

October 21, 2009

Commissioner Leslie G. Bellamy, Chair
Commissioner Wayne Rew, Vice Chair
Commissioner Esther L. Valadez
Commissioner Harold V. Helsley
Commissioner Pat Modugno
Regional Planning Commission
Department of Regional Planning
320 West Temple Street
Los Angeles, CA 90012

**Re: Project R2006-01510 and Project R2006-02726 (together the “OT/21 Project”)
COMMENTS on the OT/21 Project and combined Draft Environmental Impact Report
(DEIR) - : OPPOSE**

Honorable Commissioners:

We ARE Marina del Rey (“WAM”) strongly urges the Regional Planning Commission to continue the hearing on the projects listed above, including all applicable Plan Amendments, Coastal Development permits, Conditional Use permits, Variances and Parking permits based on the following issues and comments on the projects and the DEIR.

A) PREMATURE HEARING

The scheduled Regional Planning Commission hearing today is premature for two reasons.

1) Lack of DCB Conceptual Approval

Upon review of past records, agendas and meetings, We ARE Marina del Rey has determined that the Design Control Board (“DCB”) has NOT conceptually approved the current project as described in the project materials and DEIR.

The August 18, 2005 DCB agenda included Item *5b: Consideration of a new building and severance of the westernmost portion of parcel for future use as public parking.* (Exhibit B)

On September 5, 2005, the DCB agenda included Item *3f: Approval of the record of the DCB’s August 2005 action for conditioned approval of a new building that includes a yacht club, office space, parking and a public park.* (Exhibit C)

The project that was granted conceptual approval called for the western edge of parcel 21 to be bifurcated for future use as public parking to be owned/operated by Los Angeles County with the remaining eastern portion of Parcel 21 to be used for construction of a new building that would include a yacht club, office space, on site parking for its uses and an adjacent park.

The Department of Beaches and Harbors returned to the DCB on February 16, 2006 for the bifurcated parking portion of parcel 21, now dubbed Parcel 21 Phase II, calling for a public

parking structure of 4-levels and 235 spaces to accommodate relocated public parking from proposed projects on Parcels IR, OT and NR (See Exhibit A). The DCB had a problem with the parking structure being on the waterfront and with the issues of a shell game of public parking and that other proposed projects appeared to not have sufficient on-site parking for their own uses.

But more importantly, this Parcel 21 Phase II was continued 3 times to March 16, 2006, April 27, 2006 and then indefinitely. In other words, it never returned to the DCB.

The current project before the commission calls for a 5-story commercial/office building with some parking as well as a 6-story, 447-space private parking structure (only 94 spaces will be public which are being relocated from Parcel OT) and a further reduction of Parcel 21 land area for the expansion of parcel GR parking.

THIS project has NOT been reviewed OR conceptually approved by the DCB. Therefore we urge your Commission to continue these integrated projects until such time as the DCB can review this project.

2) Projects Hearing should not precede compound LCP Amendment

The above referenced projects are included in the bundle of the projects labeled by Los Angeles County Departments of Beaches and Harbors and Regional Planning as the “pipeline” projects (see Roadmap Letter Exhibit D). While WAM does not agree with roadmap approach which includes the bundling of project-driven LCP amendments into one overall compound amendment or the limited scope of the LCP amendment vis-à-vis a comprehensive LCP update as recommended by the Coastal Commission, the fact is, the Departments of Beaches and Harbors and Regional Planning are proceeding in this direction and the Board of Supervisors approved this direction on September 1, 2009.

Given this, we respectfully urge this commission to further continue the hearing on Project R2006-01510 and Project R2006-02726 until such time as both the Regional Planning Commission AND the California Coastal Commission have reviewed and taken action on the compound LCP Amendment that is currently being prepared by the Department of Regional Planning in conjunction with the Department of Beaches and Harbors. As stated last week by your Commission during the hearing for the Neptune Apartments and Woodfin Suites Hotels (project #s R2006-03647, R2006-03652, TR067861, R2006-03643 and R2006-03644), it is premature and out of order to hear these individual projects now prior to the drafting of compound LCP amendment that would allow these projects to proceed let alone prior to any action being taken on it by your Commission, the Board of Supervisors and the California Coastal Commission - all required steps that need to be completed before these projects can be ultimately approved.

Furthermore, in terms of ESHA, the DEIR’s reliance on the environmental analysis of the Certified Marina del Rey LCP is flawed. This DEIR does not reflect the changes on the ground to the environment since the LCP was certified in 1996. The DEIR states on page IV.E - 3:

Additionally, in the certified 1996 Marina del Rey Land Use Plan (LCP), the California Coastal Commission found that there were no Environmentally Sensitive Habitat Areas (ESHAs) in the developed Marina del Rey proper. As such, no riparian habitat or other sensitive natural communities identified in local or regional plans, policies, or regulations were found to be present on either site.

However, on January 9, 2008 (reaffirmed October 16, 2008), the California Coastal Commission determined parts of Marina del Rey contain ESHA, and therefore, recommended that County, as part of the overall LCP update amendment, add ESHA findings and provisions to the Marina del Rey LCP, in conformance with the Coastal Act and that County carry out a survey to determine if there are additional ESHA sites in Marina del Rey. We understand this survey to be under preparation but has not been completed at this time. Therefore, in relation to ESHA, this DEIR is substantially incomplete.

Furthermore, how can this Commission properly review these two projects relative to all the projects proposed by a range of developers and the Department of Beaches and Harbors given that the compound LCP amendment will include a Cumulative Impact Assessment and additional studies that are not complete?

How can this Commission properly review these projects given that the Department of Regional Planning has not completed its response to the Coastal Commission's Periodic LCP Review Recommendations that members of the public spent much time providing input.

And finally, moving forward with these projects now is a waste of taxpayer funds. When Los Angeles County states they cannot afford to carry out a comprehensive LCP update; that they cannot build a public park for its residents; and that they cannot fix a broken playground, how can this project proceed at this time with the risk that it will not be approvable. The Department of Beaches and Harbors spends hundreds of thousands of dollars a year of taxpayer money to pay for consultants that work on these projects and make presentations before your Commission.

Once again, we respectfully urge this commission to further continue the hearing on Project R2006-01510 and Project R2006-02726 until such time as the DCB has reviewed the current Parcel 21 project plans AND both the Regional Planning Commission AND the California Coastal Commission have reviewed and taken action on the compound LCP Amendment that is currently being prepared by the Department of Regional Planning.

2. PIECEMEALING CEQA/OVERALL MARINA WIDE EIR

WAM further believes that Los Angeles County including the Department of Beaches and Harbors and the Department of Regional Planning (together "the County") is piecemealing the redevelopment of Marina del Rey in violation of state law, including the California Coastal Act ("Coastal Act") and the California Environmental Quality Act ("CEQA"). County has admitted on the record and it is widely known, that County intends to redevelop Marina del Rey (the "Marina Redevelopment Project"). This "Marina Redevelopment Project" constitutes "a project" under CEQA. According to Public Resources Code § 21065, a project is defined as the whole of

an action, which has a potential for resulting in either a direct physical change in the environment.

The Marina Redevelopment Project consists of all the County's individual developments within Marina del Rey now making their way through the public approval process (Fisherman's Village, Mother's Beach, Western Marina residential complexes, etc) and including Projects R2006-01510 and R2006-02726. County is dividing "the Marina Redevelopment Project" into smaller redevelopment projects (e.g. the projects cited above) in order to reduce and hide the environmental impact of the "Marina Redevelopment Project." Therefore, County is piecemealing the "Marina Redevelopment Project," in violation of CEQA. California Supreme Court case law holds that the County cannot "hide" the redevelopment project from the public by breaking the Marina Redevelopment Project into little parts, and the County's behavior – actions and words - confirms there is "a Marina Redevelopment Project."

The California Coastal Commission stated during its Local Coastal Program (the "LCP") Periodic Review hearing on January 9, 2008, that County is piecemealing projects and that this is bad planning. They strongly recommended (said recommendation reaffirmed on October 16, 2008), that County should undertake a comprehensive LCP update amendment of anticipated future development that includes ALL pending project driven amendments, fulfillment of Asset Management strategies and other facilities identified through a community planning process. The intent behind this recommendation was:

"Well, I think it is apparent that if LCP amendments are pursued on an individual basis, project by project, that the cumulative impacts, and the coordinated efforts will be very difficult for the community, for the County, and for this Commission to understand." - Commissioner Kinsey, LCP Review Hearing, January 9, 2008

An Environmental Impact Report should be prepared for the whole "Marina Redevelopment Project" should be County's highest obligation to determine the overall environmental impacts of all projects in the Marina. County argues that the LCP is the functional equivalent of an EIR per CEQA § 21080.5 because it is a certified program or at the very least a Master Plan, a position WAM does not share. However, instead of following the LCP for Marina del Rey, which County considers to be the functional equivalent of an EIR, County is implementing a slate of redevelopment projects contained in its *Marina del Rey Asset Management Strategy* ("AMS," April 15, 1997, which is not part of the Certified LCP). The projects, including R2006-01510 and Project R2006-02726 and the document itself are not in conformity or consistent with the Marina del Rey Certified LCP. Additionally, the AMS has not been reviewed or approved by the California Coastal Commission and has no regulatory or legal standing.

Public Resources Code § 21080.5 and CEQA Guideline also state that a "certified program" remains subject to other provisions in CEQA such as the policy of avoiding significant adverse effects on the environment where feasible. Therefore, even if the LCP were the functional equivalent of an EIR, County must still review the overall impacts of the "Marina Redevelopment Project."

Furthermore, the Roadmap approach adopted by Los Angeles County fails to carryout an overall Environmental Impact Report and instead opts for a cumulative impact assessment that may not be CEQA compliant and which may not involve full public participation as required under the California Coastal Act. The Roadmap approach also hides the “Marina Redevelopment Project” by compiling individual, project-driven LCP amendments into one overall LCP Amendment prior an overall project CEQA-compliant environmental review.

3. FURTHER CEQA VIOLATIONS

We ARE Marina del Rey also alleges that a range of actions and statements by the Los Angeles County Board of Supervisors, the Los Angeles County Department of Beaches and Harbors, the Los Angeles County Department of Regional Planning and the California Coastal Commission (“CCC”), taken as whole, have committed Los Angeles County to a definite course of action on Projects R2006-01510 and R2006-02726 in addition to other “pipeline” projects included in the Roadmap approach (Exhibit D), prior to conducting environmental reviews in accordance with the California Environmental Quality Act (CEQA). These commitments preclude from consideration, other feasible alternatives and/or mitigation measures prior to the environmental review of these projects.

This is indirect conflict with the courts that provided the following guiding general principle: “[b]efore conducting CEQA review, agencies must not ‘take any action’ that significantly furthers a project ‘in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.’” *Save Tara*, ____ Cal. 4th ____ (citing Cal. Code Regs., tit. 14, §15004(b)(2)(B)).

As enunciated by the Supreme Court, in determining whether a conditional agreement such as the one in *Save Tara* is an approval under CEQA, "courts should look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures.”

An agency's statements and unofficial actions, taken as a whole, can be the basis for finding that an agency has "committed to a definite course of action" and, therefore, "approved" a project. If environmental review has not preceded the agency's "commitment," then the agency has run afoul of CEQA.

The actions and statements that WAM references includes but is not limited to:

- The approval and of Lease options for Parcels 21 and OT by the Small Craft Harbor Commission (12/17/07 for Parcel OT and 3/12/08 for Parcel 21) and the Board of Supervisors (7/15/08 for both Parcels) that were conditional on future environmental reviews
- The adoption of the Marina del Rey Asset Management Strategy by the Board of Supervisors in 1997

- The adoption of the Roadmap Approach by the Departments of Beaches & Harbors, Regional Planning and the California Coastal Commission and its subsequent approval by the Board of Supervisors on September 1, 2009 (see comments below)
- Statements by the Regional Planning Commissioners at the October 14, 2009 hearing for the Neptune/Woodfin projects about the out of order process of the projects because the amendments need to be heard and approved first by their Commission and the California Coastal Commission
- Statements by Supervisor Yaroslavsky of his concerns that by the time Marina del Rey redevelopment projects reach the Board, they will be a done deal, as he experienced for The Shores development project.
- Statements by Director of Beaches and Harbors that 1) the developers have been negotiating for years in what he terms good faith based on entitlements allowed in the LCP and 2) the County has commitments and liabilities on the pipeline projects and need to move them through.

In reference to the Roadmap approach, WAM believes that approval of the motion on September 1, 2009 by the Los Angeles County Board of Supervisors to endorse the Roadmap approach and to create one project-driven LCP amendment is a violation of state law, including the Coastal Act and CEQA. The Roadmap approach includes the advancement of eight separate projects of which only two have undergone recent environmental reviews in accordance with CEQA rules (see Exhibit D, #7 and #8). CEQA reviews have not been conducted for the remaining six projects (Exhibit D, #s 1-6) which include Projects R2006-01510 and Project R2006-02726 on the agenda today.

For all eight projects, Los Angeles County has signed lease options with developers or negotiated lease terms conditioned on implementing future CEQA review processes. The single LCP amendment authorized to be prepared on September 1, 2009 calls for the packaging of individual, project-driven LCP amendments including those for Projects R2006-01510 and Project R2006-02726, into one compound LCP Amendment. As stated above, a CEQA review has not been conducted for six of these projects with project-driven LCP amendments.

Therefore, we believe these actions, taken as whole, commit Los Angeles County to a specific course of action and constitute discretionary project approvals prior to CEQA environmental reviews. These commitments preclude from consideration, other feasible alternatives and/or mitigation measures prior to the environmental review of these projects.

As stated above, this is indirect conflict with the courts that provided the following guiding general principle: “[b]efore conducting CEQA review, agencies must not ‘take any action’ that significantly furthers a project ‘in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.’” *Save Tara*, ___ Cal. 4th ___ (citing Cal. Code Regs., tit. 14, §15004(b)(2)(B)).

4. Conclusion

Based on the above comments, we once again urge your Commission to continue Project R2006-01510 and Project R2006-02726 until such time as the above issues are resolved and/or actions taken.

Together,
We ARE Marina del Rey

David Barish
Co-Director
davidb@wearemdr.com
www.wearemdr.com

CC: Michael Tripp, Department of Regional Planning
Santos Kreimann, Department of Beaches & Harbors
Peter Douglas, Executive Director, California Coastal Commission
The Honorable Senator Oropeza, 28th Senate District