

**CORRESPONDENCE
FOR
SEPTEMBER 18, 2006
CITY COUNCIL MEETING**

- The field reviews of intersections in the City of Pasadena revealed an average saturation flow rate of 1,758 vplph. This figure was rounded down to 1,700 to provide a more conservative analysis.
- According to the City's traffic consultant, the 1,700 vplph capacity standard has been used in other traffic studies completed by the City of Pasadena during the previous eight months and in traffic studies currently underway. The standards were not changed to benefit the Westgate Pasadena project.
- The 1,700 vplph figure is based on actual conditions in the City of Pasadena. The use of actual field-verified data is preferable to the use of standard default values such as the previously used 1,600 vplph standard. Default values are commonly only used in the absence of real-world data.
- The Los Angeles County Congestion Management Program affirms that cities are permitted to establish their own traffic study guidelines for intersections under their jurisdiction and that no single standard can be imposed for all intersections in Los Angeles County.
- Additionally, the Draft Environmental Impact Report is submitted to the Los Angeles County Metropolitan Transportation Authority to review for consistency with the Congestion Management Program. No comments from this agency were identified in the Final Environmental Impact Report.
- The Westgate project has excellent freeway access to the 134 and 210 freeways. The environmental impact report estimates that 43% of the automobile trips generated by the project will travel out of Pasadena via these freeways. This is a significant number of trips that will spend very little time on local Pasadena streets.
- The fact that several intersections will operate at LOS E in the future condition was raised by WPRA as an issue needing explanation, and there is an easy explanation for this factor. There are several important points to highlight regarding this issue:
 - Twelve of the 13 intersections identified in the traffic analysis as operating at LOS E do so during the AM and/or PM peak hour in the Future Without Project condition. The LOS E condition will occur at these intersections whether or not the Westgate project is constructed.
 - More than half of the study intersections anticipated to operate at LOS E in the future condition experienced a volume to capacity ratio increase of one half of one percent (0.5%) or less as a result of traffic generated by Westgate project.
 - With the exception of the Pasadena Avenue/Del Mar Boulevard intersection, the increase in the volume to capacity ratio caused by the Westgate project at the 13 LOS E intersections is less than 2%, which is the threshold established by the City's Traffic Impact Analysis Guidelines for a significant impact at LOS E.
 - The identified traffic impact at the Pasadena Avenue/Del Mar Boulevard intersection will be fully mitigated by the project. This mitigation will improve traffic conditions at the intersection from LOS E to LOS B.
- The Westgate Pasadena project will pay its fair-share of the City's Transportation Impact Fee, a figure in excess of \$2 million. This fair-share fee payment will assist in implementing the traffic mitigations identified in the Mobility Element and is an important mitigation for the effects of the other expected development in the area, as well.

- Several innovative transportation demand management strategies are proposed as part of the project. These measures were added to the project based on comments received from the City's Transportation Advisory Commission (TAC) and many of the measures correspond to the Trip Reduction Ordinance requirements currently under consideration by TAC. Sares-Regis has voluntarily committed to implement these measures, which have become Conditions of Approval for the project. The strategies also fulfill the following policies from the City of Pasadena's General Plan Mobility Element:
 - Policy 1.7 – Focus development density around light rail stations
 - Policy 1.8 – Support automobile demand reduction programs
 - Policy 2.4 – Construct safe, clean, attractive transit stops
 - Policy 2.7 – Promote pedestrian improvements
 - Policy 2.8 – Promote bicycle riding
 - Policy 2.9 – Promote car-sharing programs
 - Policy 2.10 – Foster Transit Oriented Development districts near light rail stations

In conclusion, the City of Pasadena has planned for a transit-oriented development of this size in the Central District, and the City has prepared a thorough, conservative, and objective analysis of the potential traffic impacts associated with the proposed Westgate Pasadena project. The City's thorough analysis of traffic conditions study has found the Westgate project to be consistent with the development envisioned by the City Council and found that the traffic impacts caused by the project can be fully mitigated.

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CITY OF PASADENA

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Via Facsimile and
First Class Mail

September 13, 2006

Mayor William J. Bogaard
Vice Mayor Steve Madison
Councilmember Victor Gordo
Councilmember Steve Haderlein
Councilmember Chris Holden
Councilmember Paul Little
Councilmember Joyce Streater
Councilmember Sid Tyler
City of Pasadena
117 East Colorado Boulevard
Pasadena, CA 91105

Re: Westgate Pasadena – Minor Conditional Use Permit #4702

Dear Mayor Bogaard and Members of the City Council:

This firm represents Sares-Regis Group ("SRG") in connection with the development of the Westgate Pasadena project (the "Project") proposed to be constructed on the three blocks bounded by Green Street, Pasadena Avenue, Del Mar Boulevard, and DeLacey Avenue in the City of Pasadena (the "City"). On June 15, 2006, the Zoning Hearing Officer, after a properly noticed public hearing, approved the Minor Conditional Use Permit ("CUP"), adopted the Specific Findings for the CUP and Tree Removal ("CUP Specific Findings"), recommended Conditions of Approval, certified the Final Environmental Impact Report ("FEIR"), adopted the Mitigation Monitoring and Reporting Program ("MMRP"), and adopted by resolution the Findings of Fact and Statement of Overriding Considerations for the Project. The foregoing approvals are referred to collectively herein as the "Hearing Officer's Determination."

On June 26, 2006, the Planning Commission voted to call the Hearing Officer's Determination for review by the Board of Zoning Appeals. On August 1, 2006, the Board of Zoning Appeals unanimously upheld the Hearing Officer's Determination, thereby affirming that the Hearing Officer's Determination was correctly decided on the basis of careful consideration of substantial evidence in the record. On August 14, 2006, the City Council voted to call the action of

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the Board of Zoning Appeals for review by the City Council. SRG now urges you to uphold the Hearing Officer's Determination as affirmed by the Board of Zoning Appeals and to approve the Project as proposed, subject to minor changes to the conditions of approval requested by SRG.

As set forth in detail below, the Project fully complies with all applicable requirements of the Central District Specific Plan ("CDSP") and the Pasadena Municipal Code ("PMC"). The Project's environmental impacts have been fully analyzed and mitigated, and the Project will contribute to the overall vitality and success of Old Pasadena by creating the balance of residential and commercial uses envisioned in the CDSP.

A. The Project Has Been Subject to Extensive Public Review and Comment.

As set forth in the Hearing Officer's Determination, "interested members of the public have been afforded ample notice and opportunity to comment on the Final EIR and the comment process has fulfilled all requirements of State and local law." SRG has made extensive efforts to work closely with City officials and the public over the course of many months to make the Project design responsive to the goals and policies of the City and to community needs. Throughout this entire period, SRG conducted extensive community outreach efforts with local residents and community groups to address possible concerns regarding the Project. Based on the preponderance of the information received, the Project, as approved, represents the optimal use and development of the Project site.

The City prepared a draft environmental impact report ("DEIR") for the Project which was circulated, together with the technical appendices, to the public and other interested persons for a 60-day public comment period compared to the standard 45 days required under the California Environmental Quality Act ("CEQA"). It is important to note in this context that the Project could have been exempted from CEQA review. According to State law, if a residential project is consistent with a specific plan for which an EIR has been certified, it is exempt from CEQA altogether. Government Code section 65457(a), states in pertinent part:

Any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980, is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

In this case, the Project implements and is consistent with the CDSP. The City Council certified the environmental impact report for the adoption of the CDSP and the amendments to the City's Land Use and Mobility Elements (the "CDSP/Mobility Element EIR") in 2004. The CDSP/Mobility Element EIR was not challenged and is therefore conclusively presumed to be valid

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for all purposes.¹ The City's approach to the Project has thus been extremely conservative from a CEQA compliance perspective.

During the 60-day public comment period for the DEIR, the City conducted four duly noticed public meetings: the Historic Preservation Commission/Design Commission joint meeting on January 23, 2006; Transportation Advisory Commission meetings on January 13, 2006 and February 9, 2006; and the Planning Commission meeting on February 22, 2006. During these meetings and throughout the public comment period, members of the public submitted oral and written comments. The City prepared written responses to all comments received on the DEIR and made revisions to the DEIR in accordance with the oral and written comments received. Written responses to comments were distributed in accordance with CEQA and made available to the public for a 45 day period. The Hearing Officer then held a duly noticed hearing on the FEIR and the Project on June 15, 2006. Based on the number of comment cards submitted, 12 members of the public appeared in favor of the Project, including affordable housing advocates and representatives of the Pasadena Chamber of Commerce, the Old Pasadena Management District, and the Pasadena Foothill Association of Realtors. Only five members of the community spoke in opposition to the Project. At the conclusion of the hearing, the Hearing Officer approved the Project and certified the FEIR.

The Board of Zoning Appeals held a duly noticed hearing on the FEIR and the Project on August 1, 2006. Based on the number of comment cards submitted, 13 members of the public appeared in favor of the Project, including affordable housing advocates and representatives of the Pasadena Chamber of Commerce, the Old Pasadena Management District, and the Pasadena Foothill Association of Realtors. Only nine members of the community spoke against the Project. At the conclusion of the hearing, the Board of Zoning Appeals voted unanimously to approve the Project and certify the FEIR.

As set forth above, the public has had ample opportunity to comment on the Project over the course of the last eight months. The Hearing Officer and the Board of Zoning Appeals took all such comments into consideration and approved the Project. SRG is aware of no new information that would alter the facts considered by the Hearing Officer or the Board of Zoning Appeals. SRG therefore respectfully requests the City Council to uphold the Hearing Officer's Determination and the unanimous decision of the Board of Zoning Appeals and approve the Project.

B. The Project Fully Complies with Applicable Requirements of the Central District Specific Plan and the Pasadena Municipal Code.

The Project fully complies with the applicable requirements of the CDSP and associated zoning regulations that the City Council adopted in 2004. Because of an apparent inconsistency

¹ CEQA §§ 21080.1 and 21167.2.

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between the CDSP and the zoning regulations, the Project nevertheless requires approval of a minor CUP pursuant to Section 17.50.340(C) of the PMC for the development of more than 15,000 square feet of commercial/retail space in the Central District Transit Oriented Development Area. SRG has also applied for Vesting Tentative Tract Map Nos. 061577, 061578, and 061579 to subdivide the Project site for the sale of residential condominiums.

Throughout the course of the review and approval process, City Planning Department staff has consistently found that the Project fully complies with the applicable use and development standards of the CDSP. The Staff Report for the February 22, 2006 Planning Commission meeting stated that "[t]he Westgate project is designed in compliance with the Urban Housing design standards of the Zoning Code and the Central District Specific Plan."² A chart prepared by Planning Department staff outlining the Project's consistency with the density, floor area ratio, street setbacks, and height requirements of the CDSP is attached hereto as Attachment A.

Both the Zoning Hearing Officer and the Board of Zoning Appeals also found the Project to be consistent with the CDSP use and development standards outlined above. The June 15, 2006 Hearing Officer's report states that the Project "is consistent with the land use densities identified in the CDSP plan and advances the ultimate goal of developing a residential urban village."³ The Project "follows the height envelope allowed under the CDSP,"⁴ and the Project "is designed in compliance with the Urban Housing design standards of the Zoning Code and the CDSP."⁵ The Staff Report for the August 1, 2006 hearing of the Board of Zoning Appeals provides that the proposed "Project (height, setbacks, open space, parking, residential density, floor area ratio, specifications for ground floor uses, and sidewalk design) is consistent with the CDSP,"⁶ and that "the applicant has designed commercial/retail space into the project site plan where required by the Specific Plan."⁷ Accordingly, there has been a consistent consensus on the part of City Staff that the Project fully complies with the CDSP.

² See Exhibit 1, Planning Commission Staff Report, dated February 2, 2006 at p. 5.

³ Zoning Hearing Officer's Staff Report, dated June 15, 2006 at p. 6.

⁴ *Id.* at p. 7.

⁵ *Id.*

⁶ Board of Zoning Appeals Staff Report, dated August 1, 2006 at p. 2.

⁷ *Id.* at p. 3.

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C. The Project Meets All the Residential Density Requirements and Adds a Significant Number of Affordable Units to the City's Housing Base.

1. Residential Density.

The residential density of the Project fully complies with all of the following applicable laws and ordinances: (1) the CDSP, (2) the City of Pasadena's Inclusionary Housing Ordinance ("IHO"), and (3) State density bonus law.

a. Central District Specific Plan.

The CDSP restricts the number of residential units permitted on the Project site to 60 units per acre.⁸ Thus, the City has planned for the Project area to have a high-density, urban character to complement the predominantly commercial character of Old Pasadena. The combined area of the Project site is approximately 11.94 acres. The area of Block 1 is approximately 1.54 acres. The area of Block 2 is approximately 4.47 acres, and the area of Block 3 is approximately 5.93 acres. At 60 units per acre, a total of 716 units are permitted on the 11.94 acre Project site, 92 of which could be developed on Block 1, 268 of which could be developed on Block 2, and 356 of which could be developed on Block 3. The Project proposes to develop 820 units, 110 of which will be affordable to moderate or low income families. The proposed residential density is permitted as a **matter of right** pursuant to the density bonus incentives provided by State law for the development of affordable housing.

b. Inclusionary Housing Ordinance.

The IHO requires a minimum of 15 percent of the total number of dwelling units in any residential development to be made available at a cost which is affordable to low or moderate income households, either through lower purchase prices or lower rental rates.⁹ The IHO permits developers to choose one or more of the following options to meet the 15 percent requirement: (1) construct the affordable units on-site as part of the applicable project; (2) construct the affordable units off-site in a more feasible location; or (3) pay a fee to the City in lieu of constructing the affordable units.¹⁰ The City adopted the IHO to encourage development and construction of new housing units priced at lower than market rates in an effort to provide housing options for low or moderate income families in Pasadena. The Project is a perfect example of a balanced residential project that will provide a significant number of affordable units pursuant to the IHO. With a total of 716 units permitted on the Project site, the IHO requires at least 15 percent, or 107 units, to be affordable either within the Project, off-site, or to be accounted for by the payment of in lieu fees.

⁸ Pasadena Municipal Code ("PMC") Section 17.31.050, Table 3-4.

⁹ PMC Section 17.42.040.

¹⁰ PMC Section 17.42.050.

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SRG will exceed the 15 percent requirement by providing 110 on-site affordable units within the Project.

c. State Density Bonus Law.

Section 65915 of the California Government Code provides that developers may obtain a density bonus **by right** of up to 35 percent above the number of residential units otherwise permitted if they provide a requisite number of affordable units, regardless of whether the affordable units are required by local laws such as the IHO. This means that no discretionary approvals are required for a developer to construct the bonus units, even if construction of the bonus units causes the development to exceed local density limits.

The amount of the density bonus varies depending on whether the units will be affordable to families of very low, low, or moderate incomes.¹¹ For example, a developer may obtain a 20 percent density bonus if 10 percent of the base number of dwelling units are priced at a level which is affordable to **low income** families. In contrast, only a five percent density bonus is available if 10 percent of the base number of units are priced at a level which is affordable to **moderate income** families. The density bonus may be increased by 1.5 percent for every one percent increase in the number of low-income units over 10 percent, and by one percent for every one percent increase in the number of moderate-income units over 10 percent, up to a maximum of 35 percent of the base number of units.¹² Therefore, a density bonus of 35 percent is available if 20 percent of the base number of permitted dwelling units are dedicated for purchase or rent by **low income** households.

In order to obtain the minimum density bonus under State law, SRG would be required to designate at least nine of the 92 condominium units permitted on Block 1 as affordable to moderate income families, at least 27 of the 268 condominium units permitted on Block 2 as affordable to moderate income families, and at least 36 of the 356 rental units permitted on Block 3 as affordable to low income families.

SRG has elected to designate 14 of the 88 units proposed on Block 1 as affordable to moderate income families and 96 of the 480 units proposed on Block 3 as affordable to low income families. Because the number of low income dwelling units on Block 3 exceeds 20 percent of the base number of units (96 out of 356), a density bonus of 35 percent is available on Block 3, which permits the total number of 480 units on Block 3. As a result, the Project proposes to develop 820 units, 88 of which will be located on Block 1, 252 of which will be located on Block 2, and 480 of which will be located on Block 3. The total number of units planned for the Project is less than the total number of units that could otherwise be built by SRG if SRG designated 20 percent of all

¹¹ California Government Code Section 65915(b).

⁵ California Government Code Section 65915(g).

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Project residential units as affordable to low-income families. The residential density of the Project therefore fully complies with the CDSP and IHO as modified by State law.

2. Affordable Housing

The Project not only complies with the IHO and the goals it advances, but also directly responds to the City's stated need for affordable housing. SRG could elect to pay in-lieu fees for all or a portion of the affordable units required for the Project; however, that option would leave the City without any immediate benefit for low and moderate income residents. SRG has chosen instead to designate 14 units on Block 1 as affordable to moderate income families and 96 units on Block 3 as affordable to low income families for a total of 110 affordable units. As described in more detail below, the number of affordable units that SRG proposes to construct on site as part of the Project will contribute approximately 38 percent of the number of affordable units that will be developed for the benefit of the general public City-wide since the adoption of the IHO in 2001.

In the four years since the adoption of the IHO, the City has made an effort to track the impact of the IHO by monitoring the number of affordable units that are under contract to be constructed as part of residential development projects. According to the Inclusionary Housing Report Card prepared by the City and dated as of March 1, 2006, there are approximately 345 affordable units that have been or will be constructed under existing development contracts in Pasadena. That amounts to fewer than 90 units per year in the last four years, considering all projects in the aggregate. Furthermore, of those 345 affordable units, 169 are being constructed by Fuller Theological Seminary and will only be made available to students at the Seminary. Thus, none of those 169 units will actually be made available to low and moderate income families in the general public. Considering this, the total number of affordable units added to the market since the adoption of the IHO is only 176 units. This Project would add 110 affordable units to the City's housing base, and would account for nearly 32 percent of the existing affordable units under contract City-wide, and 38 percent of the affordable units actually available to the general public (excluding Fuller Theological Seminary's affordable units). Thus, the low and moderate income families of Pasadena (and the City as a whole) stand to benefit greatly from the approval of the Project as proposed.

Because the Project fully complies with the CDSP and the IHO, it serves as a prominent example of the public benefits that smart development can bring to the City. Disapproval of the Project as proposed could risk discouraging other developers from future attempts to add affordable units to Pasadena rather than simply paying in lieu fees. This result would only harm those low and moderate income families that the IHO was adopted to benefit.

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D. The Project Fully Complies with Applicable Requirements of the California Environmental Quality Act ("CEQA").

Although an EIR is not technically required for a residential project that complies with an applicable specific plan, the City prepared a complete EIR for the Project that is wholly consistent with CEQA and the CEQA Guidelines. The FEIR thoroughly analyzed all potential Project impacts in accordance with CEQA and found that with the exception of impacts to air quality, all Project impacts could be mitigated to a less than significant level. Both the Zoning Hearing Officer and the Board of Zoning Appeals certified the FEIR and adopted a Statement of Overriding Considerations with respect to the impacts on air quality.

Public comments regarding the FEIR for the Project have focused primarily on the Project's anticipated traffic impacts. Objections to the traffic analysis performed as part of the EIR concentrate on two issues: (1) that the traffic analysis utilizes an inappropriate standard for intersection capacity, and (2) that the traffic analysis does not provide for the adequate mitigation of the Project's potential cumulative traffic impacts. Objections to the analysis of cumulative impacts also concentrate on two issues: (1) that the traffic analysis relies on an unacceptable level of service standard for cumulative traffic impacts, and (2) that fair share cost of traffic improvements identified in the CDSP/Mobility Element EIR does not adequately mitigate cumulative traffic impacts. Notwithstanding assertions to the contrary, the City thoroughly analyzed the Project's direct and cumulative traffic impacts in accordance with City policies and CEQA requirements. The traffic analysis in the FEIR is also consistent with the methodology and conclusions of the traffic analysis performed in the CDSP/Mobility Element EIR and the potential impacts identified therein. On the basis of comprehensive review of the evidence in accordance with established traffic engineering practices and procedures, the FEIR identified all potentially significant traffic impacts and incorporated mitigation measures to address and reduce such impacts to a level of insignificance in accordance with CEQA.

1. The Criteria Used to Analyze Project Traffic Impacts Was Proper and Consistent with CEQA.

In accordance with CEQA, the FEIR relied on the City of Pasadena Traffic Impact Analysis Guidelines ("City Traffic Analysis Guidelines") to analyze the Project traffic impacts at 42 separate intersections and 10 separate street segments. In response to the traffic analysis, the West Pasadena Residents Association ("WPRA") retained Austin-Foust Associates to review the traffic study prepared for the FEIR by the City's traffic consultant. However, even the review of the traffic analysis in the FEIR prepared by Austin-Foust Associates (the "AFA Report") dated July 28, 2006, concludes that the City's traffic consultant followed standard practice in analyzing the traffic impacts and that the FEIR traffic study

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involved an *exhaustive* data collection (42 intersections and 10 street segments) and *rigorous capacity analysis of the impacts of the Westgate Project* – particularly for a project expected to generate 5,850 average daily trips (ADT) with 360 AM and 525 PM peak hour trips.¹³

The AFA Report also concludes that "[w]e find very little to criticize with respect to the data or analytical methodology utilized to evaluate the project's traffic impact." The AFA Report nevertheless questions the FEIR's use of a saturation flow rate of 1,700 vehicles per lane per hour ("vplph") instead of the Los Angeles County Congestion Management Plan ("CMP") standard for traffic studies, which utilizes 1,600 vplph. The AFA Report fails, however, to identify any negative impacts associated with the use of the higher saturation flow rate. In fact, the AFA Report recognizes that the saturation flow rate used in the FEIR is also used by other jurisdictions and, in fact, "may be better than the original Los Angeles County CMP criteria."¹⁴

In response to questions raised by the WPRA and others regarding the adequacy of the traffic analysis in the FEIR, SRG retained IBI Group, an independent traffic consultant, to review the traffic analysis and findings in the FEIR. IBI Group prepared a memorandum on behalf of SRG in which IBI Group concluded – as did Austin-Foust Associates in the AFA Report – that the "traffic analysis completed as part of the City's environmental review of the Westgate project provides a thorough, conservative, and objective analysis of future traffic conditions and potential traffic impacts associated with the project."¹⁵ IBI Group also concluded that the analysis and criteria used by the City's traffic consultant "is consistent with traffic engineering standard of practice in the City of Pasadena, Los Angeles County, and Southern California." Regarding the capacity criteria used in the FEIR, IBI Group states (1) that the revised saturation flow rate was adopted as a result of empirical investigations performed by the City pursuant to recommendations received in connection with the adoption of the General Plan Mobility Element, (2) that the City has used the same saturation flow rate in at least eight other traffic studies during the previous eight months, and (3) that the 1,700 vplph standard provides a more accurate reflection of actual traffic conditions in Pasadena than the CMP standard of 1,600 vplph.¹⁶ In fact, the Los Angeles County CMP guidelines acknowledge that each city within the County is permitted to establish its own guidelines for conducting traffic impact analysis.¹⁷ The WPRA's concern regarding the saturation flow rate standard utilized in the FEIR is therefore misplaced.

¹³ AFA Report, p. 1 (emphasis added).

¹⁴ AFA Report, p. 2.

¹⁵ A copy of the memo from IBI Group is attached hereto as Attachment B.

¹⁶ IBI Memo, August 20, 2006, p. 1.

¹⁷ IBI Memo, p. 2.

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2. The FEIR Provides Adequate Mitigation of the Project's Potential Cumulative Traffic Impacts.

Section 15130(a) of the CEQA Guidelines provides that an EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable, as defined in Section 15065(a)(3) of the CEQA Guidelines. According to Section 15065(a)(3) of the CEQA Guidelines, "[c]umulatively considerable' means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." In accordance with the CEQA Guidelines, the FEIR evaluated the Project's contribution to traffic at given intersections based on City-approved thresholds to determine whether the Project contributes sufficient traffic to warrant a finding of "cumulatively considerable."¹⁸ As concluded in the FEIR, the Project's incremental contribution to the impact at local intersections would not be considerable as determined by comparing Project impacts to the thresholds established by the City Traffic Analysis Guidelines.¹⁹

a. *The FEIR Does not Misstate the Acceptable Level of Service Standard for Area Intersections.*

The WPRA has repeatedly asserted that the FEIR identifies level of service ("LOS") E as an acceptable standard for area intersections under future cumulative traffic conditions. The WPRA's assertion in this regard is based on a misreading of the traffic analysis. What the traffic analysis in the FEIR actually states is that the City "considers a project to result in a significant cumulative impact if the project's impact is cumulatively considerable (as shown by comparing project impacts to the thresholds in Table 3I.5) and the addition of project traffic and cumulative development traffic is projected to degrade performance of an intersection below LOS E."²⁰

Table 3I.5 at page 3I-12 of the FEIR provides that a significant impact occurs at an intersection operating at LOS E only if additional traffic results in an increase in the volume to capacity ("V/C") ratio of the traffic at the intersection of 0.02 or more. According to Tables 3I.9 and 3I.10 of the FEIR, copies of which are attached hereto as Attachment C, the addition of Project traffic and cumulative development traffic will not degrade the performance of any intersection below LOS E. Tables 3I.9 and 3I.10 also indicate that of the 42 intersections studied, 13 will operate at LOS E under future cumulative traffic conditions. Of the 13 intersections that will operate at LOS E under future cumulative traffic conditions, all but one, the intersection of Fair Oaks Avenue and California Boulevard, will operate at LOS E even if the Project is not developed. With the exception of the Pasadena Avenue/Del Mar Boulevard intersection, the projected

¹⁸ FEIR pp. 3I-12 - 3I-13, 9-10 - 9-11, Table 3I.5; *see also* Staff Report for the Minor Conditional Use Permit # 4703 dated June 15, 2006 pp. 8-9, 20.

¹⁹ FEIR pp. 9-11 - 9-13.

²⁰ FEIR p. 3I-13.

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individual increase in the V/C ratio caused by the Project at the 13 LOS E intersections is less than 0.02. In fact, more than half of the intersections identified in the FEIR to operate at LOS E under future conditions experience a V/C ratio increase of 0.005 or less as a result of the traffic generated by the Project. Thus, while a number of local intersections would be impacted by cumulative growth (assuming that all anticipated future projects are actually developed), the Project would make a cumulatively considerable contribution to traffic only at the intersection of Pasadena Avenue and Del Mar Boulevard. Mitigation Measure No. 31.1 requires the construction of a new westbound right turn lane at the intersection of Pasadena Avenue and Del Mar Boulevard, which will mitigate the Project's impact at that intersection to a less than significant level and will improve the level of service at the intersection from LOS E to LOS B.²¹ The 13 intersections identified as operating at LOS E under future conditions are listed in the table attached hereto as Attachment D.

An attorney for the WPRA has argued that according to Kings County Farm Bureau v. City of Hanford, 221 Cal.App.3d 692 (1990), and Los Angeles Unified School District v. City of Los Angeles, 58 Cal.App.4th 1019 (1997), it is not permissible for an EIR to find cumulative impacts to be insignificant where such impacts make a small contribution to an existing unacceptable environmental condition. The reliance of the WPRA's attorney on the foregoing cases is misplaced because the facts on which those cases were decided are clearly distinguishable from the present situation. The court in Kings County Farm Bureau v. City of Hanford held that the analysis of the cumulative air quality impacts of a proposed cogeneration plant was inadequate because the EIR failed to address the combined air quality impacts of the proposed project with the existing air quality conditions, and no mitigating factors were considered. The court in Los Angeles Unified School District v. City of Los Angeles similarly held that the analysis of the cumulative traffic noise impacts of a proposed development project was inadequate because the EIR failed to address the combined traffic noise impacts of the proposed project with the serious traffic noise problem already existing around the schools in the area, and no mitigating factors were considered. In both cases the potential cumulative impacts were ignored because the direct impacts were deemed to be insignificant.

Here, the FEIR explains that 14 intersections would be significantly impacted by growth in the City combined with ambient growth in the region, as determined by the CDSP/Mobility Element EIR. The FEIR also states that compliance with the 2004 Mobility Element is a condition of approval and a component of the Project.²² As discussed in more detail below, the 2004 Mobility Element requires the Project to fund its fair share of transportation improvements designed to alleviate cumulative traffic impacts. The Project is wholly consistent with the CDSP, and the cumulative impacts specific to the Project have already been adequately addressed in the CDSP/Mobility Element EIR. Only after consideration of the Project's contribution to existing,

²¹ FEIR p. 9-11.

²² FEIR pp. 9-12 – 9-13; *see, also*, Staff Report pp. 8-9, 20.

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current, and future traffic impacts **and** the Project's contribution to the infrastructure improvement program did the FEIR conclude that the Project would not add a cumulatively considerable contribution to traffic at any intersection and therefore would not have a potentially significant cumulative impact. The FEIR reaches the conclusion that cumulative impacts are insignificant only after the mitigating factors are considered. Accordingly, the FEIR's analysis of cumulative traffic impacts complies with CEQA, and neither of the authorities cited by the WPRAs are dispositive with respect to the adequacy of the cumulative impact analysis of the FEIR.

b. The Project Meets its Fair Share of the Mobility Element Improvements and is Proper Mitigation Under CEQA.

The FEIR provides that the Project's cumulative traffic impacts will be largely mitigated through the Project's fair share contribution to the cost of traffic improvements identified in the Mobility Element of the City's General Plan. The Project's fair share contribution is intended to be commensurate with traffic mitigation fee identified as a mitigation measure for cumulative traffic impacts in the CDSP/Mobility Element EIR. Because the City had not yet adopted the proposed traffic mitigation fee at the time that the DEIR was prepared, SRG has committed to pay its fair share of the improvements, which will be equivalent to the amount of the proposed fee once it is adopted by the City Council.

The WPRAs has asserted that there is no analysis in the FEIR to establish that the Project's fair share contribution will be sufficient to mitigate the Project impacts in accordance with CEQA and that the implementation of the traffic impact fee is too speculative to serve as adequate mitigation. The WPRAs's assertions ignore the work completed by the Pasadena Transportation Advisory Commission ("TAC") and the City Council, and blatantly overlook the fee analysis set forth in the FEIR. The facts are that the TAC has for many months and at considerable expense worked with the public on the design of a traffic impact fee that is consistent with and meets the goals of the Mobility Element.

Most recently, the TAC reviewed staff recommendations to the City Council approving a traffic impact fee during its regular meetings on April 6, May 5, and June 1, 2006. The TAC made recommendations to the City Council to approve the traffic impact fee and set forth implementation criteria. On July 17, 2006 the City Council approved amending the PMC to include a new Traffic Reduction and Transportation Improvement Fee ("Traffic Fee") and directed the City Attorney to prepare an ordinance for Council adoption establishing the fee. The City Council approval establishes the new traffic impact fee for residential development at \$2,480 per net new residential unit and \$8.62 per net new square foot of retail development. Thus, the total fees that would be required of the Project analyzed by the FEIR is substantially within the payment commitment by SRG of \$2,206,000. Further, implementation criteria as well as the fee schedule approved by the City Council is the result of extensive staff analysis based on the approved Mobility Element, the

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existing development impact fee program, as well as substantial stakeholder outreach. As indicated by the FEIR and restated in the Staff Report to the City Council regarding the Traffic Fee ("Traffic Fee Staff Report"), funds collected through the new fees "would be used to **implement the transportation improvement projects identified in the Mobility Element required to address the traffic generated by new development.**"²³ Revenue from the funds also would be used to fund "seven key intersection improvements and two street extensions identified in the Mobility Element as well as funds for improvements to manage traffic on designated multimodal corridors as specified in the Mobility Element."²⁴

As stated in the CDSP/Mobility Element EIR, implementation of the City's trip fee program would provide some mitigation of cumulative traffic growth in the City but not enough to reduce the effects of growth below a level of significance.²⁵ This finding in the CDSP/Mobility Element EIR is consistent with the findings in the FEIR traffic study. As stated in the FEIR, "[e]ach project on the related projects list will be responsible for assessing the impacts to street segments and intersections and implementing mitigation measures to address those impacts."²⁶ In addition to the fair share contributions required from SRG as a condition of approval, the Project includes Project-specific mitigation measures to mitigate increased traffic volumes at local intersections and street segments.²⁷ The traffic mitigation measures in the FEIR reduce the Project's traffic impacts to less than significant levels.

Under the CEQA Guidelines and as settled by recent case law, an EIR may find that a Project's contribution to a significant cumulative impact will not be cumulatively considerable based on appropriate mitigation. This finding can be made when "the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact."²⁸ When making such a finding, the lead agency must provide an analysis with supporting facts showing the basis for its determination that the contribution will be rendered less than cumulatively considerable.²⁹ The WPRRA relies on Endangered Habitats League, Inc. v. County of Orange, 131 Cal.App.4th 777 (2005), and Napa Citizens for Honest Government v. Napa County Board of Supervisors, 91 Cal.App.4th 342 (2001), to argue that a fee program is insufficient where there is no source for the balance of funds for the improvements and where there is no evidence that the improvements funded by the fee program will actually mitigate effects.

²³ Staff Report, p. 3 (emphasis added).

²⁴ *Id.*

²⁵ FEIR p. 9-12.

²⁶ *Id.* (emphasis added).

²⁷ *See, e.g.*, FEIR pp. ES-16, 3I-29 – 3I-35.

²⁸ CEQA Guidelines § 15130(a)(3).

²⁹ CEQA Guidelines § 15130(a)(3).

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Neither Endangered Habitats League, Inc. v. County of Orange or Napa Citizens for Honest Government v. Napa County Board of Supervisors are dispositive, however, as to the adequacy of the fair share contribution to traffic improvements incorporated into the FEIR for the Project. The court in Endangered Habitats League, Inc. v. County of Orange found that the EIR improperly attempted to mitigate traffic impacts based on the wrong traffic analysis method by identifying the existence of a fee program to fund future improvements along with a study to identify the needed improvements. The court discussed that the EIR prepared for two area plans was inadequate because, among other things, the traffic analysis used the Volume to Capacity method of analysis where the Highway Capacity Manual (HCM) method was required pursuant to the jurisdiction's general plan, and thus the proposed mitigation was based on the wrong method of analysis. The court found the proposed mitigation to fall short of a mitigation measure that requires improving the impacted road to the required HCM Service Level because there was no evidence of the improvements that would be funded by the fee programs, nor that it would achieve the appropriate HCM Service Level.

In Napa Citizens for Honest Government v. Napa County Board of Supervisors, the court found that it was proper for the EIR for a specific plan to conclude that a mitigation fee was infeasible because it cannot reasonably be argued that the \$2 million in funds that the jurisdiction already raised or that it could reasonably expect to raise in the future, would be enough to mitigate the effect on traffic that would result from cumulative conditions. The court stated that the "mitigation fee will not, cannot, and should not pay for the roadway improvements" because the highway improvements adjacent to the project were estimated at \$70 million and at the time the EIR had been prepared only \$2 million had been raised for improvements to the project's internal roadways. The court concluded that the EIR adequately identified the project's significant impacts on traffic and that "the EIR could have discussed the efficacy of imposing a mitigation fee or of using an existing mitigation fee as a means of providing funding for highway improvements, but the available evidence indicated that it would be unreasonable to view such fees as a potential solution to the region's traffic congestion and circulation problems."

In contrast, the court's holding in Save Our Peninsula Committee v. Monterey County Board of Supervisors, 87 Cal.App.4th 99 (2001), supports the finding that a traffic impact fee proposed as a mitigation measure in an EIR is adequate if it sets forth a reasonable plan for mitigation. The court in Save Our Peninsula Committee v. Monterey County Board of Supervisors found that the collection of fees for a Carmel Valley Road traffic impact fee program designed to respond to cumulative growth in traffic by generating the funds needed for construction of improvements along Carmel Valley Road was not an idle act and was a reasonable plan for mitigation of cumulative traffic impacts due to a proposed 208-home subdivision development. In that case, a traffic impact fee program was established by county ordinance and designed to implement road improvements as needed. Studies in the EIR indicated that existing traffic levels at all segments were below the threshold at the time the EIR was complete and thus, the requirement for improvements to bring the