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CF 17-0029: Ivar Gardens Hotel Project (CPC-2015-2893, ENV-2015-2895)

Jordan Sisson Jul 27, 2017 11:17 AM

Posted in group: **Clerk-PLUM-Committee**

Dear Committee Clerk:

On behalf of Appellant Roberto Mazariegos in the referenced project, please see the attached comment letter regarding Council File 17-0029 scheduled for PLUM Committee hearing on August 1, 2017. This Office asks that it is placed in the administrative record for the project. You can reach me directly if you have any issues retrieving the document.

Many thanks,

Jordan Sisson

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July 27, 2017

VIA EMAIL:
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Hon. Jose Huizar, Chair
Planning and Land Use Management Committee
Los Angeles City Council
200 N. Spring Street, Room 375
Los Angeles, CA 90012

RE: Ivar Gardens Hotel Project (CPC-2015-2893, ENV-2015-2895); Appellant's Reply to Applicant's Response to Appeals; PLUM Hearing Scheduled August 1, 2017 (Council File 17-0029)

Honorable PLUM Committee Members:

On behalf of Appellant Roberto Mazariegos ("*Appellant*"), this Office respectfully submits this letter regarding the Hollywood Ivar Gardens hotel project (CPC-2015-2893-VXC-HD-CUB-SPR, ENV-2015-2895-MND) ("*Project*"), proposed by R.D. Olson Development ("*Applicant*"), approved by the City of Los Angeles ("*City*") City Planning Commission ("*CPC*") on September 8, 2016 and made effective by the mailing of the Project's Letter of Determination ("LOD") on December 5, 2016.

For brief background purposes, Mr. Mazariegos is one of three Project appellants including the Los Angeles Film School and former appellant Coalition for Responsible Equitable Economic Development (collectively "*Appellants*"). Appellants challenge the adequacy of the Project's Initial Study/Mitigated Negative Declaration ("*IS/MND*") under the California Environmental Quality Act, Pub. Res. Code § 21000 *et seq.*, ("*CEQA*"). In short, Appellants argue, *inter alia*, that the City (1) failed to properly assess the Project's environmental impacts (e.g. traffic, noise, air quality, greenhouse gas ("*GHG*"), land use inconsistencies, etc.) and (2) cannot make the necessary findings required by the Los Angeles Municipal Code ("*LAMC*") and applicable land use plans (e.g. General Plan Housing Element, Hollywood Community Plan, Hollywood Redevelopment Plan). Therefore, under CEQA's "fair argument" standard creating a "low threshold" favoring environmental review through an environmental impact report ("*EIR*"), the City should have prepared a more comprehensive EIR. *See Mejia v. Los Angeles* (2005) 130 Cal.App.4th 322; *see also Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318 (an agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary). ***This Project is too big for a MND.***

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Subsequently, Applicant submitted a Response to Appeal dated April 2017 ("*Response*") addressing the collective issues raised by Appellants, including comments submitted by traffic expert Neal Liddicoat, P.E. and environmental consultants SWAPE related to traffic impacts, health risks associated with diesel particulate matter, hazardous substance cleanup, greenhouse gas ("*GHG*") emissions and compliance with climate change laws. However, Applicant's Response is entirely inadequate under CEQA law for the following reasons:

(1) Traffic impacts are ignored and masked by improper/missing analysis

As indicated in Mr. Liddicoat's comment letter of May 11, 2017 already provided to the City ("*Liddicoat Letter*"), Applicant's Response fails to address deficiencies in the Project's traffic analysis for several reasons and that a "corrected analysis would [likely] reveal a previously-unreported significant impact at the intersection of Sunset Boulevard/Cahuenga Boulevard." Liddicoat Letter, p. 7.

First, traffic counts were calculated during the holiday week in clear violation of Los Angeles Department of Transportation guidelines with "no evidence [] provided to confirm that the data represents typical conditions in the vicinity of the proposed Project." *Id.* at p. 2. Second, the traffic study and Response fail to "apply [] generally-accepted pass-by trip adjustment procedure" and ignores "new, project-related eastbound left turns ... critically important because ... one additional eastbound left turn in the PM peak hour would result in a significant traffic impact at the Sunset Boulevard/Cahuenga Boulevard." *Id.* at p. 3. Third, failure to determine actual operating conditions by performing traffic counts for the existing Jack in the Box, rather than relying on an average rate comprised of wildly fluctuating trip generations (between 7.96 and 117.15 trips per 1,000 square feet). *Id.* at p. 4. Fourth, failure to provide any documentation of a purported "extensive review" of driveway operations and "truck maneuvering studies." *Id.* at pp. 5-6. Fifth, no explanation is given how drivers entering and exiting the Project site will not block traffic given the site already suffers backups by queue southbound vehicles at the Sunset Boulevard/Ivar Avenue intersection. *Id.*

(2) Diesel particulate matter health risk emissions inadequately evaluated

As previously stated in SWAPE's July 5, 2017 comment letter, the Office of Environmental Health Hazard Assessment ("*OEHHA*") Health Risk Assessment Guidelines recommend that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.[1] Not only does OEHHA recommend evaluating the cancer risk resulting from short-term projects, but the South Coast Air Quality Management District ("*SCAQMD*"), which has jurisdiction over the proposed Project, also recommends that health risk impacts from short-term projects be assessed.[2] Furthermore, the SCAQMD recommends that a health risk assessment be prepared for any development project that generates mobile source emissions.[3] Since the Project will generate

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[1] Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments (Feb. 2015) OEHHA, pp. 8-18, available at http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf.

[2] Risk Assessment Procedures for Rules 1401, 1401.1 and 212 (Jun. 5, 2015) SCAQMD, pp. 11, IX-1-7, available at http://www.aqmd.gov/docs/default-source/planning/risk-assessment/riskassprocjune15.pdf?sfvrsn=2.

[3] Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis (Aug. 2003) SCQAMD, p. 1, available at http://www.aqmd.gov/docs/default-source/ceqa/handbook/mobile-source-toxics-analysis.doc?sfvrsn=2.

on-road heavy-duty truck trips during construction and operation, the IS/MND should have quantified the health risk that would occur as a result of these activities and compared it to the SCAQMD's numeric threshold of ten in one million for determining a Project's health risk impact.[4]

Air quality impacts and their concomitant impacts on human health must be studied in the CEQA document. *See Bakersfield Citizens, Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220. If an impact is significant, the agency must impose all feasible mitigation measures, and may only declare the impact to be unavoidable if it remains significant after imposition of all feasible mitigation measures. Thus, the court held in *Bakersfield Citizens* that:

> "Guidelines section 15126.2, subdivision (a) requires an EIR to discuss, inter alia, "health and safety problems caused by the physical changes" that the proposed project will precipitate . . . It is well known that air pollution adversely affects human respiratory health. (*See, e.g., Bustillo, Smog Harms Children's Lungs for Life, Study Finds*, L.A. Times (Sept. 9, 2004).) . . . Air quality indexes are published daily in local newspapers, schools monitor air quality and restrict outdoor play when it is especially poor and the public is warned to limit their activities on days when air quality is particularly bad. Yet, neither EIR acknowledges the health consequences that necessarily result from the identified adverse air quality impacts. Buried in the description of some of the various substances that make up the soup known as "air pollution" are brief references to respiratory illnesses. However, there is no acknowledgment or analysis of the well-known connection between reduction in air quality and increases in specific respiratory conditions and illnesses. After reading the EIRs, the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin. On remand, the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIRs."
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> *Id.* at 1220.

(3) Failure to demonstrate consistency with Executive Order B-30-15, S-3-05 and SB32 concerning GHGs

The Applicant must determine a way of scaling the 49 percent statewide GHG-reduction target set forth by Executive Order B-30-15 down to a project-level.[5] The IS/MND should have demonstrated compliance with the 2030 reduction goals using one of the many methods suggested within the recent decision in *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204 (commonly referred to as "*Newhall Ranch*"). By failing to demonstrate consistency with Executive Order B-30-15, the IS/MND is incomplete and should not be relied upon to determine Project significance.

The Project GHG analysis also is outdated and needs to be recirculated in light of *Newhall Ranch* and the new SB32 targets.[6] In 2016, the Legislature passed SB 32, which codifies a 2030 GHG emissions reduction target of 40 percent below 1990 levels. The EIR must also consider the 2050

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[4] Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis, *supra* fn. 3, p. 9.

[5] Governor Brown Establishes Most Ambitious Greenhouse Gas Reduction Target in North America (Apr. 29, 2015) State of California, available at https://www.gov.ca.gov/news.php?id=18938.

[6] SB32 text available at https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB32.

long term reduction goal set forth by Executive Order S-3-05,[7] which requires California to reduce its statewide emissions to 80 percent below 1990 levels by 2050. By failing to demonstrate compliance with these additional reduction goals, the Project's GHG impact analysis is incomplete and inadequate, and the Project's GHG emissions are insufficiently addressed and mitigated.

The Bay Area Air Quality Management District GHG significance thresholds, 2011 Cal. Air Resources Board Scoping and LA City Sustainability pLAn were all adopted before the more aggressive targets of SB32 were passed, and Executive Order S-3-05 adopted. These are outdated thresholds for a proper GHG analysis.

The Applicant's assertion that the Project would generate approximately 1,921 MT CO2e/yr rather than 3,102 MT CO2e/yr lacks substantial evidence and is inadequate. The 1,921 MT CO2e/yr estimation is representative of the Project's net emissions, rather than the Project's total (3,102 MT CO2e/yr) emissions, which is incorrect and inconsistent with recent guidance set forth by the Office of Planning and Research ("*OPR*"). In the Final Statement of Reasons for the GHG-specific Guidelines, OPR concluded that lead agencies cannot simply consider whether a project increases or decreases emissions at the project site, but must consider the effect that the project will have on the larger environment.[8] Accordingly, if a lead agency wants to use a *net* approach by subtracting existing on-site emissions from the project emissions, it must support that decision with substantial evidence showing that those existing emissions sources will be ***extinguished and not simply displaced***. Both the IS/MND and Response fails to provide substantial evidence showing that the existing emissions sources on the Project site would be extinguished by the Project, and not simply moved elsewhere, leading to increased total cumulative criteria air pollutant emissions over the applicable thresholds.

Also, it is highly questionable whether the IS/MND can rely on statewide mobile source reduction programs and, most seriously, treating measures having nothing to do with the Project as mitigation for the Project impacts. According to California Air Pollution Control Officers Association ("*CAPCOA*") on quantifying project-related GHG emissions:

> "... in order for a project or measure that reduces emissions to count as mitigation of impacts, the reductions have to be 'additional.' Greenhouse gas emission reductions that are otherwise required by law or regulation would appropriately be considered part of the existing baseline. Thus, any resulting emission reduction cannot be construed as appropriate (or additional) for purposes of mitigation under CEQA."
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> Quantifying Greenhouse Gas Mitigation Measures (Aug. 2010) CAPCOA,[9] pp. 32 & A3.

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[7] Executive Order S-3-05 text available at https://www.gov.ca.gov/news.php?id=1861.

[8] Final Statement of Reasons (Dec. 2009) OPR, pp. 83-84, available at http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf.

[9] Available at http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf.

This concept is known as additionality, whereby GHG emission reductions that are otherwise required by law or regulation are appropriately considered part of the baseline and, pursuant to CEQA Guideline § 15064.4(b)(1), a new project's emission should be compared against that existing baseline.[10] ***Emissions reductions that would occur without the Project should not normally qualify as Project mitigation.*** Thus, this Project needs to do its own fair share, with enforceable, detailed Project-specific mitigations – aside from existing statewide and local measures – governed by performance standards to guarantee efficacy.

(4) Hazardous Substance Cleanup Is Inadequately Mitigated and Deferred

The existence of toxic contamination on a Project site is a significant impact requiring CEQA review. *See McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136. When toxic contamination is present, the CEQA document must propose a feasible cleanup plan to safeguard public health and the environment. *Id.*

The IS/MND improperly provides only deferred and insufficient mitigation to address the contamination caused by the former dry cleaner at the site without any required performance standards. CEQA caselaw requires the Agency to "craft mitigation measures that would satisfy enforceable performance criteria." *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 407. Despite an admittedly incomplete understanding of the site's contamination, and the lack of prior sampling and monitoring logs, the City asserts that its only obligation with respect to this recognized environmental condition it to comply with federal, state and local regulations. However, without the benefit of the nature and extent of the former dry cleaner site contamination, it is impossible to determine which regulations and performance standards might apply.

This deferral of cleanup performance standards violates CEQA. CEQA disallows deferring the formulation of mitigation measures to post-approval studies with no performance standards to guide the mitigation. *See Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92; *see also* CEQA Guidelines § 15126.4(a)(1)(B). Here, HAZ-1 does not identify what criteria will be used to identify "impacted" soils and to what standard soil cleanup will achieve (i.e. health based regulatory residential soil cleanup thresholds like Environmental Screening Levels or California Human Health Screening Levels). No specific plans for regulatory oversight are documented. Given the high levels of contamination, and to ensure a cleanup that is conducted in a manner safe for construction personnel and future occupants, regulatory oversight of the cleanup is necessary. Applicant should engage the Department of Toxic Substances Control through a voluntary cleanup agreement to ensure the adequacy of the assessment of site contaminants and of the ultimate cleanup.

Conclusion

Appellant Mazariegos appreciates the opportunity to provide these comments and respectfully urges the City to ensure compliance with CEQA and LAMC. In sum, the record before the City, including expert comments submitted by Mr. Liddicoat and SWAPE, establishes a fair argument that the Project may cause significant environmental impacts and, therefore, require the preparation of a Project-specific EIR. Without which, the genuine impacts cannot be adequately

[10] Final Statement of Reasons, *supra* fn 8, pp. 88-89.

assessed, disclosed, and mitigated to the fullest extent feasible – as required by CEQA. *See* CEQA Guidelines § 15002(a)(2) & (3).

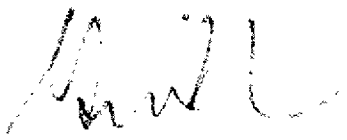
This comment letter is made to exhaust remedies under Pub. Res. Code § 21177 concerning the Project, and incorporates by this reference all written and oral comments submitted on the Project by any commenting party or agency. It is well-established that any party, as Appellant here, who participates in the administrative process can assert all factual and legal issues raised by anyone. *See Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 875.

Appellant reserves the right to supplement these comments at future hearings and proceedings for this Project. *See Cmtys. for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 86 (EIR invalidated based on comments submitted *after* Final EIR completed); *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120 (CEQA litigation not limited only to claims made during EIR comment period).

Finally, on behalf of Appellant, this Office requests all notices of CEQA actions and any approvals, CEQA determinations, or public hearings to be held on the Project under and state or local law requiring local agencies to mail such notices to any person who has filed a written request for them. *See* Pub. Res. Code §§ 21080.4, 21083.9, 21092, 21092.2, 21108, 21167(f) and Gov. Code § 65092 and LAMC §§ 12.28.C.3, 12.32.D.2, 16.058.G.3(b). Please send notice by electronic and regular mail to: Gideon Kracov, Esq., 801 S. Grand Avenue, 11th Fl., Los Angeles, CA 90017, gk@gideonlaw.net (cc: jordan@gideonlaw.net).

Thank you for considering these comments in connection with the Project appeal. We again ask that they be placed in the administrative record for the Project.

Sincerely,



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