to have their cake it eat it too.

With this overview in mind, the BIA respectfully offers the following analysis of the Sierra Club letter.

1. **A General Plan is designed to provide a framework for accommodating the competing interests of a constitutionally protected right to enjoy property and Stockton's right to enact growth and development policies pursuant to the police power.**

According to State law Stockton is compelled to adopt a "comprehensive, long-term general plan for the physical development" of the city. Gov.C. §65300. This requirement includes addressing seven mandatory elements identified in Government Code Section 65302. In this instance the Sierra Club focuses only on mandatory element (a), the land use element, which consists of "the proposed general distribution and general location and extent of the uses of land".⁴ A land use element requires a "statement of the standards of population density and building intensity for the various

⁴ The General Plan Elements must be integrated and consistent. Gov.C. §65300.5. As explained subsequently, by looking at only the Land Use Element and ignoring the requirements of the Housing Element the Sierra Club proposal creates an illegal segregated and inconsistent General Plan that is legally insufficient and invalid.

(zoning) districts" but does not compel Stockton to independently conduct population growth projections or choose between competing population growth projections by other government agencies.

We agree that economic projections and expectations have changed since 2007; however, suggesting that revised projections and expectations requires a wholesale abandonment of all former development strategies and policies constitutes a faulty syllogism. (And we point out with some irony that in 2007 the Sierra Club advocated the exact same policies it advocates today. Hence changed economic circumstances has no influence on the Sierra Club's position which remains unchanged by these economic circumstances but somehow should cause wholesale changes in the General Plan's strategies and policies designed to accommodate property rights and create a positive and robust environment for job and economic opportunity.)

The Sierra Club's suggestion does not take into account, indeed conflicts with and fully ignores more specific requirements contained in the Housing Element. Gov. C. §65580. By omitting important legal requirements the Sierra Club proposal appears simple, straightforward and facile. Contrary to the general objectives of the Housing Element of the General Plan, it constrains housing opportunities by greatly restricting or prohibiting non-in-fill growth. This requires a detailed and comprehensive analysis that the Sierra Club neither performs nor acknowledges.

Stockton's Housing Element must "make adequate provisions for the existing and projected needs of all economic segments of the community." Gov. C. §65583. There must be an "inventory of land suitable for residential development" and there can be no argument that lands currently within the General Plan boundary but outside the municipal boundary have already been found suitable for residential development.

Furthermore, emphasizing in-fill development to the exclusion of other development lands requires the Housing Element to conduct an "analysis of the potential and actual governmental constraints upon....the development of housing for all income groups." At a minimum the relevant factors include "land use controls,...site improvements....local processing and permit procedures"⁵ and the impact to the "availability of financing, the price of land and the cost of construction."⁶

The Sierra Club's methodology toward adopting a Land Use Element to the General Plan is fatally flawed from at least two perspectives. First, it offers no accommodation between Constitutionally protected property rights and Stockton's exercise of police power. Second, the Sierra Club approach dispenses with any consideration of regional housing needs: "the court held, 'In pursuing the valid zoning purpose of a balanced community, a municipality must not ignore housing needs, that is, its fair proportion of the obligation to meet the housing needs of its own population and of the region. Housing needs are encompassed within the general welfare. The

⁵ Gov.C. § 65583(a)(5).

⁶ Gov. C. §65583(a)(6).

general welfare does not stop at each municipal boundary.'" *Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal. 3d 582, 620 (Italics in original)_(J. Mosk dissent) Justice Mosk's analysis was subsequently followed in *Arnel Development Company v. City of Costa Mesa* (1981) 126 Cal.App.3d 330, 337. We observe that the Sierra Club methodology operates as a *de facto* growth limitation measure by changing "the standards of residential development on vacant land so that the governing body's zoning is rendered in violation of Section 65913.1" (Evid. C §669.5) and therefore shifts the burden of proof to Stockton to justify this limitation.

2. Stockton faces a chronic need for housing stock for all economic groups and has failed to produce housing in a manner that keeps pace with the local demand for a variety of housing types and stocks.

Stockton presently faces an acute shortage of housing stock to meet the current needs of Stockton residents. The policies advocated by the Sierra Club will operate to exacerbate this serious imbalance and materially impede Stockton's efforts and obligation to provide geographically diverse housing with diverse housing types to Stockton's diverse population. To put the problem into a context we note that the California Department of Finance reports that Stockton has grown from a population of 233,992 in 1996 to 315,592 in 2016, an increase of 81,600 residents. During this same time the City of Stockton produced just 19,153 new residential housing units equating to 4.26 new residents per new unit. This calculation presents a staggering problem to the community. To put this imbalance into a statewide context, California has 2.8 residents per housing unit. To put a finer point on it, the present shortage of available housing stock represents a serious if not catastrophic public policy problem.

Stockton has failed to maintain an acceptable balance between the demand for and supply of new residential units, consistent with State average, during the past 20 years. As a direct consequence the City faces an existing shortage of 9,890 residential units. Without those new housing units Stockton has become significantly more overcrowded than the state on average and a restricted supply in relationship to a growing demand causing all existing housing units to increase in cost due to artificial government action rather than natural economic factors. This has a negative impact on the quality of life for all Stockton residents. With overcrowding the amount of disposable income dedicated to rent increases leaving less monthly income for quality of life amenities. It simply has a damping effect on a dynamic and robust local economy.

The Sierra Club proposal does not recognize nor does it address the current imbalance between the need for housing and the absence of an adequate supply of housing stock for all members of our community. Thus it is incumbent on the Stockton City Council to reverse these trends of overcrowding, under production of demand based housing and unaffordable rents. The City needs more housing units produced; restricting the land available to build housing exacerbates rather than relieves this very serious socio-economic problem. It increases housing prices and apartment rents,

thwarts job creation efforts and shrinks the amount of disposable income held by the average resident.

3. The Sierra Club's aggressive in-fill policy will not produce sufficient housing stock for the demands of local residents.

The Sierra Club's extreme plan cannot create sufficient affordable housing for Stockton residents. In part this is due to the fact the extreme plan pivots on an inherently faulty assumption: private capital for land development projects will blindly go to wherever public zoning laws directs it to go. Unfortunately for this extreme plan, common sense and experience teaches us the opposite is true. Rather than blindly follow a municipality's uneconomically tethered policies, capital, which is highly fungible, seeks and finds jurisdictions more favorable and stable for investment purposes. An extreme but simple economic concept offers a straightforward illustration: there is an obvious reason why substantially more fungible capital is spent in the United States than in Zimbabwe or Russia.

Accordingly capital devoted to constructing homes will migrate to cities and counties with more favorable regulations rather than build in narrowly designated and zoned areas under uneconomical circumstances. Quite simply fungible capital has no loyalty to a political entity or geographic area. To the contrary this extreme plan wrongly assumes a significant and certain amount of capital will be spent in Stockton to meet future housing needs irrespective of geographic limitations or development rules in place. Economic theory and history does not support this extreme approach to policy making and this is the wrong time in Stockton's history to engage in such untested and wobbly social engineering.

4. In-fill and edge growth are not inherently antagonistic. In fact they are compatible.

In-fill and edge homes and developments tend to offer different types of housing and different life style experiences. Public policy and existing law compel Stockton to aggressively provide diverse housing types and life style opportunities. Perhaps the BIA's greatest disagreement with the Sierra Club is the BIA's sincere belief that both types of development can be harmonious and play important roles in providing housing diversity rather than being inherently antagonistic.

Thus the BIA strenuously disagrees with the Sierra Club's implied assumption that in-fill and edge development compete and this is a zero sum game. The truth is that suburban developers are different from in-fill developers and, indeed many times their sources of financing are derived from different financial markets. Accordingly the fight between in-fill and edge development is one the City Council does not need to have and is a decision between the two types of development that does not need to be made. The two types of development are complementary not contradictory and

produce a diversity of housing that is desirable for the community and required by superior state law.

5. The General Plan is a long term plan and the time to develop property is lengthy.

The time needed under California's land use regime to convert vacant land into a residential subdivision is generally from six to nine years. Stockton's General Plan needs to have sufficient vacant land reserved now in order to achieve a reasonable balance between housing types and geographic location for a period of time ten or twenty years into the future. To put a finer point on it, the community cannot perceive a need for more land available for residential development in ten years and expect such land to be immediately available for this use. Instead this perceived immediate need would remain unfulfilled for a period of seven to ten years after the need was initially understood.

6. The Attorney General Settlement does not require Stockton to produce any discrete results in terms of housing.

The original draft AG Settlement provided for specific identified results in terms of residential building in the downtown and core areas. However, due to legal and policy constraints compelled the AG and Stockton to dispense with specifically identified results. Rather the AG Settlement Agreement promotes goals and efforts, but not predetermined results. Indeed the City's outside counsel advised the City at a noticed public hearing that the final agreement did not compel Stockton to take any action and this opinion was subsequently reconfirmed in a letter from the City Manager. To the extent the Sierra Club letter interprets the AG Settlement as imposing discrete results concerning housing in the downtown and core area it supplies an erroneous interpretation.

7. Evaluations of so called land or residential lot inventories are inherently suspect.

The mere fact a residential lot is approved does not mean the lot is buildable, suitable or attractive to capital expenditures. Thus there is land zoned for residential purposes or subject to a residential map that may never be built out due to physical or fiscal problems. Failing to take this reality into account substantially distorts the Sierra Club analysis which assumes all land zoned residentially is equally available for residential development. This failing applies to both in-fill lots and edge zone land.

The Sierra Club assumption is inherently wrong. For instance, from a highly practical perspective, it is very difficult to see the Mariposa Ranch project overcoming the substantial physical and fiscal problems in order to proceed with development. Yet Mariposa Lakes' lots are listed as residential lots ready for building. This methodology substantially distorts the real picture.

8. Sphere of Influence Lands should be recognized.

The Local Agency Formation Commission designated certain properties within the Stockton General Plan as Stockton's sphere of influence in 2004. All city planning and infrastructure discussions and actions have been made with the assumption that these territories would eventually build out. For planning purposes and recognizing the reliance these landowners have made based on this designation the lands within LAFCO's sphere of influence should not be changed.

We observe the SOI designation was imposed after a full CEQA review and noticed public hearings. The Sierra Club did sue the city and property owners over the SOI designation but subsequently dismissed the lawsuit with prejudice. Dismissing the lawsuit with prejudice means the Sierra Club allowed the SOI decision to become final and conclusive. The Sierra Club received bargained for consideration in exchange for dismissing its lawsuit and should not be allowed to enjoy the benefits of the settlement agreement while seeking to take away the certainty that the City and landowner negotiated and received in settling the legal dispute.

Respectfully,



John R. Beckman
Chief Executive Officer