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LAND USE ENTITLEMENTS □ LITIGATION □ MUNICIPAL ADVOCACY

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May 27, 2020

VIA E-MAIL

City Planning Commission
City of Carson
701 E. Carson Street
Carson, CA 90745

Planning@carson.ca.us

Re: City Planning Commission May 27, 2020 Agenda Item No. 5.A) Site Plan and Design Review (DOR) 1745-18, Conditional Use Permit (CUP) 1074-18, Specific Plan (SP) 18-18, General Plan Amendment (GPA) 108-18 and Entitlement Agreement (DA) 24-18

Honorable City Planning Commissioners:

I am writing on behalf of Carson El Camino LLC, which owns the property labeled in the staff report as site 5 and a portion of site 4, both located immediately to the south of the KL Fenix project site, to oppose this project. (See attached site plan from the staff report.)

Sites 4 and 5 have as current uses that include five churches with associated childcare programs and other preschool through 12th grade student activities, a dance school, an after school program, an adult day care, and other commercial uses. On Site 5, an application has been filed for construction of up to 356 units of housing, consistent with the City's Urban Residential designation. (See site plan and elevations for that project attached.)

My client and surrounding neighbors do want to see development on the KL Fenix site, but this intensive heavy industrial trucking use is a shocking and absolutely wrong choice for this neighborhood.

The proposed project is incompatible with existing and proposed future uses in the neighborhood. It does not follow the law, does not comply with the general plan requirements for heavy industrial uses, will create a nuisance and will bring an end to the ongoing redevelopment of the Main Street corridor with housing and commercial development. The staff report clearly reflects these concerns.

Although we believe the Planning Commission should for all of these reasons deny the project outright, should you decide to further evaluate this project, an EIR must be prepared that fully and correctly evaluates its substantial impacts on the neighborhood and the City.

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I. Nuisance.

This project creates a nuisance for Sites 4 and 5 that no walls will keep out. The project will bring up to 400 cargo laden trucks per day (per the Air Quality analysis attached to the MND) to idle on the site with loading activities taking place until 2 a.m. 5 days a week and with additional hours on Saturday. These uses, including the noise, air quality and traffic impacts they bring, are not compatible with and will be dangerous to the surrounding residential and school uses, including the Vista Del Loma Mobile Estates and the 300-unit Evolve Apartments (under construction). It will also have enormous impacts on future development of housing on our project site.

II. Inconsistent with General Plan and Laws.

Under the Carson General Plan, the Heavy Industrial designation is intended to provide for uses that **“may have nuisance or hazardous characteristics, which for reasons of health, safety, environmental effects, or general welfare, are best segregated from other uses.”** Rather than being segregated from other uses, this heavy industrial truck yard project is plopped down as an island in the midst of a variety of incompatible uses. In fact, the proposed project is classic spot zoning which is prohibited by law. It creates an "island" in the middle of a larger area of other uses. (Foothill Communities Coalition v County of Orange (2014) 222 CA4th 1302). As noted in the staff report, the nearest Heavy Industrial sites are miles away from this site and are clustered with other heavy industrial uses. The project also raises equal protection and uniformity issues by creating a special class of heavy industrial use.

Also, the specific plan is inconsistent with the proposed general plan amendment. The applicant has rushed this project through, and the specific plan does not even identify the correct general plan designation, make accurate general plan findings or restrict uses on the site to those addressed in the Mitigated Negative Declaration.

The Specific Plan also allows a variety of uses by right that are wholly incompatible with the neighboring uses, including petroleum and natural gas storage.

Finally, the Specific Plan itself requires findings which are clearly contrary to the record and cannot be made by this Commission, including a finding that in light of the project as a whole, including any mitigation measures imposed, the project is compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety. In light of the record before you, this finding cannot be made.

III. Granting Temporary Heavy Industrial Use of the Project Site Is Still Inconsistent with the General Plan and This Approach Cannot Be Successfully Maintained

The staff report indicates that the heavy industrial uses are not consistent with the General Plan or surrounding uses, but can be made compatible for a temporary period of time. Something non-compatible in the long term cannot be made compatible in the short term. The concept is that

the project uses will not be automatically renewed if any housing is developed on the adjoining sites. But the approach proposed by staff to address these issues is doomed to fail. It does not preclude continuing use of the site for heavy industrial use. And if the City seeks to terminate the use, it will face years of litigation. The enforcement mechanisms proposed are simply not sufficient to ensure compliance with the requirements the City seeks to impose.

We have tested the market and bringing heavy industrial uses onto the project site will reduce or remove the availability of financing for future residential development in the area and will result in redevelopment of the corridor with heavy industrial rather than residential uses, which will not only affect our project and surrounding uses, but will also affect the ability of the City to comply with RHNA requirements. This makes the short-term nature of the initial authorization unlikely, as the project will inevitably deter the types of uses the City wants to see in the area, and a short term heavy industrial designation will make a long term heavy industrial use in the area inevitable.

IV. The MND is Inadequate and An EIR Must be Prepared for this Project

The Mitigated Negative Declaration does not adequately address the Project. A full EIR is required.

A. The MND Does Not Analyze Specific Plan Uses and Does Not Contain an Accurate or Stable Project Description.

The MND fails to evaluate the specific plan, focusing on only one of the permitted uses among the many uses authorized by the Specific Plan, including oil and gas storage uses and contains an inadequate project description. The project is variously described as a cargo container parking facility, a warehouse for transfer of goods and a logistics site but there is no consistency in the description or in the analysis. The MND fails among other things to properly analyze air quality, traffic, noise and construction impacts and fails to properly describe the impacts of each on surrounding sensitive uses.

B. Noise Analysis is Inadequate

Actual construction techniques to develop a building on the landfill site are not analyzed. For example, pile construction is not analyzed even though pile construction is required by the geotechnical report and was found in other city EIRs to be a significant and unavoidable impact. Construction noise impact analysis focuses on the easterly boundary of the site and does not analyze impacts at the southerly boundary. For operations, the noise analysis uses Leq, rather than the appropriate CNEL standard, which minimizes the real impacts on the community because it does not catch noise impacts from trucks idling and the constant banging from the connecting and disconnecting of trailers on the site. This is especially magnified during evening and nighttime hours in a residential neighborhood. The use Leq fails to look at these impacts of the project.

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C. Air Quality Analysis is Inadequate.

The project's analysis of air quality impacts also fails due to lack of an adequate project description. Although the MND identifies a total 546 average daily trips from passenger vehicles and 641 average daily trips from heavy duty trucks are identified in the AQ report only 24 trucks idling at the warehouse for loading per day were assumed in the CEQA analysis, vastly underestimating the impacts of trucks idling on site was not taken into account in the health risk assessment despite the presence of existing sensitive uses, including school children, immediately south of the project site. There is no operational Toxic Air Contaminant analysis provided despite the presence and idling of up to 641 trucks daily on the site.

D. Land Use Analysis is Inadequate

Based on the discussion above, the conclusion of consistency with the General Plan Land Use Element made in the land use analysis is incorrect. The Heavy Industrial Land Use designation is not separated from other uses as is required by the General Plan and is inconsistent with overall General Plan requirements.

E. Mitigations Proposed Are Woefully Insufficient.

The mitigations proposed are wholly inadequate. For example, the noise mitigation proposed, to stop back up signaling after a certain hour, likely violates OSHA requirements and does not address the enormity of the problem presented by the project.

F. No Cumulative Impacts Analysis.

The MND fails to analyze the cumulative impacts of the project, identifying the housing project on my client's property as speculative even though there is an application on file for the proposed residential uses and omitting any cumulative impacts analysis.

For all of these reasons, we urge you not to adopt the requested actions this evening. Neither a truck and container storage yard or any other industrial land use should be considered for this property which is surrounded by residential and church and school uses.

Very truly yours,



Amy E. Freilich

Planning Commission Staff Report

KL Fenix Project

Figure (c) Surrounding parcels and area



CHAPTER 3: LAND USE ILLUSTRATIVE

The development standards and guidelines contained within the Specific Plan permit multiple dwelling units, mixed-use and commercial. To gain an understanding of what could be developed under the Specific Plan, the following illustrative presents conceptual drawings of building footprints and heights for a residential, market rate apartment project. It is important to note that the illustrative site and building height plans (Figure 3-6) are conceptual and that a final plan may vary provided it complies with the regulations proposed herein, as described in Chapter 2.

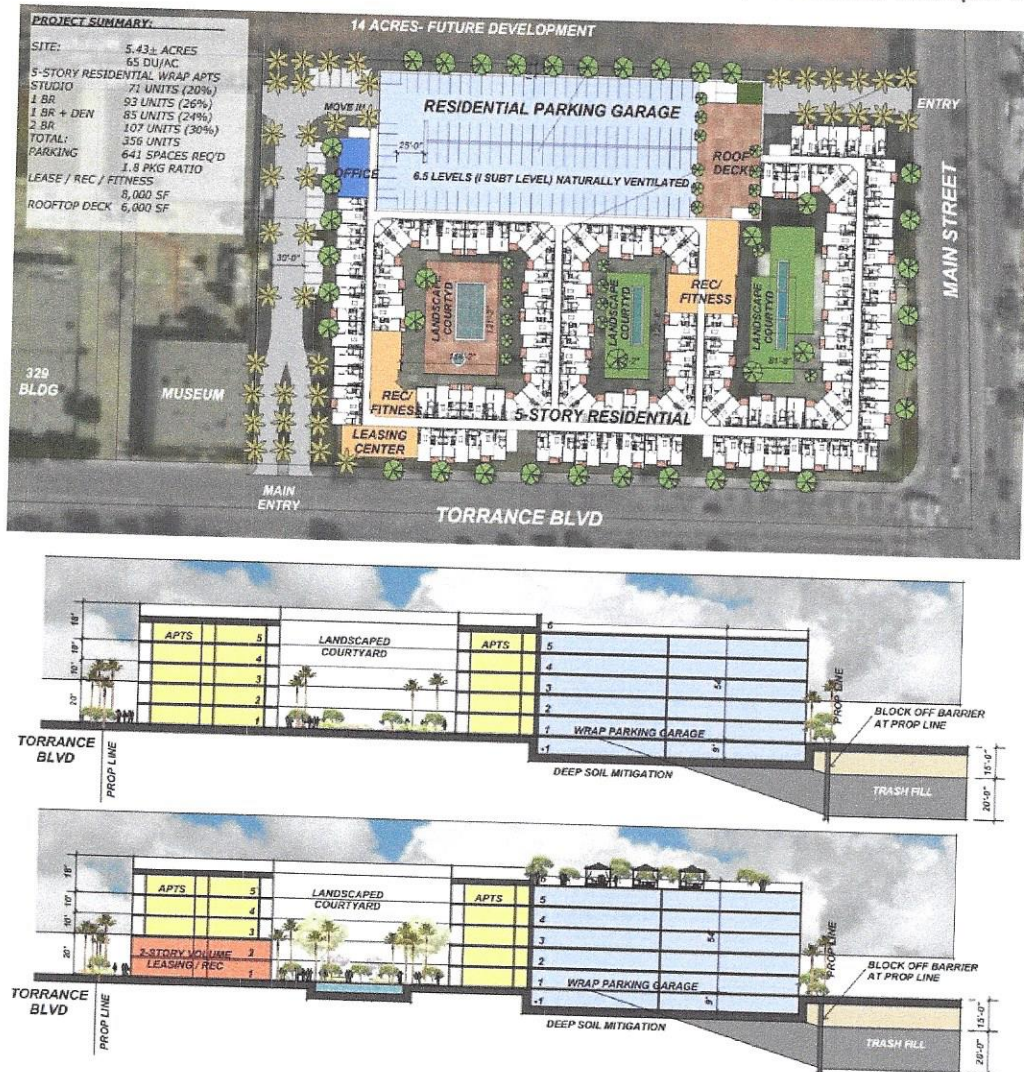




Figure 3-7 Representative Elevation Types

MEMORANDUM

To: Manraj Bhatia, City of Carson
From: Collin Ramsey, Dudek
Subject: KL Fenix Cargo Container Parking Specific Plan – Response to Comment Letter Authored By Armbruster Goldsmith & Delvac LLP
Date: June 23, 2020

Dudek has reviewed the comment letter authored by Amy E. Freilich at Armbruster Goldsmith & Delvac LLP dated May 27, 2020 and have the following responses to the comments pertaining specifically to the Initial Study/Mitigated Negative Declaration (IS/MND).

Comment

A. The MND Does Not Analyze Specific Plan Uses and Does Not Contain an Accurate or Stable Project Description.

The MND fails to evaluate the specific plan, focusing on only one of the permitted uses among the many uses authorized by the Specific Plan, including oil and gas storage uses and contains an inadequate project description. The project is variously described as a cargo container parking facility, a warehouse for transfer of goods and a logistics site but there is no consistency in the description or in the analysis. The MND fails among other things to properly analyze air quality, traffic, noise and construction impacts and fails to properly describe the impacts of each on surrounding sensitive uses.

Response

The project description provided in Section 2 of the IS/MND is based on the project information provided to the City of Carson by the Project applicant. The project description is clear in identifying the proposed project characteristics and clearly defines the project as consisting of an approximately 53,550-square-foot warehouse/office building (comprised of 39,500 square feet of warehouse space and 14,050 square feet of office use), 115 parking spaces for passenger vehicles, 400 spaces for cargo containers, 75 spaces for truck parking, 6 loading docks, and designated exterior and interior areas for the unloading and loading of goods between containers. This is the same project description that was referenced by technical specialists while conducting the air quality, greenhouse gas emissions, noise, and traffic studies for the Project.

Given that the IS/MND presents a Project-level analysis (as opposed to a Program-level evaluation), and because the Project applicant did not propose oil or gas storage in their development applications, these use/activities were not analyzed as part of the Project. Assuming that the proposed on-site uses/activities are defined (as was done in this case), the IS/MND need not evaluate each and every permissible use/activity allowed under the Specific Plan. This is consistent with the City's analysis of other projects that may fall within the boundaries of a Specific Plan.

Comment

B. Noise Analysis is Inadequate

Actual construction techniques to develop a building on the landfill site are not analyzed. For example, pile construction is not analyzed even though pile construction is required by the geotechnical report and was found in other city EIRs to be a significant and unavoidable impact. Construction noise impact analysis focuses on the easterly boundary of the site and does not analyze impacts at the southerly boundary. For operations, the noise analysis uses Leq, rather than the appropriate CNEL standard, which minimizes the real impacts on the community because it does not catch noise impacts from trucks idling and the constant banging from the connecting and disconnecting of trailers on the site. This is especially magnified during evening and nighttime hours in a residential neighborhood. The use Leq fails to look at these impacts of the project.

Response

Actual construction techniques (i.e., project construction phases such as site preparation, grading, building construction, etc.) were assessed, using the anticipated type and number of construction equipment – please see Section 3.13 (Noise), Tables 9 and 10. With regard to the specific comment concerning pile driving, the Geotechnical Study prepared for the Project site and appended to the IS/MND stated, “drilled pile **can** [emphasis added] be used for the foundation system.” However, it did not state or infer that pile driving was the only means of construction, and the Project applicant has never indicated that pile driving is the selected construction method. Thus, pile driving was not assumed in the noise analysis.

In addition, despite what the comment infers, land uses found both east and south of the project site were taken into consideration in the noise analysis. This is clearly evident in Mitigation Measure (MM) NOI-5, which requires the Project applicant to install temporary construction sound barriers along the southerly Project boundary in addition to the easterly boundary.

The L_{eq} noise metric was used to model and evaluate Project-related noise impacts because the City’s Noise Ordinance and associated noise standards use L_{eq} and not CNEL (Community Noise Equivalent Level, a 24-hour average weighted noise metric) . CNEL is used in the City’s General Plan and is used in that particular document to illustrate land use compatibility pertaining to estimated noise levels. However, when determining whether on-site noises from a Project would or would not be consistent with the City’s Noise Ordinance, L_{eq} is the more appropriate metric in order to disclose an apples-to-apples comparison.

Comment

C. Air Quality Analysis is Inadequate

The project’s analysis of air quality impacts also fails due to lack of an adequate project description. Although the MND identifies a total 546 average daily trips from passenger vehicles and 641 average daily trips from heavy duty trucks are identified in the AQ report only 24 trucks idling at the warehouse for loading per day were assumed in the CEQA analysis, vastly underestimating the impacts of trucks idling on site was not taken into account in the health risk assessment despite the presence of existing sensitive uses,

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including school children, immediately south of the project site. There is no operational Toxic Air Contaminant analysis provided despite the presence and idling of up to 641 trucks daily on the site.

Response

As previously discussed above, the project description provided in the IS/MND is based on the project information provided to the City of Carson by the Project applicant. The project description is clear in identifying the proposed project characteristics and clearly defines the project. This is the same project description that was referenced by technical specialists while conducting the technical studies – including the air quality analysis -- for the Project.

Given that the City is conditioning the Project applicant to reduce the number of on-site truck stalls that can be used at any given time, the air quality analysis likely overestimates operational air emissions, as reduction in the number of on-site truck spaces would result in a proportional reduction in on-site operational intensity and Project-related trips, all of which would result in a similar reduction in tailpipe air emissions (e.g., NO_x).

Only 6 loading dock doors will be provided on-site, and the warehouse building will not operate 24 hours, 7 days a week. Thus, based on experience with other industrial/warehouse projects that are not fulfillment or other similar types of high-intensity logistics operations, assuming 4 truck turns per dock per day is reasonable.

Truck idling, although limited, was accounted for in the air quality analysis. As we understand it, the trucks would enter the Project site, find their assigned space or go to a free loading dock, and then turnoff their engines. In addition, idling is governed by California Air Resources Board (CARB) rules that limit the amount of time that a truck can be left to continuously idle.

The commenter is incorrect to state that “no operational Toxic Air Contaminant analysis provided,” as the Health Risk Assessment (HRA) was prepared and provided in Appendix C and summarized in Section 2.4.2.3 of the Draft IS/MND. For the operational HRA (as well as the mass emission estimates), all trucks were assumed to idle a maximum of 5 minutes each at the entrance gate and the exit gate; for a total of 10 minutes at the gates. For a small portion of trucks accessing the on-site warehouse, an additional 5 minutes of idling time was assumed to occur at the loading docks. To estimate the potential additional idling at the loading docks, it was assumed that one turn would occur every three hours at each of the six loading docks, resulting in a total of 24 trucks idling at the warehouse per day. Project truck idling would be limited to 5 minutes in accordance with CARB’s adopted Airborne Toxic Control Measure.

The operational HRA included all air quality sensitive receptors that would have the potential for long-term exposure. No short term, acute relative exposure values are established and regulated for diesel particulate matter, which is the toxic air contaminant of concern; thus, the focus of the operational HRA is on long-term exposure. The toxic air contaminant exposure period was assumed to be from third trimester to 30 years for all receptor locations, which is the appropriate conservative approach to this analysis. The Project is not anticipated to operate on Sundays; however, the operational HRA assumed 365-days per year operation, so the results of the analysis overestimate impacts and are conservative.

As shown in Table 2.5-6 of the Draft IS/MND, Project operational activities would result in a Residential Maximum Individual Cancer Risk of 4.29 in 1 million, which would be less than the significance threshold of 10 in 1 million. Project operation would also result in a Residential Chronic Hazard Index of 0.001, which is below the 1.0 significance threshold.

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Multiplying the maximum estimated 70-year cancer risk by the Project population gives a cancer burden of 0.057, which is less than the SCAQMD cancer burden threshold of 0.5. Therefore, the impacts with respect to both potential cancer burden and TAC health risk due to Project operations would be less than significant.

Comment

D. Land Use Analysis is Inadequate

Based on the discussion above, the conclusion of consistency with the General Plan Land Use Element made in the land use analysis is incorrect. The Heavy Industrial Land Use designation is not separated from other uses as is required by the General Plan and is inconsistent with overall General Plan requirements.

Response

The majority of Project-related truck traffic would both exit and enter the adjacent I-110 without having to traverse past residential or other land uses. The City has designated truck routes where vehicles in excess of 3 tons may travel. The purpose of regulating truck routes is to provide access for large trucks on streets designed to accommodate them and to protect residential streets from unwanted truck traffic. Del Amo Street, Main Street, Figueroa Boulevard, and Torrance Boulevard, which surround the project site, are designated truck routes (City of Carson 2019). The project would traverse the adjacent streets, which is the intention of the City in an effort to minimize truck traffic effects on the surrounding non-industrial uses.

Approval of the project would require Site Plan and Design Review to ensure the project does not conflict with applicable zoning and other regulations in place to ensure compatibility between surrounding land uses. Compliance with applicable development standards in the City's Zoning Ordinance would help ensure consistency with the existing character of the surrounding area.

Comment

E. Mitigations Proposed Are Woefully Insufficient

The mitigations proposed are wholly inadequate. For example, the noise mitigation proposed, to stop back up signaling after a certain hour, likely violates OSHA requirements and does not address the enormity of the problem presented by the project.

Response

Although a blanket statement is made stating that IS/MND's mitigation measures are inadequate, the only example provide is for a requirement that is not even a mitigation measure identified in the IS/MND, but instead a condition of approvals included in the Staff Report.

Memorandum

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Comment

F. No Cumulative Impacts Analysis.

The MND fails to analyze the cumulative impacts of the project, identifying the housing project on my client's property as speculative even though there is an application on file for the proposed residential uses and omitting any cumulative impacts analysis.

Response

This comment misrepresents what is stated in the IS/MND. The IS/MND never states that any cumulative/related project is not analyzed or taken into consideration. Instead, when evaluating cumulative localized impacts, the IS/MND states that, "Schedules for potential future projects near the project area are currently unknown; thus, potential impacts associated with two or more simultaneous projects would be considered speculative." The CEQA Guidelines find that if a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact (14 CCR 15145). As of this date, the development application for the nearby residential project referred to in this comment has been placed on hold until that applicant coordinates further with the Department of Toxic Substances Control. As such, the construction schedule for this neighboring project is currently unknown and presently highly speculative.

Comment

For all of these reasons, we urge you not to adopt the requested actions this evening. Neither a truck and container storage yard or any other industrial land use should be considered for this property which is surrounded by residential and church and school uses.

Response

Refer to response to comments above regarding land use compatibility.