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VIA ELECTRONIC MAIL AND PERSONAL DELIVERY

City of Long Beach
City Council
333 West Ocean Boulevard
Long Beach, CA 90802

Re: Notification of Non-Compliance with CEQA with Regard to Development Project Located at 3655 North Norwalk Boulevard (SCH#2016081047); Agenda Item No. 1, File No. 17-075, 17-0076, 17-077

Dear Mayor Garcia and Honorable Councilmembers:

This firm represents Warren Blesofsky and the Long Beach Citizens for Fair Development with respect to the City of Long Beach's ("City") consideration of the development project located at 3655 Norwalk Boulevard. This letter is intended to inform the City Council that the Environmental Impact Report and Statement of Overriding Considerations prepared in relation to the Project are inadequate under the California Environmental Quality Act and that to approve the development as planned would be an exercise in impermissible spot zoning.

The Project

As evidenced in the Environmental Impact Report ("EIR"), the Project is a development located at 3655 North Norwalk Boulevard Long Beach Boulevard ("Project"). The EIR states the following: "The project site is currently developed with a 27,709 square foot (sf) church facility with a parking lot, a landscaped area, and a cell tower. The church operates a pre-school on the site. The proposed project would involve demolition of the existing church and construction of 40 four-bedroom single family residences. The residences would all be two stories tall. The 40 residential lots would average 4,005 sf in size, ranging from 3,696 sf to 5,696 sf." The EIR describes the Project very briefly and includes neither a photo-simulation nor floor plans, but does acknowledge that the church is historically.

The EIR Failed to Analyze a Reasonable Range of Alternatives

The alternatives analysis is fundamentally flawed, because the EIR only analyzed alternatives that meet almost none of the project objectives.

The EIR defined the project objectives in terms of creating housing. Five of the six project objectives specifically relate to creating desirable housing. (EIR 41). However, the City never considered any housing-related alternatives. *Id.* The alternatives selected by the City (in addition to the statutorily mandated no project alternative) were to create a private elementary school or an event venue; neither of which could even conceivably obtain the objectives of "Provide construction of high quality housing...", "Provide residential development...", "provide a walkable pedestrian friendly neighborhood...", or "provide[] for the creation of . . . expanded housing opportunities. . . ." *Id.*

The EIR was required to consider a reduced development alternative that actually attempted to meet the project's objectives. Here, they should have considered a project that involved developing *some* housing but retaining the most significant historic structure—the chapel.

Similar to what occurred in *Watsonville Pilots Ass'n v. City of Watsonville*, the EIR did not analyze the impacts of a reduced-scope project of the type actually sought. (2010) 183 Cal.App.4th 1059. In *Watsonville Pilots*, the court rejected the agency's contention that the "no project" alternative was an adequate reduced development alternative because the no project alternative "would meet *almost none* of the project's objectives." (2010) 183 Cal.App.4th 1059, 1090. "As a result," the court stated, "[the alternative analyzed] did not serve the purpose that a reduced development should have served." Here, *all* of the analyzed alternatives meet "almost none" of the project objectives, because none of the alternatives analyzed provide additional housing. Just as in *Watson Pilots*, the EIR "provides no justification for the [EIR]'s failure to include within its alternatives analysis a reduced development alternative that would have satisfied the [numerous] objectives of the project that did not require the level of development contemplated by the project." *Id.*

The EIR should have analyzed the alternative of building homes to the extent possible without demolishing the chapel itself. Such an alternative could potentially meet ALL of the project objectives and significantly reduce the impact on historic resources. Instead, the EIR impermissibly analyzed project alternatives which met *almost none* of the project objectives, and by doing so neglected to conduct meaningful environmental analysis. Indeed, the "reduced development alternative" briefly mentioned—but not analyzed—in the EIR would *still involve destroying the chapel*, rendering it a useless comparison to the current project. However, the EIR *does not ever* consider developing homes while keeping the chapel intact, and does not provide any analysis on whether such an alternative could meet the project objectives.

Additionally, the EIR should have analyzed the alternative of upzoning the neighborhoods nearby to allow for the level of development contemplated by the Project. These neighborhoods contain land that is not occupied by historic structures such as the chapel, and housing could be increased by simply allowing more dense development *around* the chapel, instead of only rezoning the chapel parcel to allow higher density development.

Finally, the EIR should have analyzed the alternative of building the project at another site which did not contain historic structures.

The EIR Underestimates the Campus' Historical Significance

The campus as a whole should be considered historic. The campus contains four examples of well preserved and typical Mid-Century Modern architecture which were constructed as part of the same complex and were all part of major historical events. The entire campus was used to provide drive-in Church services, which exemplify California's automobile-centric development patterns. The campus as a whole was also responsible for the provision of a *weekly national television broadcast from 1971-1981*, when less than half a dozen national television networks were in operation.

The auxillary buildings are good examples of a shared Mid-Century Modern style, and should be considered as part of a historic complex of buildings, and, as the EIR concedes, the "grouping of buildings does represent a distinguishable entity." EIR 31.

The buildings are not only historic examples of automobile-centric development in Southern California, but sites associated with early televangelism, an influential and important phenomenon in America's history that not only gave remote access to church services to Americans unable to physically attend service, but also gave rise to the "Religious Right" as a political movement and drastically changed the American landscape of ideas.

The administration building and chapel should be preserved as an example of the architecture of Benno Fischer, who survived forced labor under the Nazis during the Holocaust and eventually came to California where he designed, among many other projects, the Los Angeles Martyrs' Memorial (which has now been incorporated into the Los Angeles Museum of the Holocaust) and helped to design the Garden Grove Community Church (the social hall for the iconic Christ Cathedral a/k/a the "Crystal Cathedral") with Richard Neutra, one of the most widely renowned modernist architects.

The site is not only associated with automobile-centric development and Benno Fischer, but also embodies the distinctive outdoor living characteristics of Southern California Mid-Century Modern Architecture. Distinct from simply having a "clear expression of structural elements and building materials, simple geometric volumes, and expanses of glass," the site has all of these in the context of a mixed indoor/outdoor space—one literally designed so that a sermon can be delivered simultaneously indoors and outdoors. And, while the structures other than the chapel itself were not designed for drive-in sermons, they were designed for indoor/outdoor use, typical of Southern California Mid-Century Modern architecture. The complex is joined by hardscaped courts and covered walkways, which are not part of the chapel, but are significant architecturally, and the drive-in chapel will no longer be in dialogue with the indoor/outdoor features of the rest of the campus should the rest of the campus be destroyed. Indeed, "ARG found that the sanctuary building, *including its associated landscape features*, is eligible for listing in the California Register of Historical Resources and for designation as a City of Long Beach Landmark."

As correctly stated in the EIR, "[h]istorical resources are 'significantly' affected if there is demolition, destruction, relocation, or alteration of . . . [the resource's] surroundings," not just of the resource itself, as would occur here even if the chapel building were preserved if the other buildings in the complex were destroyed. To take the chapel out of the context of the complex would prevent the public from experiencing the first drive-in church in Long Beach in its entirety—they would miss the architectural features of the fully-connected indoor/outdoor campus.

Considering the historic significance of the campus, the discussion of the impacts to cultural and historic resources contained in the EIR is inadequate.

The EIR contains Inadequate Analysis of the Traffic Impacts

In the traffic analysis, the City states that the development could result in more regional trips, rather than local trips, but does not analyze whether that could result in increased traffic impacts to regional intersections and freeways—the EIR merely *assumes* that the reduction in total trips will decrease regional as well as local traffic.

Additionally, the EIR claims that "Construction traffic would be limited and temporary, and would not be substantial in relation to the existing traffic load and capacity of the street system," but does not provide ANY analysis to support its assertion. EIR 34. The EIR does not say how much traffic will increase due to construction, how the level of service at nearby intersections would be affected, or how these increased traffic loads would relate to existing traffic and street capacity. *Id.*

Furthermore the traffic methodology is out of date because it uses the outdated LOS intersection approach rather than a miles travelled approach.

The Cumulative Impacts analysis under the traffic section is likewise flawed because it again assumes that the project would reduce traffic in the area because of total trip reduction, without analyzing the effects of increased regional trips. Indeed increased regional trips are *more* likely to result in cumulative impacts, since they—by definition—involve impacts in other areas than the project area itself.

Finally, just because the daily trips to the current day-care center would cease does not mean that these trips have been eliminated, but merely that they will be displaced to other day-care centers, potentially requiring longer trips.

The Project is an Exercise in Illegal Spot Zoning

Spot zoning describes an arbitrary and unreasonable zoning action by which a smaller area is singled out of a larger area or district and specifically zoned for a use classification totally different from and inconsistent with the classification of surrounding land, and not in accordance with the General Plan. Spot zoning is a zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole. Spot zoning has variously been characterized as implicating substantive due process, takings and equal protection concerns. *Buckles v. King County*, 191 F.3d 1127, 1137 (9th Cir. 1999).

Although not defined in the state's Planning and Zoning Laws, throughout the United States "spot zoning" is uniformly frowned upon as poor land use planning smacking of favoritism:

spot zoning n. a provision in a general plan which benefits a single parcel of land by creating a zone for use just for that parcel and different from the surrounding properties in the area. Example: in a residential neighborhood zoned for single family dwellings with a minimum of 10,000 square feet, the corner service station property is zoned commercial. Spot zoning is not favored, since it smacks of favoritism and usually annoys neighbors.

– www.legal-dictionary/thefreedictionary.com/Spot+Zoning

Spot zoning is a provision in a general zoning plan which benefits a single parcel of land by creating an allowed use for that parcel that is not allowed for the surrounding properties in the area. Because of implications of favoritism, spot zoning is not favored practice.

– www.definitions.uslegal.com/s/spot-zoning/

spot zoning : the illegal singling out of a small parcel of land within the limits of an area zoned for particular uses and permitting other uses for that parcel for the special benefit of its owners and to the detriment of the other owners in the area and not as a part of a scheme to benefit the entire area.

– www.m-w.com

The adoption or amendment of specific plans and zoning ordinances are normally legislative acts judicially reviewed pursuant to Code of Civil Procedure section 1085. (Mitchell v. County of Orange (1985) 165 Cal.App.3d 1185, 1188.) (Mitchell, supra, 211 Cal.App.3d at 1190-1191; Gov. Code § 65301.5 & 65860(b); *Arnel Development Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 522.) Thus, courts usually decide actions challenging those acts under the section 1085 standard of review: whether the agency's action was "arbitrary, capricious, or entirely lacking in evidentiary support" (*City of Livermore v. Local Agency Formation Commission* (1986) 184 Cal.App.3d 531), or "whether [the agency] has failed to follow the procedure and give the notices required by law." (*Pitts v. Perluss* (1962) 58 Cal.2d 824, 833; *Lewin v. St. Joseph Hospital of Orange* (1978) 82 Cal.App.3d 368, 383.)

However, case law explains that, in actions such as this one challenging a spot zoning, this standard does not apply. The reason why is because, regardless of whether it hurts or favors, spot zoning constitutes "[a] blatant example of discriminatory land use legislation." (*Wilkins v. City of San Bernardino* (1946) 29 Cal.2d 332, 340; *Ross v. City of Yorba Linda* (1991) Cal.App.4th 954, 960; *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 900 ["even in the case of zoning regulations, to which courts have been traditionally deferential, a more rigorous form of judicial review, fueled by a suspicion of legislative motive, has been employed when the regulation applies uniquely to a single property owner—so-called "spot zoning."].) Thus, this Court owes no deference to the City's legislative actions and efforts to spot zone the Project site. Similarly, in reviewing the City's administrative action under the state's Planning and Zoning Laws, this Court is not beholden to the City's conclusions and exercises its independent judgment. *Goat Hill Tavern v. City of Costa Mesa* (1992) 6 Cal.App.4th 1519, 1525-1532.

Government Code section 65852 requires that all zoning "regulations shall be uniform for each class or kind of building or use of land throughout each zone, but the regulation in one type of zone may differ from those in other types of zones." *Id.*, emphasis added. By approving the Project- and specifically the Ordinances, the City created non-uniform zoning regulations and violated section 65852.

In order to facilitate the Project, the City has proposed to amend the land use element of the general plan from LUD No. 10 (Institutional and School) to LUD No. 1 (Single Family District). The City has also proposed to amend the Zoning District Map by amending portions of Part 20 from Institutional (I) to Single-Family Residential (R-1-M). These changes are being made solely to facilitate this particular development and therefore violate Government Code section 65852 and constitute illegal "spot zoning." No special hardships affecting the property exist to merit a variance under Government Code section 65906.

Other Issues

The EIR violates CEQA in that it:

- a. Failed to adequately analyze and mitigate both direct traffic impacts and indirect impacts on traffic and related air pollution issues resulting from faulty parking analyses.

- b. Failed to identify, and adequately analyze and mitigate impacts to the environment resulting from the additional demands placed on the available wastewater transport and treatment facilities as a result of the addition of residential units to the area.
- c. Failed to identify and adequately analyze and mitigate impacts to the surrounding properties and road system resulting from the Project's construction activities and additional traffic in light of the sensitive geotechnical conditions in the area.
- d. Failed to adequately analyze and mitigate Project impacts to biological resources.
- e. Failed to adequately analyze Project impacts to water supply and water quality.
- f. Failed to identify and adequately analyze and mitigate the Project's aesthetic impacts.
- g. Failed to identify and adequately analyze and mitigate indirect impacts to the environment resulting from the Project's faulty marketing assumptions.
- h. Failed to identify and adequately analyze and mitigate noise impacts by limiting consideration to indoor noise impacts.
- i. Failed to adequately analyze identified alternatives to the project and to mitigate impacts by selecting a less impactful alternative that was nevertheless a feasible alternative to the Project without adopting a statement of overriding considerations.
- j. Failed to adequately describe the baseline conditions and the project with the result that its analysis of the impacts of the Project was based on generic models that failed to reflect the actual baseline conditions and that failed to properly take into account the specifics of the project.
- k. Failed to identify and adequately analyze and mitigate potential impacts that might result if future actions the Draft EIR assumed would occur did not occur.
- l. Engaged in prohibited piecemealing in that analyses that should have been included in the Draft EIR were deferred to later permit reviews contemplated by the Draft EIR. By so doing, the Draft foreclosed mitigation opportunities that would no longer be available at the time of the permit process.
- m. Failed to actually analyze the feasibility of moving the church. Rather than provide a cost estimate, or explanation of how big the church is and how the size of a building relates to the difficulty of moving it, the EIR merely states that "Based on the size of the building [moving the church] does not appear to be technically feasible."
- n. Did not actually address the environmental impacts of the project, but rather discussed existing regulatory measures designed to conserve energy and the de minimis impacts of the project on state-wide numbers.

Further, the City has proposed inadequate findings for the Project under CEQA. CEQA requires that a lead agency's findings for the approval of a project be supported by substantial evidence in the administrative record. CEQA further requires that a lead agency provide an explanation of how evidence in the record supports the conclusions it has reached.

The City's proposed CEQA findings are inadequate as a matter of law in that they are not supported by substantial evidence in the record, including, but not limited to, the following.

- a. The determination that certain impacts would be less than significant and/or that adopted mitigation measures would avoid or lessen the Project's significant effects on the environment;
 - b. The determination that alternatives to the Project and proposed mitigation measures that would have avoided or lessened the significant impacts of the Project were infeasible;
- Additionally, the City is required to recirculate the EIR under the present circumstances.

CEQA requires that if significant new information is added to an EIR after a draft EIR is prepared, but before certification of the final EIR, the EIR must be recirculated for public review and comment.

Comments submitted to the City after the Draft EIR was circulated provided significant new information within the meaning of Public Resources Code section 21092.1 and CEQA Guidelines section 15088.5.

Despite the availability of this significant new information, the City has failed to recirculate the EIR, or any portion of the EIR. As a result of City's failure to recirculate the EIR, the public and other public agencies are being deprived of any meaningful opportunity to review and comment on the Project, its substantial adverse environmental consequences, and the new information regarding other unanalyzed environmental effects of the Project.

Moreover, the City has failed to respond adequately to comments, other members of the public, and other agencies. Instead, the responses given to numerous comments regarding the Project's impacts were dismissive, conclusory, evasive, confusing, or otherwise non-responsive, contrary to the requirements of CEQA. Many of the responses to comments also ignored that CEQA deals with both direct and indirect impacts on the environment. Some of the responses were simply conclusory without any of the analysis required by CEQA.

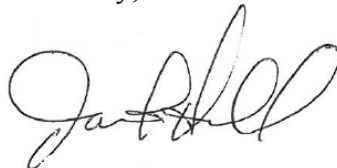
CEQA also requires that the EIR provide a sufficient description of the existing environment that may be affected by the Project so that the Project's impacts may be measured against the background or baseline of the existing environment. Contrary to the requirements of CEQA, the EIR fails to provide a full and accurate description of the already identified impacts of global warming on the County and City, as well as the greenhouse gas emissions inventory of the County and City. The EIR also fails to accurately describe the rare, sensitive, threatened and endangered species that exist with the countywide Project area.

Finally, there is no evidence provided that the City has consulted with Native Americans as required under SB 18.

Conclusion

For the reasons outlined above, the EIR is inadequate and should not be certified and instead be revised, and the project is an exercise in impermissible spot zoning and should not be approved. The alternatives analysis, discussion of historic and cultural resources, and traffic analysis contained in the EIR are inadequate.

Sincerely,



Jamie T. Hall