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**August 8, 2017**

## **VIA PERSONAL DELIVERY**

City Council  
City of Long Beach  
333 W. Ocean Blvd.  
Long Beach, CA 90802

### **Re: 500 West Broadway Mixed Use Project; Non-Compliance with California Environmental Quality Act ("CEQA")**

Dear Honorable Mayor and City Council:

This firm represents Long Beach Citizens for Fair Development, Inc. ("LBCFD") with respect to the City of Long Beach's ("City") consideration of the 500 West Broadway project ("Project"). Generally speaking, the Project consists of a seven-story mixed use development where a commercial parking lot currently exists. This letter is intended to inform the City that approval of the Project would violate the California Environmental Quality Act ("CEQA").

#### **I. The Project**

The Project, as proposed, is for the construction of a mixed-use building consisting of 142 units, 4,603 square feet of ground floor commercial uses, 191 vehicle parking stalls, and landscape and hardscape improvements to Magnolia Avenue and Broadway. Staff has concluded that the Project is exempt from CEQA as a Class 32 infill project.

#### **II. Background**

In 2012, the City adopted the so-called "Downtown Plan," a specific plan that replaced the existing land use, zoning and planned development districts as the land use and design document for all future development in the Downtown area of Long Beach. The Downtown Plan was approved by the City Council and went into effect in February 2012. The Downtown Plan

revised parking standards for both residential and commercial land uses, requiring one space per unit plus .25 spaces per unit for guest parking.

### **III. The California Environmental Quality Act**

#### **a. Purpose of California's Environmental Protection Statute**

The California Environmental Quality Act is California's broadest environmental law. CEQA helps to guide public agencies such as the City during issuance of permits and approval of projects. Courts have interpreted CEQA to afford the fullest protection of the environment within the reasonable scope of the statutes. CEQA applies to all discretionary projects proposed to be conducted or approved by a City, including private projects requiring discretionary government approval. *See* California Public Resources Code, sections 21000 - 21178, and Title 14 Cal. Code Regs., section 753, and Chapter 3, sections 15000 - 15387.

### **IV. The Downtown Plan Environmental Impact Report**

Pursuant to Section 15168 of the CEQA guidelines, the City conducted an environmental review for the "Downtown Plan", the Program Environmental Impact Report ("PEIR") (SCH No. 2009071006); The City circulated a draft of the PEIR for public comment in December 2010 (hereinafter referred to as "Draft PEIR"). This report was finalized in November 2012 ("Final PEIR").

The Draft PEIR specifically contemplated that its mitigation measures were not intended to be comprehensive or final, and that future projects would be subject to future environmental review:

These mitigation measures are intended to be implemented as future development projects occur. Each proposed development project will be reviewed to determine whether potential project impacts have been adequately addressed in the PEIR; and to identify appropriate mitigation measures identified in the PEIR and the Mitigation Monitoring and Reporting Program (MMRP) that would be required to be implemented by the proposed development project." Draft PEIR at 1-2.

The PEIR also acknowledged that it "might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site" and referred to Section 15183 for guidance for preparation of Initial Studies for subsequent projects "to determine whether there were project- or site-specific impacts; environmental effects that were not analyzed as significant effects in the PEIR; as offsite or cumulative impacts; or as more severe impacts than were identified in the PEIR." Draft PEIR at 1-2.

In addition, the PEIR provided:

"During subsequent review of future development projects, the City may use an Initial Study or require additional project-specific environmental documentation to analyze the relationship of the proposed development to the significant environmental impacts identified in this PEIR. This analysis may determine that the potential environmental effects were anticipated in the PEIR and that no additional environmental documentation is required. If the City or the Redevelopment Agency determines that the environmental effects of a proposed

project have not been addressed in the PEIR, exceed the level of impact for any environmental issue identified in the PEIR, or do not propose to adequately implement mitigation measures identified in the PEIR, an additional project-specific environmental document in compliance with CEQA and the State CEQA Guidelines **would be required**.” Draft PEIR at 1-3 (emphasis added).

In response to public comments received regarding the Draft PEIR, the City reiterated that future projects would be subject to future environmental review, stating the following in the “Environmental Impact Report Response to Comments,” part of the Final PEIR:

“CEQA Analysis for Future Development Projects.

*It should be noted that all future development projects proposed within the Downtown Plan project area will require some type of subsequent CEQA environmental review to determine whether all of the potential environmental impacts of that particular project were ‘adequately addressed’ in the Downtown Plan Draft PEIR.*

The CEQA Guidelines, Section 15152(f)(3) provides that significant environmental effects have been ‘adequately addressed’ in a previous program EIR if the lead agency determines that such effects:

*Have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report; or have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project.”*

Therefore, after a program EIR is certified, any individual development project within that program area (i.e., the Downtown Plan 725-acre area) that could result in any of the following conditions *would require some type of new CEQA environmental documentation*: new environmental impacts not identified in the Program EIR; a substantial severity in the increase of impacts identified in the Program EIR; or if conditions have changed substantially from those expected in the Downtown Plan EIR. If any of these conditions are present, then subsequent environmental impact analysis and any required mitigation for the future development project must be prepared in compliance with CEQA.”

Final PEIR at RTC-13 to RTC-14.

Finally, the City stated the following in conjunction with the near-term traffic analysis conducted in the Draft PEIR: “... **any increase in land use intensity, such as an increase in vehicle trip generation or other new or increased environmental impacts that were not evaluated by the individual project EIR, will be reviewed for CEQA compliance** pursuant to the Downtown Plan PEIR.

**V. The City Did Not Conduct a Subsequent Environmental Review for the Project and Deemed the Project Exempt from CEQA**

The PEIR unambiguously states that “all future development projects proposed within the Downtown Plan project area will require some type of subsequent CEQA environmental review to determine whether all of the potential environmental impacts of that particular project were ‘adequately addressed’ in the Downtown Plan Draft PEIR.” Here, there is no evidence that the City conducted any subsequent environmental review for the Project or rendered any such determination. The City has abused its discretion by failing to conduct this subsequent review.

The City has asserted in the NOE that the project qualifies for a Class 32 Categorical Exemption. As a “statement of support” for this exemption determination, the City states “The project is consistent with adopted general plan and zoning regulations” pursuant to 14 Cal. Code Regs. section 15332 (a). The Class 32 exemption is reserved for certain types of “infill” projects. According to the State CEQA Guidelines, a project must meet the following conditions to qualify for this exemption:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

14 Cal. Code Regs. section 15332.

**VI. Per the Final PEIR, New CEQA Environmental Analysis is Required**

There are significant environmental effects associated with the Project that were not adequately addressed in the PEIR pursuant to CEQA Guidelines, Section 15152(f)(3). The Project proposes new environmental impacts that were not identified in the PEIR. These impacts include the following:

- Aesthetics – The site is currently a parking lot with sidewalk greenbelts that allow the Deukmejian Courthouse aesthetics to shine. The courthouse is an award-winning design and green building that is 5 stories tall. The proposed project is 7 stories tall and will significantly and negatively impact the overall aesthetics of the intersection.
- Transportation/Traffic – The project has one auto ingress/egress on Magnolia. Putting these high density residential units here will have significant traffic impacts by slowing the north south traffic on Magnolia in an especially critical area of high traffic flow on the Broadway corridor, the courthouse will have many auto arrivals slowing and looking for

courthouse parking. In addition due to the proximity of the courthouse and the project's location in the downtown district there is a high amount of pedestrian traffic at the intersection and on the sidewalk in front of the proposed project's proposed parking ingress egress location.

- Population/Housing – While the downtown plan goals include walkability and pedestrian friendliness this project will significantly and negatively impact pedestrian experience on this important intersection and block as part of the downtown core. All too often in recent project approvals the negative impact on walkability and pedestrian safety are ignored with overly optimistic findings when it comes to the impact of underparked projects and reduced traffic flows effect on the safe for pedestrians and overall walk ability. Without any study these impacts cannot be measured.
- Air quality is negatively impacted by the overly dense and under adequate parking ingress and egress.

Moreover, it bears noting that the Draft PEIR specifically contemplates that its mitigation measures were not intended to be comprehensive or final, and that future projects would be subject to future environmental review:

These mitigation measures are intended to be implemented as future development projects occur. Each proposed development project will be reviewed to determine whether potential project impacts have been adequately addressed in the PEIR; and to identify appropriate mitigation measures identified in the PEIR and the Mitigation Monitoring and Reporting Program (MMRP) that would be required to be implemented by the proposed development project.” Draft PEIR at 1-2.

## **VII. Class 32 Exemption is Not Applicable**

This particular project is not exempt as a Class 32 project because there are both “unusual circumstances” and “cumulative impacts.” Categorical exemptions are not absolute. An exemption should be denied if one of the exceptions listed in section 15300.2 of the CEQA Guidelines applies. Section 15300.2(c) provides for one such exception and states that if there is a "reasonable possibility" of a "significant effect on the environment due to unusual circumstances," then the categorical exception cannot apply. *Id.*

Moreover, all classes of exemption are inapplicable when the cumulative impact of successive projects of the same type in the same place over time is significant. Where there is a reasonable possibility of a significant effect due to unusual circumstances surrounding the project it is not exempt even if it clearly fits one of the categories. (14 Cal. Code Regs § 15300.2(c).), (*See e.g., Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego*, 139 Cal.App.4th 249 (2006).)

### **a. Unusual Circumstances**

There is a reasonable probability that the proposed Project will have a significant effect due to unusual circumstances. The following unusual circumstances exist:

- The project is located one of only three vehicle entry ways into the downtown core from the 710 freeway. Considering all the current project approvals in the downtown core, the traffic and pedestrian patterns created from the new civic center and other important buildings the intersection of Magnolia and Broadway is unusual. It is unusual because of these three road entries into the downtown core. This one uniquely sits near the geographic center and will become a vital pedestrian and vehicle pathway for business between the new civic center, the courthouse and other important downtown buildings.
- The site is unusual in that it is under parked. The project will have an unusually negative impact on the flow of traffic eastbound on Broadway and in turn to the high pedestrian crossing.
- The site is also aesthetically unusual in that it sits directly to the south of the new courthouse. So, this proposed project is unusual in that its 7-story proposed stature will tower over the 5-story courthouse and unusually affect the sunlight, shadows and aesthetics of the courthouse and the overall area.

Therefore, the proposed exemption is inapplicable as there is a reasonable possibility of a significant effect due to unusual circumstances surrounding the project; CEQA analysis must be conducted.

#### **b. Cumulative Impacts**

The Project is also not eligible for a Class 32 categorical exemption due to cumulative impacts. Section 21083(b)(2) of the Public Resources Code mandates that categorical exemptions do not apply if the “possible effects of a project are individually limited but cumulatively considerable.” Impacts are “cumulatively considerable” if the “incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” *Id.* There are a great number of mixed use development projects wither proposed, approved or currently being constructed in downtown Long Beach. Thus, environmental analysis is required per CEQA.

There is currently at least 21,221 sq. ft of commercial/retail space dispersed amongst the currently approved projects within the downtown Long Beach area. The reduction of parking combined with the increase of projects intended to attract more shoppers and activity within the area without adequate parking has the potential to result in increased obstruction to local transportation and traffic.

The space intended for this project already contains almost 90 parking spaces usable by the public. The new structure will reduce that number available to the public to 49 while increasing the amount of commercial space within the immediate area. Combined with the fact that the Governor George Deukmejian Courthouse is nearby results in an increase in attractions for vehicle traffic and a decrease in existing parking. This is a potential cumulative impact resulting in traffic congestion in an area between a Courthouse and a Police Station. As provided for in the Programmatic EIR additional studies must be done in order to ensure compliance with CEQA.

**VIII. The City Cannot Adopted Mitigation Measures in the Form of Specialized Conditions of Approval for the Project In an Effort to Mitigate the Environmental Impacts of the Project**

Significantly, it should be noted that in evaluating whether a categorical exemption may apply, the agency may not rely on mitigation measures as a basis for concluding that a project is categorically exempt, or as a basis for determining that one of the significant effects exceptions does not apply. *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098. Staff is recommending a host of conditions of approval, several which are customized for this project, to reduce its effect on the environment. Therefore, the Project is not eligible for a categorical exemption under CEQA.

The City Council states that the Project conforms with the Programmatic Downtown Plan. However, one of the special conditions of approval for the project listed in the Staff Report from May 4, 2017 states that,

*“The applicant or successor in interest shall conduct and report to the City a parking utilization study by licensed engineer three years from the issuance of the building's Certificate of Occupancy.”*

This indicates that current usage and future development of parking is in fact a concern which warrants study and should be analyzed before approval.

The city also conducted a shade study to analyze what effects the structure would have on the Courthouse which is an attractive local monument and intended to provide additional beautification to the area.

These studies are serving as mitigation measures which render the Project not exempt from CEQA.

**IX. Conclusion**

For the reasons outlined above, the City cannot deem the Project exempt from CEQA. I may be contacted at 310-982-1760 or at [jamie.hall@channellawgroup.com](mailto:jamie.hall@channellawgroup.com) if you have any questions, comments or concerns.

Sincerely,

Jamie T. Hall