From: CityClerk
To: Dionne Bearden
Subject: FW: FEIR for Spring Street Business Park Project (SCH No. 2019100514)
Date: Thursday, July 02, 2020 12:10:23 PM
Attachments: 2020.07.01.Spring St Bus Park FEIR ComLtr.pdf

FYI-

From: Richard Drury [mailto:richard@lozeaudrury.com]
Sent: Wednesday, July 1, 2020 7:49 PM
To: Dionne Bearden <Dionne.Bearden@longbeach.gov>; PlanningCommissioners <PlanningCommissioners@longbeach.gov>; Christopher Koontz <Christopher.Koontz@longbeach.gov>; Scott Kinsey <Scott.Kinsey@longbeach.gov>; CityClerk <CityClerk@longbeach.gov>
Subject: FEIR for Spring Street Business Park Project (SCH No. 2019100514)

-EXTERNAL-

Dear Chair Lewis and Honorable Planning Commissioners:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the Final Environmental Impact Report ("FEIR") prepared for the project known as Spring Street Business Park Project (SCH No. 2019100514), including all actions related or referring to the proposed construction of a business park complex consisting of 160,673 square feet of floor area within three concrete tilt up buildings located at 2851 Orange Avenue (Assessor's Parcel Number 7212-009-021) in the City of Long Beach ("Project"). Our comments are attached hereto. Please include this letter in the administrative record. Thank you.

Richard Drury

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Via Email Only Due to COVID-19 Procedures

July 1, 2020

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Re: **Comment on Final Environmental Impact Report for the Spring Street Business Park Project (SCH No. 2019100514)**

Dear Chair Lewis and Honorable Planning Commissioners:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the Final Environmental Impact Report ("FEIR") prepared for the project known as Spring Street Business Park Project (SCH No. 2019100514), including all actions related or referring to the proposed construction of a business park complex consisting of 160,673 square feet of floor area within three concrete tilt up buildings located at 2851 Orange Avenue (Assessor's Parcel Number 7212-009-021) in the City of Long Beach ("Project").

After reviewing the FEIR, we conclude that the FEIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. SAFER requests that the City of Long Beach ("City") address these shortcomings in a revised draft environmental impact report ("RDEIR") and recirculate the RDEIR prior to considering approvals for the Project.

I. LEGAL STANDARD

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). *See, e.g.*, Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs*. (2001) 91 Cal. App. 4th 1344, 1354 ("Berkeley Jets"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); see also, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines §15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." Pub. Res. Code § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B). The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732 (Cal. App. 5th Dist. 1990).

The EIR is the very heart of CEQA "and the integrity of the process is dependent on the adequacy of the EIR." *Berkeley Jets*, 91 Cal. App. 4th 1109, 1355.

CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. Pub. Res. Code § 21100(b)(1); Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354. The EIR must not only identify the impacts, but must also provide "information about how adverse the impacts will be." *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831. The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau*, 221 Cal.App.3d 692, 732. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better Env't*, 103 Cal.App.4th 98, 109.

While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A 'clearly inadequate or unsupported study is entitled to no judicial deference.'" *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 391 409, fn. 12 (1988). A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist*. (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946. As discussed below, and in the attached expert comment letters of expert Dr. Smallwood, expert consulting firm SWAPE, and Mr. Smith, the EIR for this Project fails to adequately analyze and mitigate the Project's impacts.

The lead agency must evaluate comments on the draft EIR and prepare written responses in the final EIR ("FEIR"). Pub. Res. Code § 21091(d). The FEIR must include a "detailed" written response to all "significant environmental issues" raised by commenters. As the court stated in *City of Long Beach v. LA USD* (2009) 176 Cal.App.4th 889, 904:

> The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.

The FEIR's responses to comments must be detailed and must provide a reasoned, good faith analysis. CEQA Guidelines § 15088(c). Failure to provide a

substantive response to comment render the EIR legally inadequate. *Rural Land Owners Assoc. v. City Council* (1983) 143 Cal.App.3d 1013, 1020.

The responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. "Conclusory statements unsupported by factual information" are not an adequate response. CEQA Guidelines §§ 15088(b), (c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3rd 348. The need for a substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. *Berkeley Keep Jets*, 91 Cal.App.4th at 1367; *People v. County of Kern* (1976) 62 Cal.App.3d 761. A reasoned analysis of the issue and references to supporting evidence are required for substantive comments raised. *Calif. Oak Found. v. Santa Clarita* (2005) 133 Cal.App.4th 1219.

II. DISCUSSION

A. The Project Fails to Impose Feasible Mitigation Measures to Reduce Significant Unmitigated Traffic Impacts.

The Final EIR (FEIR) admits that the Project will have significant unmitigated traffic impacts. The intersection of Spring Street and Orange Avenue would deteriorate from level of service (LOS) D to LOS E or F, which is a significant impact. (FEIR ES-3).

The intersection of Orange Avenue and 32nd Street would result in a significant and unavoidable impact. The FEIR proposes to impose no mitigation measures contending that "the City of Signal Hill has jurisdiction over the intersection … [and] Signal Hill does not have any plans to improve the impacted intersection." (FEIR ES-3). The FEIR therefore concludes that mitigation is infeasible.

The intersection of Orange Avenue and Interstate 405 would result in significant unavoidable impacts. (FEIR ES-3). The FEIR states that CalTrans has jurisdiction over this intersection and does not have any plans to improve it and therefore concludes that mitigation is infeasible. (FEIR ES-3).

This analysis is inadequate under CEQA. Feasible mitigation is available, despite the fact that the intersections are under the jurisdiction of other agencies. The Supreme Court held in *City of Marina v. Board of Trustees of California State University*, 39 Cal. 4th 341 (2006), that even if agency lacks power to implement mitigation itself, it may still make a voluntary contribution to another agency to allow that agency to implement mitigation – even if the law would prohibit the other agency from imposing a mitigation fee on the lead agency. In such circumstances, lead agency may not conclude that such mitigation is "infeasible." In the *Marina* case,

CSU erred in finding that mitigation was infeasible because it could have contributed to Reuse Authority to allow that agency to mitigate off-site project impacts. The court rejected the trustees' contention that mitigation was infeasible because the trustees could not lawfully contribute to FORA as a way of discharging their obligations under CEQA. It also rejected the trustees' arguments that a contribution by the trustees to FORA would constitute a gift of public funds in violation of Cal. Const., art. XVI, § 6, or that the trustees could not guarantee that FORA would actually implement proposed infrastructure improvements. The trustees could not disclaim responsibility for measures necessary to mitigate the project's off-campus environmental effects. Because the trustees abused their discretion in determining that the project's remaining effects could not feasibly be mitigated, it necessarily followed that their statement of overriding considerations in approving the campus master plan was invalid. See also, *Lexington Hills v. State of Calif*. (1988) 200 Cal.App.3d 415. (CEQA lead agency cannot delegate responsibility to develop mitigation measures to a responsible agency, even if the responsible agency has more expertise in a particular area. Lead agency must use its authority to analyze the entire project and to devise mitigation measures. Id. at 433-435.); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433 (Lead agency cannot refrain from considering means of exercising its own regulatory power simply because another agency has general authority over the impacted natural resource. City could not delegate mitigation measure development for project impacts to wetlands to US Army Corps of Engineers. Id. at 443).

B. FEIR Fails to Select the Environmentally Superior Reduced Project Alternative.

The FEIR acknowledges that the Reduced Project Alternative is the environmentally superior alternative. (FEIR 5-11). Yet the FEIR does not propose to select the Reduced Project Alternative because is "would not need all of the project objectives." (Id.). The FEIR fails to apply the proper standard. CEQA requires the agency to select the environmentally superior alternative if it meets ***most*** of the project objectives and is feasible. Since the Reduced Project Alternative will meet most of the Project objectives, and it is feasible, the City must require its implementation.

"CEQA's substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures is effectuated in section 21081. Under this provision, a decisionmaking agency is prohibited from approving a project for which significant environmental effects have been identified unless it makes specific findings about alternatives and mitigation measures." (*California Clean Energy Comm. v. City of Woodland* (2014) 225 Cal. App. 4th 173, 203.) An agency's rejection of an alternative as "infeasible" or otherwise "unworthy of more in-depth consideration" must be supported by

"substantial evidence." (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 885.)

Where a project is found to have significant adverse impacts, CEQA requires the adoption of a feasible alternative that meets most of the project objectives but results in fewer significant impacts. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-81; see also, *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322) A “feasible” alternative is one that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (Pub. Res. Code § 21061.1; 14 Cal. Code Regs. § 15364)

The lead agency is required to select the environmentally superior alternative unless it is infeasible. As explained by the Supreme Court, an environmentally superior alternative may not be rejected simply because it is more expensive or less profitable:

> The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.

(*Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-81; see also, *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322).

The FEIR fails to make any showing that it would be infeasible to proceed with the Project if the Reduced Alternative were chosen. Therefore, the FEIR fails to provide substantial evidence sufficient for a statement of overriding considerations.

Moreover, to narrowly define the primary "objective" of the proposed project itself constitutes a violation of CEQA since such a restrictive formulation would improperly foreclose consideration of alternatives. (See *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438) (holding that when project objectives are defined too narrowly an EIR’s treatment of analysis may also be inadequate.) As a leading treatise on CEQA compliance cautions, "The case law makes clear that…overly narrow objectives may unduly circumscribe the agency’s consideration of project alternatives." (Remy, Thomas, Moose & Manley, *Guide to CEQA* (Solano Books, 2007), at 589)

CEQA prohibits a project sponsor from limiting its ability to implement the project in a way that precludes it from implementing reasonable alternatives to the project. (See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736 (holding alternatives may not be artificially limited by applicant's prior contractual commitments that would prevent sponsor from implementing reasonable

alternative). Inconsistency with only some of the Project Objectives is not necessarily an appropriate basis to eliminate impact-reducing project alternatives from analysis in an EIR. (14 Cal. Code Regs § 15126.6(c), (f))

C. FEIR Fails to Provide Substantial Evidence to Support a Statement of Overriding Considerations.

The EIR concludes that the Project will have significant, unmitigated environmental impacts. As a result, the City will need to adopt a statement of overriding considerations. Under CEQA, when an agency approves a project with significant environmental impacts that will not be fully mitigated, it must adopt a "statement of overriding considerations" finding that, because of the project's overriding benefits, it is approving the project despite its environmental harm. (14 Cal.Code Regs. §15043; Pub. Res. Code §21081(B); *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222). A statement of overriding considerations expresses the "larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes and the like." (*Concerned Citizens of South Central LA v. Los Angeles Unif. Sch. Dist*. (1994) 24 Cal.App.4th 826, 847).

A statement of overriding considerations must be supported by substantial evidence in the record. (14 Cal.Code Regs. §15093(b); *Sierra Club v. Contra Costa Co*. (1992) 10 Cal.App.4th 1212, 1223)). The agency must make "a fully informed and publicly disclosed" decision that "specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project." (14 Cal.Code Regs. §15043(b)). As with all findings, the agency must present an explanation to supply the logical steps between the ultimate finding and the facts in the record. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515).

Key among the findings that the lead agency *must* make is that:

> "Specific economic, legal, social, technological, or other considerations, including ***the provision of employment opportunities for highly trained workers*****,** make infeasible the mitigation measures or alternatives identified in the environmental impact report…[and that those] benefits of the project outweigh the significant effects on the environment."

(Pub. Res. Code §21081(a)(3), (b)).

Thus, the City must make specific findings, supported by substantial evidence, concerning both the environmental impacts of the Project, and the economic benefits including "the provision of employment opportunities for highly trained workers" created. The EIR contains no analysis of the nature of the jobs that will be created by the Project. Will they be "living wage" jobs for "highly trained

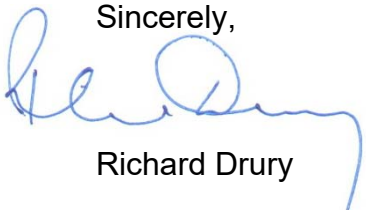
workers," or will they be minimum wage dead-end jobs? The EIR and its supporting documents fails to provide substantial evidence to support a statement of overriding considerations.

In short, the County cannot find that the economic benefits of the Project outweigh the environmental costs if it does not know what the economic benefits will be. A revised EIR, Fiscal Analysis and Statement of Overriding Considerations is required to provide this information.

III. CONCLUSION

For the above reasons, we urge the City to decline to certify the FEIR, and to require preparation and recirculation of a Revised Draft EIR.

Sincerely,



Richard Drury