

**From:** [lindy540@gmail.com](mailto:lindy540@gmail.com)  
**To:** [WebMail - CCD](#)  
**Subject:** Urban Canopy  
**Date:** Tuesday, April 23, 2024 5:32:39 PM  
**Attachments:** [image001.png](#)

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**DATE:** April 23, 2024  
**TO:** Mayor Joe Vinatieri, City Council, City Manager Brian Saeki, Community Development Staff  
**FROM:** Linda de Vries, Citizen  
**SUBJECT:** The Greenleaf Promenade Plan and the Law

The City Council approved the Greenleaf Promenade Project on December 12, 2023. Subsequently, however, owing to a large and concerted citizen objection, the Council scheduled a Study Session on April 30, 2024. The scheduling of a Study Session after approval constitutes a motion to reconsider (made by Councilwoman Warner in her request to staff), thereby cancelling the motion to approve.

The Whittier Conservancy and other citizens have entered into the record, should legal action become necessary, potential violations of law in the Council's approval of the Promenade Plan. I assume staff's answers to these points will constitute the initial presentation by staff in the April 30th Study Session.

**The points below echo the concerns already expressed, but arise from a broader look at State Law as it pertains to the Council's decision to approve the Plan. These, too, should be addressed in the Study Session and considered carefully by Council and staff.**

There are three problems in this conflict between Council and citizens—lack of transparency, violation of the law, and exclusion of citizens from decision making. Ultimately, the first and last most need correction by the Council. I have focused on those two in my previous communications on this subject. Now, I focus on the law. Your fellow citizens can help you avoid conflicts like this. Let them in. Let the Study Session be a true dialogue between the governors and their representatives.

**1. The Greenleaf Promenade Plan is illegal because it violates the Uptown Specific Plan. The Whittier Conservancy has documented the details of the violation.**

**Gov § 65455**

No local public works project may be approved, no tentative map or parcel map for which a tentative map was not required may be approved, and no zoning ordinance may be adopted or amended within an area covered by a specific plan unless it is consistent with the adopted specific plan.

“No motion is in order that conflicts with the laws of the nation, or state, or with the assembly's constitution or by-laws, and if such a motion is adopted, even by a unanimous vote, it is null and void.” (Robert's Rules of Order Online; <http://www.rulesonline.com>)

**The Uptown Specific Plan**

Once a Specific Plan is adopted, development applications for the area are reviewed by the municipality for consistency with the Specific Plan as well as other applicable governing land use documents in the community.” (<https://www.losgatosca.gov/Faq.aspx?QID=308>)

“Specific plans . . . say what land uses can occur in the area. They set limits on how much building can go on sites (known as the "intensity" of development) and what structures will look like.” (Institute for Local Government)

- 2. The Greenleaf Promenade Project is not exempt from CEQA. A new Environmental Impact Report is required because the Greenleaf Promenade Plan requires substantial changes to the Uptown Specific Plan and its EIR, and there is new information not known at the time— climate change that necessitates a new examination of the negative environmental impact of tree removal and the necessity of the positive impacts of the Urban Canopy, and the significance of intense citizen attachment to the trees as a symbol of Whittier as their home town.**

**PRC § 21166**

When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

- 3. The Greenleaf Promenade Plan is not exempt from CEQA.**

**Gov § 65457**

- (a) Any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980, is exempt from the requirements of [Division 13 \(commencing with Section 21000\) of the Public Resources Code](#) (CEQA). However, if after adoption of the specific plan, an event as specified in [Section 21166 of the Public Resources Code](#) occurs, the exemption provided by this subdivision does not apply unless and until a supplemental environmental impact report for the specific plan is prepared and certified in accordance with the provisions of [Division 13 \(commencing with Section 21000\) of the Public Resources Code](#). After a supplemental environmental impact report is certified, the exemption specified in this subdivision applies to projects undertaken pursuant to the specific plan.
- (b) An action or proceeding alleging that a public agency has approved a project pursuant to a specific plan without having previously certified a supplemental environmental impact report for the specific plan, where required by subdivision (a), shall be commenced within 30 days of the public agency's decision to carry out or approve the project.

- 4. Should there be any question about the 30-day requirement, the Council’s decision to reconsider the motion to approve and hold a Study Session necessitates a new vote on the Greenleaf Promenade Plan. The clock begins ticking when that vote is taken.**

**Motion to Reconsider**

The Council voted for the Plan. A vote taken and a motion approved are finished business.

“A tenet of parliamentary procedure is finality. After vigorous discussion, debate, and a vote, there must be some closure to the issue. Thus, after a vote is taken, **the matter is deemed closed, subject only to reopening if a proper motion to reconsider is made and passed.**” (Robert’s Rules of Order Online; <http://www.rulesonline.com>)

The Conservancy and others pointed out laws violated by the Plan and the vote. Cathy Warner directed staff to answer those points of law .Her request seems to function as a motion to reconsider, or the Staff response to her request will necessitate a motion to reconsider

A motion to reconsider “allows a question previously disposed of to come again before the assembly as if it had not previously been considered. The motion to reconsider can be made only by a member who voted on the prevailing side and only on the same day the original vote was taken. The motion is debatable only if the motion to be reconsidered is itself debatable.” (Ibid.) The same day requirement is often overlooked.

A motion to reconsider either identifies an error in law or fact in a prior Board decision or identifies a change in law that affects a prior Board decision and asks the Board to re-examine its ruling. A motion to reconsider is based on the existing record and does not seek to introduce new facts or evidence. (Ibid.)

**Council cannot simply let their previous vote stand. They must consider the new evidence.**

**Again, I encourage the Council to include citizens in the upcoming Study Session by using this definition:**

**Study Session** means an **informal gathering of board members and interested public** to discuss topics of interest or to hear presentations. No formal business is ever conducted in a study session.  
<<https://www.lawinsider.com/dictionary>>

There are State laws in addition to those I have cited above to which the Council should pay attention, whether there are legal consequences or not. The City lacks a viable vision for the future and needs to address that lack sooner rather than later.

The Governor’s Office of Planning and Research is a good place to start, as in this bulletin about grant programs available to increase the urban canopy:

### **Urban Forestry**

**Trees and the urban forest provide a variety of important benefits in the urban environment.** Environmental benefits include removing carbon from the atmosphere, reducing energy use, improving air quality, moderating stormwater flows, protecting water quality, improving economic sustainability, and providing habitat for wildlife. In addition to the health benefits realized through the protection and promotion of the environment, **trees and urban forests also support the physical and mental health of residents. The urban forest can play a role in meeting carbon reduction mandates required by the Global Warming Solutions Act of 2006. In short, trees can improve the environment, health, and quality of life in our urban environments where Californians live, work, and play.**

**In order to establish and maintain the stream of benefits potentially provided by an urban forest, a community’s trees need to be well planned-for and managed over the long term. Unlike most other urban infrastructure, the value of the urban forest generally increases over time. Not only are trees and urban forests critical to the community’s economic well-being and overall quality of life, but they are an important strategy for addressing chronic disease**

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**and obesity.**

**OPR provides the following information for local governments to plan for a healthy urban forest that optimizes the benefits urban forests can provide to the environment, public health, economy, and more.**