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Sent via Email: Hadar.Plafkin@lacity.org.

September 16, 2011

Re ENV-2008-4950-EIR - STATE CLEARINGHOUSE NO. 2009061084 – 2025 Avenue of the Stars

Dear Mr. Plafkin,

This letter is written on behalf of the following community groups:

The Cheviot Hills Home Owners' Association represents the residents of Cheviot Hills.

The Cheviot Hills Traffic Safety Association is focused on traffic impacts within the Cheviot Hills area.

The Overland Avenue Community is focused on impacts along Overland Avenue between Santa Monica and Pico Boulevards.

The Tract No. 7260 Homeowners Association represents residential property from Pico Boulevard to Santa Monica Boulevard and from Beverly Glen Boulevard to Century City.

The West of Westwood Homeowners Association represents residential property owners from Pico Boulevard to National Boulevard, the 405 to Kelton Avenue, Pico Boulevard to Ashby Avenue, and Patricia Avenue to Overland Avenue.

The Westwood Gardens Civic Association represents residential property owners with boundaries on the north at Pico Boulevard, on the south at National Boulevard, on the east at Overland Avenue & Dunleer Place, and on the west at Midvale Avenue.

The Westwood Homeowners Association represents residential property owners and covers the area from Wilshire Boulevard to Santa Monica Boulevard and Sepulveda Boulevard to the Los Angeles country club.

Overview

As discussed throughout this response, it is abundantly clear that the process of evaluating, mitigating and monitoring environmental impacts in the City of Los Angeles is fatally flawed.

CEQA is a disclosure law. But the City repeatedly allows EIRs to inaccurately disclose project impacts on the infrastructure and on the city budget. Instead, EIRs conducted in the City of Los Angeles take as a matter of faith, rather than fact, that somehow, all these costs are worthwhile and that most impacts will be mitigated as approved (or at all).

At a minimum, CEQA requires that an EIR be based on the facts in the record and not on conclusory, speculative statements. This EIR is a case study in such leaps of faith that the project is benign when in fact; it further burdens a city whose infrastructure is crumbling.

Unfortunately, the City has failed to compile data to be used specifically for making environmental decisions. As a result, each project can create its own set of "facts" to support its project. Each project claims that adequate infrastructure exists. And most importantly, as will be shown later, the City is not only asleep at the mitigation

implementation and monitoring switch, it doesn't even know where the switch is. No better description of this problem can be given than that provided by then-controlled Laura Chick who stated:

“Ever since the mid 1990’s when I was a City Councilmember, I wondered what actually happened with the conditions we imposed when approving development projects. The City often sets requirements to shape and improve a project, promote safety and mitigate negative impacts to communities.

Now as Controller, I have circled back to answer the question: “Who ensures that the requirements attached to these developments are followed?” The answer is: No one.”

It is in this light that we state that the entire concept of mitigation in the City of Los Angeles fails the CEQA test for the lead agency making a “clear commitment” to implementation of mitigations and then monitoring those mitigations as required by AB3180.¹

Project after project is allowed to claim that their project will reduce traffic, yet traffic throughout the area increases.

Project after project is allowed to claim that adequate infrastructure exists to support their project, yet the agencies themselves claim otherwise – especially when seeking job-killing increased fees and taxes to pay for the cumulative new demand.

Project after project is “burdened” with mitigations that are often not implemented and rarely monitored as required by state law.

There has recently been quite a bit of discussion concerning the “reform” of CEQA to make it more difficult to file lawsuits challenging flawed EIRs. The argument is that this “reform” will provide more certainty to developers who will “create jobs.”

Perhaps it is no coincidence that these “reform” discussions never include the essential fact that certainty is needed by both sides. The public derives its certainty from knowing that the process uses the best data which is consistent with data used by other projects that the City’s leaders actually take the time to consider the arguments and that once a project is approved, the City will enforce the mitigations it claimed would resolve the project’s problems.

The City appears to review major developments from a parallel universe in which the infrastructure exists and systems exist to ensure mitigation compliance. It then offers the escape of a statement of overriding considerations predicated on claims of generating jobs that are never documented. Thus the premise for Statements of Overriding Considerations is consistently speculative, conclusory and not based on reality. The costs to the city to absorb the burdens placed on the infrastructure are never disclosed, and the true number of new jobs created is never validated.

This EIR purports consistency with the Los Angeles General Plan, including the Framework Element. It also purports consistency with the West Los Angeles Community Plan. Coincidentally, the EIR fails to mention the very policies within those documents that require the City to assure its citizens have adequate infrastructure. Had there been one omission of one of these key policies, the omission may have been accidental.

As this document discusses below, the omissions appear far from accidental. Key policies are omitted throughout, and those specific policies are the same policies that assure that citizens can count on adequate fire protection, police protection, schools, parks, libraries and roads.

As a result of these (and other) fatal flaws, this document fails the requirements of CEQA and must be rejected by the City.

¹ http://ceres.ca.gov/ceqa/more/tas/CEQA_Mitigation/CEQA_Mit.html

Traffic

Traffic has been one of the key issues facing the Westside. Development in Century City far in excess of that contemplated by the planners who wrote the Specific Plan without corresponding improvements to the local transportation infrastructure have caused near-gridlock at many Westside intersections.

This is not a statement made by so-called NIMBYs. This is a statement made by John Fisher, AGM of LADOT at a 2008 Westside Neighborhood Council Meeting. This EIR must address this statement.

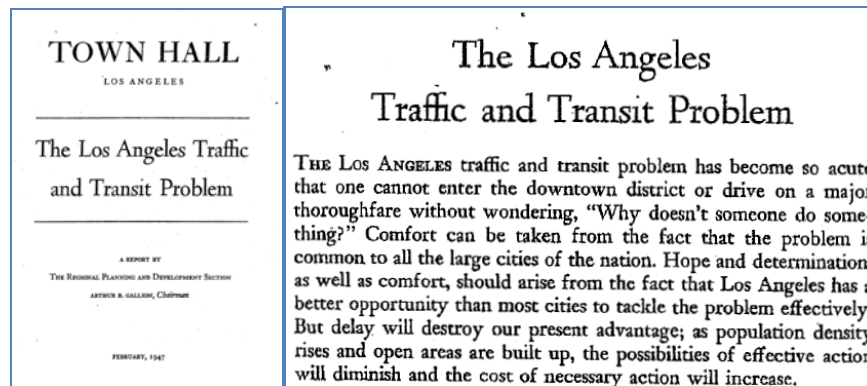
Los Angeles has a habit of approving huge project after huge project that, after some magical mitigation, will actually decrease traffic. (This project claims that it will reduce traffic on Motor Avenue by 200 cars per day) Magic used by past and present projects includes "TDM" which is wholly unproven in this environment, use of mass transit which does not serve the target demographic for Century City projects, uniform ATCS intersection benefits which are admitted to be inaccurate and ever-changing trip distributions that serve the particular developer's needs despite inconsistencies with past studies.

Traffic is not a new problem for Los Angeles. There is a long history of unfulfilled plans and unimplemented policies that has contributed to the traffic problem. ,

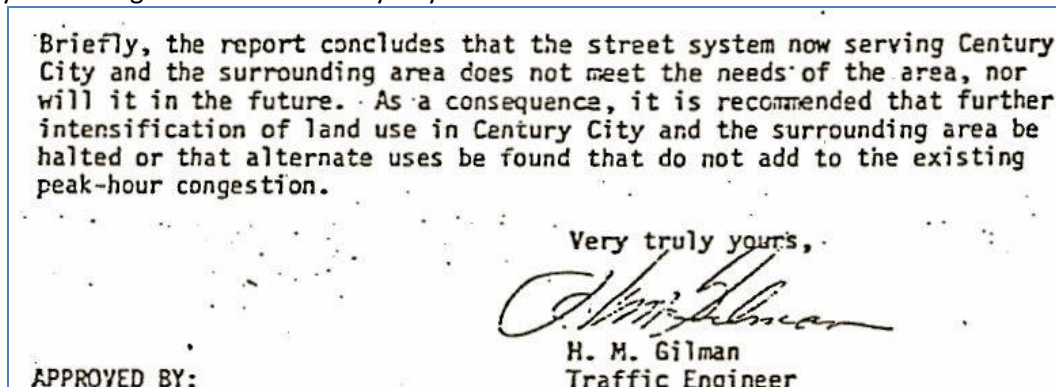


"We have the worst cut-through traffic of any area of the City. It's due to the fact that development has continued without proper infrastructure."

John Fisher, LADOT - WNC meeting: July, 2008



In 1975, The City of Los Angeles studied Century City traffic. It stated:



Little comment would seem to be needed, though apparently it is. The City has continued to allow development in an area that in 1975 was deemed incapable of meeting the needs of the area. This suggests that the methodology for determining impact in the intervening years is fatally flawed and must be reviewed prior to certification of this EIR.

Flawed Assumptions/Analysis of Expo Light Rail

The EIR fails to analyze blockage of Overland as route to the 10 freeway due to the Expo Light Rail. The Expo traffic studies are inherently flawed as they did not include analysis of baseline present-day conditions. As this EIR relies on the Expo traffic study, it too is flawed.²

Internal Capture/CCNSP Legislative History

The EIR's internal capture rates, especially for retail and hotel uses, are inconsistent with the legislative history of the CCNSP. The 1/10/80 City finding stated:

"Representatives of the Transportation Department do not believe that guests of hotels would do any more business on foot than guests of hotels outside of Century City: nor that hotel guests would necessarily be doing business in Century City: nor that such guests are likely to make any fewer trips outside of the Center."

Regarding traffic at the shopping center:

"The Department of Transportation indicates, based on the number of cars parked in the shopping center's parking lot and a substantial traffic count, based on daily ticket sales for parking, that a majority of shopping center patrons do not live or work in Century City. As indicated previously, traffic problems in and around Century city are related to an extended nine to 10-hour peak period during the day rather than any specific morning or evening peak hour period. For example, while the morning peak hour on Santa Monica Boulevard adjacent to the shopping center is between 8:00 and 9:00 a.m., all of the remaining morning hours have traffic flows of at least 90 percent of the peak hour period. Thus, while shopping center traffic generated after 10:00 a.m. will not influence "peak hour" traffic, it will nevertheless impact traffic during the other hours of heavy travel."

The EIR must be adjusted accordingly or specific studies must be used to corroborate the EIR's internal capture claims. We further point out that this EIR failed to use actual traffic counts for its uses despite the clear ability to do so.

ATCS

We also believe the EIR improperly assumes a 7% ATCS credit even though LADOT cannot state that each intersection receives that benefit. This EIR failed to independently validate capacity increase assumptions awarded based on implementation of the ATCS system, including an analysis of the effectiveness of ATCS in increasing capacity at intersections with a variety of loads, both balanced and unbalanced. The EIR also failed to take into account various manual split/timing changes which have been made to ATCS controlled intersections which may result in decreased intersection efficiency.

Overland Avenue

Overland Avenue is incorrectly listed north of Pico as a secondary highway. It is a collector – see council files 04-1226, 08-1115-a1.

Cumulative Impacts

We attach two historical documents to illustrate the complete lack of factual basis for claiming increased development results in decreased traffic. The documents are from the legislative history of the CCNSP. They are comments from the City of Beverly Hills and the Cheviot Hills Homeowners Association.

Simply stated, whatever methodology is being used to conclude that increased development results in decreased traffic or that those impacts can be mitigated, is clearly flawed.

² *Sunnyvale West Neighborhood Ass'n. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351 (holding that the use of hypothetical, future conditions as the environmental baseline results in illusory comparisons and misleading the public, thereby contravening CEQA's intent)

Trip Distribution

The trip distribution used is highly suspect. Travel to the 405 freeway is to the west, not east. Travel to the 10 freeway is to the south, not east. Travel to downtown is via 10/405 freeways. Despite the above, the trip distribution allocates 43% heading east – conveniently away from congested West L.A.

Infrastructure, Flawed Data, Flawed Methodology, Inconsistency with the General Plan and Community Plan

We include the position paper on the FixTheCity lawsuit concerning the City's failure to adhere to its General Plan and Community Plans. Each of the points in that paper must be addressed.

The General Plan

The City made a pledge to its residents that adequate, unthreatened infrastructure would exist. The City stated it best when it said the Infrastructure Report is to be used **“so that allowable increases in density ... would not occur until infrastructure and its funding was available.”** (General Plan EIR, 1998)

This clear, unambiguous statement is essential to the proper functioning of the City: You can't allow new development if you don't have the infrastructure necessary to support the new development and can't pay to improve it.

The Infrastructure Mitigation and enabling Annual Report were to be used by the City in assessing EIRs and Community Plans. In the absence of the City producing its report and implementing its mitigations, there can be no determination of consistency with either the General Plan or the Community Plan without the Annual Report of Growth and Infrastructure as described by the City in its General Plan EIR.

As mentioned above, this EIR fails to mention key General Plan policies cited as essential in the Framework Element. It specifically fails to disclose or attempt to satisfy General Plan Framework policy 3.3.2. (as originally adopted on December 11, 1996 and re-adopted on August 8, 2001 as CPC 94-0354 GPF CF 95-2259 CF 01-1162);

“Policies 3.3.2... contained in the General Plan Framework represent measures that would serve to lessen impacts relative to fire/EMS. Policy 3.3.2 directs monitoring of infrastructure and public service capacities to determine need within each CPA for improvements based upon planning standards. This policy also directs determinations of the level of growth that should correlate with the level of capital, facility, or service improvement that are necessary to accommodate that level of growth. In addition, the policy directs the establishment of programs for infrastructure and public service improvements to accommodate development in areas the General Plan Framework targets for growth. Lastly, the policy requires that type, amount, and location of development be correlated with the provision of adequate supporting infrastructure and services.”

The EIR also strategically fails to mention policies P42 and P43 which were called out as essential.

P42 Establish a Monitoring Program to accomplish the following:

- a. Assess the status of development activity and supporting infrastructure and public services within the City of Los Angeles. The data that are compiled can function as indicators of (a) the rate of population growth, development activity, and other factors that result in demands for transportation, infrastructure, and services; (b) location and type of infrastructure investments and improvements; and (c) changes to the citywide environmental conditions and impacts documented in the Framework Element environmental database and the Environmental Impact Report.*
- b. Assess transportation conditions and determine the City's progress toward attainment of citywide transportation objectives.*
- c. Determine the progress of the Los Angeles County Sanitation District 2010 Master Facilities Program and any other capital improvement projects which could affect their ability to collect City wastewater and provide full secondary treatment for that wastewater.*
- d. Identify existing or potential constraints or deficiencies of other infrastructure in meeting existing and projected demand.*
- e. Identify, based on consultation with the LAUSD, the surplus and/or deficit of classroom seats.*

P43 Prepare an Annual Report on Growth and Infrastructure based on the results of the Monitoring Program, which will be published at the end of each fiscal year and shall include information such as population estimates and an inventory of new development. This report is intended to provide City staff, the City Council, and service providers with information that can facilitate the programming and funding of capital improvements and services. Additionally, this report will inform the general plan amendment process. Information shall be documented by relevant geographic boundaries, such as service areas, Community Plan Areas, or City Council Districts.

As a result of the above and information presented in the attached documents, no statement of consistency can be provided and thus the EIR must fail.³

The Community Plan

The West L.A. Community Plan states:

“...if this monitoring finds that population in the Plan area is occurring faster than projected; and, that infrastructure resource capacities are threatened, particularly critical ones such as water and sewerage; and, that there is not a clear commitment to at least begin the necessary improvements within twelve months; then building controls should be put into effect, for all or portions of the West Los Angeles Community, until land use designations for the Community Plan and corresponding zoning are revised to limit development.”

The EIR fails to address the following Issue as listed on page I-3: “Need to coordinate new development with the availability of public infrastructure.” In the absence of the Annual Report which is relied on by the plan, no such statement of consistency can be made.

The EIR fails to acknowledge, analyze and find consistency with the required monitoring which is described on page II-5, including use of the required reports:

PLAN MONITORING

The Plan has a land use capacity greater than the projected development likely to occur during the Plan period. During the life of the Plan, growth will be monitored and reported in the City’s Annual Report on Growth and Infrastructure, which will be submitted to the City Planning Commission, Mayor and City Council. In the fifth year following Plan adoption (and every five years thereafter), the Director of Planning shall report to the Commission on the relationship between population, employment, housing growth and plan capacities. If growth has occurred faster than projected, a revised environmental analysis will be prepared and appropriate changes recommended to the Community Plan and zoning. These Plan and zoning changes and any related moratoria or interim control ordinances, shall be submitted to the Planning Commission, Mayor and City Council as specified in the Los Angeles Municipal Code.

The EIR fails to acknowledge, analyze and find consistency with the section titled Land Use Policies: Residential. It states:

RESIDENTIAL

The quality of life and stability of neighborhoods throughout the West Los Angeles Community critically depends on providing infrastructure resources (i.e., police, fire, water, sewerage, parks, traffic circulation, etc.) commensurate with the needs of its population. If population growth occurs faster than projected and without

³ Pursuant to Public Resources Code §21081.6, the general plan must incorporate the approved mitigation measures identified in the EIR into its policies and plan proposals.

needed infrastructure improvements to keep pace with that growth, the consequences for livability within the Community could be problematic.

The EIR fails to acknowledge, analyze and find consistency with the basic fundamental purposes listed in the community plan, with emphasis on the second two. They are:

...the proposed Plan has three fundamental premises. First, is limiting residential densities in various neighborhoods to the prevailing density of development in these neighborhoods. Second, is the monitoring of population growth and infrastructure improvements through the City's Annual Report on Growth and Infrastructure with a report to the City Planning Commission every five years on the West Los Angeles Community following Plan adoption. Third, if this monitoring finds that population in the Plan area is occurring faster than projected; and, that infrastructure resource capacities are threatened, particularly critical ones such as water and sewerage; and, that there is not a clear commitment to at least begin the necessary improvements within twelve months; then building controls should be put into effect, for all or portions of the West Los Angeles Community, until land use designations for the Community Plan and corresponding zoning are revised to limit development.

The EIR fails to acknowledge, analyze and find consistency with policy 1-2.3 which reads:

Do not increase residential densities beyond those permitted in the Plan unless the necessary infrastructure and transportation systems are available to accommodate the increase.

Program: *The decision maker should adopt a finding which addresses the availability and adequacy of infrastructure as part of any decision relating to an increase in permitted residential density.*

The EIR fails to acknowledge, analyze and find consistency with policy 6-2.1 which reads:

Explore creative alternatives for providing new school sites in the City, where appropriate.

Program: Develop plans to address issues of siting and joint use of facilities including strategies for expansion in transit-rich locations.

Program: Utilize the City's "Annual Growth Report" to monitor locations for growth and potential new school sites.

The Housing Element

The Housing Element, updated in 2008, depends heavily on the Infrastructure Report. No statement of consistency with the Housing Element can be made without the required reports and mitigation which flows from the reports. It states:

*The Mitigation Monitoring Program was adopted by the City Council on December 11, 1996, in conjunction with the adoption of the Los Angeles General Plan Framework Element, its accompanying Final Environmental Impact Report (FEIR No.199407 1030) and Statement of Overriding Considerations. **The Mitigation Monitoring Program is required by Section 21081.6 of the California Public Resources Code.***

*Pursuant to Government Code Section 65103(c), local officials **must implement** the adopted plan and the policies and programs it contains. **The Mitigation Monitoring Plan consists of two annual reports to the City Council.***

COMPONENT 1. *The first component is the Annual Report on Growth and Infrastructure which presents the amount and distribution of actual growth of population and residential, commercial, and industrial land uses; growth in households; growth in jobs to the extent that this information is available; the actual capital investment funds allocated to infrastructure projects; and other factors directly related to growth. This allows the City to compare actual growth in the City with projections and to identify trends and the need for updated projections and/or estimates for population, land use, jobs, and housing units.*

The City's ability to monitor its own actions is so dysfunctional that few decision makers know that an Infrastructure Report Card was prepared in 2003 by a blue-ribbon panel assembled by the Mayor.

That report card (done without knowledge that the date should already have been available via the General Plan Framework mandated Annual Report) showed that many systems were at unacceptable levels and would continue to degrade unless substantial investments were made.

In most cases those investments have not been made and the infrastructure has degraded. This EIR cannot be approved unless and until the state of the infrastructure is known AND the trajectory of infrastructure consumption is known.

The City is so unaware of its duties that the current Controller, admirably and with good intentions, just introduced an "annual audit report card" which appears to describe information that should already be available to the developers of this project and to the public in the form of the Annual Report on Growth and Infrastructure.

Few know that this data should have already been available. This EIR makes numerous assumptions about the internal functions of the City and assumes that those functions will be performed as described. That is clearly an erroneous assumption which must be revisited and analyzed.

Preservation


Perhaps one of the most surprising aspects of this EIR is the inclusion of an alternative which mandates destruction of the Century Plaza hotel.

Councilmember Koretz and this developer have issued press releases touting the preservation of the hotel and representing it as a done deal. Whether or not preservation of the hotel is important to any particular reader, it must be clear that approval of this EIR explicitly approves an alternative that involves demolition of the Century Plaza.

In this case, the developer seems not to be even hiding their true preference for the option that includes demolition by labeling it OPTION A.

Option B (the so-called preferred option) preserves the hotel. Whether it was an unintentional slip or an intentional shot across the bow of our Councilmember, the developer seems to have indicated through the ordering of its options that its real preference is to implement Option A.

Those who claim that inclusion of preservation as the "preferred alternative" is sufficient are ignoring not only the past, but the present as well.

 INFRASTRUCTURE REPORT CARD for the CITY OF LOS ANGELES – January 2003			
Completed Assessments			
INFRASTRUCTURE	GRADE	GOALS	TEN-YEAR INVESTMENT NEED
Bridges	B+	Bridges shall be maintained such that 70% of bridges are rated "B" or better, with no bridge rated less than "D".	\$0.5 Billion
Stormwater System	C+	Stormwater System shall be maintained at a condition "D" or better.	\$0.1 Billion
Streets & Highways	D+	Street network pavement condition shall be maintained at "B" or better, with no pavement rating below "D".	\$1.5 Billion for pavement, \$0.7 Billion for congestion relief.
Street Lighting	C	Streetlights shall be maintained at a condition of "C".	\$1.0 Billion
Wastewater Collection	B+	Sewer systems shall be maintained at a condition of "B" or better and condition "F" sewers shall be repaired immediately.	\$1.8 Billion.
Wastewater Treatment	B+	Treatment facilities shall be maintained at a minimum operating condition of "B" or better with no individual treatment process less than "C".	\$0.5 Billion
Water	C	Water systems shall be maintained at a minimum operating condition of "B" or better.	\$3.2 Billion

Overall Grade = C+

"Auditing is a standard business procedure but it is a waste of money unless the recommendations are studied and implemented," said Gary Toebben, President and CEO of the LA Chamber of Commerce. "An annual Audit Scorecard that becomes a part of the standard operating procedure at City Hall would be an asset to the Mayor's office, department heads, the City Council and the public." From the Controller's Press Release – 9/8/11

In the recent past, Westfield sought and was granted approval for a mall expansion including office space and a residential component. The 1801 Avenue of the Stars building – the first building in Century City received the same CEQA treatment as the present developer is providing with regard to the Century Plaza. In fact, this EIR makes a veiled reference to that EIR here (page IV.D-35):

“In addition to the analysis provided above, the Proposed Project was evaluated with regard to its relationship with the 1961 Century City master plan. The City, in the context of an EIR for a project located in the same area of Century City as the Proposed Project concluded that the Century City master plan lacked the requisite attributes to be considered a historic resource. As the Century City master plan lacks standing as a historic resource, Proposed Project activities (i.e., Option A or Option B development) would have no impact with regard to this issue.”



Cultural Monument. Therefore, 1801 Avenue of the Stars may be considered a historical resource for the purposes of CEQA under Section 15064.5(a)(2) of the CEQA Guidelines. As the project would result in the removal of the 1801 Avenue of the Stars building and features, which may conservatively be assumed to be a historic resource, the proposed project may be considered to result in a significant impact on the environment under CEQA.

The Westfield project first stated that 1801 Avenue of the Stars may be a historical resource under CEQA, and then mitigated that impact not by physically preserving it, but by photographically preserving it. It appears this developer is paving the way to do the same.

The present situation with another developer offers a glimpse as to what can happen when a fundamentally different alternative is included as part of a project. JMB received approval for 483 residential units at 10131 Constellation – at the corner of Constellation and Avenue of the Stars. JMB is now seeking a 750,000 office building in its place and, due to the inclusion of an office space alternative in their original EIR, is calling that office building the same project as the 483 residential tower project.

As such, those who feel comforted by designation of Option B as the preferred alternative should not be fooled. Preservation is far from guaranteed. Councilman Koretz’ office made the bold public assertion in a “Hi-5” newsletter statement which read: *“first the good news – in fact the very good news: the historic Century Plaza hotel will be saved and restored!”*

However, in a private memo obtained through the Public Records Act request, the council office was less than certain of the outcome. The January 18, 2010 memo from Paul Michael Neuman to the Councilman and his other staff stated:

“The draft speech that Jay circulated says that PK will never let the Century Plaza be torn down on his watch. I think that’s accurate and that it reflects PK’s stance. But I’m wary of any absolute about things that might conceivably depend on factors out of our control....There’s a difference between promising an outcome and promising to fight something to the hilt.”

We certainly admire Councilman Koretz’ stance on an issue he believes in. However, there should be no doubt that approval of this EIR is approval of Option A which includes destruction of the hotel. The developer states it directly when they write: *“Option A is still under consideration in the event that entitlements for Option B are not granted.”*

The EIR then provides a seemingly simple but procedurally complex statement of how Option A might be mitigated. It includes what on the surface appears to be an inherent circular flaw in presenting option A and option B as separate mutually exclusive options, yet states that Option A’s only mitigation is Option B. As Option B is infeasible if Option A is implemented, the EIR is indirectly stating that there is no mitigation planned for Option A – destruction of the hotel.

The inclusion of ONLY Option B as a mitigation for Option A violates CEQA Guidelines section 15126.4 ("EIR shall describe feasible measures which could minimize significant adverse impacts" (Guidelines, § 15126.4, subd. (a)(1)). The absence of any other mitigation, such as the photographic preservation provided by Westfield, renders the EIR less than adequate, complete, and a good-faith effort at full disclosure. By way of example, the No Build alternative is equally as feasible as Option B in mitigation Option A.

We believe that *Madera Oversight Coalition v. County of Madera*, applies. The court stated:

The relevant provisions include Guidelines section 15064.5, subdivision (c)(1), which states: "When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource, as defined in subdivision (a)." In addition, another Guideline states: "Prior to approving a project the lead agency shall certify that: [¶] (1) The final EIR has been completed in compliance with CEQA" (Guidelines, § 15090, subd. (a)(1); see § 21151, subd. (a) [local agencies shall certify completion of the EIR].)

The use of the word "shall" in Guidelines section 15064.5, subdivision (c)(1) indicates that the determination whether an archaeological site is an historical resource is mandatory. (See id., § 15005, subd. (a) ["shall" defined as mandatory].) Also, that provision's use of the word "first" and the Guideline concerning the certification of EIR's lead to the conclusion that the determination must be made sometime before the final EIR is certified, and it cannot be undone after certification of the EIR. In other words, if the determination regarding historicity is subject to being undone, the EIR cannot be regarded as complete for purposes of CEQA.

City Budget Constraints – Flawed Assumptions, Methodology

The EIR fails to analyze the current budget situation facing the City, including cuts to public services which have occurred or are likely to occur. Instead, the EIR uses dangerously outdated information regarding City services. While that data may be within normally-acceptable timeframes, these are extraordinary times. Budgets are changing rapidly, and since this EIR process started, numerous agencies have seen their budgets gutted, including the loss of positions and City-imposed furlough days.

This EIR must be revised and recirculated with up-to-date assumptions about City services and budgetary shortfalls.

Alternatives

The EIR improperly lists two mutually exclusive options (Option A and Option B), then proceeds to state that Option B is the only possible mitigation for Option A. This renders the study of those options inoperable. Options which are not linked such that one is the only mitigation for the other are needed to give decision makers and the public a true choice.

The EIR fails to disclose other preservation options when it says that Option B is the only mitigation for Option A.

We point out that Alternative 2 lists an office tower of approximately 775,000 square feet. It also makes the assumption that the office Trip rate is the limiting factor. JMB is currently attempting to alter the office Trip rate from 14 to approximately 4. This would have the effect of tripling the amount of office space that might be allowed on the site. It also provides a disincentive to build residential. This material change to the CCNSP has not been studied as it relates to this project.

We object to the designation of Alternative 5 as the "Community Input Alternative." While one community (Century Woods) and one developer (JMB) may stand to benefit from this alternative, there are no benefits for the larger community.

Alternative Trip Generation Request

Concurrent with the submission of this comment letter, we also submit an Alternative Trip Generation Factor request per Section 6 of the CCNSP relating to the Equinox Spa. The Equinox Spa is a limited-membership, valet-only facility which, according to management, receives much of its business on foot from Century City tenants.

The Traffic Study which accompanies the request demonstrates that the true Trip rate for the Equinox Spa is 20 Trips/1000 Square Feet. If approved, this would result in a reduction of over 500 CCNSP Replacement Trips. This request must be processed and then analyzed before a statement of consistency with the CCNSP can be made.

It should also be noted that the EIR claims a total 15% “internal capture” rate for the Equinox Spa. That reduction alone from 35/1000 to 29.75 results in a loss of 185 Replacement Trips. This inconsistency must be resolved.

Park Space/Open Space Credit

The project’s open space should not offset open space requirements. The EIR clearly states that the open space will not be used by the general public.

Cited Mitigations, Deferred Mitigation

Several of the mitigations listed in the EIR are deferred and therefore impermissible. By way of example, mitigations B10, G5, L3, L5, M1, and M10 are not sufficiently described.

Development Agreement, Deferred Mitigation

Per CEQA guidelines, the formulation of mitigation measures should not be deferred.⁴ The length of the development agreement request, which states that the project may not be completed until 2027, requires, by definition, a deferral of mitigations as the state of the infrastructure 15 years in to the future is not known.

Specifically, allowing development 15 years in the future without a knowledge of what traffic baseline conditions will be at that time is no different than using a traffic projection 15 years in the future to study project impacts.

There is no way to predict what the condition of the City will be 15 years hence, thus assumptions that mitigations can be put into effect, will be relevant or will be feasible. Given the current financial state of the City and its current poor record of compliance with state law, there is no way to predict if the City will be capable of ensuring implementation and monitoring of mitigations.

CCNSP Trips

The EIR contains several errors and questionable assertions concerning CCNSP Trips. They are:

Manager Suite

The EIR attempts to take credit for two suites converted to a manager’s suite on page IV.I-87. That credit was already taken on 12/6/06, Covenant# 06-2734001.

Equinox Spa

As mentioned above, the EIR admits to a Trip rate 15% below the 35/100. This alone would result in a Trip reduction of 185 Trips. The Alternative Trip Generation request submitted confirms that the Trip rate should be 17.09/1000 for this project, resulting in a reduction of over 550 Trips.

⁴ (Guidelines, § 15126.4, subd. (a)(1)(B); see *Communities for a Better Environment v. City of Richmond*, *supra*, 184 Cal.App.4th at p. 95 [deferral of specification and adoption of mitigation measures concerning greenhouse gas emissions until a year after project approval violated CEQA].)

Contingent Trips

The project seeks approval on alternatives for which CCNSP Trips do not exist. This is admitted on page IV.I-84 which reads:

“As is the case with Option A, as described above, the Option B With Office Scenario would need to obtain additional Trips from other sites within the CCNSP area. In any case, through one means or another, both Option A and Option B would ultimately be consistent with the CCNSP’s Trip requirements.”

The City cannot approve a project that asserts consistency “through one means or another.” The source for Trips must be specifically described and confirmed prior to approval. In the absence of this information, a decision on consistency is improperly contingent and fails to provide the public or decision makers with the required information.

Violation of CCNSP Restriction on 26,250 Square Feet of Restaurants, Meeting Rooms and Retail Commercial Facilities

The CCNSP, Section 2 reads in part:

“ (The Trip generation factor for Hotels includes the Trip generation potential of Guest Rooms, ancillary hotel facilities (such as laundry, storage, accounting, lobby, front desk, cashier, administrative, corridor, mechanical, kitchen, rest room and similar areas), and 75 square feet of restaurants, meeting rooms and retail commercial facilities per Guest Room, not exceed a total of 26,250 square feet in any one Hotel.”

The proposed project, which includes a hotel, contains (under Option A) 160,000 feet of Retail, Spa/Fitness, Restaurant and Meeting/Ballroom Space. This is a direct violation of the CCNSP. Allowing the EIR to create an arbitrary distinction within the same Project as to which uses “belong” to the hotel and which do not merely is unsupportable. Project residents will not be barred from uses “belonging” to the hotel, and hotel patrons will not be barred from uses “belonging” to the residential and commercial uses. Correcting this flaw will result in a substantial and material change in the project that renders the EIR inoperable.

Plaza Pavilion

There appears to be no record of trips consumed for the Plaza Pavilion which added 9,100 square feet of function space in 2007.

Improper Trip Re-Transfer

250 Trips appear to have been improperly “re-transferred” from parcel 11 back to parcel 19 in contravention of the City’s June 20, 1996 “Century City Specific Plan Trip Allocation Summary.” It states:

Transfer of Development Rights. *The sale or transfer of development rights may be permitted from a site having unused allocated vehicle trips to another site in the Specific Plan area. In transfer of development rights, all or part of the unused development potential of one site is transferred to another site. The “donor” site is then permanently restricted from using those rights and the “receiver” site is entitled to the use of those rights.*

Greening Plan

The EIR states throughout that it is consistent with the “Greening of Century City” plan. However, the increased traffic on Century Park West will not only expose the residents of Tract 7260/Fox Hills to increased pollutants⁵, but will also create more traffic along the Greening Plan’s jogging path along Century Park West.

The EIR also fails to analyze the noise, light/glare and other impacts on the residents of Tract 7260 that will be materially altered based on the Greening Plan’s material changes to the west side of Century Park West.

⁵ See attached study “All Choked Up – Heavy Traffic, Dirty Air and the Risk to New Yorkers”

Reliance on City Implementation and Monitoring of Mitigations Is Not Based In Fact

As stated above, Controller Chick issued the following report.⁶

“Ever since the mid 1990’s when I was a City Councilmember, I wondered what actually happened with the conditions we imposed when approving development projects. The City often sets requirements to shape and improve a project, promote safety and mitigate negative impacts to communities.

*Now as Controller, I have circled back to answer the question: “Who ensures that the requirements attached to these developments are followed?” **The answer is: No one.**”*

Conditions have not changed. Not only does the City completely fail to monitor project mitigations, it fails to monitor its own mitigations, including mitigation and monitoring of the General Plan. The EIR must show conclusive proof that the City has the means and intent to implement and monitor project mitigations. The EIR must do so by showing past adherence to mitigation monitoring in Century City including previous mitigation monitoring reports from the last five years;

Economic Impact Methodology Flawed

The economic impact methodology used by the EIR is fatally flawed. It fails to account for:

- Decreased value of JMB office space as a result of the loss of views and proximity to the new project.
- Decreased value of the Century City Mall as a result of adding new retail outside of the mall parcel as envisioned by the CCNSP.
- The impact on the Century City Mall with regard to parking given that the mall offers free parking for the first three hours. If the new project charges for parking, the likelihood of mall parking becoming overcrowded (as it would be handling excess retail space) is substantial.
- Decreased value of homes already in the Westwood Charter district that may have to be reassigned due to over-development in the area, including this project. Westwood Charter is widely recognized as a superior school, is advertised in real estate listings and provides a substantial increased property value.
- The costs to the City of the incremental consumption of infrastructure. Per the Chick report:
“City departments do not consistently track, plan or budget for maintenance of public improvements installed as a result of conditions of approval for development projects. In addition, Some City departments do not collect sufficient fee revenues to cover the costs of maintaining public improvements. Although project applicants pay the costs of installing public improvements, only some departments track and recover maintenance costs for these improvements. No departments systematically track public improvements imposed as development project conditions of approval as part of their fiscal planning process. Some City departments do not collect sufficient revenues to cover the costs of maintaining public improvements, particularly those imposed as conditions of approval for development. Specifically, the Urban Forestry Division of the Bureau of Street Services Street Tree Maintenance, Inspection and Clerical fees, the Bureau of Street Lighting Street Lighting Maintenance Assessment, and the Bureau of Sanitation Stormwater Pollution Abatement Charge revenues are not sufficient to recover the costs of maintaining public improvements.”

⁶ <http://www.nwsanpedro.org/pdfs/FinalReportLACityPlanning032309.pdf>

Water/Power Methodology and Assumptions Flawed – Inconsistent With LADWP Stated Assessments

The EIR's conclusions appear to be at odds with LADWP's conclusions in its June 4, 2011 report to the City Council.

In that report, DWP discloses that water systems are aging and that based on our current budget, the system is "unsustainable."

DWP also discloses that the power transmission system is aging and it is also unsustainable.

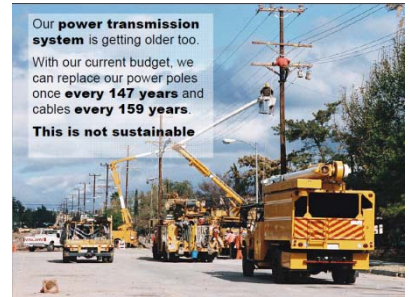
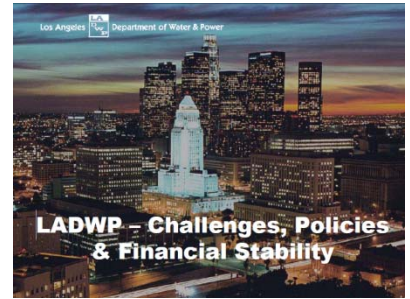
Despite this report, the EIR makes the assertion that existing water and power systems are sufficient to handle the project and the cumulative load of other projects.

This speaks to the key issue flaw in the City's environmental approval process which directly results from its failure to produce a reliable infrastructure assessment report AND act on it as required in the Framework and the General Plan EIR.

Absent that report there can be no consistency in decision-making, no understanding of the trajectory of the state of the infrastructure and no statements of consistency with the General Plan or the Community Plan.

Clearly, the EIR's conclusion that the water and power systems are sufficient is incorrect. The systems cannot simultaneously be sufficient and unsustainable.

The EIR must be corrected to reflect the true state of the infrastructure.



Signage

The EIR does not describe signage that will become part of the project. Specifically, it does not disclose whether digital or other moving signs will be used. Use of such signs will be visible from commercial and residential structures which are part of or are directly adjacent to the project.

Shade/Shadow

The shade/shadow section of the EIR fails to disclose the cumulative impact on the ability of homes in the 7260 area to employ solar collectors.

The EIR is also incorrect when it states in section IV.B that "neither project casts shadows" on area 4 (7260) when the diagram clearly shows shade/shadow during the winter equinox and the summer solstice.

Noise Methodology Flawed

The EIR's noise methodology, specifically placement of monitoring location 6, is flawed. Noise from Century City travels both along Constellation and Garden Lane. Location 6 places the sensor directly behind a parking structure which shields it from the "funnel" effect experienced.

We also experience substantial noise from large vehicles making turns from or to Constellation and Century Park West.

The EIR generally makes reference to music that may emanate from the Project. The EIR fails to mention that the existing hotel often emanates amplified sound so that it can be heard from our R1 neighborhood over 800 feet away in direct violation of the Los Angeles Noise Ordinance.

Additional use, including a retail use, would certainly generate additional violations of the noise ordinance. By way of reference, music from the Westfield Shopping Center was recently measured at over 140dB 50 feet from the source and was clearly audible from our neighborhood.

Our friends to the north in the Comstock Hills HOA constantly experience noise emanating from the Westfield Mall, usually from one of the restaurants.

We question the findings on Page IV.J-30 which conclude that "Composite Noise Impacts" for Tract 7260 will only increase 0.3dB (Option A) and 0.2dB (Option B) from the addition of open air retail and restaurants, planned outdoor events and a higher daytime population.

Each of the conclusions reached based on the misplacement of sensor 6 should be discarded.

Jobs

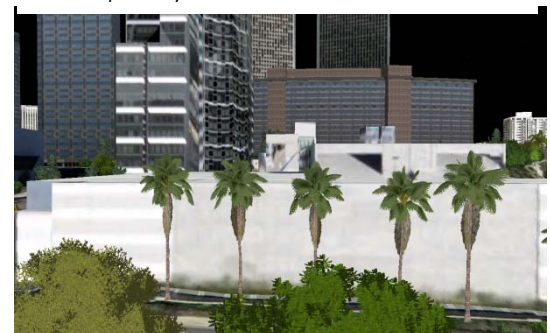
The EIR makes bold claims about net new jobs, but fails to address where the new employees might live, and whether or not these are new jobs to the City of Los Angeles, or new jobs at all. While there is no doubt that valuable construction jobs will be created during construction (whenever that may happen), it is also true that all of the existing jobs at the property will be lost.

The EIR also claims that it will generate jobs even though the creation of those jobs is heavily dependent on the economy. This benefit is therefore not subject to accurate prediction and should not serve as a basis for approving the project.

The EIR attempts to analyze the maximum job creation capability of the project against 2009-2015 job creation figures, but fails to address the impact of job creation during the entire development agreement period. In fact, employees who might fill the "new jobs" created by this project should it be developed at the end of the development agreement period in 2027 are currently in diapers. Assumptions on the job market or with regard to any impact at the end of the development agreement period are necessarily invalid.



Noise pathways down Constellation and Garden Ln.



Location Selected - Shielded by JMB Parking Lot

Schools

The DEIR section on schools embodies the flawed analysis allowed in EIRs – and more. The concept that payment of fees to LAUSD can mitigate the loss of a neighborhood school for current residents is provably without merit. The neighborhoods which are currently served by Westwood Charter have worked hard to make that school the exceptional school that it is. Our children receive exceptional educations and our homes have an increased value because they are served by Westwood Charter.

The DEIR states that Westwood Charter will be short 149 seats (though the Westfield DEIR found that number to be 319 seats) if all projects are approved. Westwood Charter has a capacity of roughly 800 students. Allowing development of projects that will consume seats at our neighborhood school and result in the certain displacement of students who would otherwise attend Westwood Charter is nothing short of a slow, reverse-taking.

It bleeds value from existing neighborhoods to feed new development. Residents have been told that the LAUSD has already considered splitting the Westwood Charter catchment area. New development should not be able to take a local school from existing residential areas. This impact has not been studied.

The Principal at Westwood Charter stated:

*“We cannot continue our tradition of excellence faced with the dramatic increases in enrollment we have seen in the last few years. These new students will take the place of other students in the attendance area. There is no possible way to accommodate them at Westwood, and children will have to be transported to other schools. Provisions for new seats must be made **before** this type of large scale development is allowed to continue. “*

The EIR also fails to take into account budgetary shortfalls and cuts that have occurred since the EIR research was completed. These two articles provide some insight:

Throwing the book at school libraries

L.A. Unified lays off library aides and slashes their hours when it should be addressing huge reading deficiencies.

<http://www.latimes.com/news/local/la-me-lopez-library-20110914,0,431171.column>

By Steve Lopez *September 14, 2011*

Schools enjoy unexpected funds, but midyear cuts are possible

Los Angeles Unified's superintendent says he is 'gravely worried' about midyear cuts in state funding and plans to talk with the teachers union about further shortening the school year.

By Teresa Watanabe, Los Angeles Times *August 28, 2011*

<http://www.latimes.com/news/local/la-me-schools-budget-20110828,0,1112993.story>

In that article, it was reported that:

Los Angeles Unified Supt. John Deasy said he was "gravely worried" about midyear cuts and has begun meeting with staff to plan for the possibility. Among other things, he said he intended to broach the subject of shortening the school year with the teachers union.

The state budget "was put together on assumptions and illusions of revenue rather than facts and reality," he said. "That's proven to be incredibly problematic."

The City can no longer make environmental decisions based on “illusions,” rather than “facts and reality.”

Fire

The EIR's section on fire coverage is severely flawed. We are exceptionally concerned that this project and other projects rely on first-responder services that no longer exist.

Key flaws are:

- The baseline conditions for Stations 92 and 58 are incorrect. Station 92 no longer has an engine. Station 58 no longer has a light force.
- The EIR assumes (with regard to possible cuts at Station 92):

“Nonetheless, should Fire Station 92 have its service capabilities reduced, the Proposed Project would continue to be served by Fire Stations 58 and 71. As shown in Table IV.L-1 on page IV.L-5, Fire Station 58 provides the same facilities and equipment mix, and the same number of personnel, as Fire Station 92. It is also likely that equipment or personnel subject to the downsizing of Fire Station 92 would be redeployed to Fire Stations 58 and 71. **Thus, downsized Fire Station 92, together with Fire Stations 58 and 71, would be able to provide an equivalent level of fire protection service to the Project area.**

As station 92's personnel did NOT move to 58 and 71, and Station 58 had its light force demobilized, the conclusion of this EIR with regard to fire service is fatally flawed.

- Second-in coverage for the Century City area has actually been provided by Stations 43, 37 and 59. Station 43 is on Motor near Palms – across what is planned to be an at-grade crossing at Overland Avenue and Exposition. Station 37 is in Westwood Village and is severely impacted by traffic congestion. Station 59 is an exceptionally busy station that is on the other side of the 405. Station 59 also has first-in responsibility for accidents near the 405 and 10 interchange.
- The EIR's fire conclusions are also flawed as they assume level staffing for the fire department. No new firefighters have been trained in over two years and the new recruit program has been mothballed. LAFD is experiencing a loss of over 100 firefighters per year due to attrition and there are no replacements trained and no budget to train them. The EIR must therefore assume and study the impacts of decreased fire staffing over time.
- The EIR claims consistency with the General Plan, yet fails to acknowledge the mitigation measures cited in the General Plan EIR which read:

2.10 FIRE/EMERGENCY MEDICAL SERVICES

2.10.5 Mitigation Measures

2.10.5.1 Mitigation through Framework Policy

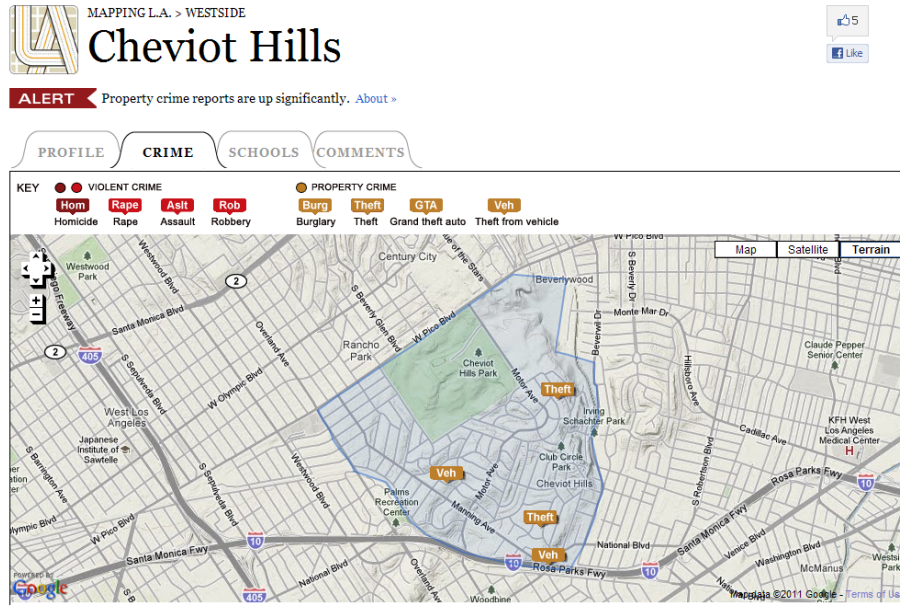
Policies 3.3.2, 7.10.1, 9.17.1, 9.18.1 through 9.18.4, 9.19.1, 9.20.1 through 9.20.3 contained in the General Plan Framework represent measures that would serve to lessen impacts relative to fire/EMS.

Policy 3.3.2 directs monitoring of infrastructure and public service capacities to determine need within each CPA for improvements based upon planning standards. This policy also directs determinations of the level of growth that should correlate with the level of capital, facility, or service improvement that are necessary to accommodate that level of growth. In addition, the policy directs the establishment of programs for infrastructure and public service improvements to accommodate development in areas the General Plan Framework targets for growth. Lastly, the policy requires that type, amount, and location of development be correlated with the provision of adequate supporting infrastructure and services. Policy 7.10.1 focuses available implementation resources in targeted areas or “communities in need.” Policy 9.17.1 addresses the monitoring and forecasting of demand for existing and future fire facilities and service for the purpose of assuring that every neighborhood would have the necessary level of fire protection service and infrastructure.

Absent this information, both present and historical so that trend lines can be compiled, the EIR cannot properly study fire impacts and the City cannot make a finding of consistency with the General Plan.

Police

Likely as a result of the current state of the economy, all areas surrounding Century City are experiencing increased crime per an LAPD briefing to the Westside Neighborhood Council. This includes Century City proper. The EIR fails to discuss the current existing conditions relating to crime and police coverage.



Six-month summary

3 VIOLENT CRIMES

90 PROPERTY CRIMES

127.3 CRIMES PER 10,000 PEOPLE

- Six-month summaries are based on the latest six months where data are available from all departments, Feb. 14, 2011 to Aug. 14, 2011

Conclusion

For each of the reasons listed in this response, this EIR should not be certified by the City. We look forward to a revised and recirculated EIR that accurately reflects the existing conditions and true impacts of the project, including the ability of the City to implement and monitor mitigations.

Supplemental comment – September 21, 2011

Alternative 5

The DEIR states:

“Under Alternative 5, a portion of the south building and associated garden podium would extend over the Project Site’s existing property line onto land currently owned by the adjacent property owner, JMB. The Applicant has an exclusive use easement over this area, which is currently used to access the Existing Hotel’s loading dock. As the City’s Building Code does not allow buildings to cross the property line between two parcels under separate ownership, the Applicant would need the approval of JMB to record a tract map to adjust the lot line between the two parcels. Upon recordation of the final map, the south building deck would be located entirely within property owned by the Project Applicant. The feasibility of this Alternative is contingent upon JMB agreeing to give up its property rights and consent to the map.”

We note the following issues:

- Each parcel in the CCNSP carries with it CATGP Trips. There is insufficient detail as to how Trips would be allocated between parcels or if such allocations are consistent with the CCNSP.
- There is no indication of study of the interference, if any, with approvals, setbacks and other conditions imposed on the JMB parcel and how those would be impacted.
- The City cannot approve of an option that’s feasibility is dependent on a private agreement without first having that agreement in hand for review by both the city and the public. Absent that agreement, the DEIR is insufficient and should be recirculated once the final third-party agreement is in place and its terms are known. The DEIR states:

” It should be noted that the feasibility of implementing Alternative 5 is contingent upon the adjacent property owner, JMB, agreeing to record a tract map to adjust the above grade lot line between the Project Site and its parcel.”

And

“Unless JMB approves the tract map, this Alternative could not be implemented and would be infeasible.”