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Superior Court Of California
County Of Los Angeles

MAR 10 2014

Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 SANTA MONICA COALITION FOR A)
11 LIVABLE CITY, a nonprofit organization,)

12 Petitioner/Plaintiff,)

13 v.)

14 CITY OF SANTA MONICA; SANTA MONICA)
15 CITY COUNCIL; and DOES 1 to 100, inclusive)

16 Respondents/Defendants.)

17 HINES 26TH STREET LLC, a limited liability)
18 corporation; and ROES 1 to 100, inclusive)

19 Real Party In Interest.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Case No.:

BS147678

VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE RELIEF (Public Resources Code,
§ 21168; Gov. Code, §§ 65009, 65860; Code Civ.
Proc., §§ 525, 1085, 1094.5)
CALIFORNIA ENVIRONMENTAL QUALITY
ACT ("CEQA") ACTION

1 INTRODUCTION

2 1. Petitioner and Plaintiff Santa Monica Coalition for a Livable City (“SMCLC”) brings this
3 lawsuit to challenge Respondents and Defendants City of Santa Monica’s (“City’s”) and Santa Monica
4 City Council’s (“City Council’s”) determination to approve a Development Agreement permitting Real
5 Party in Interest Hines 26th St LLC (“Real Party” or “Hines”) to construct the Bergamot Transit Village
6 (“BTV Project”), the largest development that is likely to be constructed in the eastern portion of Santa
7 Monica. The BTV Project is a 766,000 square foot mixed use office and residential project, consisting
8 of five separate buildings of up to 86 feet in height, on a roughly seven-acre parcel in the eastern portion
9 of the City of Santa Monica. The project contains two office buildings with a sum total of
10 approximately 375,585 square feet of office space and three buildings housing 498 residential
11 apartments. Parking for the project will be in a large underground structure spanning the entire site and
12 containing approximately 1800 spaces, with access provided only through two of the five buildings.
13 The project provides “open space” useable to the public in the form of two new streets, two plazas, and
14 several passages between buildings that will purportedly be landscaped for the use of both residents and
15 the general public. The Development Agreement grants Real Party up to 10 years to construct the five
16 buildings, permits construction of one office without constructing any other aspect of the project,
17 including the residential units, and allows Real Party to sell off for separate construction each of the five
18 buildings approved by the City. The BTV Project has received significant opposition from residents of
19 Santa Monica, as well as nearby residents in the City of Los Angeles.

20 2. In approving the Development Agreement for the BTV Project and certifying the
21 project’s Environmental Impact Report (“EIR”), the City failed to comply with the information and
22 disclosure requirements of the California Environmental Quality Act (“CEQA”). Moreover, the BTV
23 Project is inconsistent with the City’s recently adopted land use plan for the area, the Bergamot Area
24 Plan (“BAP”).

25 3. Petitioner seeks a determination from this Court that Respondents have not met their
26 obligations under CEQA to properly review and disclose the environmental impacts of, and feasible
27 alternatives to, the BTV Project. Petitioner also seeks a determination that the project’s approval is
28 inconsistent with the BAP, the applicable land use plan for the area. Petitioners seek a ruling that all of

1 Respondents' actions approving the Development Agreement and certifying the EIR are void and
2 contrary to law. Petitioner asks this Court to issue peremptory and alternative writs of mandate to
3 prevent Respondents or Real Party in Interest from taking actions based on the faulty approvals.

4 4. Petitioner also seeks a preliminary injunction and/or an administrative stay if necessary
5 to prevent Real Party from commencing construction activities on the parcels in question, including
6 demolition of existing structures and other site preparation activities, while this litigation is pending.

7 **PARTIES**

8 5. Petitioner and Plaintiff SANTA MONICA COALITION FOR A LIVABLE CITY
9 ("SMCLC") is a California nonprofit corporation. SMCLC is an all-volunteer group of Santa Monica
10 residents concerned about unsustainable commercial development and the effects of such development
11 on traffic and quality of life. Many of SMCLC's members are residents of the City of Santa Monica.
12 SMCLC was formed in 2005, and has worked since then to enhance public involvement in development
13 decisions and governmental accountability to ensure that developers live up to the commitments they
14 have made to provide community benefits in connection with discretionary development approvals.
15 SMCLC participated extensively in the approval process for the BTV Project, including providing
16 written comments on all phases of the EIR process, as well as on the terms of the Development
17 Agreement and other aspects of the Project's approval. SMCLC's members also made oral comments at
18 hearings before the Planning Commission and the City Council.

19 6. Respondent and Defendant CITY OF SANTA MONICA ("the City") is a charter city and
20 the governmental entity serving the people of the City of Santa Monica, in which the BTV Project is
21 proposed to be located.

22 7. Respondent and Defendant SANTA MONICA CITY COUNCIL ("City Council") is the
23 seven-member elected body that represents citizens of Santa Monica. The Council was the final
24 decisionmaking body for the BTV Project under CEQA.

25 8. Respondents and Defendants Does 1 through 100 are or were the agents, employees,
26 contractors, and/or entities acting under the authority of each other respondent or real party in interest,
27 and each performed acts on which this action is based within the cause and scope of such agency and/or
28 employment. Petitioner does not know the true names and capacities, whether individual, corporate, or

1 otherwise, of Does 1 through 100, inclusive, and therefore sues said respondents and defendants under
2 fictitious names. Petitioner will amend its Petition and Complaint to show their true names and
3 capacities when they have been ascertained.

4 9. Real Party in Interest HINES 26th ST LLC (“Real Party” or “Hines”) is a Delaware
5 corporation, and the owner of the parcels on which the BTV Project is intended to be constructed.
6 Hines was the applicant for the entitlements awarded by the Council to the BTV Project. Hines and the
7 City are the two parties to the Development Agreement that establishes the permissible scope of the
8 BTV Project.

9 10. Real Parties in Interest Roes 1 through 100 are or were the agents, employees,
10 contractors, and/or entities acting under the authority of each other respondent or real party in interest,
11 and each performed acts on which this action is based within the cause and scope of such agency and/or
12 employment. Petitioner does not know the true names and capacities, whether individual, corporate, or
13 otherwise, of real parties in interest Roes 1 through 100, inclusive, and therefore sues said real parties in
14 interest under fictitious names. Petitioner will amend its Petition and Complaint to show their true
15 names and capacities when they have been ascertained.

16 **VENUE**

17 11. This Court has original jurisdiction over this matter pursuant to article VI, section 10 of
18 the California Constitution, sections 1085 and 1094.5 of the Code of Civil Procedure, and Public
19 Resources Code section 21168.5.

20 12. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure
21 section 394 in that Respondents/Defendants are government entities and/or agents of the City of Santa
22 Monica.

23 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

24 13. As set forth in paragraph 5 above, SMCLC participated extensively during the approval
25 process for the BTV Project, providing both oral and written comments sufficient to apprise the City and
26 Council of its concerns regarding the BTV Project.

27 14. On March 7, 2014, as required by Public Resources Code section 21167.5, Petitioner
28 notified Respondents that it intended to file suit to enforce the requirements of CEQA. Proof of service

1 of that notification is attached as Exhibit C.

2 15. On March 10, 2014, as required by Public Resources Code section 21167.7, Petitioner
3 informed the Attorney General that it intended to file this action. Proof of service of this letter is
4 attached as Exhibit D.

5 16. Petitioner files with this Verified Petition a Notice of Election to Prepare Administrative
6 Record.

7 **STATEMENT OF FACTS**

8 17. On May 20, 2010, Hines submitted an application to the City for approval to construct a
9 957,521 square foot project consisting of 344 residential units, 566,573 square feet of creative office
10 space, and 83,712 square feet of retail space on a roughly seven-acre site which presently houses the
11 former Papermate factory. This application and all variants of it are referred to herein as the BTV
12 Project. At the same time, Hines requested study of two “alternative ideas” that would include a greater
13 percentage of residential, specifically requesting that the City “study these alternatives in sufficient
14 detail as part of the environmental review (the EIR) for the project such that the City Council would be
15 in a position to approve either alternative idea should we agree together to move in that direction.”

16 18. On November 16, 2010, the City issued a Notice of Preparation (“NOP”), stating that it
17 intended to prepare an EIR for the BTV Project. The NOP stated that the BTV Project would demolish
18 existing uses on the site and replace them with approximately 957,521 square feet over five new
19 buildings. The BTV Project described in the NOP would include 566,573 square feet of creative office
20 space, 344 residential units, and a maximum of 83,712 square feet of retail use. The NOP also notes
21 that “an alternate development scenario” will also be analyzed in the EIR. The NOP explains that the
22 alternate scenario would contain 946,476 square feet of buildings, with 420,919 square feet of creative
23 office space, 488 residential units, and 83,766 square feet of retail.

24 19. The City held a Public Scoping Meeting for the project on December 8, 2010, and
25 received 50 written scoping comments, a significant number, from government agencies and members
26 of the public, including SMCLC. The issues addressed in these comments include traffic impact,
27 aesthetics, land use, and air quality.

28 20. The redevelopment of the area around the future Bergamot Light Rail Station has been a

1 concern of the City for several years. In 2010, the City successfully applied to the United States
2 Department of Housing and Urban Development (“HUD”) for a grant to develop a master plan for the
3 redevelopment of the area, emphasizing the significant need for housing in this section of the City. The
4 application set a target goal of 60 percent commercial and 40 percent residential for future development
5 on the land where the BTV Project is to be located. This 60/40 commercial/residential split is echoed in
6 the City’s General Plan, in the Land Use and Circulation Element (“LUCE”), also adopted in 2010.

7 21. The Council conducted “float up” reviews of the BTV Project on March 22, 2011 and
8 August 23, 2011. As a result of the float up process, the overall size of the project was reduced to
9 766,000 square feet. In spite of the reduced size of the project, the proposal did not reflect the 60/40
10 commercial/residential split in the LUCE or the HUD grant application. Instead, the project contained
11 only 29 percent residential uses and 71 percent commercial uses.

12 22. The City released the Draft Environmental Impact Report (“DEIR”) on January 12, 2012,
13 for a 45-day public comment period, which was subsequently extended until March 12, 2012. The
14 DEIR analyzes only one project option in depth, a 766,094 project with 494,927 square feet of creative
15 office space, 325 residential units, and 46,895 square feet of retail, a project that did not satisfy the
16 LUCE objective of 40 percent residential, with only 29 percent residential use included. The proposed
17 project was also inconsistent with the LUCE in other respects such as mass, open space, and design, and
18 thus could not have been approved consistent with the LUCE when proposed. Although drafts of the
19 DEIR described two project “options,” one in which office uses predominated as well as a more
20 “residential” project, the publically-released DEIR did not include a residential project option in its
21 primary analysis.

22 23. Although the DEIR purported to analyze the 766,000 square foot project that emerged
23 from the float-up process, the report still contained significant analysis of the *larger* 957,521 square foot
24 project that was no longer being evaluated in the DEIR, including hundreds of pages of traffic analysis
25 of the larger version of the project, forcing readers to jump between various versions of the traffic
26 impact analysis for the two projects in order to understand the DEIR’s conclusions regarding traffic
27 impacts.

28 24. The alternatives analyzed in the DEIR, aside from the legally required “no project”

1 alternative, were an existing zoning alternative that consisted of reoccupying the commercial site with
2 an addition to the existing building; a “residential” alternative the same size as the 766,000 project with
3 498 residential units and 375,585 square feet of creative office space; and a “reduced” alternative of
4 621,000 square feet with only 241 residential units and 430,000 square feet of creative office space.
5 The only alternative to satisfy the 60/40 commercial/residential split was the “residential” alternative.
6 The “reduced” alternative contained the lowest ratio of residential uses of all the proposals, with only 27
7 percent residential use and 73 percent commercial use.

8 25. The DEIR noted that both the “reduced” and “residential” alternative would meet all
9 project objectives, while the existing zoning alternative would not meet any of the project objectives.
10 The DEIR concluded that the “reduced” alternative was the environmentally superior alternative, over
11 the objection of Real Party, who advocated in its DEIR comments that the “residential” alternative (and
12 not its proposed project) was the environmentally superior option. The DEIR did not analyze a project
13 that combined residential and commercial uses, consistent with the project’s objectives, but in a smaller
14 scale than the proposed project.

15 26. The DEIR purported to analyze the project’s impacts to the environment, including the
16 impact on traffic and transportation from the additional trips that would be generated by the project.
17 The DEIR found that the proposed project would have a significant, unmitigable impact on 25
18 intersections in the City and in neighboring Los Angeles. The “reduced” and “residential” alternatives
19 would have a significant unmitigable impact on 24 intersections. The “current zoning” alternative,
20 consisting of the addition to the existing building, would have a significant, unmitigable impact on 17
21 intersections and generate fewer than half the trips of the proposed project.

22 27. The City received 341 comment letters on the DEIR from government agencies and
23 members of the public, including SMCLC. A majority of the comments received expressed concerns
24 about the proposed project’s impact on traffic and requested that the City evaluate ways to reduce,
25 mitigate, or eliminate the project’s impact on area roadways; or study a smaller project that would have
26 fewer traffic impacts.

27 28. The City of Los Angeles and the California Department of Transportation (“CalTrans”)
28 expressed concerns about the project’s significant impacts on traffic. The City of Los Angeles

1 requested that further study be conducted in order to develop a mitigation plan for the project's
2 significant impacts on traffic. If no such plan could be developed, the City of Los Angeles requested
3 that the project applicant "be directed to remove these impacts through either a scaled reduction or a
4 land-use reconfiguration of the project;" or, in other words, by making the project smaller or by
5 changing its mix of uses. CalTrans commented on the DEIR's analysis of impacts to the I-10 Freeway
6 and the Cloverfield off-ramps, noting that the DEIR did not include any mitigation measures for the
7 significant impacts at these locations. CalTrans expressed concern that the project would impact the
8 already poor operating conditions on the I-10 Freeway and requested a traffic analysis of I-10 in the
9 vicinity of the project, as well as mitigation measures to help improve circulation in that location. The
10 City did not undertake the studies or take the actions requested by the City of Los Angeles or CalTrans
11 in response to these comments.

12 29. Before the DEIR comment period had even closed, Hines and the City had determined to
13 pursue the version of the project analyzed in the DEIR as Alternative 3, the "residential" alternative, the
14 only alternative satisfying the 60/40 commercial/residential split, instead of the proposed project studied
15 in depth in the EIR. The decision flipped one of the five buildings from office to residential, for a total
16 of two office buildings and three residential ones. Attached as Exhibit A is a true and correct copy of an
17 article that appeared in the Santa Monica Daily Press on March 13, 2012, the day after SMCLC had
18 submitted comments on the DEIR. The article quotes Director of Planning and Development David
19 Martin as saying that the City was working to modify the project and that Alternative 3 was "the
20 direction we're moving forward with." That decision meant that all of the DEIR comments that had just
21 been submitted were directed towards a project that the City had already rejected, and there was no
22 opportunity to comment upon the impacts of a reduced project.

23 30. The Final Environmental Impact Report ("FEIR") was released on July 29, 2013. The
24 FEIR contained responses to the comment letters received on the DEIR and made de minimis changes to
25 the DEIR to clarify the use of certain terms, insert figures, and revise mitigation measures.

26 31. On September 10, 2013, the Council approved the Bergamot Area Plan, a specific plan
27 for the area of the City in which the BTV Project is located. The purpose of the BAP is to assist with
28 the transition of over 140 acres of former industrial land to a walkable, complete neighborhood. The

1 BAP contains specific development requirements and standards for all projects proposed to be
2 constructed in that area. The BAP establishes a tiered development scheme, with different standards
3 applicable to projects based primarily upon the size and height of a proposed project. Projects meeting
4 the Tier I standards may be constructed “by right.” Larger projects that meet the Tier II standards must
5 pay certain transportation impact fees and provide transportation related benefits. The largest projects
6 that meet Tier III standards (which are the maximum standards permitted in the area) must provide a
7 number of community benefits and amenities set forth in the BAP, including social and cultural
8 facilities, affordable and workforce housing in excess of code requirements, physical improvements,
9 traffic management strategies exceeding what is code-required, and improved development practices.
10 These community benefits are laid out in Development Agreements, like the one approved for the BTV
11 Project. Although the City has been entering Development Agreements for large projects for decades, it
12 is only in recent years that the City has undertaken any efforts to ensure that the conditions imposed by
13 those agreements are being satisfied. SMCLC has undertaken an independent review of this question
14 and has determined that in some cases the City has not required that its conditions be satisfied.

15 32. The City’s Planning Commission held a number of hearings on the BTV Project, with
16 extensive public testimony and significant debate among the Planning Commissioners regarding the
17 project’s size, design, environmental impacts, and community benefits. The Planning Commission
18 discussed the Project on September 11, 2013, September 18, 2013, October 23, 2013, November 20,
19 2013, and December 4, 2013. At the December 4, 2013 meeting, the seven-member Planning
20 Commission voted 4 to 3 to recommend approval of the Development Agreement for the BTV Project,
21 as modified by the Planning Commission.

22 33. The Council heard a staff report, a presentation from Hines, and public comment from 95
23 members of the public at its meeting on January 28, 2014. The vast majority of public commenters
24 spoke in opposition to the BTV Project, expressing concern about the project’s size, its impacts on
25 traffic, the project’s design, and the lack of public benefits, including affordable housing and open
26 space.

27 34. The Council continued its discussion of the Project until a special meeting on February 4,
28 2014. At the February 4, 2014 meeting, Councilmembers asked questions of staff regarding the project

1 and debated the proposed project.

2 35. During the course of the February 4, 2014 meeting, several Councilmembers expressed a
3 desire to reduce the size of the project in order to reduce the project's impacts. Councilmembers also
4 expressed interest in increasing the proportion of the project to be used for residential purposes.
5 Councilmembers were advised that additional environmental review would be required for such a
6 change, and that such review would require the Council to delay the approval of the project for as many
7 as several months. Certain Councilmembers expressed reservations about any delay in approving the
8 project, fearing that the applicant would withdraw its application and re-occupy the existing buildings
9 on site, although the buildings on-site are disused industrial facilities that would have to be made code
10 compliant prior to such re-use as office space. Instead of making significant changes to the BTV
11 Project, Councilmember Glean Davis moved to make small changes to the levels of affordable housing
12 and other modest changes to the Development Agreement that would not necessitate or trigger further
13 environmental review.

14 36. At the close of the February 4, 2014 hearing, the Council voted 4 to 3 to approve the
15 Development Agreement as modified by Councilmember Davis and certify the EIR. On February 11,
16 2014, the Council had a second reading of the Development Agreement and again voted 4 to 3 to
17 approve the Development Agreement.

18 37. Immediately following the February 4, 2014 meeting, several Councilmembers made
19 statements that were published in a local publication, the Santa Monica Observer. These statements are
20 attached as Exhibit B, which is a true and correct copy of the article published in the Santa Monica
21 Observer. Councilmember Ted Winterer, who had voted against the BTV Project's approval, stated that
22 he "would have preferred to explore an alternative with a much greater percentage of housing as that
23 choice would no doubt have much reduced traffic impacts and have been more palatable to many in our
24 community." Councilmember Davis's statement noted that "any significant change to the project would
25 require months (or longer) of additional study and work," and expressed concern that without a strong
26 likelihood of approval by the Council that the developer would "be unwilling to take the risk of doing
27 the additional work and waiting the additional time, and then, having done the work, still lose at the
28 Council."

1 38. The City’s Notice of Determination was posted on February 12, 2014.

2 **FIRST CAUSE OF ACTION**

3 **Violation of California Environmental Quality Act**
4 **(Public Resources Code § 21168, Code of Civ. Proc., § 1094.5)**

5 39. Petitioner incorporates by reference all the allegations contained in the previous
6 paragraphs as though fully set forth herein.

7 40. CEQA requires environmental review and analysis prior to the approval of discretionary
8 projects by local governments. The Legislature has declared that CEQA supports numerous state
9 policies for “the maintenance of a quality environment for the people of this state now and in the future.
10 . . .” (Pub. Resources Code, § 21000, subd. (a).) Moreover, the Legislature has declared that “the
11 interrelationship of policies and practices in the management of natural resources and waste disposal
12 requires systematic and concerted efforts by public and private interests to enhance environmental
13 quality and control environmental pollution.” (*Id.*, subd. (f).) Finally, “[i]t is the intent of the
14 Legislature that all agencies of the state government which regulate activities of private individuals,
15 corporations, and public agencies which are found to affect the quality of the environment, shall regulate
16 such activities so that major consideration is given to preventing environmental damage, while
17 providing a decent home and satisfying living environment for every Californian.” (*Id.*, subd. (g).)
18 Long-term protection of the environment is a fundamental criterion of CEQA. (Pub. Resources Code, §
19 21001, subd. (g).)

20 41. The basic purposes of CEQA are to inform governmental decision makers and the public
21 about the potential, significant environmental effects of proposed activities, identify ways that
22 environmental damage can be avoided or significantly reduced, prevent such damage by the imposition
23 of mitigation measures or the adoption of alternative activities that avoid such damage, and disclosure to
24 the public of the reasons for approving an activity with significant, unmitigable environmental effect.
25 (CEQA Guidelines, Cal. Code Regs., tit. 14, § 15002(a).)

26 42. CEQA requires the assessment and public disclosure of potentially adverse impacts that a
27 discretionary project, requiring public agency approval, might have on the environment. (Pub.
28 Resources Code, §§ 21002, 21002.1.) CEQA states that public agencies may not approve projects “if

1 there are feasible alternatives or feasible mitigation measures available which would substantially lessen
2 the significant environmental effects of such projects.” (*Id.*, § 21002.) The Legislature has established
3 a variety of methods to accomplish its goals concerning California’s environment. The principal
4 method is the drafting and completion of an EIR.

5 43. An EIR is a descriptive statement that provides governmental agencies and the public
6 with detailed information about the harm that a proposed project may have on the environment, lists
7 ways in which those significant impacts may be minimized, and indicates alternatives to the proposed
8 project. (Pub. Resources Code, § 21061.)

9 44. Because informing the public about the environmental effects of a proposed project is a
10 crucial function of CEQA, the EIR must be made available for public review and comment. (See Pub.
11 Resources Code, § 21091, subd. (a) [“public review period for a draft environmental impact report may
12 not be less than 30 days”]; see also *id.*, § 21091, subd. (d) [public agency shall consider those comments
13 that it receives on a draft EIR].)

14 45. In addition to those provisions found in the Public Resources Code, the Legislature has
15 authorized and directed the Office of Planning and Research to adopt guidelines for the implementation
16 of CEQA (Cal. Code Regs., tit. 14, § 15000 et seq.; hereinafter referred to and cited as “Guidelines”).
17 (See Pub. Resources Code, § 21083.) The Guidelines are binding on all state and local agencies,
18 including Respondents. (Guidelines, §§ 15000, 15020.)

19 46. According to the Guidelines, an EIR must be adequate, complete, and exhibit a good-
20 faith effort at full disclosure. (Cal. Code Regs., tit. 14, § 15151.) Again, as expressed in CEQA, the
21 EIR must identify the significant environmental impacts of the project, including those impacts that
22 cannot be avoided if the project is implemented, as well as significant irreversible environmental
23 changes related to implementation of the project, alternatives to the project, and measures to mitigate the
24 impacts of the project. (*Id.*, § 15126; see also *id.*, §§ 15126.4, 15126.6.)

25 47. The Guidelines establish procedures for calculating the baseline environmental
26 conditions at a proposed project site, stating that an “EIR must include a description of the physical
27 environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation
28 is published.” (Cal. Code Regs., tit. 14, § 15125, subd. (a).)

1 48. “An EIR shall describe a range of reasonable alternatives to the project . . . which would
2 feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of
3 the significant effects of the project, and evaluate the comparative merits of the alternatives.” (Cal.
4 Code Regs., tit. 14, § 15126.6, subd. (a).) The EIR’s “discussion of the alternatives shall focus on
5 alternatives to the project or its location which are capable of avoiding or substantially lessening any
6 significant effects of the project, even if these alternatives would impede to some degree the attainment
7 of the project objectives, or would be more costly” (*id.*, § 15126.6, subd. (b)), and the “EIR shall include
8 sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison
9 with the proposed project” (*id.*, § 15126.6, subd. (d)).

10 49. “Public participation is an essential part of the CEQA process.” (Cal. Code Regs., tit.
11 14, § 15201.) The public is entitled to file written comments regarding the environmental review of the
12 project (see *id.*, §§ 15087, 15202, 15203) and to testify at any public hearing concerning the EIR (see
13 *id.*, § 15202, subd. (d) [the “draft EIR should be used as a basis for discussion at a public hearing”]; see
14 also *id.*, § 15202, subd. (b) [“If an agency provides a public hearing on its decision to carry out or
15 approve a project, the agency should include environmental review as one of the subjects for the
16 hearing.”]).

17 50. An agency’s written responses to comments must provide a description of the significant
18 issues raised by the comments and, particularly when the opinion in the comments varies from that of
19 the agency, the agency must address the comments in detail and provide a good-faith reason why
20 specific comments and suggestions were not accepted. (Cal. Code Regs., tit 14, § 15088; see *id.*, §
21 15202.)

22 51. Agencies may not undertake actions that could have a significant adverse effect on the
23 environment, or limit the choice of alternatives or mitigation measures, before complying with CEQA.
24 (Cal. Code Regs., tit. 14, § 15004(b)(2).) CEQA also requires that an agency consider the cumulative
25 effects of its actions. Where “individual projects are, or a phased project is, to be undertaken and where
26 the total undertaking comprises a project with significant environmental effect,” the agency must
27 prepare an EIR addressing the scope of the entire project, including “comment upon the cumulative
28 effect.” (*Id.*, § 15165.)

1 52. The EIR does not comply with CEQA’s mandates and requirements in several critical
2 respects.

3 53. The EIR fails to analyze an adequate range of alternatives as required by CEQA. In spite
4 of requests from the public in response to the DEIR, the City failed to include a truly reduced alternative
5 to the proposed project. This failing precluded informed decision making, as demonstrated by the
6 Councilmembers who expressed desire to approve a smaller project but concern that the delay required
7 to conduct an environmental review of a reduced project would jeopardize construction of the project at
8 all. The EIR did not analyze an alternative with both a reduced residential and commercial component,
9 and did not analyze a project that would meet the “Tier II” requirements of the BAP or the Land Use
10 and Circulation Element (“LUCE”), the City-wide general plan that applied prior to the adoption of the
11 BAP.

12 54. The purpose of CEQA is to provide full information to the decision-making body about
13 the environmental impacts of a proposed project, as well as alternatives to the proposed project that
14 might reduce those impacts. That purpose was defeated here where a true reduced alternative was not
15 included in the EIR’s range of alternative proposals, and where the EIR instead provided more
16 information on the environmental consequences of approving a larger project in order to create a
17 favorable comparison with the proposed project.

18 55. The EIR and the associated Mitigation and Monitoring Program do not adequately
19 mitigate the impacts of the BTV Project on traffic, among other things. The EIR relies upon traffic
20 management measures with unknown efficacy to mitigate the impacts of the project’s considerable trip
21 generation. Moreover, the EIR does not include mitigation measures for numerous intersections that are
22 impacted by traffic, both within and outside of the City, because of the City’s policy of not making
23 modifications to roadways that “could” adversely impact the pedestrian environment. The EIR does not
24 contain any justification for the refusal to mitigate these locations either in Santa Monica or in Los
25 Angeles, which does not have the same policies as the City with regard to the pedestrian environment.
26 The failure to require feasible mitigation measures is contrary to CEQA’s policy of mitigating all of a
27 project’s impacts to the environment. The EIR also does not contain adequate or responses to comments
28 requesting additional study of mitigation measures at key locations in the City and in the neighboring

1 City of Los Angeles. In many cases the City did not provide good faith responses to the DEIR
2 comments, instead reframing the comments in an extreme way to avoid responding directly to the
3 commenter's assertions.

4 56. The EIR does not adequately analyze the impacts of the BTV Project on the environment,
5 including, but not limited to, traffic, land use, water supply, population, greenhouse gases/climate
6 change, or cumulative impacts. As an example of the type of defects in the EIR's analysis, the trip
7 generation rate for traffic generated by office workers relies upon a square foot metric that allows for
8 much larger office space per square foot than is presently provided in many workplaces, thereby
9 understating the traffic generation of the project. The EIR also does not analyze the final proposed
10 parking and circulation plan for the project when it considers the impacts of the project on traffic or on
11 land use. The EIR's cumulative impacts analysis is based on an incomplete project list and does not
12 include significant new development in the area, including a proposed hotel and office project directly
13 across Olympic Boulevard. The failure to properly analyze the environmental impacts of a proposed
14 project defeats CEQA's objectives of full public disclosure and awareness of the environmental
15 consequences of governmental decisions.

16 57. A public agency's failure to comply with either the substantive requirements of CEQA or
17 its procedures, so that complete information as to the project's impacts is neither developed nor publicly
18 disclosed, is a prejudicial abuse of the agency's discretion requiring invalidation of the agency's action
19 regardless of whether full compliance would have produced a different result. (Id., § 21005, subd. (a).)

20 58. The City abused its discretion by certifying the EIR, because the EIR does not conform
21 to CEQA's requirements, and is not based on substantial evidence. A writ of mandate may issue to
22 correct this abuse of discretion and require the City Council to rescind its certification of the EIR and
23 the associated Statement of Overriding Considerations and Mitigation and Monitoring Plan.

24 59. Under Public Resources Code section 21167, subdivision (c), an action alleging that an
25 EIR does not comply with CEQA must be filed within 30 days of the posting of the Notice of
26 Determination. This action is timely filed within 30 days of February 12, 2014, the date the Notice of
27 Determination was posted.

28 60. Petitioner has a direct and beneficial interest in the action herein and has exhausted all

1 other available remedies.

2 61. Petitioner has a beneficial right to Respondents' performance of their respective duties
3 based on Petitioner's interest in maintaining and improving the quality of the urban infrastructure in the
4 City of Santa Monica, as well as the interest of Petitioner's members in improving quality of life in their
5 own city.

6 **SECOND CAUSE OF ACTION**
7 **Gen'l Plan Consistency; Challenge to Development Agreement**
(Gov. Code, §§ 65009 & 65860; Code Civ. Proc., § 1094.5)

8 62. Petitioner incorporates all the allegations contained in the previous paragraphs as though
9 fully set out herein.

10 63. The Government Code requires every city in California to adopt a "general plan" to serve
11 as a "comprehensive, long-term general plan for the physical development" of the city. (Gov. Code, §
12 65300.) All zoning ordinances and land uses within the city must be consistent with the general plan.
13 (See *id.*, §§ 65860, 66473.5.) After adoption of the general plan, local planning agencies may enact
14 specific plans to regulate development for portions of the area covered by the general plan. (*Id.*, §
15 65450.) Specific plans are required to include, inter alia, the "standards and criteria by which
16 development will proceed," as well as regulations necessary to ensure compliance with those
17 development standards. (*Id.*, § 65451.)

18 64. The consistency doctrine is the linchpin of California's land use and development laws.
19 Land use decisions, including zoning changes, of general law cities must be consistent with the general
20 plan. (Gov.Code, § 65860, subd. (a).)

21 65. The zoning consistency requirement requires local governments to maintain their zoning
22 in a manner consistent with their general plans. Every zoning action must be consistent with the plan,
23 and a zoning ordinance that is inconsistent with the general plan at the time it is enacted is invalid when
24 passed.

25 66. An action, program, or project is consistent with the general plan if, considering all its
26 aspects, it will further the objectives and policies of the general plan and not obstruct their attainment.

27 67. As set forth in paragraph 31 above, in September 2013 the City adopted the Bergamot
28 Area Plan, a specific plan that includes the area containing the BTV Project, and contains numerous

1 development requirements and standards for projects to be constructed in that area in furtherance of the
2 BAP's objective of creating a walkable, complete community.

3 68. The BTV Project is the first development proposal reviewed and approved under the new
4 standards established in the BAP, thereby setting a precedent for future project approvals in the area.
5 The approval of the BTV Project is not consistent with the requirements and the development standards
6 of the BAP. The approval likewise will obstruct the attainment of critical policies and objectives of the
7 BAP and the City's General Plan. The approval is therefore invalid and void.

8 69. The approval is inconsistent with development standards in the BAP, including but not
9 limited to height limits, floor area ratio, floor plate size, street and sidewalk standards, and open space.

10 70. The BAP contains "mandatory" development standards that set limitations on height and
11 floor area ratio ("FAR"). The BTV Project conforms to neither limitation, failing to satisfy the required
12 first floor height necessary to construct an 86-foot high building, and exceeding the permissible 2.5 FAR
13 ratio for four of the five structures. The City relied upon an "averaging" of FAR for all the structures, in
14 spite of the fact that the structure of the Development Agreement permits Real Party to sell the rights to
15 construct each of the five structures on the site to other developers, and does not limit Real Party's
16 ability to seek a subdivision of the parcels in the future. Further, no parcel map was included with the
17 Development Agreement.

18 71. In addition, in unusual situations, the BAP permits the adjustment of select specified
19 mandatory standards – including maximum floor plate size and building modification for upper floors --
20 but only where specific findings are made to justify why a project cannot meet these standards.
21 Building 1, an office building that appears to be the first structure planned to be built, as it is the only
22 structure planned to have an entrance and an exit from the garage, exceeds both of these standards,
23 without a showing that the variances are necessary. The City's justification relies largely on the fact
24 that a "bridge" connects two portions of Building 1; the "bridge" is four stories high and appears to
25 contain significant office space, rather than serving as some simple architectural feature that connects
26 two structures. Other buildings in the project likewise violate the "flexible" standards with insufficient
27 justification. The purpose of the BAP is to create walkable communities of an appropriate scale to
28 enhance the human environment. By permitting oversize structures, and other deficiencies in street and

1 sidewalk widths and open space provided, the City frustrates the objectives of the BAP and does not
2 comply with its mandates.

3 72. The Development Agreement is also in violation of policies in the Land Use and
4 Circulation Element (LUCE) of the General Plan. The LUCE contains a policy that projects in the City
5 will add no net new evening peak hour vehicle trips. The BTV Project contributes 519 new evening
6 peak hour trips. The City took the position that individual projects can add new trips, without being
7 inconsistent with the LUCE policy, because that policy is intended to apply to the City as a whole.
8 However, there was no evidence before the City that measures that the City has taken, or plans to take,
9 to reduce traffic generation, will specifically offset the 519 new evening peak hour trips that the BTV
10 Project will generate. The City's position makes the LUCE policy entirely meaningless, and its action
11 in approving the BTV Project without a quantifiable plan for reducing evening trip hour traffic
12 generation will obstruct the attainment of the LUCE policies.

13 73. The Development Agreement for BTV Project also is inconsistent with several affordable
14 housing requirements contained in the BAP, LUCE, City Charter, and City Code. The City's
15 Affordable Housing Production Program requires that five percent of a residential project be devoted to
16 households at 30 percent of Los Angeles County median income. The Development Agreement
17 requires the applicant to provide 24 such units. However, 5 percent of 498 is 25 units, so the project is
18 deficient by 1 unit.

19 74. Both the LUCE and the BAP require additional affordable housing beyond the basic
20 requirements for Tier III projects. The BAP contains a specific goal of 30 percent of new housing that
21 is affordable to households earning between 30 percent and 150 percent of *area* median income, an
22 income level much higher than Los Angeles County median income (\$64,800 is 100% area median
23 income for a four-person household). The Development Agreement requires that the developer deed
24 restrict a total of 93 units for income levels between 30 and 150 percent of area median income, only 20
25 percent of the project total, again frustrating the BAP's policies of affordable housing on the largest
26 project likely to be constructed in the area.

27 75. Finally, the LUCE requires that Tier III residential projects provide increased affordable
28 housing. The majority of the deed-restricted units are for income levels in excess of 100 percent of area

1 median income, while the City Charter specifically defines low income and moderate income with
2 reference to the Los Angeles County median income. Because the Development Agreement allows the
3 majority of the deed-restricted housing to be provided at “workforce” levels that exceed moderate
4 income, the approval is not consistent with the LUCE’s affordable housing policies, because it fails to
5 provide “affordable” housing beyond minimal requirements, according to the City Charter definition of
6 “affordable” housing, which does not include the “workforce” housing with rents set for much higher
7 income levels.

8 76. Government Code section 65009, subdivision (c)(1)(D) requires a challenge to a local
9 government’s approval of a development agreement be commenced and served within 90 days of the
10 legislative body’s decision. Likewise, Government Code section 65860 requires a challenge to the
11 inconsistency of any zoning decision with the general plan of a city be commenced and served within 90
12 days of the zoning action. This action is filed within 30 days of the City’s decision on February 11,
13 2014, to approve the Development Agreement for BTV Project, and pursuant to the service
14 requirements of CEQA, will be served on the City Council within 10 days of filing.

15 77. Petitioner has a direct and beneficial interest in the action herein and has exhausted all
16 other available remedies, including by providing written comments on these specific issues to the City
17 Council.

18 78. Petitioner has a beneficial right to Respondents’ performance of their respective duties
19 based on Petitioner’s interest in maintaining and improving the quality of the urban infrastructure in the
20 City of Santa Monica, as well as the interest of Petitioner’s members in improving quality of life in their
21 own city.

22 **THIRD CAUSE OF ACTION**
23 **(Injunctive Relief)**
24 **(Code Civ. Proc., § 525)**

25 79. Petitioner incorporates all the allegations set forth in the preceding paragraphs as though
26 fully set forth herein.

27 80. Respondents’ actions in approving the BTV Project and certifying its EIR has caused and
28 threatens to cause Petitioner irreparable and substantial harm.

81. Petitioner has no plain, speedy, and adequate remedy at law, in that unless this Court

1 enjoins the Real Party, it will develop the BTV Project consistent with the invalid and void
2 Development Agreement and the improperly certified EIR. No amount of monetary damages or other
3 legal remedy can adequately compensate Petitioner for the irreparable harm that Petitioner, its members,
4 the residents of the City of Santa Monica will suffer from the violations of law described herein.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner prays for relief as follows:

7 1. That this Court issue a peremptory writ of mandate commanding Respondents: (a) to
8 rescind all approvals issued in support of the BTV Project, including, but not limited to, the
9 Development Agreement, the certification of the EIR, the adoption of the Statement of Overriding
10 Considerations, the adoption of the Mitigation and Monitoring Program, and the adoption of Findings in
11 support of all of the above approvals;

12 2. That this Court issue a temporary restraining order, preliminary injunction,
13 administrative stay, and permanent injunction enjoining Respondents and Real Party from taking any
14 action to implement the BTV Project, and to further enjoin Respondents and Real Party from taking any
15 action to construct the BTV project, including but not limited to demolition, grading, and construction
16 activities, until such time as the City Council has certified an EIR that conforms to the requirements of
17 CEQA and approved a project that conforms to all applicable land use plans;

18 3. That this Court award Petitioner costs and attorneys' fees pursuant to Code of Civil
19 Procedure section 1021.5 or other applicable law; and

20 4. That this Court grant Petitioner such other, different, or further relief as the Court may
21 deem just and proper.

22
23 Dated: March 10, 2014

Respectfully submitted,

24 STRUMWASSER & WOOCHELL LLP
25 Fredric D. Woocher
26 Beverly Grossman Palmer

27 By: 
28 Beverly Grossman Palmer

VERIFICATION

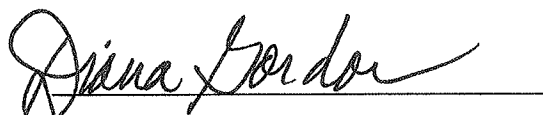
I, Diana Gordon, declare:

I am a Co-Chair of Santa Monica Coalition for a Livable City. I am authorized to make this verification for Petitioner Santa Monica Coalition for a Livable City.

I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Injunctive Relief and know the contents thereof. Said contents are known to me to be true except those matters alleged on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of March, 2014 at Santa Monica, California.



Diana Gordon

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EXHIBIT A

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TEACHING KIDS TO EAT HEALTHY
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THE LOTS 'O NEWS ISSUE



Daniel Archuleta daniela@smdp.com

MAKING A POINT: Diana Gordon, co-chair of the Santa Monica Coalition for a Livable City, speaks out Monday against the proposed Bergamot Transit Village, a project she and other members of neighborhood groups from across the Westside say is too big for the area.

Residents want a reduced Bergamot Transit Village

BY DANIEL ARCHULETA
Managing Editor

CITY HALL A coalition of neighborhood groups from Santa Monica and West Los Angeles made their case Monday for downsizing a proposed development on the east end of town that they say will create more traffic in an area already plagued by gridlock.

Their statements were made during a press conference on City Hall's lawn that they hope draws the attention of city planners as they continue to work with the developer of the Bergamot Transit Village that is slated to include a mix of residences and creative office space.

"This project is just too big," said Diana Gordon, co-chair of the Santa Monica Coalition for a Livable City. "This needs to be scaled back."

The major point of contention revolves

around what they claim is the lack of an area plan that mitigates the impact on traffic created by the new development, which will consist of five buildings.

The push to voice their concerns is taking place as City Hall works to create a final environmental impact report, a necessary step for the development to move forward.

Representatives from 17 neighborhood groups from across the Westside hand-delivered community comments to city officials, hoping to have their concerns addressed before the project progresses.

The uproar over the development has reached the ear of David Martin, Santa Monica's director of Planning and Community Development.

The draft report includes a number of alternative plans for what is expected to be 766,094 square feet of office space and residences. Martin said that his department is leaning toward "Alternative Three," which

would increase the total number of residences from 325 to 498, hopefully creating less need for people to commute to the city, thus lessening traffic. The final project would be comprised of three buildings of residences and two for offices.

A major concern of the neighborhood groups was the ratio of housing to commercial space, which led Martin to push developers to increase the number of residences.

"We have been working with the applicant to modify the project," Martin said. "This is the direction we're moving forward with."

That may not be enough to appease community members from both cities.

Jay Handal, the president of the West L.A. Neighborhood Council, said that the sheer scope of the project is what irks his members.

"You cannot get a car through our district now," he said. "[Santa Monica officials]

SEE PROJECT PAGE 7

Airport officer sues City Hall; alleges racial discrimination

BY ASHLEY ARCHIBALD
Daily Press Staff Writer

LOS ANGELES A trial is expected to begin today in federal court between City Hall and a long-time employee who alleges he was denied a promotion based on his race and age.

Vonnell Adams, 56, an African-American service officer at the Santa Monica Airport, filed suit in 2010 claiming that his supervisors improperly promoted a Hispanic colleague by circumventing the agency's normal promotion procedures.

The 17-year employee further alleged that there was a pattern of hiring Hispanics over African Americans, and of discrimination based on age.

City Hall "adamantly" denies that either

SEE SUIT PAGE 9

Local laboratory tests pot for potency, purity

City Hall yet to issue business license

BY KEVIN HERRERA
Editor in Chief

EASTSIDE When a medical marijuana patient walks into a dispensary to purchase some pot, they are most likely not going to speak with a certified pharmacist, but rather a 20-something with glossy, blood-shot eyes who probably got high hours or minutes before.

Instead of hearing about possible side effects and reactions that have been well documented in clinical trials, the patient will hear such terms as "stoney" or "body high."

Richard McDonald wants to change that. A patient himself (McDonald is legally blind and has used marijuana to fight off the destructive forces of glaucoma), he opened Golden State Collective Cannabis Laboratories on the eastside of town earlier this month.

The lab, housed in an old brick building

SEE LAB PAGE 10

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PROJECT FROM PAGE 1

build without thinking about how it impacts the Westside."

What members of each community group really want is for the overall size of the development to be reduced, not modified.

Mary Marlow, a former chair of the Ocean Park Association, said that the project as is doesn't incorporate an area and regional traffic mitigation plan, something she feels is necessary if development in that part of the city is going to include other large projects.

She held steadfast to the notion that there isn't enough housing in Santa Monica to begin with, forcing many of the city's workers to live elsewhere and commute.

"There just aren't enough places to live

here," Marlow said. "We're guaranteed we'll have more traffic."

Monday marked the final day the public can comment on the draft EIR before a final one is formalized.

The next step will have city officials reviewing the comments, ultimately including them in the final report.

That's exactly what those assembled Monday hope leads to enough critical mass to move City Hall to insist on a smaller end product.

"This is one of the most over-developed areas in Los Angeles County," said Lauren Cole, a member of the South Brentwood Residents' Association. "We already can't support the 200,000 commuters who enter Santa Monica every day."

daniela@smdp.com

BULGER FROM PAGE 3

Three family members of alleged Bulger victims said prosecutors told them that they plan to add two charges against Greig — identity fraud and conspiracy to commit identity fraud — and that Greig will plead guilty to all three charges Wednesday.

Prosecutors said each of the charges carries a maximum penalty of five years in prison, but prosecutors told the families that Greig could face as little as 32 months in prison under federal sentencing guidelines.

Tom Donahue, whose father, Michael Donahue, was allegedly killed by Bulger and another man in 1982, said he was angry about what he called a "sweetheart deal" and a "slap on the wrist" for Greig.

"I'm not happy with the deal," Donahue said. "She helped keep that guy on the run. We could have had questions answered 16 years ago."

Michael Donahue's widow, Patricia

Donahue, said prosecutors told the families they could not force Greig to testify against Bulger.

"They said, 'We cannot make anybody do anything they don't want to do,'" she said.

Patricia Donahue and her son said prosecutors told the families they did not want to risk Greig getting acquitted at trial.

Steven Davis, whose sister, Debra Davis, was allegedly killed by Bulger, said he has mixed feelings about Greig avoiding trial.

"I mean, she's going to get what's coming to her ... it's never going to be enough. You can't bring my sister back."

Davis said the families met for a little over an hour with U.S. Attorney Carmen Ortiz and assistant U.S. attorneys.

Bulger, now 82, headed the notorious Winter Hill Gang and was also a top-echelon FBI informant who ratted out the rival New England Mafia. His former FBI handler, John Connolly Jr., was convicted for warning Bulger that he was about to be indicted, prompting him to flee Boston in late 1994.

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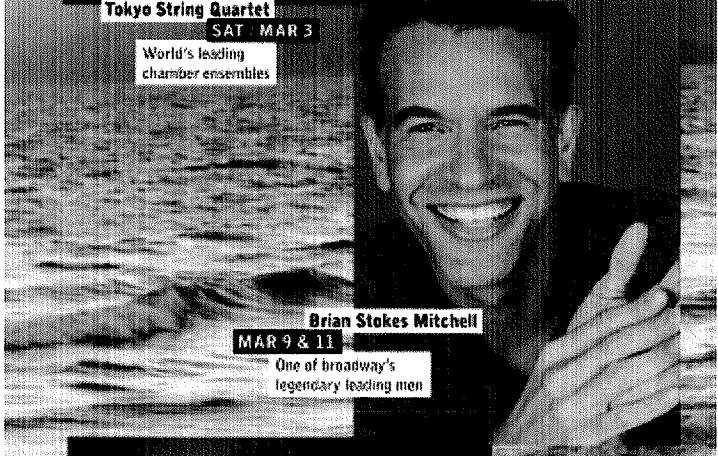
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EXHIBIT B

COUNCILMEMBERS RESPOND

From: Kevin McKeown

Good public policy demands the ability to be decisive when appropriate, but also to learn from new information. The LUCE approximation on commercial versus residential square footage certainly deserved to be reconsidered in light of the volumes of new information provided by the Hines project Environmental Impact Report. With the adoption of the LUCE, we promised our community "no net new PM trips." The Hines EIR showed that their project as proposed generated 7000 new car trips, and would make mobility worse not only in the short term but as far out as 2030.

Further, since the LUCE was adopted, the state has cut off our redevelopment revenue, which for many years had been our primary tool for creating affordable housing. The Hines project provided too little housing, and too little of it at truly affordable prices. The amendment made Tuesday night nibbled gently around the edges. It was a love bite to the developer, not a substantive improvement that genuinely addressed our housing needs.

Where, I'd also ask, is the 25% minimum open space our Bergamot Area Plan calls for? Even if one counts the narrow corridors among the tightly packed buildings, and counts the traffic-bearing streets as open space, the Chair of the Planning Commission pointed out that the Hines project fell significantly short of what's required. If one excludes the streets, Jennifer Kennedy advised the City Council, the open space drops to 11%, less than half of the target. Is that being "flexible" with standards, or is it bending over backwards for the developer?

Some have wondered aloud why the project had not been better negotiated early in the process. I watched the Planning Commission try for improvements, but it was clear the developer was unwilling to yield anything not demanded by the City Council, the ultimate decision-making body on a Development Agreement.

What is the outcome, besides a project I believe our community simply will not accept and will overturn via referendum? We had the opportunity to decide what was the appropriate, future-conscious Transit-Oriented-Development in a crucial vehicular traffic corridor in an existing city, where this site sits astride an important route into and out of town for residents. The Council majority abandoned "appropriate," claiming fear that the developer would walk away from the deal. That hasn't happened in decades in Santa Monica, and this Hines decision tells other developers that "my way or the highway" threats will work with this Council majority.

Thanks,
Kevin

From: Ted Winterer

I believe there's a good chance the project as approved will succumb to challenges in the courts or at the ballot box, which will leave the applicant with only the option of reoccupying the existing commercial space, the very scenario four of my colleagues sought to avoid. So I would have preferred to explore an alternative with a much greater percentage of housing as that choice would no doubt have much reduced traffic impacts and have been more palatable to many in our community.

From: Gleam Davis

I believe that the project the Council approved is a superior alternative to the only other option on the table—allowing Hines to reoccupy the existing building and use 300,000 square feet of commercial space without any significant public benefits. As the City attorney made clear on Tuesday night, any significant change to the project would require months (or longer) of additional study and work. After investing years and millions of dollars in a very public process, Hines would have no obligation to engage in further study (especially if it had no reason to believe that after spending additional time and money, the project still would not be approved). As a result, it was important to either pass something on Tuesday or send Hines back for some additional work with the confidence that the additional work would likely lead to approval. With the approved project we get peak hour trip caps (with significant monetary penalties), seed money for a traffic management association that will attempt to reduce traffic from the entire area (including the existing nearby office buildings), over 400 residential units that will allow workers to live near their jobs, significant affordable housing including very affordable accessible units designed to serve seniors and those with physical disabilities, \$2 million for a new park in the Pico neighborhood, a very large on-site plaza that can host a farmer's market and other types of community gatherings, a separate 20,000 square foot green park for the neighborhood, and new streets and wide sidewalks and other pedestrian and bike enhancements that will make this part of Santa Monica extremely walkable. This project also will be the foundation for realizing the Bergamot Area Plan of creating a complete neighborhood in this formerly industrial area. I know that many people now are suggesting that the project should have been 100% residential. Unfortunately, when we considered the Land Use and Circulation Element (LUCE) and the Bergamot Area Plan, none of the folks now calling for 100% residential came to Planning Commission or Council and asked for that. In fact, when the City Council considered the issue of mix of uses, the debate was between 50%-50% and 60%-40% (commercial to housing). Although the Council adopted the 60%-40% configuration for this area, at the hearing on Tuesday I tried to reach a compromise with those who had concerns about the size and use mix by proposing that the Council direct the developer to reduce the commercial component by 42,000 square feet. This would have pushed the use mix back to 50% commercial and 50% residential. I think if there had been five votes for this compromise, the developer would have had sufficient comfort that the project would be approved in the new configuration and would have been willing to make that change even though it required a few weeks of additional work. However, as there did not appear to be a fifth vote for the idea, I became concerned that the developer would be unwilling to take the risk of doing the additional work and waiting the additional time and then, having done the work, still lose at Council. So I withdrew that portion of my motion. I appreciate that traffic is a huge concern for many. However, the traffic studies done in connection with this project showed that allowing Hines to reoccupy the building would create MORE traffic than the commercial component of the approved project.

Gleam Davis
Santa Monica Councilmember

EXHIBIT C

STRUMWASSER & WOOCHELLP

ATTORNEYS AT LAW

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PATRICIA T. PEI
ADRIENNA WONG

† Also admitted to practice in New York
‡ Also admitted to practice in Massachusetts

March 7, 2014

Via Email, Facsimile, and Overnight Mail

Sarah P. Gorman, City Clerk
City of Santa Monica
1685 Main Street, Room 102
Santa Monica, California 90407
Email: sarah.gorman@smgov.net
Facsimile: (310) 394-2962

Re: Notice of Intent to Commence CEQA Action
Santa Monica Coalition for a Livable City v. City of Santa Monica, et al.,

Dear Ms. Gorman:

This is to inform you that, as an agent for the City of Santa Monica and the Santa Monica City Council, that the Santa Monica Coalition for a Livable City ("SMCLC") will be filing suit against the City of Santa Monica and the Santa Monica City Council (collectively, "the City") to challenge the approval of the Bergamot Transit Village project and its Development Agreement, as well as the certification of the Environmental Impact Report for the project.

Please take notice, under section 21167.5 of the Public Resources Code, that SMCLC intends to include a cause of action under the provisions of the California Environmental Quality Act (CEQA) against the City of Santa Monica and its City Council. The lawsuit will challenge the City's certification of the Bergamot Transit Village Environmental Impact Report and the City's failure to perform a legally adequate environmental analysis pursuant to CEQA.

Sincerely,



Beverly Grossman Palmer

cc: Client

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Re: *Santa Monica Coalition for a Livable City v. City of Santa Monica, et al.*,

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024.

On **March 7, 2014** I served the foregoing document(s) described as **LETTER TO SARAH P. GORMAN, CITY CLERK, DATED MARCH 7, 2014**, on all appropriate parties in this action, as listed on the attached Service List, by the method stated:

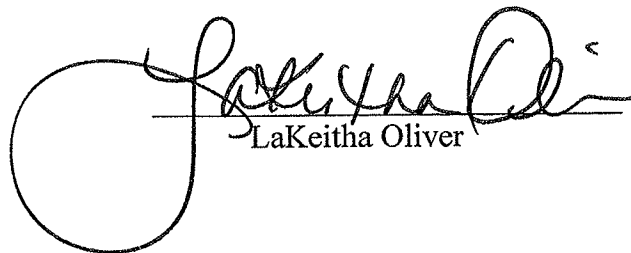
If electronic-mail service is indicated, by causing a true copy to be sent via electronic transmission from Strumwasser & Woocher LLP's computer network in Portable Document Format (PDF) this date to the e-mail address(es) stated, to the attention of the person(s) named.

If fax service is indicated, by facsimile transmission this date to the fax number stated, to the attention of the person named, pursuant to Code of Civil Procedure section 1013(f).

If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

If overnight service is indicated, by placing this date for collection by sending true copies in sealed envelopes, addressed to each person as indicated, pursuant to Code of Civil Procedure, section 1013(d). I am readily familiar with this firm's practice of collecting and processing correspondence. Under that practice, it would be deposited with an overnight service in Los Angeles County on that same day with an active account number shown for payment, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **March 7, 2014**, at Los Angeles, California.


LaKeitha Oliver

SERVICE LIST

Santa Monica Coalition for a Livable City v. City of Santa Monica, et al.,

Sarah P. Gorman, City Clerk
City of Santa Monica
1685 Main Street, Room 102
Santa Monica, California 90407
Fax: (310) 394-2962
Email: sarah.gorman@smgov.net

EXHIBIT D

STRUMWASSER & WOOCHELLP

ATTORNEYS AT LAW

10940 WILSHIRE BOULEVARD, SUITE 2000
LOS ANGELES, CALIFORNIA 90024

TELEPHONE: (310) 576-1233
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FREDRIC D. WOOCHELLP
MICHAEL J. STRUMWASSER
GREGORY G. LUKE †‡
BRYCE GEE
BEVERLY G. PALMER
RACHEL A. DEUTSCH
PATRICIA T. PEI
ADRIENNA WONG

† Also admitted to practice in New York
‡ Also admitted to practice in Massachusetts

March 10, 2014

Via U. S. Mail

Kamala D. Harris
Attorney General
Office of the Attorney General
1300 I Street
Sacramento, California 95814-2919

Re: Notice of Commencement of CEQA Action
Santa Monica Coalition for a Livable City v. City of Santa Monica, et al.,

Dear Attorney General:

Pursuant to Public Resources Code section 21167.7 and Code of Civil Procedure section 388, Plaintiff and Petitioner Santa Monica Coalition for a Livable City ("SMCLC") hereby gives notice that on March 10, 2014, a petition for writ of mandate and complaint will be filed against Defendants and Respondents, the City of Santa Monica and the Santa Monica City Council (collectively "the City") in Los Angeles Superior Court, Central Division. The action challenges the City's approval of the Bergamot Transit Village Environmental Impact Report and failure to comply with procedural and substantive requirements of the California Environmental Quality Act, Public Resources Code section 21000, *et seq.* ("CEQA").

A copy of the Petition for Writ and Complaint for Injunctive Relief is attached to this notice. In addition, I include a copy of the notice of intent to commence action upon Defendants and Respondents the City, and the proof of service of the notice.

Should you have any questions about this notice, do not hesitate to contact me at (310) 576-1233 or bpalmer@strumwoochellp.com

Sincerely,



Beverly Grossman Palmer

cc: Client

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Re: *Santa Monica Coalition for a Livable City v. City of Santa Monica, et al.*,

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 10940 Wilshire Boulevard, Suite 2000, Los Angeles, California 90024.

On **March 10, 2014** I served the foregoing document(s) described as **LETTER TO KAMALA D. HARRIS, ATTORNEY GENERAL, DATED MARCH 10, 2014**, on all appropriate parties in this action, as listed on the attached Service List, by the method stated:

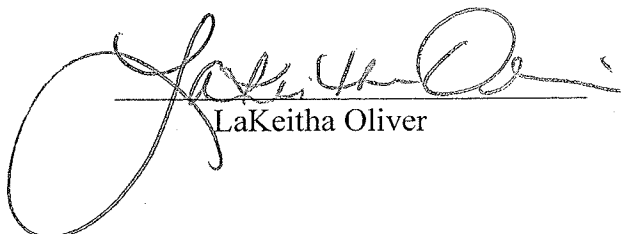
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **March 10, 2014**, at Los Angeles, California.


LaKeitha Oliver

SERVICE LIST

Santa Monica Coalition for a Livable City v. City of Santa Monica, et al.,

Kamala D. Harris
Attorney General
Office of the Attorney General
1300 I Street
Sacramento, California 95814-2919