



Santa Monica Coalition for a Livable City

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DATE: September 10, 2013  
TO: Planning Commission  
CC: Rod Gould, Marsha Moutrie, David Martin, Jing Yeo  
RE: Agenda Item 5-A, Hines Bergamot Transit Village DA

### INTRODUCTION

For well over two years, Hines, the developer of this massive, “business park” project has been tone-deaf to direction from the City Council and the Planning Department as to how to resolve critical project design, development, open space and traffic mitigation issues. The proposed Development Agreement (“DA”) is not final -- it has multiple, open, contentious issues as to affordable housing and affordable housing fees, sustainability, parking cash outs and parking pricing, and street improvements. SMCLC believes the problems with the DA are far greater than this, as described in the attached Exhibit “A” and need serious reworking.

This project is not ready for final review by either the Planning Commission or the City Council and should not be before you now except as a progress report. Nor is this project entitled to priority under the City Council’s instructions for Development Agreement projects.

Therefore, the Planning Commission should not commence final review or trigger the 90-day review period until there is 1) a final project and a final DA that has been fully negotiated by the City and Hines (not a partial contract with significant undecided points and areas of disagreement); 2) a project plan and schematics that fully comply with staff recommendations as well as LUCE and the Bergamot Area Plan (“BAP”); and 3) community involvement and feedback on the project as proposed.

In addition to now meeting the BAP Tier 3 standards, Hines also should include an alternative Tier 2 project with reduced height and density, due to the intractable traffic congestion in the immediate area and the I-10 freeway and the worsening impacts its project would create at 27 key intersections that are already failing. There is no excuse for a developer to have failed to analyze a smaller Tier 2 project for this problematic site under CEQA or under LUCE; and

to pose “alternatives” that are largely the same mass and square footage and then claim no mitigations are feasible.

Lastly, the Commission should advise Hines to engage the community meaningfully in the process, which, to the detriment of the entire project, Hines has not done. Holding only one community meeting in December 2009 says it all.

#### IT IS NOT THE ROLE OF THE PLANNING COMMISSION TO NEGOTIATE DEVELOPMENT AGREEMENTS THAT ARE MISSING VITAL TERMS OR TO SETTLE CRITICAL PROJECT DESIGN AND DEVELOPMENT DISPUTES

The role of the Planning Commission is to review discretionary projects under LUCE (and now BAP) once the development negotiations have been completed, and thereafter to make recommendations to the City Council as to whether to approve or disapprove the project. (SMMC Section 9.48.130).

Analyzing the finalized terms of the project’s DA is an important part of that review. It is there, for example, on the Hines project that the definition of “creative office space” would restrict the type of tenants who could lease office space; and it is there that the array of mechanisms and enforcements to mitigate the serious traffic impacts generated by this project, as mandated by LUCE, would exist. It is there that the developer’s basic obligation as to when it must build the necessary infrastructure of public streets and sidewalks to transform the huge superblocs into non-industrial space, the requirements of sufficient open space, and specific project design and development standards are found.

Yet this DA is incomplete and still needs serious work to be ready for review. Notwithstanding over two years of negotiations with the City, this developer still has not reached a final agreement or an acceptable meeting of the minds as to critical parts of the DA as to even building the streets or providing the necessary security for street improvements. Nor has Hines adequately addressed the project’s massing and site design, as the staff report indicates. Attached as Exhibit “A” is a cursory list of significant, unresolved areas of disagreement between Hines and the City that do not comply with LUCE and/or the BAP or that constitute unfinished DA negotiations.

While we have no problem with the developer seeking advice from the Planning Commission, such advice in these circumstances should not trigger a 90-day review by the Commission as to a final “project.” Here, this is akin to a “float up” or a progress report, where the advice of the Planning Commission is being sought. The staff report refers to this proposed project as “a first step

towards fulfilling . . . LUCE (and the BAP).” (p1). A first step, **not** a final project.

The notice given about the reason for this hearing, however, is confusing. From the notice, it appears that the Planning Commission is being asked to undertake a 90-day review of this project and make recommendations to the City Council. This is inappropriate.

The Planning Commission is not a mediation body empowered to negotiate between the City and a developer where, as here, there are outstanding disagreements as to key terms of a DA. Its recommendation role is limited to review of final agreements and related documents for consistency with our land use laws, standards and community values. Then and only then does it make specific recommendations to the City Council under our code.

Therefore, until this Commission is presented with a final DA and related materials for this project, it should not commence the 90-day review period. To do otherwise would be to drastically shortchange the process, the level of review and the public process. We believe that this 90-day time period will be essential once the project is final in order to review it adequately given its size and significant impacts for the entire region.

#### HINES HAS FROZEN THE COMMUNITY OUT OF THE PROJECT NEGOTIATIONS

Unfortunately for residents and our Westside neighbors, Hines has given residents short shrift as it has attempted to move its massive project forward over the past several years. Hines has turned a blind eye as to the highly adverse impacts of its project given its problematic site in the heart of an area of perpetual traffic gridlock. Other than one initial community meeting in 2009 followed by the mandatory EIR scoping meeting in 2010, Hines has not met with or engaged any group in our community to discuss its project. In fact, Hines recently reneged on the one meeting that SMCLC initiated to meet with Hines’ architects to view a physical model of the project while it was still possible to discuss changes. Hines initially agreed but then changed its mind; Instead Hines (V. Akula) said as a “gesture to the community” Hines would bring its physical model to the Planning Commission hearing.

This sort of gamesmanship frustrates the essential benefit of community involvement -- to enable a better project that is designed to meet the very needs of the community that will be most severely impacted by it. By contrast, under one of the City’s early DAs, Hines did meet with the community on its Lantana project on Olympic Blvd., and that project has been tremendously

successful, recently selling for \$310 million. L.A. developers of massive projects – Millennium as well as Casden readily understood that community participation is vital and those projects' negative impacts have been substantially reduced through such a process.

Therefore, we ask the Commission to urge Hines to act in good faith with the community and meet with residents now, before the Commission formally takes up its project and before the DA is finalized. There are major issues with respect to both – see Exhibit “A” attached.

#### INADEQUATE HEARING NOTICE AND OPPORTUNITY FOR PUBLIC COMMENT

Let's face it: This is a huge project and because of that there is a huge amount of material to review. The notice of this hearing, coming at the onset of the Labor Day weekend, the Jewish Holidays and the start of school is unfortunate. Everyone understands the competing time, holiday and vacation schedules in this time period. There is really no good reason to have shortened the time for such an important hearing on the project that is the largest in the area and that will define and impact the City for a very long time. The 90-day period shouldn't commence under this cloud.

#### CONCLUSION

For all these reasons, we urge you to: 1) advise Hines that the Planning Commission will not commence the 90-day review period for review of this project until there is a final project and a final DA before it (and all disagreements with the City have been settled); 2) encourage Hines to meet with the community as to its project, including the possibility of down-sizing the project under a Tier 2 project under BAP; and 3) encourage Hines to provide an analysis of its project under both BAP Tier 2 and Tier 3 standards when it next brings its project before the Commission so that all of us can readily understand the benefits and reduced impacts of a smaller project on the site.

Sincerely,  
Diana Gordon

#### Exhibit “A”

There are multiple, major inconsistencies/violations that remain pursuant to LUCE, the Bergamot Area Plan (“BAP”), and/or that are in conflict with the community's needs, or constitute open areas of disagreement, particularly as to how to mitigate the many thousands of new vehicle trips that would result from the project. These issues include, by way of example:

- incomplete and imprecise descriptions of breakdown of type of housing units on the site, including failure to meet the requirements for affordable housing;
- insufficient community benefits, where streets and paths are included in calculating FAR, instead of as “community benefits” specified in LUCE;
- inadequate functional access to underground parking and ongoing disagreement with the City over shared parking and pricing;
- continuing refusal to address potentially disastrous traffic impacts, by refusing to agree to adopt multiple, required traffic reduction measures, including transit passes, parking cash-outs, and shared parking for the life of the project or in perpetuity (obligations would expire in 20 yrs. under current DA and Hines has 10 years to pull a building permit and begin to develop the infrastructure);
- inadequate Final EIR that has evaded or ignored every significant comment concerning deficiencies in the DEIR, including a worker/square footage calculation that is grossly wrong and greatly undercounts the likely number of workers for each commercial building and therefore the amount of likely vehicle traffic generated. (See August 23, 2011 Staff report; compare it to Sept 11, 2013 Staff report; SMCLC Comment Letter on DEIR at 10-151; Hines response at 10-256; Wilmont comment letter at 10-296; Hines response at 10-302; Caltrans letter requesting “comprehensive traffic analysis of the mainline SM Freeway (I-10) in the vicinity of the project to include traffic volumes in the build-out year and 20 years from the build-out year along with a LOS analysis and queue length analysis”) at 10-20; Hines response at 10-24; LADOT letter at 10-27 requesting reduction of project if significant traffic impacts cannot be mitigated; Hines response 10-31; and Kilroy Realty comment letter at 10-95 (also requesting reduced project to mitigate traffic impacts; Hines response at 10-118).
- no analysis of a Tier 2 project alternative in the DEIR or the FEIR under CEQA or in the materials before the Planning Commission and whether that is the maximum development that could be reasonable for this site given its gridlocked surroundings and the 7,755 new daily vehicle trips
- failure to create a human-scale, pedestrian-oriented environment or human scale buildings;
- incorrectly calculated and insufficient open space, uninviting to the public;
- inadequate size of public streets, paths and sidewalks within the site to allow for needed circulation and alleviation of business superblock feel;
- oversized city blocks, repetitive, boxy building forms and masses with little height or skyline variation;
- a 300’ building frontage as to the scale of building (5) that creates a

fortress to the street and the neighborhood together with long, narrow corridors, and insufficient natural daylight and air for ground floor residential units;

- lack of articulations, setbacks and insufficient skyline variation;
- inadequate ground level floor heights and variety for various retail uses;
- canyonization effect due to building placement and narrow streets, enhancing a “universal,” robotic business park appearance;
- inflated and incorrect height and FAR calculations that yield greater height and density than is appropriate for the site and are in conflict with LUCE, BAP, LEED Gold standards and the SMMC;
- unresolved discrepancy as to the actual size of the parcel in determining FAR (6.9 acres per assessor or “approximately 7.1” per Hines -- needs independent verification);

#### THE DA ITSELF IS UNACCEPTABLE BECAUSE IT PROPOSES 5 UNRELATED PROJECTS AND A VERY MINIMAL PERIOD OF TIME FOR THE PROJECT TO BE TRANSIT-ORIENTED

This is a “transit-oriented project” only in the sense that it would be located adjacent to Expo so that under the current terms of the DA it could be expected to fulfill TDM, creative office and affordable housing requirements for 4 to 5 years if and when each of the buildings was built and occupied. Yet the life of the project itself is defined as 55 years under the DA.

Equally unacceptable under the DA as proposed, Hines is entitled to carve the site up into 5 separate projects – with each building subject to separate ownership and separate obligations. So the failure to build affordable housing or to meet traffic reduction mitigations, or to build a parking garage on one portion of the site, or anything else required in the DA would not constitute a default as to any other building or phase of the project which could independently go forward (or not) on its own and be subject to its own series of defaults and non-compliance issues.

Moreover, the 5 separate owners have *carte blanche* as to whether to build part, all or nothing on their portions of the site, with a 10-year window after the DA is signed to even pull a building permit. But all obligations, transit or otherwise that were negotiated to enable a project of this huge size to be built, would expire 20 years from the date of the DA, except as to actual physical improvements made to traffic signals or infrastructure.

This highly advantageous timeline for Hines and any other owners also means that the very infrastructure -- the streets and sidewalks needed to break up these superblocks -- might not be built until 12 years or so after its DA is

approved, which is unacceptable if the LUCE and BAP goals to transform this area into a viable community are upheld. Instead, Hines is keeping all of its property rights intact while it secures multiple buyers/owners for over a decade.

This arrangement is extremely disadvantageous for the community and it is fraught with disaster. It virtually guarantees that each owner will go its own way, undertake its own risks of financing and default, without regard to overall LUCE or BAP community development and design standards because there is no incentive to build the project as a whole. It also creates a host of enforcement issues for the City that is of great concern to residents. Our city has failed many times to conduct DA required compliance reviews or to enforce major contract defaults, including the failure to build affordable housing and parking structures. Increasing the amount of enforcement required will create even more of a burden on the City and raises the probability that enforcement will be insufficient.

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