



Santa Monica Coalition for a Livable City

STEERING December 13, 2010

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**The Santa Monica Coalition for a Livable City's Objections and Comments Relating to the Notice of Preparation of a Draft EIR for the Bergamot Transit Village Center Development Agreement, 1681 26<sup>th</sup> Street (former Papermate site)**

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The Santa Monica Coalition for a Livable City ("SMCLC") objects to the Notice of Preparation of a Draft EIR for the Bergamot Transit Village Center Development Agreement, 1681 26<sup>th</sup> Street (former Papermate site) ("Notice") and the Scoping Meeting held on December 8, 2010 in their entirety on the following grounds.

sherrill kushner

**Background:**

maria loya  
mary marlow  
bea nemlaha  
jacob samuel

In 2007, Hines and its financial partner, Buchanan Street Partners, bought the seven-acre Papermate site. They bought the site with the understanding that it was zoned for 300,000 square feet of commercial development. Initially, Hines (Colin Shepherd) announced that it planned to replace the existing buildings with two to four-story buildings for entertainment industry tenants within existing zoning.

lorraine sanchez  
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**The Hines Massive Project of Almost One Million Square Feet Now Proposed for the Papermate Site**

carol sobel  
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Hines and its financial partner (collectively "Hines") now propose a massive commercial project that is more than triple the size that the site was zoned for --- almost one million square feet. The site is directly across the street from The Water Garden, at Olympic Boulevard and 26<sup>th</sup> Street, which is one of the most heavily traveled and congested areas of Santa Monica and the entire Westside.

peter tigler  
bill zimmerman

The Water Garden is now acknowledged by city planners as a planning disaster. Additionally, the major office centers already in that area, including the Yahoo Center, Arboretum and MTV Networks, have had the effect of tying up traffic for miles during mornings and evenings and adversely affecting the quality of life for much of Santa Monica. One need only look at the huge backup of morning traffic on the 10 Freeway at 26<sup>th</sup> Street, or afternoon traffic going the opposite direction, to see the impact that over-building has had in that area.

Hines wants to clear a seven-acre site in this area and construct five buildings, at least one as high as 8 stories or 86 feet, with subterranean parking for almost 2,000 vehicles, and 300,000 square feet of residential units, 84,000 square feet of unspecified ground floor commercial space and 560,000 square feet of “creative arts” commercial space. And Hines has filed an application -- a defective and incomplete application as discussed below -- for a Development Agreement to obtain a vested right to build this project in five phases over a 20-year period.

While Hines is not alone in wanting to build a super-sized project in this industrial lands area, its project is by far the biggest proposed so far. Other large, pending predominantly commercial projects east of 26<sup>th</sup> Street between the 10 Freeway and Colorado include, but are not limited to: Paseo Nebraska (3.5 acres; 356,000sf); 2634 Colorado Creative Studio Project (153,600sf); Roberts Business Center (135,000sf); Agensys, Inc (153,000sf); as well as the mixed-use Village Trailer Park (229,860sf). See Exhibit “A”, SMCLC’s map of some of these pending projects. Under the recently enacted Land Use and Circulation Elements of the General Plan known as LUCE, the City projects almost five million square feet of new commercial, retail and restaurant development over the next 20 years and such projections are only estimates which could be exceeded.

Indeed, there is so much interest in development of this industrial lands area that the City of Santa Monica applied for and was just awarded a HUD grant of \$652,500 to develop a Master Plan to transform a huge swatch of Santa Monica, 140 acres of industrial land, to connect Bergamot Station, Transit Village, and the area now called the Mixed-Use Creative District to the new Exposition Light Rail. (See Exhibit “B”). In seeking the grant, the City itself recognized that such a master plan “is a critical component of the citywide vision to integrate land use and transportation to achieve reduced greenhouse gas emissions, reduce per capita vehicle miles traveled and create a sustainable local community.” (Id.)

The map of the “project” includes 35 acres of the Bergamot Transit Village District (and Hines property), 19 acres of the Bergamot Station Arts Center across the street from the Hines project, and 86 acres of the Mixed Use Creative District, which together encompass a huge area from Cloverfield Boulevard on the west to Centinela Boulevard on the east and Colorado Avenue on the north and Exposition Boulevard on the south. (See Exhibit “C”).

Since the entire area constitutes a “project” according to the City – the project being the development of a new “transit oriented” city within Santa Monica -- a master plan must precede any environmental assessment of an individual project such as Hines. Under CEQA, any EIR would have to discuss the cumulative effect on the environment of the Hines project in conjunction with all other past, present and reasonably foreseeable probable future development in the project area. Here, the Master Plan doesn’t yet exist to indicate the probable future projects or the development of the entire additional infrastructure, including roads, which would need to be built in order to support such major, new development.

One of the reasons the City sought federal funding for a Master Plan is because the LUCE does not include planning specifics for this project area. The LUCE provides only some percentages of types of allowable development and a range of allowable heights for this critical part of our City. The LUCE also lacks any mechanism for determining the actual traffic flows that would result from the development of the project area over the next 20 years of the City's General Plan. Those are some of the critical components to be addressed under the Master Plan.

Additionally, what makes developing a neutral, intelligent and thorough Master Plan essential here, is that the 140-acre project area abuts existing roads in all directions that are already at failing capacity much of the day and evening. These roads, both new and existing, would have to be shared by all of the new development that would be built in a compact area that everyone traveling into or out of Santa Monica must traverse to get on or off the 10 Freeway and through much of the City. Most of Santa Monica's commuter traffic, as well as resident-generated traffic, would be significantly affected by development in the project area.

Our review of CEQA and cases under CEQA, confirms that it prohibits piecemeal planning. Here, piecemeal planning would result from breaking the entire project area into separate projects for an EIR, and thereby failing to appropriately address the cumulative impacts of all of the reasonably foreseeable future development of the project area that is the subject of the Master Plan for which Santa Monica just received federal funding.<sup>1</sup>

### **SMCLC's Objections to the Scoping Meeting and the Preparation of a Draft EIR**

#### **A. CEQA outlaws piecemeal project EIRS like the one Hines proposes here, where the entire Project Area includes multiple projects which cumulatively would have far greater environmental impacts**

SMCLC objects to the Notice of Preparation of a Draft EIR for the Bergamot Transit Village Center Development Agreement, 1681 26<sup>th</sup> Street (former Papermate site) ("Notice") and the Scoping Meeting which took place on December 8, 2010, in their entirety because they are being undertaken in isolation from the rest of the projects to be included in the Master Plan. Both the notice and the meeting are legally and practically flawed, as is the process itself.

The requirements of CEQA cannot be avoided by piecemeal review. CEQA's mandate to review the actual effect of the project upon the environment would be defeated if a large project could be divided into many smaller ones – each claiming a minimal impact on the environment – which cumulatively could have disastrous consequences.

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<sup>1</sup> We understand from a review of the City's website which lists pending environmental reviews that there are at least two other projects in this area for which EIRs are being prepared -- a Colorado Creative Office project at 2834 Colorado Avenue and one at the Village Trailer Park. We believe that neither will withstand judicial scrutiny under CEQA for the same reason.

Here, it is clear from the very name that Hines has chosen for its project -- the Bergamot Transit Village Center -- as well as its central location, that its project is an integral part of the Bergamot Transit Village District as well as the Bergamot Station Arts Center and the Mixed Use Creative District. And, by proposing to build its project over 20 years, Hines implicitly recognizes that the 140-acre project area will be expanded in the future; by proposing to develop its site in five (5) phases, Hines would keep its development options open relating to the expansion. Santa Monica sought the Master Plan grant from HUD precisely because it recognized this area is one large development zone.

All of the future projects in this same geographical area will aggravate each other's environmental consequences. The roads to be built to enable this 140 acres to function once it is developed would all have to be shared by these projects. Likewise, these new, shared roads would all have to feed into existing roads that are already traffic clogged, and would also have to share the same entrances and exits to the 10 Freeway which are already overloaded without the additional traffic that the Hines project would generate, if approved. There also would be a significant, incremental contribution to the cumulative, adverse impact on air quality in this area which would also have to be analyzed.

It is very easy to envision that the cumulative impacts of the traffic increases alone will have disastrous consequences to the quality of life in the City. Wishful thinking that a huge project like Hines, that proposes 2,000 additional parking spaces, somehow will not generate much additional traffic or generate air quality problems will not withstand scrutiny even when studied in isolation from the other eight known projects proposed in the 140-acre project area. See Exhibit "A."

In sum, there are irreversible and significant cumulative traffic, air quality, noise, and other infrastructure issues that will occur from all of the individual projects, not just one or another. Therefore, the cumulative impacts must be studied as a whole.

Moreover, the City is the actual owner of Bergamot Station, the existing art gallery complex, and it will also own a light rail stop to be built on the site as part of the Bergamot Transit Village District project. As such, the City will be held to stringent standards under CEQA as to any EIR for any project that is located in the project area, and whether it adequately assesses the environmental impacts of future projects planned for the entire project area under a Master Plan, including those relating to its own property.

Additionally, without a proper presentation of the environmental effects of the entire proposed project area, the public will not be sufficiently informed about the true impacts of the Hines project to evaluate or comment meaningfully upon it. For the public to be informed, any EIR must include an extensive review and analysis of all individual projects that are likely to be allowable under the Master Plan, something that is not now possible to know. And any comments from residents would need to be sought after (not before) they have been provided this information, making the Notice

premature and defective.

While Hines apparently prefers to proceed now in this inchoate state, it would not be proper nor in the interests of the City or its residents. And while Hines may want to take the risk that its EIR will be rendered moot by the Master Plan or deemed defective by the courts, it's a waste of everyone's time, including the City, responsible public agencies, and the public, to be expected to comment meaningfully on a defective EIR.

**B. Despite Ample Time, Hines Has Failed to Submit a Complete Application for a Development Agreement to the City and without It, Any Environmental Review Is Premature**

SMCLC additionally objects to the Notice of Preparation of a Draft EIR for the Bergamot Transit Village Center Development Agreement, 1681 26<sup>th</sup> Street (former Papermate site) ("Notice") and the Scoping Meeting which took place on December 8, 2010, in their entirety because the project applicant Hines 26<sup>th</sup> Street, LLC ("Hines") has not completed its application for a Development Agreement ("application") in accordance with Santa Monica Municipal Code Section 9.48.020.

Because the application has not been completed, the Notice and Scoping Meeting are therefore premature and legally deficient. Hines' application is both legally and practically flawed, as is this process. This process, to be valid, can begin only after Hines has submitted a complete application to the City.

Santa Monica Municipal Code Section 9.48.020 states that: "The application shall include a fiscal impact statement on the proposed development."

When Hines submitted its application on May 20, 2010, it did not include any such fiscal impact statement. In the almost seven months since then, no such statement has been submitted to the City.

This is surprising. SMCLC promptly raised this omission by Hines with the City first on June 22, 2010, and more recently, on December 2, 2010. On both occasions, SMCLC was informed by the City that Hines had not submitted any fiscal impact statement. SMCLC raised this failure at the earliest possible time, giving Hines ample time to comply with the law by submitting a complete application. Yet Hines has not done so.

Notwithstanding that the Development Agreement application that Hines has submitted is materially incomplete, the City sent out this Notice on November 16, 2010.

At this point, there are two significant failures here. The first is the failure by Hines to file a complete application and to provide the essential missing economic information to the City and its residents for their review before residents were asked to comment in response to a Notice and at a Scoping Meeting. The second is the failure of the City to follow its own laws and common sense by requiring this information before allowing

Hines to proceed with a draft EIR.

The language requiring an economic assessment in the Santa Monica Municipal Code is mandatory. Section 9.48.020 evinces a strong public policy requiring such an economic assessment as part of an application at the very beginning of the process. It's easy to understand why. The process involved with a development agreement application is lengthy and time-consuming because the applicant is seeking an exemption from current zoning laws to build a much larger project with greater environmental impacts.

An economic assessment is essential to demonstrate that the project as proposed in the application is economically feasible. Hines has not made any attempt yet to show that it is. For the City to allow Hines to go forward with a draft EIR on a project which has not been shown to be economically viable, and to require comments on such a project from responsible agencies, organizations, interested parties and residents is not only contrary to the City's Municipal Code, but also defeats informed review and comment.

From a practical perspective, economic analysis may reveal a need for revisions to the proposed project. Those revisions would need new CEQA review. How can the City and Hines expect to complete a meaningful CEQA analysis without such an economic review? And if Hines already has an economic review, where is it? Why haven't the City and residents been able to see it in order to evaluate it as part of this process at this stage?

If Hines hasn't undertaken or completed such an assessment, there's no way of knowing what the actual project would look like. It is unfair and highly speculative to ask the public to comment on a project when the applicant hasn't even attempted to show that its proposed project is economically viable or on what assumptions it is basing its viability.

Additionally, as discussed further below, an economic assessment is even more important with this particular project, as it is described in the Notice because, as proposed, it is huge and it could be constructed in up to five (5) phases over a period of 20 years.

Finally, we ask this simple question: If a resident homeowner or a small business owner had submitted a materially incomplete application to the City, would the failure be ignored? The fact that Hines and its partner, Buchanan Street Partners, have made significant contributions concerning the recent City Council election does not entitle them to play by different rules than the rest of us. (We note that Hines has contributed huge sums into recent election cycles in our small City, dwarfing those made by residents. Its executives paid off Councilmember Pam O'Connor's entire campaign debt from a previous campaign, and contributed to several Councilmember campaigns. Hines contributed almost \$100,000 to defeat Measure T, a resident initiative to place reasonable limits on development and its traffic related impacts. And in the most recent City Council election, Hines contributed \$15,000 for mailers called "deceptive" by the Police and Firefighters' Associations, the Santa Monica

Democratic Club and CEPS (The Community for Excellent Public Schools)).

### SMCLC's Comments on a Draft EIR

If the City were to give Hines preferential treatment by allowing Hines to proceed with the preparation of a draft EIR now, notwithstanding this Objection and the objections of others, SMCLC makes the following comments. These comments are made without waiving the above Objection and subject to that Objection.

The fact that the Hines project is proposed to be built in five (5) phases over twenty (20) years creates several serious issues which need to be addressed in any draft EIR. Focusing solely on the Hines project, what are all of the possible alternative and economically viable projects that Hines might want to construct on the site? Are these future projects dependent upon what else is likely to be proposed to be built in the project area? Does Hines have a plan B, a plan C, etc, in the event the project as described in the Notice is rejected by the City or the voters?

This super-sized project and any EIR analysis would be incomplete without an analysis of the cumulative environmental impacts of all of the large, pending projects that are currently in the pipeline and those which are reasonably foreseeable in the future in the geographical area, which includes adjacent Los Angeles.

For example, any environmental impact report must include: the impact of the recent failure of the MTA to approve funding for a subway to Santa Monica; the impact of a Bundy Village project, if one is eventually to be built nearby in LA; and the impact of the next phase of Playa Vista as well as any other large projects projected or reasonably foreseeable in surrounding communities. The cumulative traffic and air quality impacts of all of these projects in the surrounding area must be taken into consideration and understood. There are simply too many very large projects with dramatic traffic impacts proposed for this area. There needs to be an analysis of which ones best meet our community's needs and which ones would have the greatest and least environmental impacts, if built. These must be analyzed together, not piecemeal.

If Hines is claiming that a portion of its project will be intended for "creative uses," or any other use for which there is a claim of reduced traffic or other environmental impacts, or some other supposed benefit to the City, the EIR should include an analysis of all of the ways in which it is legally possible to limit the proposed commercial use to "creative uses" over the 20 years of the Hines project as proposed. If no such analysis is included in the EIR, then the EIR should not contain any assumptions that "creative uses" generate fewer traffic or other environmental impacts than commercial office space in general. Otherwise, the EIR could be deemed a sham, if unenforceable labels are being used to justify allegedly fewer environmental impacts without a legitimate basis.

Finally, since Santa Monica has had a dismal record marked by repeated failure to review or enforce the negotiated terms of its development agreements, the EIR should include an enforcement discussion. That section should include an analysis of how

the developer will guarantee full compliance with promises it intends to make in the development agreement, whether they relate to traffic mitigations, or no new net trips, or public benefits and timelines by which they must be in place. This analysis should include what enforcement options would be available to the City and its residents to enforce compliance, including the financial ability of the actual owner(s) of the site to comply.

**Conclusion**

For all the foregoing reasons, SMCLC objects to the Scoping Meeting and the Notice of Preparation of a draft EIR for the Hines project and reserves all rights.

Sincerely,

Diana Gordon, Co-Chair SMCLC

Enclosures

Cc: Rod Gould, City Manager  
Eileen Fogarty, Planning Director  
Marsha Moutrie, City Attorney  
City Councilmembers  
Neighborhood Association Leaders