



1901 FIRST AVENUE, SUITE 219
SAN DIEGO, CA 92101

TELEPHONE
(619) 702-7892

FACSIMILE
(619) 702-9291

July 5, 2016

Via Email

PlanningCEQA@sandiego.gov

Seth Litchney, Senior Planner
CITY OF SAN DIEGO
Planning Department
1010 Second Avenue, MS 413
San Diego, CA 92101

Re: DPEIR Comments – Serra Mesa Community Plan Amendment Street Connection, Project No. 265605, SCH No. 2012011048

This office has been retained and represents the Serra Mesa Community Council (SMCC) for the purpose reviewing, commenting and seeking to enforce local and state laws regarding the completeness and legal sufficiency of the April 18, 2016 noticed and available draft program environmental impact report (DPEIR) for the proposed and described project, the Serra Mesa Community Plan Amendment Street Connection, Project No. 265605 (Project).

On behalf of my client and other similarly situated members of the public, this office contends there are multiple omissions, inaccuracies, and contended legal deficiencies in the circulated DPEIR and that disclosures, corrections, clarifications, and recirculation need to be made on the below subjects and points.¹

1. Project No. 265605 was *originally* applied for and publicly noticed to be a Community Plan Amendment and Site Development Permit to provide (a) the subject road connection, (b) extend Franklin Ridge Road, (c) revise the existing street classification, and (d) change a land use designation from Residential to Parks/Open Space. (Application Notice dated Dec. 21, 2011; NOP dated Jan. 23, 2012.) The Project has changed to *now* be a program EIR for not only those four (4) disclosed project elements, but now perhaps including other projects, sub-projects, or ancillary projects. (See discussion in no. 2 below.)

2. The DPEIR miserably fails to identify and describe the intended tiered or programmatic projects that are included and analyzed under the singular purposed road connection and road classification Community Plan Amendment. The DPEIR is substantially defective and contradictory by claiming to provide programmatic CEQA level review while at the same time claiming that “[f]uture projects would require project-level environmental analysis to determine the individual impacts associated with new development.” (E.g., for Transportation/Circulation section, DPEIR at pp. 10-1 to 10-6.) For practical and legal reasons, it is necessary to clarify the intended scope of projects that the DPEIR intends to cover and satisfy for purposes of CEQA review, including but not limited to:

(a) Out of the 16 projects listed on pages 10-1 to 10-6 of the DPEIR, as part of the Transportation/Circulation mitigation analysis, which of those are *projects* and which of those are *mitigation measures*?

¹ In addition to the herein-stated defects of the DPEIR, other commenters have identified particular questions, issues and DPEIR references (e.g. the June 26, 2016 comment letter submitted by the Serra Mesa Planning Group) that are applicable to the points raised here. Such additional supporting references and information are incorporated into this letter to provide support and meaning to the comments made herein.

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(b) If any of the above-referenced 16 projects listed on pages 10-1 to 10-6 of the DPEIR are mitigation measures, please clearly identify to which programmatic projects that they attach and are required to be implemented.

(c) For each of the 16 projects listed on pages 10-1 to 10-6 of the DPEIR that are intended as mitigation measures, please describe any and all likely or possible adverse environmental impacts or land use conflicts that may arise from implementation of the same.

(d) The DPEIR concludes that “[m]itigation was determined infeasible for the following issues areas: transportation/circulation.” Describe in detail which of the listed and identified mitigation measures that have been determined infeasible and explain the reasons why they are infeasible.

(e) Please explain whether or not, and under what circumstances, the subject Project road connection is intended or may be authorized to be constructed or implemented (under a final PEIR) without ANY of the other programmatic projects and mitigation measures listed on pages 10-1 to 10-6 of the DPEIR.

(f) So that the public and decision-makers may understand what may actually be required and/or constructed, for each of the other projects and mitigation measures listed on pages 10-1 to 10-6 of the DPEIR, describe the *objective standards* that will be used and considered for the City Engineer to be “satisfied” (for meeting the requirements of the mitigation measure).

(g) Also, for each of the other projects and mitigation measures listed on pages 10-1 to 10-6 of the DPEIR, describe the *subjective and discretionary considerations* that may be used by the City Engineer for him or her to be “satisfied” (for meeting the requirements of the mitigation measure).

3. The “baseline” consideration of potential adverse impacts arising from the Project should be based on the existing environmental conditions at the time the EIR process begins. (Neighbors for Smart Rail v. Exposition Metro Line Constr. Authority, (2013) 57 Cal.4th 439, 447; CBE v. SCAQMD, (2101) 48 Cal.4th 310.) While CEQA Guidelines provides that the beginning of the EIR process is *normally* the time that the Notice of Preparation is published (CEQA Guidelines §§ 15125(a), (e); 15126.2(a)), later or different baseline conditions are appropriate under certain circumstances. (Neighbors for Smart Rail, 57 Cal.4th 439, 453.)

In this case, the baseline for CEQA analysis should not be the 2011-2012 time period that environmental review commenced under the application of owner Quarry Falls LLC dated November 30, 2011. The substantial delay and passage of time from the 2011 application and 2012 NOP commencement period, is substantially discordant and stale with the 2015-2016 date and time period that the DPEIR was principally prepared and circulated. During that time period, as demonstrated by a number of other commenters and as would be demonstrated had a proper baseline impacts analysis been conducted, existing physical conditions have changed. Another practical and legal reason supporting a more realistic and current baseline date arises from the change in the scope of the original NOP which has since been revised to a program EIR. (See discussion in nos. 1 and 2 above).

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4. A legally compliant EIR requires that the DPEIR must include a summary of the proposed project and its consequences, using language that is as clear and simple as is reasonably practicable. (CEQA Guidelines § 15123(a).) The DPEIR fails to summarize and disclose a summary of potential adverse impacts, mitigation measures, and purposes of the Project (DPEIR, pp. ES-1 to ES-6). The mandatory CEQA summary of impacts was intended to be disclosed and circulated in Table ES-1² but the Table was either inadvertently or intentionally omitted from the DPEIR. The omission of Table ES-1 in the circulated DPEIR was confirmed via communication between a SMCC representative and principal planner Seth Litchney. As of the date of this letter, this omission and defect is not known to have been corrected, made available, or otherwise recirculated with the DPEIR.

5. The DPEIR fails to consider and/or analyze a reasonable range of project alternatives as required by CEQA. Most telling is the failure to consider a project alternative to fulfill the primary stated city council objective to “reconcile the conflict between the Mission Valley Community Plan and Serra Mesa Community Plan.” (Resolution No. 304297, dated Oct. 21, 2008.)

When the principal objective of a project is to resolve inconsistencies between one community plan and another, when the amendment(s) or reconciliation(s) might cause similar impacts to one community or area at the expense of the other, it is both reasonable, feasible, and legally necessary to consider a project alternative that would amend one, either or both plans to resolve the conflict. The DPEIR artificially limits the consideration of alternatives by assuming that the Serra Mesa Community Plan (SMCP) should (only) be amended to be made consistent with the Mission Valley Community Plan (MVCP). (*See Kings County Farm Bureau v. City of Hanford*, (1990) 221 Cal.App.3d 692, 736.)

Alternatives should be consistent with attaining the objective of the project. (CEQA Guidelines §§ 15126.4(a)(1) and 15126.6(a).) The basic purpose of an EIR’s discussion of alternatives is to suggest ways project objectives might be achieved at less environmental cost. Analysis in an EIR should focus on alternatives that can eliminate or reduce significant environmental impacts even if they would impede attainment of project objectives to some degree or be more costly. (CEQA Guidelines § 15126.6(b).) The following inclusions are requested and believed necessary for the DPEIR to be informative and to achieve CEQA compliance

(a) What amendments can or should be made to the MVCP to make it consistent with the SMCP (i.e., that there is to be no new or further road connection through Serra Mesa that would adversely impact its community)?

(b) Included in a MVCP alternative, or one or more related alternatives, what projects can or should be done to “improve circulation,” improve emergency access,” and implement a bicycle circulation and master plan.

² Section ES.4 of the DPEIR instructs that: “Table ES-1, located at the end of this section, summarizes the results of the environmental analysis completed for each issue area for the proposed CPA. Table ES-1 also includes mitigation measures to reduce and/or avoid the significant environmental effects, with a conclusion as to whether the impact has been mitigated to below a level of significance. The mitigation measures listed in Table ES-1 are also discussed accordingly within each environmental issue area.” (DPEIR, p. ES-3)

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(c) To better inform the public and decision-makers (consistent with the purpose of the required CEQA alternatives analysis) please list in a comparative chart or table the relative “improvements” and “detriments” that each of the alternatives will have on (a) circulation, (b) emergency access, and (c) bicycle circulation/ routing. In doing so, please identify and factor-in the mitigation measures and ancillary projects that may or may not get implemented, as well as the mitigation measures (and their incumbent and potential impacts) that are *required* to be implemented under the current proposed Project.

6. Based on the above omissions, inaccuracies, and alleged legal defects, recirculation of the DPEIR is required under Public Resources Code § 21092.1. Substantive changes and additions to the DPEIR warrant recirculation. Correction of the DPEIR will require additions and replacements with multiple pages of information, analyses and summaries that, without recirculation, would deprive the public of a meaningful opportunity to understand and comment on potential adverse impacts, including (a) possible ways to mitigate substantial adverse environmental effects, and (b) more ominously, what mitigation measures the decision-makers are determining infeasible and therefore will NOT be required to be implemented despite admitted adverse consequences resulting from the road connection contemplated by the Project.

Thank you for your thorough consideration and complete responses to the above comments and concerns.

Sincerely,



Craig A. Sherman