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Sent time:	05/29/2020 02:21:40 PM
To:	mindy.nguyen@lacity.org
Cc:	Pettit, David <dpettit@nrdc.org>
Subject:	NRDC comments on Hollywood Center DEIR
Attachments:	Hollywood Center DEIR comment letter 5-29-20.docx

Dear Ms. Nguyen:

Attached please find NRDC's comments on the Hollywood Center DEIR, Case Number: ENV-2018-2116-EIR, State Clearinghouse Number: 2018051002.

Please feel free to contact me with any questions or comments.

David Pettit

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May 29, 2020

Via email to: mindy.nguyen@lacity.org

Mindy Nguyen
City of Los Angeles, Department of City Planning
221 North Figueroa Street, Suite 1350
Los Angeles, CA 90012

Re: Hollywood Center Project DEIR
Case Number: ENV-2018-2116-EIR
State Clearinghouse Number: 2018051002.

Dear Ms. Nguyen:

Thank you for the opportunity to comment on the Hollywood Center DEIR. These comments are on behalf of the Natural Resources Defense Council and our many thousands of members and activists throughout California. Our comments focus on the greenhouse gas (GHG) issues and analysis in the DEIR.

Preliminarily, the DEIR fails the requirement to clearly inform the public because its GHG numbers differ in an important way from those that the California Air Resources Board (CARB) relied on in certifying this project under AB 900. CARB used annual GHG projections over the assumed 30-year life of the project, see http://opr.ca.gov/ceqa/docs/ab900/20180626-FINAL_Hollywood_Center_CARB_Determination.pdf at Table 2, p.4. CARB assumed emissions out to 2056 of 264,813 MT CO2e/year for the residential option and 293,187 MT CO2e/year for the hotel option. But the DEIR only presents annual operational emissions for a single, unspecified year with 10 optional scenarios rather than two. *See* DEIR at IV.E-72. Thus cross-checking the DEIR GHG analysis with the CARB analysis is impossible, putting into doubt whether the project truly qualifies for AB 900 benefits and whether the DEIR GHG analysis tells the public anything of significance. This is not what CEQA requires.

An even larger issue is how the DEIR proposes to deal with the project's GHG emissions, whatever they are: without any mitigation except offsets. *See* DEIR IV.E-79. It is worth noting that offsets under the CARB cap and trade program are limited to 8% of credits needed and no more than one-half of the offset usage limit may be sourced from

projects that do not provide direct environmental benefits in the state. *See* https://ww3.arb.ca.gov/cc/capandtrade/capandtrade.htm. By contrast, the offset proposal here is 100% without any requirement for direct local co-benefits, and without any showing that additional GHG reductions through project design elements are infeasible.

The issue of how to deal with GHG offsets under CEQA is now before the California Court of Appeal in *County of San Diego v. Sierra Club*, Case No. D075478 (Fourth Appellate District, Division One). In that case, the County of San Diego enacted a climate action plan to accelerate development of suburban sprawl subdivisions by implementing a GHG offset program. The San Diego plan gave unlimited discretion to the County Building Officer to approve GHG offsets. Sierra Club and others sued, claiming that this system for mitigation violates CEQA. The San Diego County trial court agreed, and the County's appeal was argued in early May, 2020.

In the San Diego matter, as here, the GHG offset provision at issue was not enforceable, verifiable, or additional to mitigation that would not have occurred without the project. Under CEQA, mitigation must actually avoid, lessen, or rectify the impact it is intended to mitigate (14 CCR (or "Guidelines") §15370(a), (c)). It must be fully enforceable. (*Ibid.*; §15126.4(a)(2).) And where mitigation has its own significant impacts, such secondary impacts must be appropriately disclosed and analyzed. (*Ibid.*; §15126.4(a)(1)(D).) None of those CEQA guidelines has been met in the Hollywood Center DEIR.

Moreover, the state Office of Planning and Research (OPR)'s guidance in the draft update to its advisory on CEQA and Climate Change[1] explains why GHG offsets should be local to the extent feasible. OPR's "CEQA and Climate Change Advisory" focuses on on-site and local measures in the region before moving to a broader geographic location. The Guidance states that "lead agencies should 'prioritize on-site design features that reduce emissions, especially from VMT, and direct investments in GHG reductions within the project's region that contribute potential air quality, health, and economic co-benefits locally."

OPR explains that "requiring on-site mitigation may result in various co-benefits for the project and local community, and that monitoring the implementation of such measures may be easier." OPR adds, "As with on-site mitigation measures, there may be practical reasons related to prefer local off-site measures over measures farther afield." Certainly,

[1] http://opr.ca.gov/docs/20181228-Discussion_Draft_Climate_Change_Adivsory.pdf

monitoring the implementation of these measures is crucial to ensuring that the reductions are enforced.

And, with respect to what the CEQA record must contain to justify GHG offsets, OPR's guidance states:

> CEQA does not prohibit off-site mitigation measures, but lead agencies must support with substantial evidence in the record their determination
>
> that mitigation will be effective and fully enforceable. (CEQA Guidelines, § 15126.4.) To do so, lead agencies may need to require more stringent protocols to verify the effective [sic] and enforceability of off-site mitigation measures. (Id., §§ 15126.4, 15364.)

That substantial evidence is not present in the DEIR now under discussion. In particular, the DEIR does not specify the mechanisms by which the emission reductions by offset will be met and enforced, nor does it contain any formal protocols, like those vetted and approved by CARB for cap and trade offsets. The DEIR does not provide for any authority to enforce non-local offsets, nor does its terms provide for enforcement of offset requirements via a continuing contractual agreement after the developer has completed the project. Neither does the DEIR include any provision for enforcement if offsets are terminated (e.g., trees planted as offsets are cut down).

Critically, the DEIR does not establish performance standards or other requirements to ensure the effectiveness, enforceability or additionality of GHG offset credits. And because foreign offsets are generally cheaper, extensive use of foreign offsets can reasonably be expected[2]. This makes oversight of the program extremely difficult, at best. Even having offsets in other parts of the State or country would make it difficult for the lead agency here to oversee implementation of offsets over time.

We expect the lead agency here to contend that selecting an offset from a CARB-approved registry makes the offset program CEQA compliant. But the analogy fails. CARB's offset regulations, authorized by Health and Safety Code ("HSC") section 38562(d), provide for offsets that are far more credible and limited than the purely voluntary offsets contemplated here. The voluntary market is completely separate from the CARB compliance market. CARB does not oversee the voluntary market in any way, nor does CARB regulate how voluntary credits are generated or used and the lead agency here does not regulate the use of that market in any way.

[2] The very large Newhall Ranch project claims to attain some GHG offsets from providing free cookstoves in Africa. *See* . https://netzeronewhall.com/sustainability/

Under the CARB cap and trade program, a registry offset credit must "[r]epresent a GHG emission reduction ... that is real, additional, quantifiable, permanent, verifiable, and enforceable." (California Code of Regulations ("CCR") title 17, § 95970; § 95973.) "Additional" means GHG emission reductions that exceed those otherwise required by law and those that would otherwise occur in a business-as-usual scenario. (CCR title 17, § 95802, subd. (a).) There is also strict monitoring, reporting, and record retention requirements for offset projects. (CCR title 17, § 95976.) The credits must be "verifiable," which means that the verification report complies with CARB's Compliance Offset Protocols. (CCR title 17, § 95802, subd. (a).) They must also be "permanent," which means that the GHG reductions are either irreversible or endure for at least 100 years. (Ibid.) In addition, offsets approved by CARB must conform to very restrictive offset "protocols," adopted by CARB through formal rulemaking-like procedures. (17 CCR, §95972(a).) OPR reviews all offset projects that may be eligible for compliance offset credits under the Cap-and-Trade program, as well as all project documentation for those projects. CARB also has the enforcement authority to hold a particular party liable and to take appropriate action if any of the regulations for CARB offset credits are violated. (CCR title 17, § 95802, subd. (a).) Violations of these requirements may result in penalties. (CCR title 17, §§ 96013, 96014.) None of these elements exist for the Hollywood Center project.

Putting off GHG mitigation to an unspecified future time and program also violates CEQA's prohibition against deferred mitigation. As the Court said in *Preserve Wild Santee v. City of Santee*, 210 Cal.App.4th 260, 280-281 (2012):

> An EIR must describe feasible measures that could minimize significant adverse impacts. (Guidelines, § 15126.4, subd. (a)(1).) An EIR may not defer the formulation of mitigation measures to a future time, but mitigation measures may specify performance standards which would mitigate the project's significant effects and may be accomplished in more than one specified way. (Id., subd. (a)(1)(B).)
>
> Thus, " ' "for [the] kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process (e.g., at the general plan amendment or rezone stage), the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated." ' " (Defend the Bay v. City of Irvine

(2004) 119 Cal.App.4th 1261, 1275–1276, 15 Cal.Rptr.3d 176.) Conversely, " '[i]mpermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.' " (Clover Valley Foundation v. City of Rocklin (2011) 197 Cal.App.4th 200, 236, 128 Cal.Rptr.3d 733.)

The Hollywood Center DEIR is not based on a general plan amendment or a rezoning ordinance and so there is no reason to defer the description or timing of mitigation measures. Nor is it legitimate to claim credit for mitigation measures that are standardless (as in the San Diego case) and to be carried out by an unknown private agency over which the project's lead agency has no control.

In sum, the Hollywood Center's DEIR fails to comply with CEQA in its treatment of GHGs. In doing so it fails also to comply with State and City plans to reduce GHG emissions. The DEIR must be withdrawn and corrected to fix the deficiencies in its analysis and treatment of GHG emissions and mitigation.
Thank you for your consideration of these comments.

Yours truly,

David Pettit
Senior Attorney
Natural Resources Defense Council