Report to Mayor and City Council

Tuesday, November 17, 2020

Special Orders of the Day

SUBJECT:

A CONTINUED PUBLIC HEARING TO CONSIDER: (1) INTRODUCTION OF ORDINANCE NO. 20-2014 OF THE CITY COUNCIL OF THE CITY OF CARSON TO APPROVE ENTITLEMENT AGREEMENT NO. 24-18; AND (2) ADOPT RESOLUTION NO. 20- 134 OF THE CITY COUNCIL OF THE CITY OF CARSON AFFIRMING PLANNING COMMISSION'S APPROVAL OF CONDITIONAL USE PERMIT NO. 1074-18, AND APPROVING GENERAL PLAN AMENDMENT NO. 108-18, KL FENIX CONTAINER PARKING SPECIFIC PLAN NO. 18-18, MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM FOR THE CONSTRUCTION OF A 53,550 SQUARE FOOT WAREHOUSE AND OFFICE BUILDING, AND A TEMPORARY CONTAINER PARKING FACILITY WITH 475 TRUCK AND CONTAINER PARKING SPACES ON A 14.33 ACRE SITE LOCATED AT 20601 MAIN STREET (CITY COUNCIL)

I. SUMMARY

On August 18, 2020, City Council considered this item in a public hearing (Refer Exhibit 8). At the hearing, several letters of opposition were presented (Refer Exhibit 19). The applicant also presented its concerns and disagreement with certain aspects of the Planning Commission approval (Exhibit 9). After discussion and deliberation on the project, Council voted 3-2 to continue the item for 90 days after directing staff to explore sources of funding for remediation of the organic landfill site.

Staff has worked with the City's public affairs and grant-writing consultants Townsend Public Affairs and California Consulting to search available brownfields funding opportunities appropriate for landfill development. In addition, Staff researched the subject on the State of California grant portal; however, no additional sources of funding were identified through this research. A total of eight state or federal funding opportunities have been identified for brownfield remediation. From the eight funding opportunities, three low-interest rate loan opportunities appeared viable for KL Fenix. The detailed summary of these three funding opportunities is included as Exhibit 7.

In the interim, Staff also reviewed the revised Specific Plan submitted by applicant and met with the applicant to try to resolve the several disagreements applicant presented to the

City Council during the August 18, 2020 hearing. Some of the issues were resolved by way of discussion and clarification, and some conditions were satisfied by applicant's resubmittal of materials. Other minor modifications were made to clarify the intent of Staff and Planning Commission approval. Even after these discussions and resolutions, there are several disagreements still pending between Staff's position and applicant's expectation. These are presented in detail later in this report.

It should be noted that it is within the City Council's full discretion to approve or deny the project. If the City Council should decide to approve the project, it would approve Ordinance No. 20-2014 and Resolution No. 20-134, as detailed below. If the City Council denies the project, it would deny the permits proposed in Ordinance No. 20-2014 and Resolution No. 20-134, by adopting a denial resolution to be furnished by the City Attorney after the City Council renders its decision.

II. RECOMMENDATION

TAKE the following actions:

1. **OPEN** the public hearing, **TAKE** public testimony, and **CLOSE** the public hearing; and
2. **INTRODUCE**, for first reading Ordinance No. 20-2014, entitled, "AN UNCODIFIED ORDINANCE OF THE CITY OF CARSON, CALIFORNIA, APPROVING ENTITLEMENT AGREEMENT NO. 24-18 BETWEEN THE CITY OF CARSON AND KL FENIX CORPORATION FOR A PROPOSED WAREHOUSE AND TEMPORARY CARGO CONTAINER PARKING FACILITY AT 20601 SOUTH MAIN STREET" (Exhibit 1); and
3. **ADOPT** Resolution No. 20-134 entitled, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON AFFIRMING PLANNING COMMISSION'S DECISION TO APPROVE CONDITIONAL USE PERMIT NO. 1074-18, AND APPROVING SPECIFIC PLAN NO. 18-18, GENERAL PLAN AMENDMENT NO. 108-18, AND MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM FOR A PROPOSED WAREHOUSE AND TEMPORARY CARGO CONTAINER PARKING FACILITY AT 20601 S MAIN STREET" (Exhibit 2); **OR**
4. **DENY** APPROVAL OF ENTITLEMENT AGREEMENT NO. 24-18, CONDITIONAL USE PERMIT NO. 1074-18, SPECIFIC PLAN NO. 18-18, GENERAL PLAN AMENDMENT NO. 108-18, AND MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM FOR A PROPOSED WAREHOUSE AND TEMPORARY CARGO CONTAINER PARKING FACILITY AT 20601 S MAIN STREET.

III. ALTERNATIVES

At the time of writing this staff report, there are several issues where the developer disagrees with Staff's position and Planning Commission's approval. If the applicant does not agree to the terms and conditions attached with the project prior to the continued the City Council hearing, the City Council may consider the following options:

- **CONTINUE** the item and provide direction to staff on the City Council's position on these issues; **OR**
- **TAKE** such other action as the City Council deems appropriate, consistent with the requirements of the law.

IV. BACKGROUND

Site History

The subject property was occupied by the Gardena Valley Landfill No. 1 & 2 from 1956 until 1959 and accepted approximately 75% residential municipal waste and 25% construction or industrial wastes. Industrial waste included crude oil derivatives (crude oil and tank bottoms), paint sludge, auto wash sludge, latex, molasses, cutting oil, and other semi-liquids. The average depth of the waste materials is approximately 25 feet. The former landfill was capped with approximately 5 feet of soil at the termination of landfill operations in 1959. The site has remained vacant ever since.

Project History

On March 20, 2018, the City Council adopted Interim Urgency Ordinance No. 18-1805U, extending a moratorium for 12 months on the establishment, expansion, or modification of truck yards, logistics facilities, hazardous materials or waste facilities, container storage, and container parking (Moratorium). Section 6 of this Ordinance allowed the City Council to grant exceptions. On June 6, 2018 and July 24, 2018, the applicant filed a request for an exception to the moratorium and the City Council granted the exception at its regularly scheduled meeting of August 21, 2018. The exception enabled the applicant to file for the required entitlement applications. The moratorium expired on March 20, 2019 and is no longer in effect.

On May 27, 2020, the Planning Commission conducted a public hearing to consider the request of applicant KL Fenix Corporation, for a General Plan Amendment (GPA) to change the designation of its parcel from Mixed-Use Business Park (MU-BP) to Heavy Industrial (HI), a Zone Change via the Specific Plan (SP), an Entitlement Agreement (EA) to regulate the temporary use and ensure compatibility to surrounding area, a Conditional Use Permit (CUP) and a Site Plan and Design Review per CMC 9172.23 for development of a 53,550 sq. ft. warehouse and office incorporated with an artistic feature and a temporary truck/cargo container parking facility on portions of the property. This is a former

Organic Refuse Landfill site that has sat vacant and has been in a blighted condition since the closure of the landfill in 1959. As part of the redevelopment of the property, it will be remediated with the Department of Toxic Substances Control (DTSC) being the oversight agency. The Heavy Industrial land use designation is necessary to allow the temporary container parking facility use component of the development.

After considering the item, the Planning Commission continued this item to the July 28, 2020 meeting, which was continued to July 29, 2020, to allow the applicant and staff to resolve certain disagreements between staff and the applicant with respect to the applicant's proposal. The Planning Commission also directed the applicant to host a Community Meeting or other type of feasible community outreach during the COVID-19 health crisis.

Prior to the May 27, 2020, Planning Commission meeting, the law firm of Armbruster Goldsmith & Delvac LLP, submitted a letter detailing purported land use issues associated with any approval of the project, one issue being that approval would create illegal spot zoning and another being that the proposed project is incompatible with the surrounding areas (see Exhibit 17).

On July 29, 2020, the Planning Commission considered the item in a public hearing and voted 7-1 to approve Site Plan and Design Review No. 1745-18 and Conditional Use Permit No. 1074-18 and recommended approval of General Plan Amendment No. 108-18, Specific Plan No. 18-18, Entitlement Agreement No. 21-18 and Mitigated Negative Declaration and Mitigation Monitoring Reporting Program (MMRP) to the City Council for construction of a 53,550 square foot warehouse and office building with 115 vehicular parking spaces, with a temporary container parking facility having 475 truck and container parking spaces for a period of ten (10) years.

Planning Commission's Action

The Commission's approval included a finding that the provisions included in the Entitlement Agreement (EA) and the Conditions of Approval will ensure the proposed project will not be incompatible with the immediately surrounding areas both now and in the future. The following provides a summary of the Planning Commission's approval:

- Warehouse use shall not cease under any circumstances and is permanently vested upon approval.
- The temporary truck/cargo container parking use term is 10 years.
- If no residential or commercial development occurs in the surrounding parcels (parcels 3, 4 or 5 in Exhibit 6) within the 10-year period, the truck/cargo container parking use shall be vested into perpetuity.
- If any time within this 10-year term, a residential or commercial development is built on the surrounding parcels (parcels 3, 4 or 5 in Exhibit 6), the truck/cargo container parking use and operations shall permanently cease within 60 days of notice from the City or any 3rd party after the issuance of the building permits for any of the surrounding parcel(s).

- If the operations do not cease after the 60th day, a fine of $500 per day shall be levied until the truck/cargo container parking use ceases and the property is brought into conformance with the applicable conditions of approval. These fines shall be deducted from the $100,000 developer deposit discussed in the fines section below.
- No trucks shall be permitted to traverse on Torrance Boulevard or Main Street, as those rights of way shall be used for passenger vehicle access only. A fine of $1,000 per occurrence shall be assessed against developer as a penalty to be deducted from the $100,000 developer deposit discussed in the fines section below.
- If the truck/cargo container parking uses and operations are required to cease permanently, all the temporary 475 truck/cargo container parking spaces shall be fenced off, the site landscaped in a way to effectively stop possible use of the site for a truck/cargo container parking use, and maintained in a clean condition.
- The entire project including the warehouse and the 475 truck/cargo container parking spaces are required to be built at the same time to ensure that the applicant does not merely develop the truck/cargo container parking spaces.

Applicant's Disagreements with Staff's Position & Planning Commission Approval

The applicant does not concur with several of the Conditions of Approval and Entitlement Agreement terms as approved by Planning Commission. Their arguments were presented to the City Council during the August 18, 2020 hearing. The item was then continued for 90 days. In the interim, Staff has attempted to resolve as many of these issues as reasonably possible by way of clarifying the intent of Staff and Planning Commission approval in the Conditions of Approval and Entitlement Agreement. However, there are several outstanding issues on which a resolution could not be reached as of the writing of this staff report. These are presented below:

Entitlement Agreement

a. Section 2.2 - Agreement Compliance Deposit -

This section of the Entitlement Agreement discusses penalties and fines that can be imposed on the project along with any attorney fees incurred by the City in achieving compliance.

Developer's Disagreement*:*

The applicant disagreed on the language of the section and Staff agreed to put a cap on the amount of attorney fees that can be recovered from the Developer. However, an agreement on the amount has not yet been reached.

b. Section 2.3- Permanent Vesting or Cessation of Truck/Cargo Container

Parking Facility; Warehouse-

This section discusses the process of notification to the developer for cessation of the Truck/Cargo Container Parking use in the event that surrounding parcels develop as anything other than industrial. Staff included notification to the developer by the City or by any 3rd party to act as a notice of cessation. Staff's intent was to allow the potential developer of adjacent parcel to notify the developer in the event of issuance of permits.

Developer's Disagreement:

Applicant disagrees with the 3rd party notification.

c. *Section 2.4 - Requirements after permanent cessation of Truck/Cargo Container Parking use-*

This section discusses requirements in the event the Truck/Cargo Container Parking use has to cease. It includes requirements to fence off all 475 Truck/Cargo Container Parking spaces with the exception of a drive-aisle to access the warehouse, maintain the entire Property in a clean condition in accordance with the City's Municipal Code, and provide landscaping throughout the Property in a way to effectively stop possible use of the Property, or any portion thereof, for Truck/Cargo Container Parking use. To meet these requirements and to save time and cost to the developer, this section requires a future Site Plan and future landscape plan to be submitted now and approved before the issuance of any project permits.

Developer's Disagreement:

Staff met with the developer and explained the intent behind this section. The developer team promised to discuss this issue internally and communicate the results of such discussion to staff; however, at the time of writing this Staff Report, the developer has not conveyed their response to Staff.

d. *Section 2.6 - Penalties associated with failure to cease use, remove or retrofit -*

Developer's Disagreement:

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Developer has the same concerns as in Section 2.4 of the Entitlement Agreement discussed in (c) above.

e. Section 3.3 - Escrow-

This section was added in the Entitlement Agreement per Planning Commission approval, requiring the developer to set up an Escrow account with $50,000, as a good faith gesture, to cover any indemnity related claims against the City.

Developer's Disagreement:

Developer disagrees with the language of this section maintaining that this should be limited only to legal challenges against the project approvals and also that funds should be released once the timeline for such challenges have passed.

f. Section 4.1 (f) - Artistic Piece-

The City Council moratorium exception resolution for this project requested an artistic piece to be installed along the project's Main Street frontage. Section 4.1(f) of the Entitlement Agreement is drafted in keeping with this request. To avoid delays to the project due to disagreements on the artistic piece matter, Staff also included an option for the Developer to pay an in-lieu fee for the artistic piece before issuance of any permits.

Developer's Disagreement:

Developer would like to have a firm amount determined before project approvals for an in-lieu fee. After researching other cities, Staff concluded that typically a fee equal to 1% of project appraisal is charged for art pieces. Staff presented this option to the Developer and Developer agreed to discuss this internally and communicate the results of such discussion to Staff. However, at the time of writing of this Staff Report, Developer has not conveyed a response on this matter to Staff.

g. Section 4.1 (h) - Video Surveillance Cameras - Section 4.1 (h) of the Entitlement Agreement discusses the requirement of Video Surveillance Cameras on the project site. It further goes on to discuss potential locations

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of such cameras clearly outlining the intent of the cameras while not specifying the exact locations or number of cameras which would be determined by a professional firm dealing with video surveillances after the project approvals by the City Council.

Developer's Disagreement:

Developer disagrees with the language of the Entitlement Agreement section 4.1 (h) and would like Staff to determine the exact number and location of such cameras on site prior to City approvals. Staff has discussed the matter with the developer and informed them that Staff doesn't have the expertise to determine the exact number or locations. Staff proposed that developer submit a plan prepared by a professional firm for Staff's review. Once again, Developer agreed to discuss the matter internally and communicate the results of such discussion to staff. However, at the time of writing of this Staff Report, Developer has not conveyed a response on this matter to Staff.

2. Conditions of Approval

a. #1- Interim DIF Payment -

Staff's calculation of DIF is based on both truck and container parking spaces since Staff believes that containers are also brought onto the site via trucks and this interpretation is in keeping with the intent of Ordinance 19-1931.

Developer's Disagreement:

The developer has been maintaining that the IDIF should be charged only on the 75 truck spaces proposed on site based on the usage of the term in Ordinance 19-1931. They disagree with Staff's interpretation that Container Spaces should also be included for the calculation of IDIF.

b. #28- Artistic Piece -

Developer's Disagreement:

This issue has already been discussed under the Entitlement Agreement discussion, Section 1f.

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c. #44- Additional on-site landscaping -

Developer's Disagreement:

This issue is a continuance of Entitlement Agreement Section 2.4 discussed earlier in the Entitlement Agreement discussion, Section 1d.

d. #45- Submittal of proposed, future Site Plan in the event of cessation of the use -

Developer's Disagreement:

This issue is a continuance of Entitlement Agreement Section 2.4 discussed earlier in the Entitlement Agreement discussion, Section 1d.

e. #63- Project Operations, in the event of cessation of the use, all 475 spaces shall be fenced off and area landscaped-

Developer's Disagreement:

This issue is a continuance of Entitlement Agreement Section 2.4 discussed earlier in the Entitlement Agreement discussion, Section 1d.

General Plan and Specific Plan Consistency

The proposed truck/cargo container parking use is not allowed within the Mixed-Use Business Park General Plan Land Use designation. Therefore, to implement the proposed project, a General Plan Amendment is required to change the General Plan Land Use Designation to Heavy Industrial. This change would make this parcel the only parcel in the vicinity of the site with a HI designation.

Since the current zoning of the site is not compatible with the HI land use designation, a zone change is required. Typically, the implementing zone for the HI designation is Manufacturing Heavy (MH) zone. However, since the MH zone allows a variety of uses not desired in this area, Staff requested the applicant to file for a specific plan which provides more control over the possible uses of the site.

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Environmental Review

Pursuant to the California Environmental Quality Act (CEQA), a Draft Mitigated Negative Declaration was prepared and made available for public review from April 14, 2020 through May 13, 2020. A Notice of Intent to Adopt a Draft Mitigated Negative Declaration was posted with the City Clerk, LA County Clerk, Carson Library, on-site, and sent to responsible agencies. An electronic copy of the document was also posted on the Planning Division website (<http://ci.carson.ca.us/CommunityDevelopment/KLFenix.aspx>). No comments were received recommending that an Environmental Impact Report (EIR) should be prepared.
During the Initial Study phase, the project's location on a previous landfill was also evaluated as potentially significant impact under Hazards and Hazardous Materials section. It was determined that several previous investigations, including remedial investigations and feasibility studies for the waste and groundwater, human health risk assessment, and a remedial action plan (RAP) for the former landfill waste were completed. The RAP for the waste proposed the construction of a cover and the addition of a landfill gas collection system and flare. The remedial design document to implement the RAP was prepared in 1999; however, to date, closure of the landfill in accordance with the 1999 Remedial Design and other remedial documents (e.g., the groundwater remedial investigation and feasibility study) has not occurred.

In 2019, the project applicant entered into a voluntary oversight agreement with the DTSC to review the existing environmental documents for the project site and to provide opinions on the site remediation needed to comply with the requirements of the land use restrictions and complete the project. The applicant recently submitted a design approval letter from DTSC that approves the Construction Quality Assurance Plan (CQAP). CQAP summarizes the activities associated with the installation of the pavement system and cover system at the project site. DTSC oversight will continue until the CQAP is successfully implemented.

Potentially significant impacts of Air Quality, Cultural Resources, Geology and Soils, Noise, Transportation and Tribal Cultural Resources were also identified during the Initial Study. Per the Negative Declaration, with the inclusion of the proposed mitigation measures, adverse impacts are mitigated to the maximum extent feasible and below a level of significance. The Mitigated Negative Declaration (MND) was circulated for public review from April 14, 2020 to May 13, 2020. At the close of the review period, comments from Caltrans, LA County Fire Department and LA County Sanitation District were received which are addressed in the Final MND, also available at the link above, and potential concerns have been addressed via Conditions of Approval for the project.

Additionally comments were received from Armbruster Goldsmith & Delvac LLP, legal counsel of Carson El Camino LLC on the inadequacies of the CEQA document, which have been addressed in a letter by City's Environmental Consultant (Exhibit 14). Based on the comments and their responses, Staff believes that revising or recirculating the MND is not warranted.

Public Notice & Community Outreach

Public notice was posted in the Daily Breeze newspaper on November 5, 2020. Notices were mailed to property owners and occupants within a 750' radius and posted to the

project site by November 5, 2020. The agenda was posted at City Hall no less than 72 hours prior to the City Council hearing.

V. FISCAL IMPACT

Interim Development Impact Fee (IDIF)

On July 1, 2020, the citywide DIF fees were adjusted in accordance with Article XI of the Carson Municipal Code (Interim Development Impact Fee Program) which requires the applicant to pay an estimated one-time development impact fee of $346,552 (currently $729.52 per truck/container space based on 475 Truck Spaces) to fund the development's proportional share of city-wide capital infrastructure improvements. The fee paid will be proportional to the number of truck spaces ultimately approved for the project and the fee in effect when building permits are issued, refer to COA #1.

Funding Mechanism for Ongoing Services / Community Facilities District (CFD)

The applicant, property owner, and/or successor to whom these project entitlements are assigned (Developer) is responsible to establish a funding mechanism to provide an ongoing source of funds for city services including the maintenance of parks, roadways, and sidewalks. A uniformed-standardized rate for ongoing city services was adopted by the City pursuant to Resolution No. 19-009 and accompanying Fiscal Impact Analysis (FIA) report. Under the adopted Resolution and FIA report, the subject property falls under "Other Industrial Zones" with a current rate of $480.75 per acre per year. Based on a 14.33 -acre site, the current estimated annual amount is $6,889.15, ***which reflects the adjusted rates as of July 1, 2020***. The actual amount of the CFD will be based on the fee in effect at the time the building permits are issued. Developer is required to mitigate its impacts on city services either through: 1) Annexing into a City established Community Facilities District (CFD) or 2) Establishing a funding mechanism to provide an ongoing source of funds for ongoing services, acceptable to the City, refer to COA#2.

Additionally, at the time of application for a business license, if there are two different users between the warehouse and temporary truck/cargo container parking facility, then an additional DIF payment will be made for the warehouse in the amount of One Hundred Thirty Thousand Six Hundred Sixty Two Dollars ($130,662.00), calculated at $2.56 per square foot of building area (calculated at $2.56 x 53,550 = $137,008). Such DIF payment will be made at the time applications for the business licenses are submitted to City.

VI. EXHIBITS

1. Draft Ordinance No. 20-2014 (pgs. 13-17)
2. Draft Resolution No. 20-134 (pgs. 18-39)

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3. KL Fenix Cargo Container Parking Specific Plan (pgs. 40-76)
4. Draft Entitlement Agreement (pgs. 77-123)
5. Development Plans - Site Plan, Floor Plans, Landscape Plans & Elevations (pgs. 124-130)
6. Surrounding Parcels (pg. 131)
7. Memo- Brownfield funding sources (pgs. 132-137)
8. City Council Staff Report August 18, 2020 (pgs. 138-150)
9. Applicant's presentation at City Council hearing August 18, 2020 (pgs. 151-168)
10. Planning Commission Staff Report July 29, 2020 (pgs. 169-181)
11. Planning Commission Resolution No. 20-2696 (pgs. 182-190)
12. Planning Commission Meeting July 29, 2020 disposition (pgs. 191-194)
13. Planning Commission Staff Report May 27, 2020 (pg. 195-214)
14. Planning Commission Meeting minutes May 27, 2020 (pg. 215-224)
15. Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (<http://ci.carson.ca.us/CommunityDevelopment/KLFenix.aspx>) (pgs. 225-359)
16. Amendment to the General Plan Map Designation (pg. 360)
17. Comment Letter received May 27, 2020 by Armbruster Goldsmith & Delvac LLP and DUDEK's response (pgs. 361-372)
18. Cumulative Comment Letters received in favor of the project (pgs. 373-378)
19. Cumulative Comment Letters received in opposition of the project (pgs. 379-440)

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