



City of South Gate

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MARÍA BELÉN BERNAL, Mayor
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March 12, 2019

Mayor Rick Rodriguez and City Council Members
City of Downey
1111 Brookshire Avenue
Downey, CA 90241

RE: PROPOSED HOUSING PROJECT AT 11269 GARFIELD AVENUE, DOWNEY, CA

Honorable Mayor Ashton and Council Members:

As you know, on October 9, 2018, I wrote to you on behalf of my City Council to express the City of South Gate's strong opposition to the development of a housing project on the County-owned property at 11269 Garfield Avenue (the Site). My letter followed on the heels of the City of Downey and the County entering into a memorandum of understanding (MOU), calling for Downey to assist the County in developing a homeless housing project on the Site (Project), with Downey's responsibilities including assisting the County in preparing a Request for Proposals (RFP) for such a development, evaluating proposals, and selecting a developer.

On January 9th, the County issued the RFP, with proposals due February 21st. While reading the RFP might lead one to think that developing the Project on the Site is solely a County endeavor, other evidence indicates it is a Downey one too. For example, the RFP that Downey assisted the County in preparing obliges the selected developer to obtain proper land use entitlements for the Project from Downey. In addition, the Agenda Memo for Item 14 on your city council's February 12th public meeting agenda indicated this. Item 14 recommended your city council approve up to \$209,600 in relocation assistance to American Legion Hollydale Post #723. By this action, Downey conceded that the Project is "a program or project undertaken by a public entity [*i.e.*, Downey]" under the California Relocation Assistance Act, else Downey would have no obligation to pay these relocation benefits. (Gov. Code § 7260(c)(1)(A)(i).)

The foregoing actions indicate the County and Downey have already committed to developing the Project on the Site, and this despite the City of South Gate urging Downey to explore (1) a housing project at a more appropriate location in Downey, and (2) other uses for the Site that would be more compatible with surrounding properties—especially those in South Gate. For

example, the RFP stated [p. 7] that “[t]he County can only enter into an agreement for development of the property after all appropriate entitlements and environmental clearances have been completed.” It appears that, despite this boilerplate language conditioning the Project’s approval on compliance with the California Environmental Quality Act (CEQA), the County and Downey have already committed to only the Project being developed on the Site and nowhere else, thereby frustrating a key purpose of the CEQA process:

“Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.”

(1) With public projects, at the earliest feasible time, project sponsors shall incorporate environmental considerations into project conceptualization, design, and planning. CEQA compliance should be completed prior to acquisition of a site for a public project.

(2) To implement the above principles, public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not:

(A) Formally make a decision to proceed with the use of a site for facilities which would require CEQA review, regardless of whether the agency has made any final purchase of the site for these facilities, except that agencies may designate a preferred site for CEQA review and may enter into land acquisition agreements when the agency has conditioned the agency’s future use of the site on CEQA compliance.

(B) Otherwise take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project.”

(CEQA Guidelines § 15004(b); emphasis added.) The City of South Gate’s concern here is that the CEQA process the County and/or Downey intend to employ here will be a post hoc rationalization of a prior decision to develop the Project at the Site and nowhere else. Courts have consistently condemned this approach to CEQA:

“CEQA requires that an agency determine whether a project may have a significant environmental impact, and thus whether an EIR is required, before it approves that project. [] A fundamental purpose of an EIR is to provide decision makers with information they can use in deciding whether to approve a proposed project, not to inform them of the environmental effects of projects that they

have already approved. If post approval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken. We have expressly condemned this use of EIR's."

(Laurel Heights Improvement Assn. v. Regents of Univ. of Calif. (1988) 47 Cal.3d 376, 394; see also Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, 132 ["if the agreement, viewed in light of all the surrounding circumstances, commits the public agency as a practical matter to the project, the simple insertion of a CEQA compliance condition will not save the agreement from being considered an approval requiring prior environmental review."].)

The City of South Gate has received Downey's February 13th Notice of Preparation (NOP) of a draft programmatic environmental impact report (PEIR) for a project identified as the "Rancho Los Amigos South Campus Specific Plan." Despite the proposed specific plan's boundaries including the Site, and the County and Downey already seeking a developer to develop the Project at the Site, the NOP nowhere mentioned the Project. The NOP also noticed a February 25th "informational" scoping meeting which City of South Gate staff attended. Such a meeting hardly fulfills the purpose of scoping. Properly done, scoping involves more than an informational meeting: it involves actually consulting with other public agencies in order to preempt problems. (See CEQA Guidelines § 15083 ["Many public agencies have found that early consultation solves many potential problems that would that arise in more serious form later in the review process."].)

The reason why a proactive, substantive consultation process between our two cities is so critical here was expressed in my October 9, 2018 letter to you. As I noted, there are several other County-owned sites in Downey that are vastly better suited for the Project, and there are superior alternative uses for the Site. And as I also noted, the City of South Gate desires to discuss these alternative locations and alternative uses with the County and Downey as well as possible annexation. Thus, I would urge you to direct your staff to engage in a consultation process with City of South Gate staff regarding these feasible and environmentally superior alternatives. Please have your staff contact the City of South Gate's Director of Community Development, Joe Perez [323-563-9566], to arrange this consultation meeting during the NOP's 30-day period.

Thank you for your consideration, and we look forward to your reaching out to our staff to begin the consultation process.

Sincerely,



María Belén Bernal
Mayor

cc: Honorable Supervisor Hilda Solis, First District
Honorable Supervisor Janice Hahn, Fourth District
City Manager Gilbert Livas, City of Downey
Community Development Director Aldo E. Schindler, City of Downey
Assistant Director Lynn Katano, LA County CDC