SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/23/12			**DEPT.** 86
HONORABLE ANN I. JONES	JUDGE	N DIGIAMBATTISTA M. D. CLARK/COURTROOM ASST	DEPUTY CLERK
HONORABLE 1	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	NONE	Reporter

8:30 am	BS132533	Plaintiff Counsel	
	LA MIRADA AVE NEIGHBORHOOD ASSO OF HOLLYWOOD VS CITY OF LOS ANGELES ET AL	Defendant Counsel	NO APPEARANCES
	CEQA case		

NATURE OF PROCEEDINGS:

HEARING ON PETITION FOR WRIT OF MANDATE
RULING ON SUBMITTED MATTER

The court having taken the above matter under submission on July 20, 2012, now makes its ruling as follows:

The petition for writ of mandate is granted for the reasons set forth in the document entitled COURT'S RULING ON PETITION FOR WRIT OF MANDATE HEARD ON JULY 20, 2012, signed and filed this date.

Counsel for petitioner is to prepare, serve and lodge the proposed judgment and writ within ten days. The court will hold the documents ten days for objections.

A copy of this minute order as well as the Court's Ruling are mailed via U.S. Mail to counsel of record addressed as follows:

ROBERT P. SILVERSTEIN, ESQ., 215 N. MARENGO AVE., 3RD FL., PASADENA, CA 91101-1504

TIMOTHY MCWILLIAMS, ESQ., L.A. CITY ATTY'S OFFICE, 200 N. MAIN ST., CHE - ROOM 701, LOS ANGELES, CA 90012

R. J. COMER, ARMBRUSTER, GOLDSMITH, ET AL, 11611 SAN VICENTE BLVD., SUITE 900, LOS ANGELES, CA 90049

MINUTES ENTERED
07/23/12
COUNTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

LA MIRADA AVE NEIGHBORHOOD ASSN ETC.	)	
Petitioner	)	
vs	)	**CASE NO. BS132533**
CITY OF LOS ANGELES, ET AL	)	
Respondents	)	

COURT'S RULING ON PETITION FOR WRIT OF MANDATE HEARD ON JULY 20, 2012

Petitioner La Mirada Avenue Neighborhood Asssociation of Hollywood ("La Mirada") challenges the decision of the Respondents City of Los Angeles and the Los Angeles City Council ("Los Angeles" or "City") to certify an Environmental Impact Report ("EIR") and to approve the Hollywood/Gower Project ("Project"), a proposed residential condominium tower with retail spaces on the ground floor. Real Party in Interest 6104 Hollywood, LLC ("6104 Hwd") is the Project developer. Petitioner asserts two arguments: (1) that the City denied La Mirada a fair hearing and (2) that the City violated CEQA in connection with the Project approvals.

In opposition, the City and the Real Party in Interest assert that Petitioner received a fair hearing and that its CEQA challenges are without merit. The City asserts that it afforded Petitioner ample and legally sufficient due process in this instance. And, the City argues that the EIR's analysis, most specifically of parking effects of the project, is adequate and supported by substantial evidence.

After considering the parties' briefs, the augmented administrative record and judicially noticed materials,[1] having heard argument and having taken the matter under submission, , the Court rules as follows:

[1] The Petitioner's motion to augment the record to include e-mails by certain staff members (tabs 1-5) and "declaratory evidence of Petitioner's representative and counsel" (tabs 6-7) is granted.

With respect to the staff generated e-mails contained in tabs 1-5, the motion is granted. The e-mail chatter of certain staff members, while not ordinarily relevant, may be added to the record when it evinces impropriety in the process itself. Code of Civ. P. 1094.5; Clark v. City of Hermosa Beach, 48 Cal. App. 4th 1152, 1170 n. 17 (1996). And, this material existed before the agency made its decision and Petitioner was not able with the exercise of reasonable diligence to present these facts to the decision maker before the decision was made. See Western States Petroleum Association v. Superior Court, 9 Cal. 4th 559, 577-578 (1995). Nor are these documents protected under the deliberative process privilege. These documents show the timing by which certain materials were obtained, whether

Statement of Facts

The Project site consists of a 47,000+ square foot site that is currently vacant. (AR 258). Petitioner plans to construct a 20-story mixed use building with 192,000+ square feet of total floor area. (Id.) The building was originally planned to contain 151 residential units and 6,200 square feet of ground-level retail located along Hollywood Boulevard. (Id.) The project included five levels of parking with 331 spaces for residential development and 14 spaces for the

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those materials were placed in the public file, whether those materials were considered by the decision-maker at the hearing and the access afforded by interested parties to the decision-makers. All of these non-deliberative facts are highly probative on the issue of whether the administrative process in this instance was "fair."

With regard to the "declaratory evidence" set forth in tab 6, the motion is denied. The facts set forth in paragraphs 1-9 were known by the declarant before the final administrative action in this case on May 10, 2011 and there is nothing that would have stopped Petitioner in the exercise of reasonable diligence from presenting this information to at the PLUM Committee hearing. Thus, this declaration fails to meet the strict and narrow exceptions to the general rule of inadmissibility of extra-record evidence in administrative mandamus proceedings. Western States Petroleum Association v. Superior Court, 9 Cal. 4th 559, 577-578 (1995). Paragraph 10 is covered in the Declaration of Daniel Wright and is, therefore, cumulative.

With regard to tab 7, that same objection applies to paragraphs 2-6 of the Wright Declaration. However, in Paragraph 7, Attorney Wright notes that the May 10, 2011 letter from Dale Goldsmith, containing the Hirsch/Green Parking Study, was not available to the public until May 11 – one day *after* the PLUM Hearing was held and closed. This fact and this information could not have been presented to the PLUM Committee before the hearing; nor (given the nature of the City Council's determination of this matter without further hearing) could it have been presented in the exercise of reasonable diligence to the City Council. Accordingly, the Court grants the motion to augment the administrative record to include tab 7, paragraphs 1 and 7.

The Petitioner's motion to further augment the administrative record is granted. Although late, it requests that the court consider additional e-mails showing exactly when the Hirsch/Green parking study was provided to the City Planning staff and the timing of staff revisions to the developer's supplemental findings. As discussed above, these materials are relevant, existed at the time of the administrative proceeding and could not have been obtained and put into the record with the exercise of reasonable diligence. As before, these e-mails were never presented to the decision-makers in the matter or considered by them. They are, therefore, not protected by the deliberative process privilege.

Petitioner's requests for judicial notice of exhibits A-C are denied. While records of the Superior Court are ordinarily subject to judicial notice, these decisions involve a wholly different case. The unremarkable proposition that different judges rule in different ways is not sufficiently relevant to allow these documents to be judicially noticed. To be judicially noticed, the evidence must also be relevant. Evid. Code 350.

Respondents' and Real Party's joint request for judicial notice of Exhibit 1 is denied. Although selected portions of the California Natural Resources Agency's December 2009 Statement of Reasons for Regulatory action may constitute official acts of a public entity and otherwise no subject to dispute and capable of immediate and accurate determination, they are properly objected to as partial and irrelevant. The responses to comment, which makes up a substantial part of the Request for Judicial Notice, appears merely to be staff responses at a public hearing that were not adopted by any official act of the Natural Resources Agency's Board. Additionally, this partial document did not inform any aspect of the environmental review conducted by the City in this case.

The Court does, however, grant judicial notice of the City's Administrative Code (Exhibit 2), without deciding the issue of whether it is valid after the enactment of the new City Charter in 1999. The Court shall also take Judicial Notice of Exhibit 3, which is a portion of the LAMC.

retail development, for a total of 345. (AR 258, 315). As of the date of the PLUM Committee hearing, the Project had grown to include 176 condominiums and 7,200 square feet of ground floor retail uses – with the same number of parking spaces. (AR 2106).

On January 28, 2008, the City issued a notice of preparation of an Environmental Impact Report ("EIR") on the Project.[2] (Id.) In October 2009, the Draft EIR was completed. (AR 1724). In the summary of impacts prepared as part of the Draft EIR, the City noted that the proposed project would not meet the Planning Department's Residential Parking policy. (AR 315). Under that Policy, a condominium is required to have two spaces per unit, plus .5 spaces per unit for guest parking. (Id.) Using that model, the project would have 109 spaces less than required.[3] (Id.)

Although the applicant expressed "confidence" that it would have sufficient parking because the project would operate initially as an apartment building rather than a condominium, it was noted in the Draft EIR that the Project location was in a "parking congested area."[4] (Id.) The Draft EIR also noted that "the Project was targeted" to individuals and households attracted by walking and public transit. (Id). No additional mitigation measures were proposed. (Id.)

In a later portion of that same Draft EIR, however, the agency opined that "[g]iven the urban surroundings of the project, and the availability of public transit opportunities adjacent to and in close proximity to the site, the proposed amount of residential parking is anticipated to be adequate to meet the needs of the project. (AR 334). It was also noted that a recently approved project in the vicinity was required only to provide .25 guest spaces per unit, rather than the .5 spaces required by the Parking Authority Guidelines. Under this model, the Project would be only 65 "resident" spaces deficient. (Id.) Nonetheless, the applicant would request a waiver from the Planning Department's Residential Parking policy.[5] (Id.) And, to state the obvious, were the project to provide less parking than needed, it would result in a significant impact on parking. (AR 661). But, it might occasion a reduction in the significant and unavoidable traffic impacts at adjacent intersections during peak traffic time. (AR 754).

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[2] The City's Initial Study identified inadequate parking capacity as a potentially significant impact of the Project which would be evaluated in an EIR. (AR 850-51). Respondent wishes to retract this admission based on a state agency's Statement of Reasons for Regulatory Action promulgated after the Draft EIR was prepared and circulated. The Natural Resources Agency's Statement did not inform the instant CEQA process, nor was it cited by or relied upon by the decision maker in this case. Accordingly, it is outside of the record and shall not be considered as part of this mandamus proceeding. Western States Petroleum, *supra*, 9 Cal. 4th at 577-578.

[3] In its current dimension, the Project's residential parking spaces are thirty percent below what is required by the Planning Department's Residential Parking policy for condominiums. (AR 2290).

[4] While the initial development might be rented as apartments, the developer requested a subdivision map that would allow the units to become condominiums in the future were the market demand for such units develop. (AR 1845). For a proper assessment of the Project's potential effects, therefore, the Project would be evaluated under the parking policy relating to condominiums. (AR 1846). The Real Party's effort to characterize the Project as "code compliant" by applying the apartment standard is wholly incorrect. (AR 4664).

[5] The Draft EIR assumed that the City's parking requirements applied to the proposed Project. (AR 685).

In a report dated September 2008, Hirsch/Green Transportation Consulting, Inc. made many of the claims contained in the Draft EIR. Because the Project was located in an urban neighborhood with proximate public transit, the expert assumed that it would not be necessary for residents to own and park two vehicles per unit. (AR 1488). In addition, the consultants assumed that the project could secure an exemption to allow .25 guest space model, as had been used at another near-by development.[6] (Id.) Without further analysis, the expert declared the parking for the Project to be adequate. (Id.)

A number of comments were submitted by interested persons in response to the Draft EIR. (AR 1828-1835). One commentator challenged the use of the .25 guest space model because the project for which that variance was provided had a surplus of parking for its retail component. (AR 1831). Such an assumption for this Project, however, would be improper as there was no retail parking surplus. (Id.) In reply, the agency made the same argument as was contained in the Draft EIR – this is an urban setting in which public transit would be available and, by implication, two cars per household would not be necessary. (AR 1846). Nothing is mentioned about surplus retail parking at the other location or the sufficiency of guest parking with a .25 per unit ratio. (Id.)

In June 2010, a Final EIR was prepared. (AR 1925). In the Final EIR, the City noted that the Project's parking spaces would fall well below the applicable recommended residential parking ratios. (AR 1811). In response, there were no mitigation measures required and the claimed impact of such parking shortages was deemed "less than significant." (Id). Again, the parking was presumed adequate because of the urban surroundings and the availability of public transit. (AR 1812). Once again, the EIR noted that the developer would apply to obtain a reduction in the required number of guest parking spaces, but noted that the Project would still fail to meet existing parking requirements. (AR 1812).

In August 2010, the City's Advisory Agency, which is responsible for subdivision map applications, and a hearing officer, conducted a joint public hearing on the project. (AR 2105-07). At that hearing, Petitioner and others made objections to the proposed Project. (AR 2029). Nevertheless, the Advisory Agency approved the tentative tract map, including a reduction in the parking required for the Project. (AR 3078-83). Petitioner timely appealed that decision to the Planning Commission.

In December 2010, the Planning Commission heard the appeal of the tentative tract map decision and the zoning entitlements sought by the Real Party. (AR 3195-96). Over expressed reservations regarding the adequacy of the parking in the building, the Commission adopted the EIR, approved the Project and denied Petitioner's appeals. (AR 2217, 2229, 3352, 3378, 3407-08, 3440, 3461, 3487). Petitioner timely appealed. (AR 3517-35, 3669-82).

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[6]The Consulting Report is confusing on this point. At one point, the consultant's note that the City of Los Angeles' policy is to require additional guest parking at .5 spaces per unit and that this rule applied to this project. (AR 1486-87). At another point, they use .25 guest spaces per unit to conclude that "the proposed amount of residential parking is anticipated to be adequate to meet the needs of the project." (AR 1488). There is no discussion as to any similarity or dissimilarity of the other project's parking situation with those present in the proposed Project.

On April 7, 2011 – four months after the Planning Commission adopted the EIR and approved the project and five days before Petitioner appeal was to be heard by the PLUM Committee -- 6104 Hwd's land use consultant submitted a letter that was added to the City Council file for on line viewing. (Joint Answer ¶ 26). That letter urged the members of the Planning and Land Use Management (PLUM) Committee of the City Council to adopt "Supplemental Findings" provided by the Planning Department. (AR 4077-83). At that time, there were no "Supplemental Findings" in the City Council File. (Joint Answer ¶ 27).

On that same day, April 7, the developer's consultant submitted draft review supplemental findings to City Planner Jae Kim "for his independent review and consideration." (Joint Answer ¶ 32.)

On April 12, the PLUM Committee continued the meeting to approve the project and to consider Petitioner's appeal until May 10, 2011. (AR 2269-70).

During the brief continuance, Petitioner repeatedly checked the City Council's public file and inquired of City Council staff regarding the existence of such "supplemental findings." On May 5 or 6, City Planner Jae Kim acknowledged that the developer had provided the Planning Department with "courtesy" supplemental findings, but Kim stated that the City had no intention of submitting any such findings at the May 10 hearing. (Verified Petition at 34).

Nevertheless, Petitioner's representative traveled to City Hall the next day and obtained a copy of these "courtesy supplemental filings" (Id. ¶ 35). One document contained 139 single-spaced pages of "Findings," and another was 110 single-spaced pages of "Findings of Fact (CEQA)." Id. Three days before the hearing, therefore, Petitioner received for the first time over 200 pages of proposed "courtesy supplemental filings" what had been provided by the developer to the City almost a month earlier. And, these "supplemental findings" further referred to a "parking utilization study" that was not included in the materials. (Verified Petition ¶ 39).

Immediately before the PLUM Committee meeting commenced, City Planner Jae Kim handed Petitioner's representative a set of "revised findings" that would be presented to the PLUM Committee. (Joint Answer ¶ 39; AR 2105). The first document, entitled "Supplemental Findings," was 134 single-spaced pages. The other document, entitled "Findings of Fact (CEQA)" was 97 pages in length. (Id.; AR 27-257) The 295 page "parking utilization study" referred to in the findings was not included in these materials. (Augmented Record at Tab 7, ¶ 7; AR 2288).

Despite Petitioner's request for a two-week continuance in order to give Petitioner an opportunity to rebut these newly submitted findings, PLUM concluded the hearing and voted to adopt the EIR, approve the Project without modification and deny Petitioner's appeals.[7] (AR 2284-2288, 2325-2326).

[7] Although RPI argued that this meeting remained open for submission of additional materials after the vote had been taken, the decision/recommendation by PLUM had occurred. The courts have articulated (and CEQA Guidelines have restated) six separate policy grounds justifying the requirement that agencies seek and respond to comments: (1) "sharing expertise; (2) disclosing agency analysis; (3) checking for accuracy; (4) detecting omissions; (5) discovering public concerns; and (6) soliciting counterproposals. CEQA Guidelines § 15200. The process

One day after the PLUM hearing, the City Clerk made available in the City Council file the May 10, 2011 letter from Real Party's attorney and the March 2011 Hersch/Green parking study and other sources. (AR 4727-4790).

On May 17, 2011, the City Council certified the EIR and adopted the findings of the PLUM Committee and denied the Petitioner's appeal without further hearing. (AR 2331).

Petitioner filed the Instant writ on June 15, 2011.

Statement of Issues

Both Respondent and Petitioner have set forth the Statement of CEQA Issues pursuant to Public Code Section 21167.8(f). The court incorporates those statements as if fully set forth herein.

Standard of Review

In any action or proceeding . . . to attack, review, set aside, void or annul a determination, finding or decision of a public agency on the grounds of non-compliance with CEQA, the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law, or if the determination or decision is not supported by substantial evidence." Madrigal v. City of Huntington Beach, 147 Cal. App. 4th 1375, 1381 (2007).

Substantial evidence is defined as "enough relevant evidence and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." 14 CCR § 15384(a). Substantial evidence, however, is not "argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate or evidence of social or economic impacts which do not constitute or are not caused by physical impacts . . . " 14 CCR § 15384(a).

In applying the substantial evidence standard, "the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision." Topanga Ass'n for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506, 514 (1974). However, a clearly inadequate or unsupported study is entitled to no judicial deference. Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm'rs., 91 Cal. App. 4th 1344, 1355 (2001).

Persons challenging an EIR bear the burden of proving that it is legally inadequate and that the agency abused its discretion in certifying it. Cherry Valley Pass Acres and Neighbors v. City of Beaumont, 190 Cal. App. 4th 316, 327-28 (2010).

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employed in this case effectively negated the benefits of meaningful public participation. CEQA's policy of inviting effective public participation was wholly derailed by the process adopted by the City in this case.

Analysis

Petitioner asserts a number of different arguments in support of its claim that the Respondent abused its discretion under CEQA and that it violated due process by denying Petitioner a fair hearing. Considering those two arguments separately:

1. The City Failed to Proceed in a Manner Required by CEQA

In lawsuits challenging agency decisions for alleged non-compliance with CEQA, the Court "can and must . . . scrupulously enforce all legislatively mandates CEQA requirements." Citizens of Goleta Valley v. Board of Supervisors, 52 Cal. 3d 553, 564 (1990). One of those legislatively mandated requirements requires that the public be allowed to participate in the CEQA process. Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist., 116 Cal. App. 4th 396, 400 (2004)("[e]nvironmental review derives its vitality from public participation.") Comments from the public "are an integral part of the [final] EIR." Sutter Sensible Planning, Inc. v. Board of Supervisors, 122 Cal. App. 3d 813, 820 (1981).

> The purpose of requiring public review is to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action. Public review permits accountability and informed self-government . . . . Public review ensures that appropriate alternatives and mitigation measures are considered, and permits input from agencies with expertise. . . . Thus, public review provides the dual purpose of bolstering the public's confidence in the agency's decision and proving the agency with information from a variety of experts and sources.

Schoen v. Department of Forestry & Fire Protection, 58 Cal. App. 4th 556, 573-74 (1997).

Consistent with this interest in ensuring meaningful public participation, the law also requires that, if subsequent to the commencement of public review, but prior to final EIR certification, the lead agency adds "significant new information to an EIR, the agency must issue new notice and re-circulate the revised EIR or portions thereof, for additional commentary and consultation." Pub. Res. Code § 21092.1; CEQA Guidelines § 150885.5; Laurel Heights Improvement Assn. v. Regents of the University of California ("Laurel Heights II), 6 Cal. 4th 1112 (1993). The revised environmental document must be subjected to the "same critical evaluation that occurs in the draft stage," so that the public is not denied "an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom." Sutter Sensible Planning, Inc. v. Board of Supervisors, 122 Cal. App. 3d 813, 822 (1981). Recirculation of an EIR requires notice pursuant to Section 15088.5, subd. (d).[8]

In this case, the PLUM Committee relied extensively upon the Hirsch/Green Transportation Consulting, Inc.'s March 28, 2011 parking "study" as "substantial evidence" to support its

[8]This issue has been exhausted administratively. (AR 4157).

findings that the Project would not result in a substantial adverse impact because the proposed parking spaces were sufficient to meet the needs of the residents.[9] (AR 75-76).

Petitioner asserts that this study constitutes "significant new information" as defined in the Guidelines and under relevant case law. CEQA Guidelines 15088.5; Pub. Res. Code section 21092.1. Specifically, "new information added to an EIR is "significant" if the EIR is changed in a way that deprives the public of a *meaningful opportunity to comment* upon a substantial adverse environmental effect of the project. Id. For example, where a draft EIR is so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded, significant new information that may constitute substantial evidence requires recirculation in order to ensure meaningful public review. CEQA Guidelines Section 15088.5, subd. a (4); Mountain Lion Coalition v. Fish and Game Commission, 214 Cal. App. 3d 1043 (1989).

Respondent and Real Party assert that the new parking study did not require recirculation because it only clarified, amplified or made insignificant changes to an adequate EIR.[10] See

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[9]The Court does not reach, nor does it decide, whether the March 28, 2011 Hirsch/Green study constitutes substantial evidence to support a finding that the number of parking spaces proposed for the Project are sufficient to meet both resident only and residential guest parking. This material was added to the record without a sufficient time for the public to consider and question its contents. Looking at it more carefully, however, may reveal its defects. First, the projects relied upon by the expert are not particularly good proxies to the Hollywood/Gower Project. The 2001 Kaku study focused on both apartments and condominiums in Long Beach, Santa Monica and San Diego. It is unclear whether any of the locations studied were in the severely parking-scarce adjacent neighborhood as is true in this case. (AR 4740- 4766). Nor can it be determined whether these studies considered "luxury projects"—such as this one -- where residents are more likely to retain their cars and drive in higher numbers than the general public. (AR 94, 106). As for the "Shared Parking" book, it provides only "a systematic way to apply" adjustments to parking ratios, but then states that "a poorly designed site for shared parking often cannot be significantly improved, and more spaces may ultimately have to be added." (AR 4777). The City of Los Angeles, obviously with access to such treatises, has decided in the Advisory Agency's Residential Parking Policy No. AA 2000-1, issued May 24, 2000. That Policy requires new residential condominiums to provide 2 parking spaces per dwelling unit plus .5 guest spaces per dwelling unit in light of the unique and particular car-centric nature of Los Angeles. That academics or consultants suggest a change in that policy is not substantial evidence that the Project in this case will provide sufficient parking without occasioning an overflow into the surrounding neighborhood. The third "study" upon which the March 28 "study is based involves high-rise apartments, not condominiums. (AR 4787-88). Finally, the chart showing the developers other projects is immaterial to the question of whether the current parking ratio is sufficient to meet demand. (AR 75, 4790). See Berkeley Keep Jets Over the Bay Comm. V. Board of Port Comm'rs, 91 Cal. App. 4th 1344, 1355 (2001)(a clearly inadequate or unsupported study is entitled to no judicial deference); Laurel Heights Improvement Assn. v. Regents of the University of California, 47 Cal. 3d 376, 404-09 (1988)(findings must be adequate, complete and not based on erroneous calculations or misinterpretations of the studies they rely upon.)

The Court, however, rejects RPI's claim at oral argument that this study was simply composed of already published information and that it added no new information for public review. The record shows that the March 28, 2011 report was neither a summary nor simply a regurgitation of existing reports/studies already in the record. (AR 56, 4681).

[10] Respondent and Real Party also appear to argue that under the most recent CEQA Guidelines, a project's inadequate parking capacity is not considered an adverse environmental impact. Whatever recent changes have taken place in the Guidelines, those do not affect this case. The NOP in this case was published at a time when parking capacity was considered an adverse environmental effect. (AR 850-51). The initial study acknowledged

California Oak Foundation v. Regents of the University of California, 188 Cal. App. 4th 227, 266 (2010). CEQA Guidelines Section 15088.5, subd. b. An agency's decision not to recirculate an EIR must be supported by substantial evidence in the administrative record. CEQA Guidelines Section 15088.5, subd. (e).

The agency's decision not to recirculate the Draft EIR in this instance is not supported by substantial evidence in the administrative record. The March 28, 2011 parking study – no matter how flawed – was a monumental improvement from what was presented in the Draft EIR. The Draft EIR contained only unsubstantiated opinions and conclusory statements that allowing a Project with parking spaces below the City's policy requirements would not cause any significant impacts. (AR 315-16, 685-86, 1486-88). For example, the Draft EIR notes that the "project applicant is confident that the amount of proposed parking would meet the needs of the proposed project." (AR 315). Developer "confidence" does not constitute substantial evidence to support a fact. Nor can it be fairly argued that parking ratios for "apartments" should be used, as the Project is clearly one for condominiums.[11] Finally, while the Draft EIR notes that the Project is "targeted to individuals attracted by the location," and that there are "public transit opportunities available within the project vicinity," fails to bridge the analytic gap. That some residents may like to walk around the area or that there are public transit stops nearby does not explain how the construction of a project with 109 too few parking spaces will not occasion inadequate parking for residents and their guests. Unless and until objective evidence is posited showing that occasional use of public transit or preference for walkable neighborhoods obviates the need of high-wage earners to own and park a car at one's residence, the link between these facts and the conclusion for which they are posited has not been established. In fact, the substantial evidence in the record is to the contrary. (AR 106)(Planning Commissioner Epstein's contrary opinions based on experience).

Moreover, authorizing a departure from existing parking requirements – the recommendation made by PLUM with regard to the Project – will have a substantial adverse environmental effect. While any new information does not trigger re-circulation, section 21092.1 requires an agency to provide the public with "new information" that was a substantial change/improvement on the

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such an effect. The City is bound by the legal framework it has proceeded under. Gentry v. City of Murietta, 36 Cal. App. 4th 1359, 1404-05 (1995).

Moreover, under the new CEQA Guidelines Appendix Checklist, inadequate parking capacity can still be considered an adverse environmental impact if the project would "conflict with an applicable plan or policy . . . establishing measures of effectiveness for the performance of the circulation system." Without any discussion in this record that the circulation system of Hollywood is sufficiently robust to withstand untold numbers of new residents and their guests cruising for non-existent street parking, the Respondents' claim that the Project's variance from City-established parking ratios cannot cause an adverse environmental effect is unsupported by substantial evidence.

[11]Although the Real Party repeatedly refers to the City's parking requirement for apartments, this project was a condominium project. Further, while there is some discussion about the Paseo Plaza project as a "proxy" to demonstrate that the parking spaces in the Project are not insufficient, that building only reduced the ratio of guest parking spaces from .5 per unit to .25 per unit because in that instance, as noted by a speaker at the public hearing, there were surplus retail parking spaces. That project is not sufficiently similar to the Hollywood/Gower project to support a finding that the reduced parking spaces at the Project were "consistent with other high-rise mixed use buildings in the Central Hollywood area."

previously provided information. See also CEQA Guidelines sections 15162 and 15163. Where, as here, the March 2011 Hersch/Green parking study made a significant modification to an otherwise inadequate EIR, recirculation is required. Laurel Heights II, 6 Cal. 4th 1112, 1121-22 (1993).

Without having an opportunity to review the new traffic study evidence – which is the only evidence to support the EIR's finding of no significant environmental impacts – the public was deprived of its right to fulfill its proper role in the CEQA process. See Laurel Heights Improvement Assn. v. Regents of the University of California, 47 Cal. 3d 376, 404-05 (1988).

By failing to recirculate for public comment, Respondent's approval of the EIR failed to comport with the law under CEQA and, therefore, constitutes an abuse of discretion.

For that reason and on that ground, the Writ is granted.

2. "Fair Hearing" Claims

While the Court initially declined to reach the question of whether the process afforded by the Respondent in this case was constitutionally deficient, it shall do so here.

While a court must give substantial deference to the *good faith judgment* of an agency that its procedures afforded fair consideration of a party's claims, that deference is not unlimited. A local agency's adjudicatory decisions must be made pursuant to principles of due process. Horn v. County of Ventura, 24 Cal. 3d 605, 610 (1979).

In this case, the first time that Petitioner even *heard* that a March 29, 2011 report compiling parking utilization at a total of 18 residential developments in the Southern California region and supplemented by recommendations provided by the Urban Land Institute and the Institute of Transportation Engineers would be relied upon as substantial evidence that the parking ratio provided by the applicant would be sufficient to meet demand was provided one business day before the PLUM hearing. (AR 5243, 5293, 5380). This late disclosure was compounded by the fact that the City Planner had repeatedly reassured Petitioner's representative that no additional evidence would be submitted. (AR 22-23, 26-27). The first time that the petitioner was able to *see* the evidence in the new parking study was on May 11, 2011, the day after the PLUM Committee held the hearing on this Project. (AR 4663-4790). This parking study is the only substantial evidence cited in the revised findings adopted by the PLUM Committee that the reduction in parking proposed for this Project would not result in overflow parking impacts in the adjacent neighborhood. (AR 75-77, 199-201).

And, while the City contends that its deprivation of notice and opportunity to Petitioners was "cured" at the City Council, that claim is simply incorrect. The parking study upon which the PLUM Commission relied was made public one day after the matter was referred to the full City Council. (AR 4124, 4734-4790). There was no hearing at the next level; the only "hearing" at

which Petitioner could have proffered "rebuttal" was at the PLUM Commission hearing.[12] (AR 2328-2332, 4124).

While there is no express statute that affords Petitioner the right to have notice and an opportunity to be heard, the doctrine of due process applies to land use administrative hearings of the type at issue here. Mohlief v. Robert Janovici, 51 Cal. App. 4th 267, 302 (1996)(standards regarding adequacy of due process apply at administrative hearings). The deprivation of process in this case – of a basic right to have before it the information upon which the administrative decision rests and an opportunity to be heard as to the competency or adequacy of that information – is patent.[13] The City put more than 200 pages of new findings that relied upon a new planning book not generally available to the public on short notice and the undisclosed 56-page Hirsch/Green Parking Report into the record less than one business day before the hearing on this matter. Having deprived the Petitioner and the public a reasonable advance opportunity to review the new findings and the new evidence cited in support of these findings, the City failed to afford Petitioner a fair hearing in this case. See Clark v. City of Hermosa Beach, 48 Cal. App. 4th 1152, 1171-72 (1996)("A hearing requires that the party be apprised of the evidence against him so that he may have an opportunity to refute, test and explain it.")

As the PLUM Commission's approvals of the Project violated the due process requirements of a fair hearing, the Writ is granted on this ground as well.

Conclusion

For the reasons stated above, the Court grants the Writ of Mandate.

Counsel for Petitioner is to submit to this Department a proposed judgment and a proposed writ within 10 days with a proof of service showing that copies were served on Respondent by hand delivery or fax. The Court will hold these documents for ten days before signing and filing the judgment and causing the clerk to issue the writ.

The administrative record is ordered returned to the party who lodged it to be preserved without alteration until a final judgment is rendered and to forward it to the Court of Appeal in the event of appeal.

DATED: JULY 23, 2012

ANN I. JONES

ANN I. JONES, JUDGE OF THE SUPERIOR COURT

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[12] Both RPI and the City sought to assert that the PLUM Committee decision was only a recommendation, not a decision. Constitutionally, the one who "decides, must hear." Vollstedt v. City of Stockton, 220 Cal. App. 3d 265, 274-75 (1990). If the actual decision-maker was the City Council, it decided the issue without hearing any testimony, much less rebuttal experts. Although Petitioner and its counsel submitted speaker cards at the City Council meeting on the project, no testimony was allowed. (AR 5039-41, 2330, 2340-43).

[13] The Petitioner has a property interest sufficient to allow its due process claim to be heard. An neighborhood adversely affected by a proposed development has a deprivation substantial enough to require procedural due process protection. Cf. Horn v. County of Ventura, 24 Cal. 3d 605, 615 (1979).