



**THEODORA  
ORINGHER**  
COUNSELORS AT LAW

**THEODORA ORINGHER PC**  
535 Anton Boulevard, Ninth Floor  
Costa Mesa, California 92626-7109  
T (714) 549-6200 • F (714) 549-6201  
www.tocounsel.com

**TIM PAONE**  
tpaone@tocounsel.com  
(714) 549-6115  
File No.: 80990-10005

December 16, 2011

Mayor Bob Foster  
Members of the City Council  
City of Long Beach  
333 West. Ocean Blvd., 14th Floor  
Long Beach, California 90802

Re: **2nd & PCH Project**

Mayor Foster and Members of the Council:

This firm represents Lyon Communities ("Lyon"), the developer of several projects in the City of Long Beach and the owner of property in the immediate vicinity of the proposed 2nd & PCH project (the "Project"). For the reasons set forth within this letter, Lyon asks the City Council to not certify the Project's Environmental Impact Report and, instead, either (1) deny approval of the Project or (2) continue the hearing on the Project for a period of no less than six-to-twelve months the hearing on the Project's proposed legislative approvals (the Local Coastal Program Amendment, General Plan Amendment, and SEADIP (PD-1) Amendment)<sup>1</sup>. Lyon also requests that the City Council direct staff to begin preparation of a coordinated planning effort for a broader portion of the SEADIP subarea, such as the area bounded by the Seal Beach border, 2nd Avenue, Shopkeeper, and Alamitos Bay, plus the "four corners" intersection at 2nd and PCH and those publicly owned parcels along Marina Drive of the City's General Plan and Local Coastal Program (the "Broader Planning Area").

Lyon understands that while the City has long preferred coordinated, rather than piecemeal, planning in the Broader Planning Area, funding for a coordinated planning effort has not been available. To address that issue, Frank Suryan of Lyon has provided to the City Council a letter

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<sup>1</sup> In some respects, some of the remaining non-legislative approvals (the tentative subdivision map, site plan review, standards variance, and Coastal Development Permit), are subject to statutory requirements as to the time in which they must be heard. However, those non-legislative approvals have been prematurely placed before the Council, as they will be neither valid nor effective unless and until the Coastal Commission approves the proposed LCP Amendment without any significant modifications whatsoever. Lyon views as remote the likelihood of the Coastal Commission approving the LCP Amendment for this isolated Project at all, much less substantially as proposed. Therefore, those premature non-legislative approvals should be denied unless the applicant agrees to waive any applicable hearing requirements.

in which Lyon has proposed to advance the funding for the preparation of a Specific Plan for the Broader Planning Area.

As difficult as it is to object to another landowner's development proposal, the potential environmental impacts of the Project are so significant that prudent planning principles should compel the City Council to defer consideration of the Project. We have reviewed the Project's EIR and many of the comments made on the EIR. While other commenters have noted a wide range of defects in the EIR, Lyon's concerns are focused upon three substantive areas of environmental concern which directly impact Lyon and its property. Our comments are being made now rather than during the public review period for the EIR for the simple reason that Lyon did not yet own the nearby property during the review period. As a result of this timing, we understand that the City is not legally obligated to respond in writing to these comments, but also that it may choose to do so. It is our intent that our comments be entered into the Project's administrative record.

Our environmental concerns relate to (1) the EIR's flawed analysis of traffic impacts, (2) the EIR's failure to evaluate the potential impacts of the increased traffic congestion upon nearby businesses and the resulting potential for physical environmental decline, and (3) the EIR's failure to provide an adequate alternatives analysis which would avoid or substantially lessen the significant and unmitigated traffic impacts identified in the EIR. These concerns also lead Lyon to object to the proposed adoption of a Statement of Overriding Considerations in that a proper technical analysis and an appropriate range of project alternatives inevitably would have resulted in a significantly revised project, the imposition of mitigation measures to reduce or eliminate the traffic impacts, or both.

### **Traffic Analysis.**

From a policy perspective and to assure consistent and equitable practices, the methodology used by the EIR to evaluate traffic impacts presumably would be applied to future individual projects within the Broader Planning Area. Similarly, the reasoning behind the proposed Statement of Overriding Considerations presumably would be applied consistently and equitably to other area projects. Lyon believes there is a better approach both to planning within this area and the challenges presented by the area's traffic volume and distribution. That approach requires coordinated planning for the Broader Planning Area utilizing comprehensive traffic analysis, unlike what is presented by the Project's EIR.

The EIR's analysis of Transportation and Traffic contains significant and fundamental flaws that impair the EIR's usefulness as an informational document and will preclude the City from making an informed decision about whether to proceed with the Project in light of unmitigated effects on the environment. One commenter has characterized traffic in the Project location as "one of the most heavily congested intersections, in the most congested counties in America." This comment is not hyperbolic. The Project will impose serious, unmitigated traffic impacts on residents, commuters, and businesses and it will create physical barriers to comprehensive

traffic solutions which might be possible with a broader planning effort. In the attached review of the EIR's traffic analysis prepared for Lyon by the transportation engineering firm Pirzadeh & Associates, Inc. ("Pirzadeh"), Pirzadeh notes that the traffic impact analysis ("Traffic Study") prepared for the Project suffers from a number of fundamental flaws. Some of the key deficiencies identified by Pirzadeh and others include:

- While the Project will have impacts outside the local jurisdiction, no efforts were made to coordinate with other agencies, leading Caltrans to comment that "the Revised Traffic Study is incomplete."
- Based on the Project distribution plots shown on Figures 5-1 through 5-3, a significant percentage of the proposed project trips travel beyond the limits of the study area. To be adequate, the Traffic Study area boundary must be expanded to the point where Project trips become insignificant. Several commenters noted that the traffic analysis should consider impacts at the intersections located along 7th Street from the freeway off-ramp on 7th Street to Bellflower Boulevard and Pacific Coast Highway, or the other direction from Bellflower Boulevard to the on-ramp of all five freeways, intersections with Naples Island, signalized intersections along Second Street between Livingston and Bay Shore Avenue, and impacts at locations in Seal Beach, including Marina Drive/1st Street, Bolsa Avenue/Seal Beach Boulevard, and the Bolsa Avenue roadway segment, as well as the intersections of PCH/Anderson Street, Westminster Avenue/Bolsa Chica Road, and Seal Beach Boulevard/Golden Rain Road. Considering that traffic impacts at PCH/2nd Street and PCH Studebaker Road are unmitigable, Marina Drive, in particular, could become a heavily used access route for destinations to the south. The intersection of Marina Drive at 1st Street should have been evaluated.
- The Traffic Study assumes ambitious Project trip reductions for pass-by traffic and relies on future Travel Demand Management programs that are speculative and unsupported by substantial evidence. The net result of these methodological assumptions is an understated Project trip generation, which in turn results in a minimization of traffic impacts in the Project area. As noted in the March 17, 2011, comment letter from Metropolitan Transportation Authority, California's Congestion Management Program ("CMP") requires that projects which include a non-residential component exceeding 100,000 square feet "incorporate a specific set of TDM measures into project design." The response is dismissive, stating only that "the proposed Project would be required to implement a TDM plan consistent with the City's requirements." The EIR's failure to comply with the CMP renders the EIR legally inadequate.
- The Project trip distribution shown on Figures 5-1 through 5-3 of the EIR is not based on any documented data or regional modeling patterns. The patterns are, therefore, arbitrary and misstate the true Project impacts on traffic distribution. In addition, the Traffic Study based future traffic predictions on year 2009 count data—the height of the

economic recession—which almost certainly undercounts future trip projections and distribution.

- The Traffic Study is limited to identified intersections only. Roadway links, freeway ramps, and freeway mainline segments have not been analyzed. This is a significant deficiency because many roadway segments in the study area have fewer lanes and less capacity in mid-block sections than at the intersection approaches. Moreover, Caltrans requires an analysis of project impacts on freeway ramps and mainline segments. Significantly, there is also no discussion of the major freeway improvements being undertaken as part of the West County Connectors project and its impacts to local traffic. As noted in the City of Seal Beach comment letter dated April 11, 2011, traffic is expected to be diverted onto local streets for up to four years while the interchange and the Seal Beach Boulevard Bridge are being improved. The EIR dismisses this potentially significant impact on the questionable grounds that the West County Connector project is expected to be completed prior to the opening of the Project.
- The Traffic Study analyzed potential impacts for the 2015 horizon year only, based on the highly questionable and, frankly, irresponsible assumption that the Project would be completed by 2015. The Traffic Study completely ignores potential Project impacts for long range (e.g., Year 2030) and City build-out scenarios (e.g., post 2030). This obvious omission ignores future development that can be reasonably forecast for the area and also ignores the effect of the City's planned extension of Studebaker from Westminster to PCH. As a result, traffic impacts are again under-stated and mischaracterized to the extent that the City will be unable to realistically assess them. See, e.g. *Berkeley Keep Jets Over the Bay Comm. V. Board of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1381. State CEQA Guidelines Section 15064(h)(1) provides that the lead agency should consider the effects of past projects, current projects, and probable future projects. As Caltrans noted in a comment letter dated September 1, 2010, "the project site is in a highly desirable growth area and may see a greater number of development projects in the future. It is prudent to use a longer horizon to assess potential traffic problems now and work on needed long term mitigations." The EIR dismisses this important issue, concluding simply that "as the use of the later horizon year would only add more 'background growth' that is a constant, the analysis would not be very informative." This statement alone discloses the unrealistic nature of the Traffic Study. As a result, the EIR fails to properly evaluate both the direct and cumulative traffic impacts of the Project.
- While acknowledging that the Project will significantly impact several intersections that are already operating at unacceptable levels of service (including Second Street/PCH and Second Street/Studebaker Road), the Traffic Study does not identify the required improvements that would bring these intersections to an acceptable level of service. It appears that the Traffic Study and the EIR were "strategically" drafted to suggest that absolutely nothing could be done to avoid worsening of traffic conditions. To the contrary, as noted by Pirzadeh, the intersection of 2nd Street and PCH could be

improved by the construction of physical improvements that would be partially located on the Project site, yet this discussion is missing from the Traffic Study. Several other commenters have noted additional feasible mitigation measures.

- A more comprehensive planning effort that leads to a fair share contribution program would address the existing deficiencies at all impacted “choke points” within the regional transportation system. The EIR dismisses these mitigation measures as infeasible without providing an adequate explanation. Nor does the EIR adequately address why reducing the density of the Project and integrating it into a larger planning area would not mitigate the significant traffic impacts, particularly while conceding that “five of the six alternatives would generate less traffic than the proposed project and would reduce the project’s overall traffic impacts.”
- The Traffic Study identifies a Project-sponsored shuttle service as mitigation for traffic impacts at the Bay Shore/2nd Street and 2nd Street/PCH intersections. The shuttle service would be considered a Travel Demand Management measure. As noted above, project trip generation has already been reduced in the traffic study by taking into account future TDM measures. Therefore, relying on the shuttle service as a “mitigation measure” double counts reductions in traffic trips and cannot be relied on as a mitigation measure. Moreover, there is no discussion or quantification of how the shuttle service would result in the stated capacity enhancement at the identified intersection.

In addition, the EIR failed to use the correct City code parking requirements for the residential uses of the Project. Utilizing the correct City code parking requirements results in a 618-space parking deficiency, and a standards variance will be required. In an area already plagued with parking problems and traffic gridlock, it defies logic that this Project would be approved when it adds to, rather than alleviates, the City’s traffic issues.

The EIR further distorts the Project’s traffic and congestion impacts by making numerous unsupported assumptions, such as the conclusion on Page IV.L-71 that “as cumulative development occurs, public transit agencies are expected to respond by expanding their services and facilities to meet growing demands.” This assumption led Long Beach Transit to comment that “it cannot be assumed that LBT will be able to continually add additional service given its funding restrictions. However, the identification of an additional and on-going funding source could potentially help to enable LBT to increase its service.”

LBT’s comment acknowledges the reality of funding constraints for public transportation projects and highlights the necessity for a more comprehensive planning effort, including stable sources of public transportation funding, for the entire area. The Traffic Study, by contrast, fails to acknowledge either the necessity of a broader planning effort or the inclusion of more comprehensive onsite mitigation to alleviate already critically congested intersections. Instead, it distorts and minimizes the probable impacts of the Project on traffic conditions and

by doing so attempts to mislead City decision-makers into approving a project that will lead to even worse conditions for years to come.

**Potential for Physical Deterioration of Nearby Properties.**

Section 15121 of the CEQA Guidelines provides that the economic or social effects of a project are not to be treated as significant effects on the environment unless the project's EIR traces "a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic or social changes." Here, there is, on the very face of the Project proposal, at least a "fair argument" that the Project's acknowledged worsening of existing adverse traffic conditions could adversely affect nearby businesses whose customers and clientele might choose to conduct their business in areas where traffic conditions are not as daunting.

The Project will place within its boundaries significantly increased intensity out-of-scale with its neighbors. The increased intensity will both physically dominate surrounding properties and add substantial traffic to an already severely overburdened circulation system. The EIR should have examined whether there is a potential for these conditions to result in a decline in business revenues which could lead to vacancies, which could lead to reduced rents, which, in turn, could lead to reduced maintenance of properties and, ultimately, physical deterioration. The EIR should have examined whether the traffic conditions resulting from the Project had the potential to preclude future increases in the intensity of nearby development, thus driving away investment and leading to physical deterioration. The combination of the worsening of traffic from the Project, the elimination of physical opportunities for mitigation utilizing the Project site, decline in revenues, and likely community opposition to future intensification of use on other properties should have been examined as factors that could eventually lead to a physical deterioration of nearby properties. The failure of the EIR to address this potential issue is made even more glaring by the potential understatement of traffic impacts as set forth above.

California courts have consistently held that where there is evidence suggesting that the economic and social effects of a project ultimately could result in physical deterioration of other properties, the lead agency is obligated to evaluate that potential impact in its EIR.<sup>2</sup> Here, the evidence of unmitigated and worsening traffic conditions caused by the Project raises the question of its potential impacts not only in the adjacent streets, but also in the stores and business located nearby which, ultimately, could directly suffer the physical consequences of the Project's clear intent to take no responsibility for its traffic impacts.

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<sup>2</sup> See *Bakersfield Citizens for Local Control v. City of Bakersfield (Panama 99 Properties)*, 124 Cal.App.4<sup>th</sup> 1184, 1207 (2004)

### **Alternatives Analysis.**

State CEQA Guidelines Section 15126.6(b) provides that an EIR must include an evaluation of alternatives to a proposed project which "shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project ..." To withstand legal challenge, an EIR must consider "a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation."

The EIR for the Project analyzes four "reduced intensity alternatives" as well as a "No Project/No Development Alternative" and a "No Project/Existing Zoning Alternative" that assumes the Project would not be developed, but the Project site would be redeveloped with commercial uses to the extent allowable under existing zoning.

Of the "reduced intensity" alternatives, a brief summary will help illustrate the inadequacy of the chosen Alternatives.

- Alternative A would involve the development of a similar mix of land uses, but reduced in terms of commercial/retail and residential development intensity (20 and 15 percent, respectively), and would not include the theater. Non-hotel restaurant uses would be reduced by approximately five percent.
- Alternative B would involve the development of a similar mix of land uses but reduced in terms of commercial/retail and residential development intensity (35 and 33 percent, respectively), and would not include the theater use that is included in the proposed project. Non-hotel restaurant uses would be reduced by approximately five percent. Maximum building heights would be reduced by approximately 45 percent (i.e., from 12 to six stories, or from 150 feet to 82 feet).
- Alternative C would involve the development of a similar mix of land uses but reduced in terms of commercial/retail and residential development intensity (40 and 70 percent, respectively), and would not include the theater. Maximum building heights would be reduced by a minimum of 45 percent (i.e., from 12 stories to fewer than six stories, or from 150 feet to less than 82 feet).
- Alternative D would involve the development of a comparable mix of land uses but would be reduced in terms of commercial/retail intensity (40 percent), would not include residential development, and would not include the theater project. Maximum building heights would be reduced by a minimum of 45 percent (i.e., from 12 stories to fewer than six stories, or from 150 feet to less than 82 feet).

The striking fact about each of the chosen alternatives is that none of them incorporates a broader planning area appropriate to the broad range of amendments to City planning documents required for the Project. Because the Project is located within the boundaries of the

Southeast Area Development and Improvement Plan ("SEADIP"), it requires an amendment of (1) the City's general plan, (2) the SEADIP Specific Plan, (3) the SEADIP planned development ordinance, and (4) the City's Local Coastal Program (the "LCP") as certified by the California Coastal Commission.<sup>3</sup> The purpose of SEADIP is "to present an integrated specific plan for the continuing development of this important area of the City." Rather than evaluating the Project in the broad context of SEADIP, the EIR and its range of alternatives simply looked at the Project in isolation. Doing so in combination with the inadequate Traffic Study set the stage for the incredibly naïve, though strategic, conclusion that area businesses, residents, visitors, and commuters would be subject to worsening traffic conditions *and absolutely nothing could feasibly be done about it*. Improving the traffic conditions that exist today and preventing further deterioration in those conditions very likely can be accomplished through the coordinated and comprehensive planning called for by the LCP, the general plan, the SEADIP Specific Plan, and the SEADIP development plan. Having already ignored the potential for onsite mitigation of traffic impacts as discussed above, by ignoring the comprehensive vision for SEADIP, the EIR alternatives analysis avoids evaluation of any planning alternative which might lessen or avoid the Project's traffic impacts. Not only does this failure render the alternatives analysis inadequate under CEQA, but approval of the Project would be internally inconsistent with each of the City's applicable planning documents. SEADIP states that any proposed project must meet the intent of the "**original**" standards of SEADIP and be "consistent with the overall goals and objectives" of SEADIP. The EIR makes no attempt to consider feasible alternatives that would both reduce the Project's significant impacts and promote significantly greater economic activity than proposed by the Project and fails to provide any credible discussion of why it has not done so.

Rather than focus on the reduced impacts that a broader planning effort would generate, the alternatives analysis glosses over the impacts of the Project by improperly evaluating the significant and non-significant impacts of alternatives equally. The only significant Project impacts identified by the EIR are: 1) air quality/climate change impacts from Project emissions; 2) traffic and circulation impacts from Project peak hour trips; and 3) the land use impacts caused by the Project's incompatibility with applicable planning and zoning requirements. Under State CEQA Guidelines Section 15126.6(b), the alternatives analysis must focus on project alternatives that avoided **these** three significant areas of impact, which the analysis failed to do (see, e.g., Table V-2, which purports to provide a summary of the environmental impacts of the four reduced intensity alternatives).

Moreover, the alternatives analysis fails to ask meaningful questions that would lend credibility to the choice of alternatives. For example, how were the density reductions determined? What

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<sup>3</sup> As set forth in the LCP, the SEADIP program was adopted by the Long Beach City Council in 1977 as both an amendment to the City's general plan and a specific plan. Additionally, a planned development ordinance was adopted to regulate the properties within the SEADIP boundaries. The SEADIP Specific Plan is incorporated as part of the certified LCP.



reduction in density would result in lowering traffic and circulation and air quality impacts at the subject intersections to a level of insignificance? Which of the alternatives, if any, comply with the SEADIP 1.4 FAR density requirement? What mix of uses and density allowed under the SEADIP zoning and planning requirements would avoid significant traffic impacts?

Another example of a broader planning area that could have been examined as an alternative is the area bounded by the Seal Beach border, 2nd Avenue, Shopkeeper, and Alamitos Bay, plus the "four corners" intersection at 2nd and PCH and those publicly owned parcels along Marina Drive is precisely the type of Project alternative that should have been evaluated in the EIR. This area, too, because of its overall effect on traffic circulation in the immediate area of the Project, would provide the opportunity to lessen not only the traffic impacts created by the Project (as well as the chosen alternatives), but perhaps, as well, those that exist today.

**Conclusion.**

An EIR is the primary means of achieving the policy goals of CEQA, specifically that agencies "take all actions necessary to protect, rehabilitate, and enhance the environmental quality of the state." Public Resources Code Section 21001(a); State CEQA Guidelines Section 15362. Preparation of an EIR and consideration of comments on it from the public and other agencies enables the agencies that will consider the project to have the information necessary to weigh competing policies and interests. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 576. To be legally adequate, an EIR must propose mitigation measures and alternatives designed to minimize a project's environmental impacts, and agencies must respond by mitigating or avoiding environmental impacts when it is feasible to do so. *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal. 3d 376, 392.

Simply put, the EIR falls short of achieving CEQA's important policy goals. Notably, this view appears to be widely held. The City of Seal Beach, for example, characterized the document as "deficient" and concluded that it "must be revised and corrected to comply with the full disclosure requirements of CEQA." Caltrans called the traffic analysis "incomplete." Lyon views the EIR as short-sighted, inaccurate, and incomplete in its evaluation of traffic impacts, the potential for physical deterioration of nearby properties, and the selection of project alternatives which it has evaluated. For these reasons, Lyon requests that the City Council either deny approval of the Project or defer its consideration and immediately commence the process for the preparation of a Specific Plan for the Broader Planning Area.

Sincerely,



Tim Paone  
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