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**Item No. 11**

MAR 6 2019

**City of South Gate**

**CITY COUNCIL**

**CITY OF SOUTH GATE  
OFFICE OF THE CITY MANAGER**

9:10am

**AGENDA BILL**

For the Regular Meeting of: March 12, 2019

Originating Department: Community Development

Department Director:

*Joe Perez*  
Joe Perez

City Manager:

*Michael Flad*  
Michael Flad

**SUBJECT: LETTERS PROTESTING THE REQUEST FOR PROPOSALS REGARDING FORMER AMERICAN LEGION SITE IN THE CITY OF DOWNEY (11269 GARFIELD AVENUE) AND RESPONDING TO THE NOTICE OF PREPARATION OF A DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT FOR RANCHO LOS AMIGOS SOUTH CAMPUS SPECIFIC PLAN**

**PURPOSE:** To consider approving two letters to the City of Downey concerning the former American Legion site located at 11269 Garfield Avenue (Property) in the City of Downey. The first letter, from the Mayor, protests the Request for Proposals (RFP) for a proposed housing development at the Property and expresses concerns regarding the Notice of Preparation (NOP) of a Draft Program Environmental Impact Report (EIR) for the proposed Rancho Los Amigos South Campus Specific Plan. The second letter, from City Staff, addresses technical concerns regarding the NOP and EIR for the proposed Rancho Los Amigos South Campus Specific Plan and states the need for Downey to withdraw and reissue the NOP to include the Project. The proposed Specific Plan will address several factors, including future land uses at the Property. Both letters are intended to preserve and enhance the quality of life for South Gate residents that are in close proximity to the Property.

**RECOMMENDED ACTIONS:**

- a. Authorize the Mayor to execute the letter to the City of Downey protesting the Request for Proposals for a proposed housing development at the County-owned property, former American Legion Site, located at 11269 Garfield Avenue and expressing concerns regarding the Notice of Preparation of a Draft Program Environmental Impact Report for the proposed Rancho Los Amigos South Campus Specific Plan; and
- b. Direct the City Manager or his designee to execute the letter to the City of Downey stating the City of South Gate's concerns regarding the Notice of Preparation of a Draft Program Environmental Impact Report for the proposed Rancho Los Amigos South Campus Specific Plan; and
- c. Direct the City Manager to send the two aforementioned letters to the City of Downey.

**FISCAL IMPACT:** None.

**ANALYSIS:** The Los Angeles County (County) owns a 2.2 acre property at 11269 Garfield Avenue, located at the northwest corner of Garfield Avenue and Gardendale Street (within the

City of Downey). This property is on the border of Downey and the Hollydale community of South Gate. The County formerly leased the Property to the American Legion Hollydale Post #723, which vacated the Property in November 2018. The 6,840 square foot building and parking lot previously used by the American Legion were demolished in December 2018.

Several South Gate residents from the Hollydale community have expressed concerns about the potential impacts such a development could have on their neighborhood. Furthermore, the South Gate City Council has formally opposed the proposed housing project. The City's position was communicated in an October 9, 2018 letter that stated the City Council's opposition to the project and urged the County and City of Downey to: consider other land uses at the Property that are compatible with the surrounding neighborhood; consider constructing the proposed housing development on other County-owned property in Downey that is appropriately located for such a use (e.g. Rancho Los Amigos campus); and discuss the possible purchase and annexation of the Property by the City of South Gate.

### Request for Proposals

In August 2018, the City of Downey and the County entered into a Memorandum of Understanding (MOU) regarding the exploration of an affordable housing project at the site. The MOU calls for a collaborative effort between Downey and the County in preparing a Request for Proposals from the development community for a possible supportive housing development for homeless and low-to-moderate income veterans.

On January 9, 2019, the County released an RFP for development of the Property. The RFP states that the County and the City of Downey are interested in the development of the site for affordable housing for veterans that also includes common area space for counseling, physical rehabilitation, and a variety of social, workforce and other related community services for residents and other community members.

Proposals were originally due to the County by February 21, 2019, however, this deadline was extended to March 7, 2019. After the County evaluates the proposals, it is estimated that the Board of Supervisors will approve an Exclusive Negotiating Agreement with the selected developer in summer 2019.

### Notice of Preparation - Rancho Los Amigos South Campus Specific Plan

On February 13, 2019, the City of Downey issued a Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the Rancho Los Amigos South Campus Specific Plan. The NOP is a requirement of the California Environmental Quality Act (CEQA) and, along with a mandatory scoping meeting held on February 25, 2019, is intended to: inform the public of the proposed project and City's intent to prepare Program Environmental Impact Report; present an overview of CEQA process; review topics to be addressed in the EIR; and receive input from the public on issues of concern/topics to be addressed in the EIR. The public comment period for the NOP ends March 15, 2019.

The Specific Plan encompasses approximately 172 acres (see attached map) and includes the former American Legion property. According to the NOP, the goal of the Specific Plan is to promote infill development of vacant properties and encourage various types of uses, including commercial, retail, mixed-use, and residential and public/open space. It is anticipated that the Specific Plan will alter the current zoning of the former American Legion site to allow the County's proposed housing development.

#### Draft Letters to City of Downey

Attached are two draft letters to the City of Downey addressing the proposed housing project on the Property. The first letter, from the Mayor, protests the RFP for a proposed housing development at the Property and expresses concerns regarding the NOP of a Draft Program Environmental Impact Report (EIR) for the proposed Rancho Los Amigos South Campus Specific Plan. In particular, the letter states that the Memorandum of Understanding between the City of Downey and County, as well as the issuance of the RFP for the Property have been done so without any environmental considerations or analysis into alternative sites for a housing project and other uses for the Property that are more compatible with the surrounding neighborhood. In addition, the letter states that the NOP Scoping Meeting held by Downey on February 25, 2019 does not fulfill the need to consult with other agencies to preempt potential problems. The letter concludes by urging Downey to engage in a consultation process with South Gate to determine feasible and environmentally superior alternatives for the Property.

The second letter, from City Staff, addresses technical concerns regarding the NOP and EIR for the proposed Rancho Los Amigos South Campus Specific Plan. The letter notes the NOP's failure to mention the Project in the NOP. The letter also points out the problem of "project-splitting" and "piecemealing" the various aspects of the Project for CEQA review. The letter concludes by stating the need for Downey to withdraw the current NOP and reissue the NOP to include the Project.

- ATTACHMENTS:**
- A. Draft Letter Protesting RFP & NOP
  - B. Draft Letter Regarding NOP of Draft EIR for Rancho Los Amigos South Campus Specific Plan
  - C. Regional and Local Maps of Rancho Los Amigos South Campus Specific Plan Area



# City of South Gate

8650 CALIFORNIA AVENUE • SOUTH GATE, CALIFORNIA • 90280-1666 (323) 563-9509  
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March 12, 2019

Mayor Sean Ashton and City Council Members  
City of Downey  
11111 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



# City of South Gate

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March 12, 2019

Aldo E. Schindler, Community Development Director  
David Blumenthal, City Planner  
City of Downey  
11111 Brookshire Avenue  
Downey, CA. 90241

**RE: NOTICE OF PREPARATION OF A DRAFT PROGRAM ENVIRONMENTAL IMPACT REPORT  
[Rancho Los Amigo South Campus Specific Plan, City of Downey, California]**

Dear Mrs. Schindler and Blumenthal:

I am writing in response to the City of Downey's Notice of Preparation (NOP) of a draft programmatic environmental impact report dated February 13, 2019, for a project identified as the "Rancho Los Amigos South Campus Specific Plan." I am also writing to follow up on Mayor María Bernal's letter dated March 12, 2019, to your mayor and city council, requesting that the staffs of our cities commence a consultation process regarding the draft Program Environmental Impact Report (PEIR).

At the outset, the City of South Gate is unclear as to why the NOP does not make any mention of the County's and Downey's plan to develop a homeless housing project (the Project) on the County-owned property at 11269 Garfield Avenue (the Site). As Mayor Bernal's letter sets out, it is no secret that the County and Downey are actively coordinating plans to develop the Project at the Site. Yet while the NOP lists under "III. Relationship to Other Plans and Programs" within the Specific Plan area—a Metro-proposed light rail transit line and three other County-proposed developments—it says nothing about the Project for which a developer is already being sought.

Downey's proposed Specific Plan has real environmental implications. As the California Supreme Court noted when it encountered a similar situation in one of its earliest California Environmental Quality Act (CEQA) cases:

"This is not the case of a rancher who feels that his cattle would chew their cuds more contentedly in an incorporated pasture. No one makes any bones about the fact that the impetus for the Bell Ranch annexation is Kaiser's desire to subdivide 677 acres of agricultural land, a project apparently destined to go nowhere in the near future as long as the ranch remains under county jurisdiction."

(*Bozung v. LAFCO* (1975) 13 Cal.3d 263, 281.) Likewise here, by including the Site within the Specific Plan's boundaries, it is clear that one of the Specific Plan's intended purposes is to change the Site's general plan land use designation and zoning in order to facilitate the development of the Project at that location. It is unclear as to the reason the NOP did not acknowledge this purpose.

It appears from the NOP that there is "project-splitting" and "piecemealing" of the various Downey and County aspects of the Project for CEQA review. This is particularly concerning since the County and Downey are actively cooperating on the Project as recounted in Mayor Bernal's letter.

There are several problems with this. First, CEQA defines a "project" as "the whole of an action that has the potential, directly or ultimately, to result in a physical change to the environment" and includes all phases of a project that are reasonably foreseeable. (See CEQA Guidelines § 15378(c) ["The term 'project' refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term 'project' does not mean each separate governmental approval."].) Thus, by splitting "the whole of the action," *i.e.*, the Project they are working cooperatively to develop at the Site, between them for CEQA review, the County and Downey are violating CEQA.

Second, Project-splitting is seen in the Project's Request for Proposals (RFP) which 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." Ostensibly, the County will commence a CEQA process for the Project once Downey has completed its CEQA process for the Specific Plan that changes the Site's general plan land use designation and zoning. This Project-splitting runs counter to CEQA: "Legislature has found and declared that it is state policy that: (a) Local agencies integrate the requirements of [CEQA] with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively." (CEQA § 21005(a).)

A third problem with the NOP not mentioning the Project is that the public still does not know whether the County or Downey will be the lead agency for it. For example, the NOP [pp. 2-3] identifies three County projects and notes that "[t]he County is preparing an Environmental Impact Report (EIR) pursuant to CEQA" for them. This lack of clarity is compounded by the draft Exclusive Negotiating Agreement attached to the RFP stating [p. 2] that the County "or other agency" may serve as the lead agency for the Project. As the first public agency taking action on the Project by amending the Site's general plan land use designation and zoning to facilitate the Project's development, it appears Downey should be the "lead agency" for the Project under CEQA. (See CEQA Guidelines § 15051(c).) At the same time, with the County perhaps having "the greatest responsibility for supervising or approving the project as a whole," it may be more appropriate for the County claim the lead agency role. (See CEQA Guidelines § 15051(b).) In any event, what with development of the Project at the Site being as controversial as it is, the public has a right to know now whether the County or Downey will assume the lead agency role.

Moreover, only one of them should be preparing an EIR for it. Public agencies undertaking project review under CEQA “**should** reduce delay and paperwork by ... Consulting with state and local Responsible Agencies *before and during preparation of an Environmental Impact Report so that the document will meet the needs of all the agencies which will use it.*” (CEQA Guidelines § 15006(g); italics and emphasis added.)<sup>1</sup> Note that this provision calls for the preparation of *a single* EIR. The point here is that the County and Downey need to decide and announce which of them is going to be the lead agency for the Project, and whichever one of them assumes the lead agency role needs to produce *a single* EIR that conducts a full environmental review of the “whole of the action” that constitutes the Project.

It should also be noted that the South Gate Public Works Department is concerned about the potential impact of the proposed development project on the City’s roadway network. Of particular concern is the proposal to extend Flores Street, which appears to be a residential local street, westerly to connect with Garfield Avenue. With over 650,000 SF of development planned, the City is concerned with the potential impact that this improvement and vehicle trips will have on Garfield Avenue and the Hollydale community. We are further concerned that the new roadway extension appears to be in the City of South Gate yet that roadway is not consistent with the South Gate General Plan’s Circulation Element. The City is requesting a detailed traffic impact analysis and a review of consistency with the General Plan’s Circulation Element and Bike Transportation Plan. The analysis needs to consider the entire roadway network in South Gate that could be impacted. Further, a traffic study needs to be provided that analyzes, among other impacts, the impact of the development to the I710 Freeway interchange at Imperial Highway.

In summary, the CEQA process for the Project has started off deeply flawed and the NOP is deficient for failing to mention that the Project is an already green-lighted component of the proposed Specific Plan. Therefore, at a minimum, Downey needs to withdraw the NOP, revise it to include the Project, and post the revised version for 30-day review.

In the interim, City of South Gate staff look forward to initiating a consultation process with your staff regarding the Project and the PEIR for the Specific Plan. Public agencies undertaking project review under CEQA are directed to “reduce delay and paperwork by ... [e]mphasizing consultation before an Environmental Impact Report is prepared, rather than submitting adversary comments on a completed document,” and it is for this reason that we desire to meet face-to-face. (CEQA Guidelines § 15006(j).) The consultation process is critical here because it is “helpful to agencies in identifying the range of ... alternatives ... to be analyzed in depth in an EIR.” (*Id.*; see also *Laurel Heights Improvement Assn. v. Regents of Univ. of Calif.* (1988) 47

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<sup>1</sup> “Should” identifies guidance provided by the Secretary for Resources based on policy considerations contained in CEQA, in the legislative history of the statute, or in federal court decisions which California courts can be expected to follow. Public agencies are advised to follow this guidance in the absence of compelling, countervailing considerations. (CEQA Guidelines § 15005(b).)

Cal.3d 376, 400 [“One of [an EIR’s] major functions ... is to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by the responsible official’.”].)

My staff and I look forward to meeting with you and your staff to start this process.

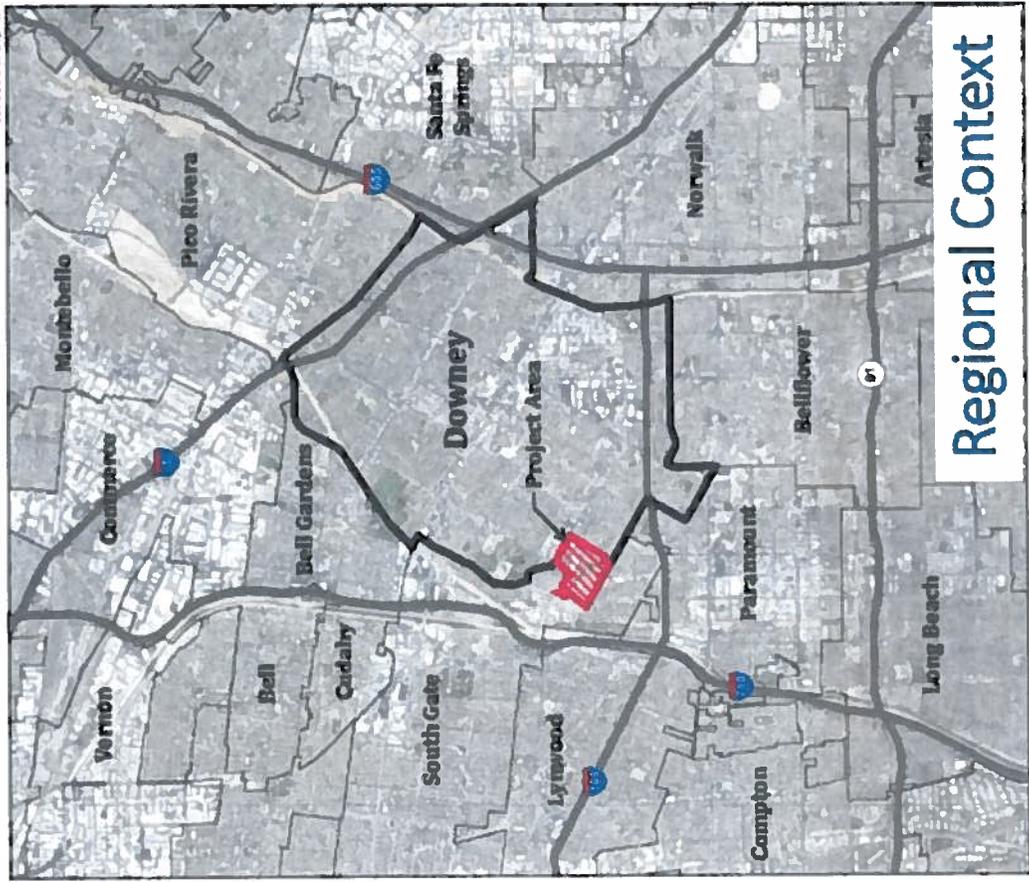
Sincerely,

Joe Perez  
Community Development Director

cc: Honorable Supervisor Hilda Solis, First District  
Honorable Supervisor Janice Hahn, Fourth District  
Mayor Sean Ashton, City of Downey  
City Manager Gilbert Livas, City of Downey  
Assistant Director Lynn Katano, LA County CDC

DRAFT

# Specific Plan Area



Regional Context



Local Context

# Attachment C