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December 13, 2017

VIA EMAIL and PERSONAL DELIVERY

Los Angeles City Council
Attn: Mike Bonin, Chair, Transportation Committee
c/o City Clerk
Los Angeles City Hall
200 N. Spring Street, Room 395
Los Angeles, CA 90012

Re: City Council File No. 15-0719-S18
DCP Case Number ENV-2016-1099-SE

Honorable Councilmembers:

Our law firm represents the Keep Vista del Mar Open Coalition and KeepLAMoving, the Appellants in the within matter. This correspondence is being submitted to confirm Appellants' position with regard to the above referenced City Council File.

As the Councilmembers are now aware, on approximately May 24, 2017, the Los Angeles Department of Transportation ("LADOT") began a radical restriping and reconfiguring of Vista Del Mar, which included the following:

1. Most of the (legal) parking on the east side of the street was eliminated;
2. The number two lane northbound (the lane closest to the east curb) was turned into the only northbound lane;
3. The number one lane northbound was eliminated in certain areas and turned into a center median in others;
4. The left turn lane just south of Culver Boulevard was eliminated, so that the only way to access the restaurants and other businesses west

Los Angeles City Council
Attn: Mike Bonin, Chair, Transportation Committee
December 13, 2017
Page Two

- of Vista Del Mar in Playa Del Rey is to turn left onto Pacific, approximately 100 yards south of Culver;
5. The number two lane southbound (the lane closest to the west curb) was eliminated, from Culver to Imperial Highway;
 6. Dozens of free parking spaces were added to the west side of the street, most of which were diagonal;
 7. Rubber tire stops/headstones were installed at the head of each diagonal parking space;
 8. Numerous bollards that were designed to prevent unsafe U-turns on the street were removed;
 9. Dedicated U-turn lanes/areas were created with no traffic lights to stop or slow oncoming traffic; and
 10. A large area behind the diagonal parking spaces (between the parking spaces and oncoming traffic) was added.

Such actions were taken without the benefit of a Coastal Development Permit, no meaningful community outreach, and without California Environmental Quality Act ("CEQA") compliance.

On May 31, 2017, LADOT also issued a Notice of General Manager's Determination for the Culver Project and/or the "Safe Streets for Playa del Rey Initiative." Although the May 31, 2017 Notice of Determination provides that the Determination would become effective and final 15 days after the mailing date, LADOT implemented all of the "proposed" work that was the subject of the Determination long before this date including reconfiguring/restriping Culver Boulevard, and narrowing the street to one lane with a very wide bicycle lane.

Initially, and as set forth in LADOT's September 11, 2017 Staff Report, LADOT took the position that all of its actions with regard to both the changes to Vista del Mar and the Safe Streets for Playa del Rey Initiative were properly found to be statutorily and categorically exempt from CEQA.¹

As of December 4, 2017, LADOT has "rescinded" its actions with regard to the Safe Streets for Playa del Rey Initiative, but continues to maintain that the restriping and reconfiguring of Vista Del Mar is both statutorily and categorically exempt from CEQA.

¹ As set forth hereinbelow, all such reliance was misplaced.

Los Angeles City Council
Attn: Mike Bonin, Chair, Transportation Committee
December 13, 2017
Page Three

Appellants contend that the City has violated, and continues to violate CEQA in connection with both the Vista Del Mar and Safe Streets for Playa del Rey Initiative actions.

I. CEQA Violations

a. LADOT has Expanded Exemption Categories

It is well settled law that CEQA exemptions, insofar as they serve against the public policy which requires environmental review are to be *narrowly construed*. *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 788; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125 (exemption categories are not to be expanded beyond the reasonable scope of their statutory language).

Here, LADOT's Staff Reports provide a long list of Project features which do not fall within the CEQA exemptions that they purport to be a part of, and are, therefore, not justified under CEQA.

b. LADOT's Analysis Constitutes Unpermitted "Piecemealing"

It is further well settled, that CEQA forbids "piecemeal" review of the environmental impacts of a project. *Berkeley Keep Jets Over the Bay Com. V. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1358 (piecemeal review is prohibited to assure that environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal impact on the environment—but which cumulatively may have disastrous consequences). "A public agency is not permitted to subdivide a single project into smaller individual subprojects in order to avoid the responsibility of considering the environmental impact of the project *as a whole*." *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145.

As most relevant to the within actions, piecemealing has been found to be plainly improper when a reviewed project legally compels or practically presumes completion of another action. *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 Cal.App.4th 1209.

Los Angeles City Council
Attn: Mike Bonin, Chair, Transportation Committee
December 13, 2017
Page Four

Here, every single action taken by LADOT in correction with the Vista del Mar changes and the Safe Streets for Playa del Rey Initiative was not only premised on the completion of the other actions, but was actually a part of the whole of the “project” under CEQA.² As such, the prohibition against “piecemeal” review prohibited LADOT from chopping up all of these actions in order to find each *individual* one to be categorically or statutorily exempt from CEQA. This concept is discussed in greater detail in CEQA Guideline §15165,³ which in its official discussion specifically provides:

Discussion: This section follows the principle that the EIR on a project **must show the big picture of what is involved**. If the approval of one particular activity could be expected to lead to many other activities being approved in the same general area, the EIR should examine the expected effects of the ultimate environmental changes.

Accordingly, all of the CEQA exemptions relied upon by LADOT are in violation of CEQA as they constitute improper piecemealing.

c. City’s Mobility Plan 2035

The LADOT Staff Report relies heavily on the premise that the City’s Mobility Plan 2035 identified and analyzed many of the changes that were

² “Project” as defined by CEQA is “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” *Public Resources Code* §21065. The California Supreme Court has determined that the term “project,” as defined by CEQA, is to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1222.

³ Where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the Lead Agency shall prepare a single program EIR for the ultimate project as described in Section 15168. Where an individual project is a necessary precedent for action on a larger project, or commits the Lead Agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project. Where one project is one of several similar projects of a public agency, but is not deemed a part of a larger undertaking or a larger project, the agency may prepare one EIR for all projects, or one for each project, but shall in either case comment upon the cumulative effect.

Los Angeles City Council
Attn: Mike Bonin, Chair, Transportation Committee
December 13, 2017
Page Five

implemented by LADOT in connection with the Vista del Mar changes and the Safe Streets for Playa del Rey Initiative.

However, there is nothing in the Staff Report to substantiate this claim. All of the mitigation measures lifted from the Mobility Plan, and on which LADOT staff relies, have absolutely nothing to do and do not reasonably relate to the Vista del Mar changes and the Safe Streets for Playa del Rey Initiative.

Simply stated, the Vista del Mar changes and the Safe Streets for Playa del Rey Initiative were not evaluated, as required by CEQA in the Mobility Plan, and the Mobility Plan cannot be relied upon as the CEQA clearance for either.

II. LADOT's "Exception" Analysis is Unsubstantiated

Without providing any evidence whatsoever, LADOT claims that none of the exceptions to the CEQA Categorical Exemptions apply. This is blatant error. In order to be legally adequate, all of this information and analysis must be substantiated with detailed information and evidence.

In particular, this problem exists with regard to LADOT's cumulative impact analysis, which is woefully lacking. One of the basic and vital informational functions required by CEQA is a thorough analysis of whether the impacts of the Project, in connection with other related projects, are cumulatively considerable. *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal App.4th 1209. A proper cumulative effects analysis requires consideration of "reasonably foreseeable probable future projects, if any." *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

Here, not only did LADOT fail to provide an adequate cumulative impact analysis, its identification of impacts from other projects renders its use of all statutory and categorical exemptions improper, and compels an initial study under CEQA.

Accordingly, LADOT's "analysis" that no CEQA exceptions to exemptions apply is not substantiated by substantial evidence.

Los Angeles City Council
Attn: Mike Bonin, Chair, Transportation Committee
December 13, 2017
Page Six

III. Impact Analysis is Unsubstantiated

Similarly, LADOT makes several findings of “insignificant” impacts in its reports which are also unsubstantiated. For example, they claim that “LADOT considers that lane removal could potentially result in significant travel delay along high volume arterials of similar configuration that exceed 16,000 average daily trips (ADT), or 800 vehicles per land in the peak hour of traffic,” and go on to claim that traffic volumes on Pershing do not meet this criteria. However, LADOT provides absolutely no data or evidence to back this conclusion. What’s more, there is no mention of the potential application of this criteria for Culver or Jefferson. This is blatant error.

IV. The Exemptions Maintain Mitigation Measures

Where mitigation measures imposed to alleviate any of environmental factors, the City cannot rely on a categorical or statutory exemption. *See Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102 (mitigation measures may support a negative declaration but not a categorical exemption); *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1199–1200 (where a project may have an effect on the environment, CEQA review must occur and only then are mitigation measures relevant).

Here, many of LADOT’s identified Project impacts are mitigated, as set forth in their Staff Report. This is error under CEQA.

V. Public Resources Code §21080.20.5 Requirements Were Not Met

In relying on *Public Resources Code* §21080.20.5, LADOT has failed to show that the requirements of that Code section have actually been met. Indeed, they have not. For example, *Public Resources Code* §21080.20.5 requires not only noticed public hearings in areas affected by the project to hear and respond to public comments, but also notice, no fewer times than required by *Government Code* §6061, by the public agency in a newspaper of general circulation in the area affected by the proposed project. LADOT has failed to show compliance therewith.

Los Angeles City Council
Attn: Mike Bonin, Chair, Transportation Committee
December 13, 2017
Page Seven

VI. Emergency Provisions do not Apply

Although missing from the Staff Report, at certain times LADOT has taken the position that certain of the Vista del Mar and Safe Streets for Playa del Rey Initiative were done as part of an unidentified "emergency" action. There is no evidence to substantiate this claim.

VII. Ongoing Road Issues

Appellants do not agree that their appeal with regard to the Safe Streets for Playa del Rey Initiative is "moot." Indeed, the roads have not been restored to their original, pre-May 2017 condition (the LADOT report admits as much with regard to Vista del Mar) and maintain bicycle lanes and lanes which are narrower than existed before.

VIII. Conclusion

Appellants request that the City Council grant the appeal and require adequate environmental review to all proposed, existing and anticipated Vista del Mar changes and the Safe Streets for Playa del Rey Initiative changes.

Very truly yours,

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