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ITEM 19 COUNCIL 6/18/14

P. Lattimore

**STATEMENT of J.H. McQUISTON on
UNLAWFUL CONVERSION of 20700-20848 ½ NORDHOFF to NON-INDUSTRIAL USE**

Honorable President and Members of the Council:

Consider my Statement and testimony at the Commission and PLUM as a part of this Statement.

The General Plan prohibits "business" (differentiated from "industrial" per Govt Code §65302(a)) use on this parcel. Use per Plan must be "industrial", and parking is also Plan-controlled on parcel and on street. CEQA requires obedience to the General Plan (The Community Plan is only part of the General Plan and both "Framework" and "Community" land-use parts (see below) require the above).

The "R" in the zoning prohibits City-discretion to permit a "business" use in an "industrial" zone. The "purpose" of the "R" is specifically-delineated in the LAMC section controlling the zone. The environmental Report must adhere to the "R" purpose to be environmentally-proper.

1. My objection to this proposed violation of the Plan concerns its incompatibility with the parcel's specific land use, required by the California Government Code §65302 *et seq* to comply therewith. Plan specifies the area and parcel is restricted, for "industrial" use. Not for any new "business" use.

Rezoning to remove "R" restriction allows "business" use without General Plan amendment, so is unlawful.

The proposal *inter alia* asks for "retail" use and special parking. **They are prohibited by Plan. "Planning 101" demands Plan's "R" zoning, for public safety and welfare in the area. CEQA prohibits environmental danger associated with the proposed zone change. In short:**

A. Policing with the City's small force requires no-parking on the street in this area; and no retail-use.

B. Proposal puts commercial use surrounded by industrial use, breaking-up industrial cohesiveness and introducing traffic problems where none existed before.

C. Any commercial-use, to be successful, would require a substantially-larger assortment of buildings, in a compatible grouping, and decorative surroundings. Railroad-setting is fundamentally-incompatible.

D. Defense of the United States requires the industrial area to be reserved for industry and for facilities operable for Defense purposes.

E. Encouraging such "scofflaw" behavior prevents City's meager Planning Staff from performing its vital role per Government Codes §§65103 & 65400, pertaining to the General Plan's implementation-success and amendments thereto, which in this City require substantial and continuous monitoring and statistical-analysis.

F. California Constitution Article 1 §7(b) and the above California Code prohibit granting special privileges which are not allowed parcels topographically-similar in the same zone in the same plan.

Proposal sets-forth no legally-valid reason permitting re-zoning even if the Plan were amended.

2. I remind the Council, Mayor and City Attorney that "anyone aiding or abetting a violation" of the City Plan commits a misdemeanor, per LAMC §11.00:

" (j) Prohibited Acts; Include Causing, Permitting, Suffering.

Whenever in this Code any act or omission is made unlawful it shall include causing, permitting, aiding, abetting, suffering or concealing the fact of the act or omission.

* * *

(m) It shall be **unlawful for any person to violate any provision or fail to comply** with any of the requirements of this Code. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code, shall be guilty of a misdemeanor unless that violation or failure is declared in this Code to be an infraction. An infraction shall be tried and be punishable as provided in Section 19.6 of the Penal Code and the provisions of this section. Any violation of this Code that is designated as a misdemeanor, may be charged by the City Attorney as either a misdemeanor or an infraction.

Every violation of this Code is punishable as a misdemeanor unless provision is otherwise made, and shall be punishable by a fine of not more than \$1,000.00 or by imprisonment in the County Jail for a period of not more than six months, or by both a fine and imprisonment."

3. City Plan prohibits use in the subject parcel **except for industrial or industrial-supplier purposes:**

"The Chatsworth-Porter Ranch Community Plan is a **part of the General Plan** of the City of Los Angeles. * * *

" OBJECTIVES OF THE PLAN

"4. To promote economic well-being and public convenience through

b. designating lands for industrial development that can be used without detriment to adjacent uses of other types, and **imposing such restrictions on the types and intensities of industrial uses as are necessary** to this purpose.

"Industry Standards and Criteria

"Industrial lands are located on a citywide basis without regard to the boundaries of individual communities, under the general principle that such employment should be available within a reasonable commuting distance from residential locations.

Without effective transportation demand management strategies, such as carpool and vanpool or transit, **parking should be provided at a ratio of one parking space per 300 gross-feet of floor area of office or industrial uses** which are primarily (over 50%) "high-tech" in nature. These uses **may include research, development, manufacturing, assembly, repair, testing or high-technology type industries, and service industries**, including computer programming, data processing and research laboratories.

"**On-street parking should be prohibited** in industrial areas whenever possible.

"The [Q]M1 Zone classification is permitted on those properties fronting on the following corridors: (1) the north and south sides of Nordhoff Street between De Soto Avenue and Topanga Canyon Boulevard; (2) the east side of Topanga Canyon Boulevard, from Nordhoff Street to the south side of Lassen Street; and (3) the south side of Lassen Street between Topanga Canyon Boulevard and De Soto Avenue. Such **conditions of approval shall prohibit** smoke stacks, metal plating, toxic and noxious industrial uses, and **any new retail commercial uses** within these zone classifications. * * *

"In keeping with the low density residential character of the Community, to the extent possible, the Plan proposes **preservation of all existing MR zoned lands, and classification of all undeveloped industrial land in the MR1 and MR2 Zones.**

"**Features: The Plan designates approximately 1,821 acres of land for industrial uses.**

"**To preserve this valuable land resource from the intrusion of other uses** and insure its development with high quality industrial uses, in keeping with the urban residential character of the Community, to the extent possible, the Plan proposes **classifying all undeveloped industrial land, as well as all industrial land used for industrial purposes, in restricted industrial zoning categories, such as the MR Zones.**"

"Chapter 3, General Plan Framework : LAND USE

"Objective 3.14 Provide land and supporting services for the retention of existing and attraction of new industries.

"Policy 3.14.3 **Promote the re-use of industrial corridors for small-scale incubator industries.**

"Policy 3.14.4 **Limit the introduction of new commercial and other non-industrial uses [] to uses which support the primary industrial function of the location in which they are located.**

"Policy 3.14.8 Encourage the development in areas designated as "Industrial-Heavy" of critical public facilities that are necessary to support the needs of residents and businesses but normally are incompatible with residential neighborhoods and commercial districts [].

"Policy 3.14.9 Initiate programs for lot consolidation and implement improvements to assist in the retention/expansion of existing and attraction of new industrial uses []."

4. California Government Code requires of this City:

"65300. Each planning agency shall prepare and the legislative body of each county and city shall adopt a comprehensive, long-term general plan for the physical development of the county or city, and of any land outside its boundaries which in the planning agency's judgment bears relation to its planning. **Chartered cities shall adopt general plans which contain the mandatory elements specified in Section 65302.**

"§65301. * * * (b) The general plan may be adopted as a single document or as a group of documents relating to subjects or geographic segments of the planning area.

(c) **The general plan shall address each of the elements specified in Section 65302 to the extent that the subject of the element**

exists in the planning area. The degree of specificity and level of detail of the discussion of each element shall reflect local conditions and circumstances.

"The requirements of this section shall apply to charter cities.

"§65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements:

(a) A land use element that designates the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. * * *

"65350. Cities and counties shall prepare, adopt, and amend general plans and elements of those general plans in the manner provided in this article."

"§65358 * * * (b) Except as otherwise provided in subdivision (c) or (d), no mandatory element of a general plan shall be amended more frequently than four times during any calendar year. * * *

"§65804. It shall be the purpose of this section to implement minimum procedural standards for the conduct of city and county zoning hearings. Further, it is the intent of the Legislature that this section provide those standards to insure uniformity of, and public access to, zoning and planning hearings while maintaining the maximum control of cities and counties over zoning matters.

"The following procedures shall govern city and county zoning hearings:

(a) All local city and county zoning agencies shall develop and publish procedural rules for conduct of their hearings so that all interested parties shall have advance knowledge of procedures to be followed. The procedural rules shall incorporate the procedures in Section 65854. * * *

(c) When a planning staff report exists, the report shall be made public prior to or at the beginning of the hearing and shall be a matter of public record. * * *

"Notwithstanding Section 65803, this section shall apply to chartered cities."

"§ 65860. Conformity to general plan; Action to enforce compliance

(a) County or city zoning ordinances shall be consistent with the general plan of the county or city by January 1, 1974. A zoning ordinance shall be consistent with a city or county general plan only if both of the following conditions are met:

(1) The city or county has officially adopted such a plan.

(2) The various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan.

(b) Any resident or property owner within a city or a county, as the case may be, may bring an action or proceeding in the superior court to enforce compliance with subdivision (a). * * *

(d) Notwithstanding Section 65803, this section shall apply in a charter city of 2,000,000 or more population to a zoning ordinance adopted prior to January 1, 1979, which zoning ordinance shall be consistent with the general plan of the city by July 1, 1982."

5. Courts have extensively-determined the intent and application of the above-restrictions on City discretion.

E.g, over 30 years ago, the Court of Appeals decided in *City of Los Angeles v State of California*, 238 Cal App 3d 526 (1982) that City's allegation, that it would be unconstitutional to apply the State's requirement for zoning to be consistent with City Plan, was pure bunkum and §65860 applied and is enforceable against City. Citing *Professional Firefighters Inc v City of Los Angeles*, 60 Cal 2d 276,292 (Cal Supreme Court 1963) it said Article XI §5(a) subjects City to general laws, which prevail over local enactments of a chartered city, when the subject of the general law is of statewide concern. It cited Government Code stating that conservation of limited land resources in California and the planning thereof is of Statewide concern:

"§65030. The Legislature finds and declares that California's land is an exhaustible resource, not just a commodity, and is essential to the economy, environment and general well-being of the people of California. It is the policy of the state and the intent of the Legislature to protect California's land resource, to insure its preservation and use in ways which are economically and socially desirable in an attempt to improve the quality of life in California."

E.g, almost 20 years ago, the Supreme Court in bank in *deVita v County of Napa*, 9 Cal 4th 763 (1995) reiterated the point:

"[T]he general plan prior to 1972 has been characterized as merely an "interesting study," and no law required local land use decisions to follow the general plan's dictates. (*City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532, 160 Cal.Rptr. 907.)

In 1971 several legislative changes were made to significantly alter the status of the general plan. For the first time, proposed subdivisions and their improvements were required to be consistent with the general plan (Gov.Code, § 66473.5 [formerly in Bus. & Prof.Code, § 11526]), as were zoning ordinances (Gov.Code, § 65860). (Stats.1971, ch. 1446, §§ 2, 12, pp. 2855, 2858; *City of Santa*

Ana, supra, 100 Cal.App.3d at p. 532, 160 Cal.Rptr. 907.)

"Moreover, **charter cities were no longer completely exempted** from the requirements of the planning law, these cities had to at least adopt general plans with the **required mandatory elements**. (Gov.Code, § 65700, subd. (a); Stats.1971, ch. 1803, § 2, p. 3904.) Thus after 1971 the **general plan truly became, and today remains, a " 'constitution' for future development"** (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540, 277 Cal.Rptr. 1, 802 P.2d 317 (*Leshar Communications*)) located at the top of "the hierarchy of local government law regulating land use" (*deVita* at 772-73)

"[T]he planning law **requires cities and counties to adopt a general plan with certain mandatory elements that will generally govern "the future development, configuration and character of the city or county and require that future land use decisions be made in harmony with that general plan."** (*DeVita* at 782-3)

E.g, **almost 25 years ago**, the Supreme Court *in bank* in *Leshar Communications v City of Walnut Creek*, 52 Cal 3d 531 (1990) **reiterated the status of an ordinance inconsistent with the policies in the City's Plan:**

"A zoning ordinance that is inconsistent with the general plan is invalid when passed (*deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 1212, 217 Cal.Rptr. 790; *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698, 704, 179 Cal.Rptr. 261) and one that was originally consistent but has become inconsistent must be brought into conformity with the general plan. (§ 65860.) The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The **general plan is the charter to which the ordinance must conform.**" (*Leshar* at 541)

E.g, CEQA cases painfully-set forth that **there is no such thing as a "minor" departure from CEQA and from Government Code**. In *Citizens Assn for Sensible Development v County of Inyo*, 172 Cal App 3d 151 (1985), the Court, invoking *No Oil Inc v City of Los Angeles*, 13 Cal 3d 68 (1984), said:

"[T]he Legislature intended [CEQA] to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. [] Accordingly, 'CEQA requires more than merely preparing environmental documents.' (Cal. Admin. Code, tit. 14, § 15002, subd. (h).)"

E.g, *Topanga Assn. for a Scenic Community v County of Los Angeles*, 11 C.3d 506 (S Ct 1974) said:

"A zoning scheme, after all, is similar in some respects to a contract; each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted, the rationale being that such mutual restriction can enhance total community welfare. (See, e.g., 1 Appendix to Sen. J. (1970 Reg. Sess.) Final Rep. of the Joint Committee on Open Space Land (1970) p. 91; Bowden, *Article XXVIII-Opening the Door to Open Space Control* (1970) 1 Pacific L.J. 461, 501.) If the interest of these parties in preventing unjustified [zoning amendments] for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests."

E.g, a few of the line of cases **recently-decided against the City for lack of consistency with Plan** include:

Los Angeles v California, supra; *Philip Anaya v City of L.A.*, BS099892 (Sup Ct 2006); *Friends of Strathmore Apts v City of L.A.*, BS129157 (Sup Ct 2011); *Chazanov v City of L.A.*, BS135382 (Sup Ct 2013); *West Chandler Blvd Neighborhood Assn v City of L.A.*, 198 Cal App 4th 1506 (Ct App 2011).

COUNCIL "granted" each parcel of the above-cases a "**departure from Plan**"; each "**grant**" was thereafter **declared unlawful upon Court-review**. COUNCIL received briefing by City Attorney on each of them *after* Courts issued writs denying the "grants". These and similar cases **strongly-demand the proposal's request for "special zoning" must be denied because approval is unlawful and an affront to environment**.

5. Plan requires 1821 acres reserved for MR1 and MR2 industrial uses. The acreage requires a **certain proportion of each class** of Restricted Industrial use. Those designations are consistent with Government Code requirement for land specifically-reserved for "industrial" use. A "business" use in the area City particularized for "industrial" use **would render the Plan internally-inconsistent and in-violation of Government Code §65300.5**.

Therefore also for an environmental reason the **proposal to violate the Plan must be denied**.

6. A transcript of the CPC 2013-1953-ZC-CU-SPR Commission hearing on this proposal will show that the Commission President **asked the attending Deputy City Attorney for a legal opinion** relative to my allegations in my Statement and testimony.

Responding, the Deputy City Attorney instead asked a Staff-member of the Planning Department to give the legal opinion regarding my interpretation of the law.

Charter §271(b) says:

"The City Attorney shall be the legal adviser to the City, and to all City boards, departments, officers and entities. The City Attorney shall give advice or opinion in writing when requested to do so by any City officer or board."

Deputy City Attorney's dereliction caused the Commission falsely to approve the unlawful CPC proposal because the unqualified Staff planner falsely-interpreted the controlling law.

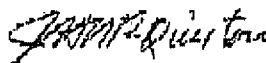
Deputy City Attorney also violated the Disciplinary Rule set forth by the California Supreme Court for licensed attorneys.

CONCLUSION

For all the above analyses and facts, the parcel may not be rezoned-incompatible with the City Plan.

The proposal's parts regarding departures from Plan policies must be denied as environmentally-unlawful per CEQA as well. It requires not only EIR but also General-Plan Amendment to proceed as proposal asks.

Respectfully submitted,



c: Interested parties

J. H. McQuiston, Injured Property Owner in City