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October 29, 2009

Jeffrey Winklepleck,
Long Beach Development Services, Planner
333 W. Ocean Blvd., 5th Floor
Long Beach, CA 90802

Re: Comments on Notice of Preparation and Scope of the Draft Environmental
Impact Report on the Second + PCH Project

Dear Mr. Winklepleck:

On behalf of Los Cerritos Wetlands Land Trust ("Los Cerritos"), we respond to the Notice of Preparation ("NOP") and the October 7, 2009 Public Scoping Meeting for an Environmental Impact Report ("EIR"). We believe that the Second + PCH Project ("Project") will have a significant adverse impact on the environment, and that an EIR is legally required. We especially want to highlight the need for an adequate project description, opportunity for public comment, analysis of significant adverse impacts and reasonable alternatives to the proposed project in the EIR.

A. An EIR Must Contain An Adequate Project Description.

An EIR must contain a detailed statement of all significant effects on the environment *of the proposed project*. (Pub. Resources Code § 21100.) The courts have stated that: "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-93.) "The defined project *and not some different project* must be the EIR's bona fide subject." (*M.M. Homeowners v. San Buenaventura City* (1985) 165 Cal.App.3d 357, 365, emphasis added.) Further, a project description, including anticipated future uses, must be accurate. (*Laurel Heights Improvement Association of San Francisco, Inc. v. Regents of the University of California*, 47 Cal.3d 376, 394, fn. 6 and 397 ("*Laurel Heights I*") [the EIR described the project as occupying only part of a building even though the university had decided to occupy the entire facility]; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450 [the EIR for a county detention facility understated the likely duration of temporary facilities, thus minimizing traffic and other impacts].)

Here, the developer has submitted a formal application for planning permits, but no permits or entitlements for the proposed project have been filed. Normally, a

proposed project must be defined in some formal way before its potential impacts can be analyzed. The description of the Project in the NOP, while a good start, does not go far enough to meet the legal requirements for an EIR. Major approvals for the General Plan Amendment/Local Coastal Program Amendment, PD-1 Amendment, Site Plan Review, Tentative Tract Map and Local Coast Development Permit should not be piecemealed from the rest of the application, but should be included in a formal description in the EIR.

B. The Community Must Have An Opportunity For Public Comment.

Under the California Environmental Quality Act (“CEQA”), a Lead Agency may conduct Early Public Consultation, or “Scoping”, to get public input during the Comment Period and to identify the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in the EIR. (Pub. Resources Code § 21002; Cal. Code Regs., tit. 14, § 15083 [hereinafter “Guidelines”].) A public scoping meeting is an essential part of this process, as it provides opportunities both to inform the public as to the nature of the proposed project and to receive input from the public as to what areas the EIR should study and to solicit input regarding the content of the Draft EIR.

The City’s October 7, 2009, public scoping meeting, while potentially a good opportunity for public comment, was inadequate in this regard, as little meaningful information about the Project was provided. At the meeting, no effort was made to describe the Project’s elements, no testimony was taken, no recordings were made and the City staff said nothing about the nature or purpose of the scoping process. Instead, the meeting consisted of responses to questions and statements from audience members, most of which merely indicated support or opposition to what they perceived the proposed project to be.

The City has indicated that additional community meetings will occur in the near future. We hope that these meetings will provide the public with more meaningful information for comment. Such information should include the General Plan Amendment/Local Coastal Program Amendment, PD-1 Amendment, Site Plan Review, Tentative Tract Map and Local Coast Development Permit.

C. An EIR Must Contain An Analysis of Significant Impacts.

Where a project may cause significant adverse impact on the environment, an EIR is required. “If there is substantial evidence, in light of the whole record before the lead agency that a project may have a significant effect on the environment, an environmental impact report shall be prepared.” (Guidelines § 21082.2(d).) With respect to the current project, significant impacts include, *inter alia*, traffic, height and construction emissions.

First, the EIR must analyze how the Project will impact traffic in the area. Specifically, the EIR should provide average daily trips for typical day traffic as well as non-typical, high traffic days; the a.m. and p.m. trips for those days (i.e., both typical days and high traffic days); and analyze how traffic for the mall will be handled on high volume shopping season days. The Project will vastly increase the number of vehicles coming to the property, and vehicles necessarily result in pollution from oil, tire particles, copper from brake dust and air emissions that settle to the ground. The EIR must not engage in unrealistic assumptions about traffic distribution. Project related trips need to be allocated to the streets on which they are most likely to travel and not just the streets that happen to have available capacity, including unduly impacted neighborhood “feeder” types of streets. Neighborhood traffic impacts and Sunday traffic patterns must be thoroughly investigated and mitigated. Information about impacts to intersections outside of Long Beach is also required.

Second, the Project will have multiple 6-story buildings and a 12-story “signature” building, which will surpass current land use regulations restricting building height in Long Beach. The City code allows the City to approve a project exceeding these standards if it provides “substantial public benefits”; however, the impact of this additional height must be analyzed under CEQA and the Coastal Act. In particular, the impact of blocking views of the PCH must be fully disclosed, as well as available mitigation measures. Also, the EIR needs to include street level perspective (i.e., from lower than six feet) on the impact of blocked views relative to the PCH.

Third, an EIR must analyze the impact of pollutant emissions that will be created during construction for the Project. Detailed disclosures of the timing of construction emissions should be prepared. Additional mitigation measures should be implemented for the significant impacts from construction equipment.

Fourth, the EIR must address the impact of project and its additional traffic, with its associated noise and light pollution, on the nearby Los Cerritos Wetlands.

Fifth, the EIR must address the inconsistency of the proposed project with the Coastal Act’s coastal access, aesthetic, and coastal resource protections policies, among others.

D. An EIR Must Include A Reasonable Range of Alternatives.

CEQA prohibits approval of projects with adverse environmental impacts if there are feasible alternatives. (Guidelines § 15021, subd. (a)(2).) The CEQA Guidelines require an agency to “[d]isclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.” In order to implement this policy, the Guidelines specify that:

A public agency may approve a project even though the project would cause a significant effect on the environment *if* the agency makes a fully informed and *publicly disclosed decision* that: (a) There is no feasible way to lessen or avoid the significant effect....”

(Guidelines § 15043, emphasis added.) More specifically, the Guidelines provide:

If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion, and should include the reasons in the EIR.

(Guidelines § 15126.6(f)(2)(B).)

The City has a duty under CEQA to evaluate a reasonable range of alternatives to the Second + PCH Project. (*Laurel Heights I, supra*, 47 Cal.3d at 400.) In a later case, also addressing the requirement for consideration of a reasonable range of alternatives, the California Supreme Court concluded that:

Under CEQA, the public agency bears the burden of *affirmatively demonstrating* that . . . the agency’s *approval* of the proposed project *followed meaningful consideration of alternatives* and mitigation measures.

(*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134, emphasis added; accord *Village Laguna of Laguna Beach v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1035.) As the Court has said, while an EIR is “the heart of CEQA”, the “core of an EIR is the mitigation and alternatives sections.” (*Citizens of Goleta Valley v. Bd. Of Supervisors* (1990) 52 Cal.3d 553, 564.) Preparation of an adequate EIR with analysis of a reasonable range of alternatives is crucial to CEQA’s substantive mandate to “prevent significant avoidable damage to the environment” when alternatives or mitigation measures are feasible. (Guidelines § 15002(a)(3).)

CEQA’s purpose of avoiding or substantially reducing effects of a project through the adoption of feasible alternatives is defeated where an EIR fails to ensure information about potentially feasible alternatives is subject to public and decisionmaker review. The absence of such review prevents meaningful public comment and denies Respondent the information necessary to make an informed decision. “One of its [an EIR’s] major functions . . . is to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by the responsible official.” (*Laurel Heights I, supra*, 47 Cal.3d at 400 quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197, emphasis in original.)

While “[a]n EIR need not consider every conceivable alternative to a project, ‘it must consider ‘a reasonable range of *potentially* feasible alternatives...’.” (Guidelines § 15126.6(a), emphasis added.) “The range of feasible alternatives [for an EIR] shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.” (Guidelines § 15126.6 (f).) “[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” (Guidelines § 15126.6(b).)

The EIR should focus on a good faith analysis of real alternatives to the Project. Development of alternatives is essential to reducing the dramatic traffic, height, and construction emissions impacts of the Project. These alternatives should include, but are not limited to: 1.) not building the Project and adaptively reusing the land for another purpose; 2.) building elsewhere offsite; and 3.) minimizing the scope of the Project.

Conclusion.

Los Cerritos believes the Second + PCH Project, as currently conceived, is the wrong project for this area of Long Beach. While the EIR will hopefully have a more candid impact analysis, and will develop realistic strategies to mitigate traffic and other adverse impacts, the reality is the massive regional shopping complex would generate far more traffic than the streets of Southeast Long Beach and its residents can bear. There are many other adverse environmental impacts that we will not detail here.

In short, we strongly recommend that the EIR focus on a good faith analysis of real alternatives to Second + PCH. The City must find some way to allow the community and the Second + PCH owner to participate in formulation of proposed alternatives, including an off-site alternative for the retail project proposed for Second + PCH. Such alternatives would greatly reduce traffic and thus air quality and noise impacts, and otherwise result in a project far more compatible with the Long Beach community. We look forward to working with the City to assure that this Project receives the careful review that it deserves.

Thank you for consideration of our views. We request to be placed on the mailing list for any future notices and documents. We look forward to reviewing and commenting upon the Draft EIR.

Sincerely,


Douglas P. Carstens