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June 5, 2020

**ORIGINAL BY U.S. MAIL**

**VIA EMAIL [councilmember.martinez@lacity.org](mailto:councilmember.martinez@lacity.org)**

The Honorable Nury Martinez, President  
Los Angeles City Council  
200 N. Spring Street, Room 430  
Los Angeles, CA 90012

Re: Council File 20-0105  
2110 Bay Street Mixed-Use Project  
VTT-74564/ENV-2016-3480-EIR  
Hearing Date: June 9, 2020  
Support for Appeal

Dear President Martinez and Honorable Council Members:

This law office represents Blue Arch Investments, Inc. (“Appellant”) with regard to its pending appeal of the project referenced above (the “Project”). **Because there is substantial evidence that the Project may create significant adverse impacts that are not adequately addressed in the Final Environmental Impact Report (“EIR”), Appellant requests that the City grant its appeal and not certify the EIR until it is revised and recirculated in accordance with the California Environmental Quality Act (“CEQA”).<sup>1</sup>**

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<sup>1</sup> It should be noted that the arguments and evidence presented herein are in addition to any other arguments or evidence which the City has received or may receive from our client or its consultants at any or all public hearings on the EIR and/or the Project.

I.

**THE EIR IS LEGALLY INADEQUATE AND CERTIFICATION WOULD CONSTITUTE PREJUDICIAL ERROR AND ABUSE OF DISCRETION.**

CEQA requires a lead agency to certify a final Environmental Impact Report (“EIR”) as complete and in compliance with CEQA, and to consider the information contained therein, before approving a project. See Public Resources Code §§ 21000 et seq.; 14 Cal. Code of Regs. (“Guidelines”) § 15090. An adequate EIR must be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of the environmental consequences of the project being studied. See Guidelines § 15151. The EIR must include detail sufficient to enable those who did not participate in its preparation to understand and consider meaningfully the issues raised by the proposed project. See Laurel Heights Improvement Association v. Regents, 47 Cal. 3d 376, 405 (1988). Although CEQA does not mandate perfection, prejudicial abuse of discretion occurs if the failure to include relevant information in the EIR precludes informed decision making and informed public participation, thereby “thwarting the statutory goals of the EIR process.” Id. at 403-405. In short, CEQA requires an EIR to include a good faith effort at full disclosure. See Guidelines §15151.

Achieving the CEQA purpose of preserving and enhancing the environment requires adequate disclosure of project information and active involvement of the public at each stage of the decision-making process. Under CEQA, decisions regarding a proposed project cannot be made in a vacuum or under a veil of secrecy. Rather, they must be made under the watchful eye of the public so as to reassure “an apprehensive citizenry that the agency has, in fact, considered the ecological implications of its actions,” No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 86, and to affirmatively demonstrate that the environment is being protected. People ex rel. Department of Public Works v. Bosio (1975) 47 Cal. App. 3d 495, 528.

As the foundation on which project decisions are made, the EIR is the “heart” of this public review process. See County of Inyo v. Yorty (1973) 32 Cal.App.3d 795, 810; Laurel Heights Improvement Association v. Regents (“Laurel Heights II”) (1993) 6 Cal. 4th 1112, 1123; Guidelines § 15003(a). The EIR serves as an “environmental alarm bell” whose purpose it is to alert the public and its responsible officials to the environmental impacts associated with a proposed project. See County of Inyo, supra, 32 Cal.App.3d at 810. The public’s ability to analyze and make comments on the adequacy of the EIR is therefore critical to insure all relevant information is considered before a decision with potentially significant and irreversible effects is made. See Laurel Heights, supra, 47 Cal. 3d at 392; Laurel Heights II, supra, 6 Cal. 4th at 1123; and Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal. 3d 553, 564.

In this case, as discussed below, the EIR is defective and, therefore, does not meet the requirements mandated by CEQA. The EIR is so fundamentally flawed that CEQA’s goal of meaningful public participation and informed decision making can only be achieved by further revising and recirculating the EIR. Accordingly, Appellant objects to the certification of the EIR and to the approval of the Project for the reasons that follow.

**A. The Analysis of Impacts to Biological Resources is Inadequate.**

In response to Initial Study CEQA checklist items IV Biological Resources, a through f, the EIR states that:

The Site does not contain any natural open spaces, act as a wildlife corridor, nor possess any areas of significant biological resource value. No hydrological features are present on the Site and there are no sensitive habitats present... Therefore, no impact would occur. Further evaluation of this issue in an EIR is not required.

However, substantial evidence to the contrary exists. Enclosed please find the Bat Habitat Assessment for 2110 Bay Street prepared by Designated Bat Biologist Stephanie Remington (the "Bat Habitat Assessment"). Stephanie Remington M.S. a well-known expert in the field of bat biology who has published bat studies on behalf of the Los Angeles Natural History Museum and conducted hundreds of surveys for Caltrans and other projects in the Los Angeles area. She has conducted recent acoustic studies within one-half mile of the project site, so that the area supports bat habitats in warehouses and bridges is well documented.

As documented in the enclosed Bat Habitat Assessment, impacts to bat hibernacula often rise to the significance level, even if the species is not a sensitive one, due to the impact on maintaining a self-sustaining population and impacts of genetic isolation due to fragmentation between populations of the same species. In some species, maternal roosts may house 10 or more generations of lactating bats and their progeny and since the maturation stage lasts in years and reproduction rates are slow, loss of maternal hibernacula are significant.

The systematic loss of hibernacula, two of which have already been documented to have occurred within the Project vicinity within the last three years, may have already reached this significance threshold. As such, as documented in the enclosed Bat Habitat Assessment, loss of potential habitat or roosts in any other local projects may have significant cumulative effects in addition to significant direct and indirect effects.

Protection of biological resources is a fundamental policy incorporated into CEQA. Under Pub. Res. Code § 21001(c), it is the policy of the state to:

[p]revent elimination of fish or wildlife species due to man's activities, insure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities.

Substantial evidence of potential impacts to bat habitat exists, and the EIR fails to study this issue. As such, the EIR is legally inadequate and its certification would constitute a prejudicial abuse of discretion,

II.

**RECIRCULATION OF THE EIR IS REQUIRED.**

If significant new information is added to an EIR after the public review, the lead agency is required to recirculate the EIR or a portion of it for additional public review and comments. See CEQA Guidelines, Section 15088.5. Recirculation of an EIR for additional public review and comment is required when the new information constitutes "significant new information" which discloses: (1) a new substantial environmental impact or new mitigation measure; (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted; (3) a feasible project alternative or mitigation measure that would lessen the environmental impacts of the project that the proponents decline to adopt; or (4) that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was meaningless. See Pub. Resources Code, § 21092.1; Communities for a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70; Laurel Heights Improvement Assn. v. Regents of University of California (1993) 6 Cal. 4th 1112, 1126-1132; Western Placer Citizens for an Agr. and Rural Environment v. County of Placer (2006) 144 Cal.App.4th 890.

Here, the enclosed Bat Habitat Assessment constitutes "significant new information" which discloses "a new substantial environmental impact." Under Pub. Res. Code § 21092.1, recirculation of the EIR is required.

III.

**CONCLUSION.**

In conclusion, the EIR does not properly disclose, describe and analyze impacts of implementation of the Project. Since impacts have not been adequately disclosed or analyzed, the Mitigation Measures proposed are insufficient to mitigate the significant environmental impacts of the Project. As a result of the lack of disclosure, analysis and mitigation, the City is required to deny the Project in its entirety and not certify the EIR. At a minimum, CEQA requires the City to further revise and recirculate the EIR prior to approval of the Project.

Thank you for your time and consideration of this matter. As always, please do not hesitate to contact me at any time with any questions or comments you may have.

Sincerely,

GAINES & STACEY LLP

By

  
FRED GAINES

Los Angeles City Council  
June 5, 2020  
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cc: All Councilmembers  
Sergio Ibarra, Department of City Planning (Via Email: [Sergio.Ibarra@lacity.org](mailto:Sergio.Ibarra@lacity.org))