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City of Redondo Beach
Attn: City Council
City Hall
415 Diamond Street
Redondo Beach, CA 90277

Via Fax to and Email to Mayor and City Councilmembers

Re: Public Hearing on Area 2 Amendments to the Coastal Land Use
Plan and Coastal Zoning Code Following the California Coastal
Commission's Action of July 9, 2009
City Council Agenda Item J3 – October 6, 2009

Dear Mayor Gin and Members of the City Council,

Angel Law has been retained by Building a Better Redondo, Inc. (BBR) as BBR's legal counsel in connection with the city council's hearing and any proposed action on the California Coastal Commission-modified local coastal program amendment (LCP amendment) for Area 2 of the Redondo Beach coastal zone. BBR formally requests that the city council, upon council approval of the LCP amendment, take the necessary steps to put the amendment to a vote of the people following appropriate traffic analysis. This requested action is mandated by Redondo Beach City Charter article XXVII (article XXVII).¹

BBR is a California nonprofit public benefit corporation, organized for the purposes of preserving and enhancing the quality of life of the residents of Redondo Beach and surrounding South Bay communities, among other things, through increasing public awareness of governmental and private activities adverse to quality of life in this area, and public participation by affected residents and community organizations in response. Having

¹ All further unlabeled section references are to city charter sections contained in article XXVII.

sponsored ballot Measure DD, which added article XXVII to the city's charter, BBR is a major stakeholder in the council's anticipated LCP amendment approval. At the general election of November 4, 2008, Measure DD passed with 58.51% of the popular vote. As such, BBR represents the interests of 15,301 voters, not including the many non-registered voters in support of the growth controls contained in Measure DD. Through their ringing endorsement of Measure DD, the vast majority of the voters of Redondo Beach found that the city's already oversaturated traffic circulation system cannot support the massive intensification of commercial and residential development planned by the city council for Redondo Beach. The voters' voices having been unheard for years, they opted to maximize their public participation in major land use decisions by requiring voter approval of all major changes in allowable land use in Redondo Beach, including zoning changes, and to secure objective, careful analysis of the traffic circulation and safety impacts of such changes, based on consistently applied standards and methodology. (§§ 27.4, 27.5.) By asking this council to follow the law -- the city's own charter -- BBR also asks the council to respect the democratic process expressed at the ballot box and honor the citizens' vote.

The main purposes of the charter amendment are to “[g]ive the voters of Redondo Beach the power to determine whether the City should allow major changes in allowable land use, as defined [in the amendment]” (§ 27.1, subd. (a)), and “[e]nsure that City officials provide timely, accurate and unbiased environmental review ... [to] minimize ... adverse traffic and land use impacts,” *prior to* the voters' decision on any major change. (*Id.*, § 27.1, subd. (c).) The Charter amendment must be liberally construed to accomplish these purposes. (*Id.*, § 27.10.)

Whether considering traffic, density or intensity of use increases compared to baseline conditions, the LCP amendment is a “major change in allowable land use,” as that term is defined in article XXVII. (§ 27.2, subd. (f).) This fact is not in dispute. What appears to be in dispute, however, is the applicability of article XXVII to the city council's anticipated acceptance and approval of the LCP amendment. In an inter-office memorandum dated November 26, 2008, the city attorney expressed his opinion that the city council's adoption of the land use plan (LUP) and coastal zoning ordinance amendments for the harbor and pier area on May 6, 2008 (and, by necessary implication, the earlier LUP and coastal zoning ordinance amendments for the power plant site and surrounding area on August 2,

2005), need not be submitted to the voters, supposedly because these amendments were already in effect before Measure DD became law. The city attorney's premise is in error. As explained below, the city council's May 2008 and August 2005 LUP and coastal zoning ordinance amendments *never entered into effect*, and so the LCP amendment now before the council, which includes the Coastal Commission's modifications to both the council's initial LUP and coastal zoning ordinance amendments, may not be accepted and approved without being submitted to the voters, following due traffic analysis, under the authority of, and as mandated by, article XXVII. We thus register our strong objections to any possible city action that would transmit to the Coastal Commission the council's acceptance and approval of the Coastal Commission-modified LCP amendment, *without* voter approval as required by article XXVII. Under article XXVII, the Coastal Commission-certified LCP amendment must be placed on the ballot after council approval (§ 27.4, subd. (a)), and the popular vote "shall be in addition to all other applicable review and approval requirements for" the LCP amendment. (§ 27.4, subd. (d).) Coastal Commission review and approval, which occurred on July 9, 2009, is such "applicable review and approval requirement...." Importantly, without voter approval, no valid permits may be approved for development projects in the power plant, harbor and pier areas. (§ 27.4, subd. (e).)

I. The LCP Amendment Proposed for City Council Approval Is Subject to Article XXVII Because the City Council's May 2008 and August 2005 LUP and Coastal Zoning Ordinance Amendments Never Took Effect.

The contention that the uncertified, since-modified LUP and coastal zoning ordinance amendments adopted by the city council on May 6, 2008 and August 2, 2005, for submittal to the Coastal Commission, became legally effective prior to the passage on November 4, 2008, of Measure DD, is untenable. This contention is wrong and, therefore, it cannot serve as a premise for exempting city acceptance and approval of the Coastal Commission-modified LCP amendment from article XXVII.

The California Coastal Act of 1976 (Pub. Resources Code, § 30000 et seq.) lays out the procedure for local governments to follow when they want to amend their LCPs. (See Pub. Res. Code, § 30514.) The Coastal Act makes clear that "no such amendment shall take effect until it has been certified by the [Coastal] commission." (*Id.*, subd. (a).) In other words, "[n]o amendment to the LCP will become effective until the Coastal Commission certifies the amendment is consistent with the requirements of

and implements the policies of the [Coastal] Act. (§ 30514, subd. (a).)" (*Conway v. City of Imperial Beach* (1997) 52 Cal.App.4th 78, 86.)

Expanding upon Public Resources Code section 30514, the Coastal Commission's administrative regulations state the requirements that must be met before LCP amendments have the force of law. Like the Coastal Act, these regulations negate the city attorney's premise that uncertified LCP amendments have legal effect. They state that when, as in this case, the Coastal Commission conditions certification of amendments on the approval by the local government of modifications thereto, local government must take several steps before the amendments become effective. (Cal. Code. Regs., tit. 14, §§ 13544, 13551.) First, Coastal Commission certification is neither final nor effective until the local government "accepts and agrees to any such terms and modifications" on which the Commission's certification is conditioned. (*Id.*, § 13544, subd. (a).) Next, the local government must take "whatever formal action is required to satisfy the terms and modifications (e.g., implementation of ordinances)[.]" (*Ibid.*) Upon approving the LCP amendment with the Coastal Commission's terms and modifications, the local government then must transmit the LCP amendment to the Executive Director of the Commission, who determines in writing whether the local government has satisfied the conditions for certification. (*Id.*, subd. (b).) Once satisfied that the local government properly approved the modified amendment, the Executive Director must report his or her determination to the Coastal Commission. (*Id.*, subd. (c).) And only after the determination is not objected to by the Commission and is reported to the Secretary of the Resources Agency via a notice of certification does the local government's LCP amendment become "final and effective." (*Id.*, subds. (c) - (d).)²

The actions of the city council towards amending the city's LCP must be placed in the context of this statutory and regulatory framework. By May 2008, the city council had taken the first steps toward approval of amendments of its LCP by adopting proposed amendments for submittal to the Coastal Commission for Commission review and action. On June 24, 2009, the Commission circulated a staff report on the city's submittal. This report recommended against Coastal Commission certification of the LUP amendment as submitted by the city, and further advised the Commission

² Consistent with this statutory and regulatory framework, the Redondo Beach Municipal Code recognizes that while city council decisions on land use matters are generally considered "final and conclusive[.]" LCP amendments "shall not take effect until certified by the Coastal Commission[.]" (Redondo Beach Mun. Code, § 10-5.2505, subd. (i); see also, *id.*, § 10-5.2238, subd. (c).)

to also “**REJECT** [the] Implementation Program [i.e., the coastal zoning ordinance amendments] as submitted.” (6-24-09 staff report at 5, 6, original emphasis.) The report continued by outlining the numerous and substantial modifications that would have to be approved by the city in order for the LCP amendment to be certified by the Coastal Commission. (*Ibid.*)

On July 9, 2009, the Coastal Commission followed its staff recommendations. It denied certification of the LUP and coastal zoning ordinance amendments as submitted. It then conditioned certification on approval by the city of the suggested modifications now before the city council, while making clear that *its action was not intended to prejudice city compliance* with article XXVII. Commission staff thereafter forwarded the Coastal Commission’s new amendment terms and modifications to the city.

Applicable law and the Coastal Commission’s own action here make crystal clear that, contrary to the city attorney’s opinion of November 26, 2008, the city’s 2008 and 2005 LCP actions never took effect. It follows that the conclusion that they need not be submitted to the voters is a non sequitur. By the same token, any conclusion that present (October 6, 2009) city council approval of the LCP amendment as modified by the Coastal Commission on July 9, 2009, need not be submitted to the voters would violate article XXVII and constitute clear prejudicial error.

II. The LCP Amendment Proposed for City Council Approval Is Subject to Article XXVII Because It Has Yet to Be Approved by the City Council.

As explained above, the LUP and coastal zoning ordinance amendments the city approved in May 2008 and August 2005, were rejected by the Coastal Commission, and the Coastal Commission-suggested modifications must be *adopted* by the city before such amendments are deemed certified by the Coastal Commission and may take effect. (Pub. Resources Code, §§ 30512, subd. (b), 30513, 30514, subd. (b); Cal. Code Regs., tit. 14, §§ 13544, subd. (a), 13551.) Therefore, it cannot be claimed that the city’s erstwhile actions of May 6, 2008 and August 2, 2005 have “approved” the LCP amendment. In fact, it would be quite a stretch to make such a claim -- especially given that the LCP amendment includes substantial Coastal Commission-suggested modifications that were never before the city council until now. Accordingly, *for purposes of voter approval* under article XXVII, any “approval” action in May 2008 or August

2005, is meaningless as such action “approved” something different in substance from the actual LCP amendment now up for final city approval -- a document including 17 separately itemized modifications in the form of numerous, detailed additions and deletions of text.

The law in effect when the city council makes its final administrative decision, i.e., when it approves the terms and modifications suggested by the Coastal Commission, governs the council’s actions in the wake of the Coastal Commission’s action of July 9, 2009. (See *Russian Hill Improvement Assn. v. Board of Permit Appeals* (1967) 66 Cal.2d 34, 38.) In *Russian Hill Improvement Assn.*, the San Francisco board of supervisors enacted a height restriction ordinance while the San Francisco central permit bureau was considering a development permit application submitted prior to the board of supervisors’ zoning action. (*Id.* at 36-37.) The permit bureau issued the permit without applying the height restriction ordinance, and the plaintiff association subsequently lost an appeal to the board of permit appeals. (*Id.* at 37.) The association then challenged the final administrative decision on the ground that the board of permit appeals should have applied the height restriction ordinance and denied the permit. (*Ibid.*) The California Supreme Court agreed, holding that the board of permit appeals was bound by the law “in force at the time of the *final* administrative decision, rather than the ordinances in effect at the time of preliminary proceedings before the permit bureau.” (*Id.* at 38, original emphasis.)

Like the height restriction ordinance at issue in *Russian Hills Improvement Assn.*, article XXVII became effective after the administrative process had begun, but before it ended. Since the LCP amendment can only become effective *after* acceptance and adoption of the Coastal Commission’s suggested modifications by the city council, such council action represents the “final administrative decision” in the local coastal planning context.³ As

³ Any contention that the approval of the Coastal Commission-modified LCP amendment by the city council constitutes ministerial rather than discretionary action, and therefore could not be deemed an “approval” would be without merit. The city council retains discretion to reject the Coastal Commission’s terms and modifications, and also “may elect to meet the [Coastal] commission’s refusal of certification in a manner other than as suggested by the commission and may then resubmit its revised land use plan to the commission.” (§ 30512, subd. (b).)

such, the city council is bound by the law in effect, namely article XXVII, when this final administrative decision occurs.⁴

Again, the people of Redondo Beach overwhelmingly passed Measure DD to add article XXVII to the charter on November 4, 2008. Section 27.3, subdivision (b) states:

“All major changes in allowable land use approved by the City Council on or after the date of publication, pursuant to Elections Code Section 9205, of the notice of intention to circulate the initiative petition adding Article XXVII to this City Charter, shall be subject to the provisions of this article.”

Because the city council has yet to adopt and approve the actual LCP amendment governing development in area 2 of the city’s coastal zone, council approval cannot avoid compliance with the city’s charter. It is “subject to the provisions” of article XXVII.⁵

Of the provisions of article XXVII the city must comply with related to its approval of the LCP amendment, two are of particular importance. First, section 27.5 requires that “any application for a major change in allowable land use shall contain accurate and up-to-date factual data and information” including, inter alia, a “complete, objective” traffic analysis that “adequately disclose[s] the direct, the indirect or secondary, and the cumulative impacts of the project.” (§ 27.5, subd. (a).) The analysis also must “identify the mitigations necessary or recommended to reduce the traffic impacts to . . . a LOS [level of service] better than ‘E’ for the corridors and intersections subject to this analysis.” (Charter § 27.5, subd. (a)(4).)

The city based its traffic analysis for its 2008 LUP and coastal zoning ordinance amendments on the old “Heart of the City” traffic analysis. However, the general plan circulation element update currently in circulation to city commissions shows significant impacts beyond those

⁴ Article XXVII’s requirement that it be liberally construed *to accomplish its purposes* (§ 27.10) further bolsters this conclusion.

⁵ Please also note that the notice of intention to circulate the initiative petition was published on July 19, 2007. This notice thus preceded the city council’s May 2008 action. Hence, under section 27.3, subdivision (b), the May 2008 action would still be subject to article XXVII, even assuming for the sake of argument that such action somehow constituted final approval of the LCP amendment.

evaluated in the Heart of the City traffic analysis. The map attached as exhibit 1 to this comment letter compares the impacts of the harbor upzoning as disclosed in the initial environmental study (IES) for the harbor upzoning, to the results of the new city study for the circulation element update.⁶ This map shows nine intersections degraded to LOS E or F (at or over capacity) that did not appear in the Heart of the City traffic analysis. Despite this severe degradation, the city's proposed LCP amendment action fails to "identify the mitigations necessary or recommended" (§ 27.5, subd. (a)(4)) to reduce these impacts, in plain disregard of the voters' clear intent expressed in article XXVII. This goes to emphasize how pressing a need there is for the city to comply with article XXVII.

Should the city council approve the proposed major change in allowable land use without complying with its public duties under article XXVII, our client will consider its legal options to remedy such illegal conduct. Please note section 27.9: "Any aggrieved person shall have the right to maintain an action for equitable relief to restrain any violation of this article, or to enforce the duties imposed on the City by this article."

Sincerely,

ANGEL LAW



Frank P. Angel

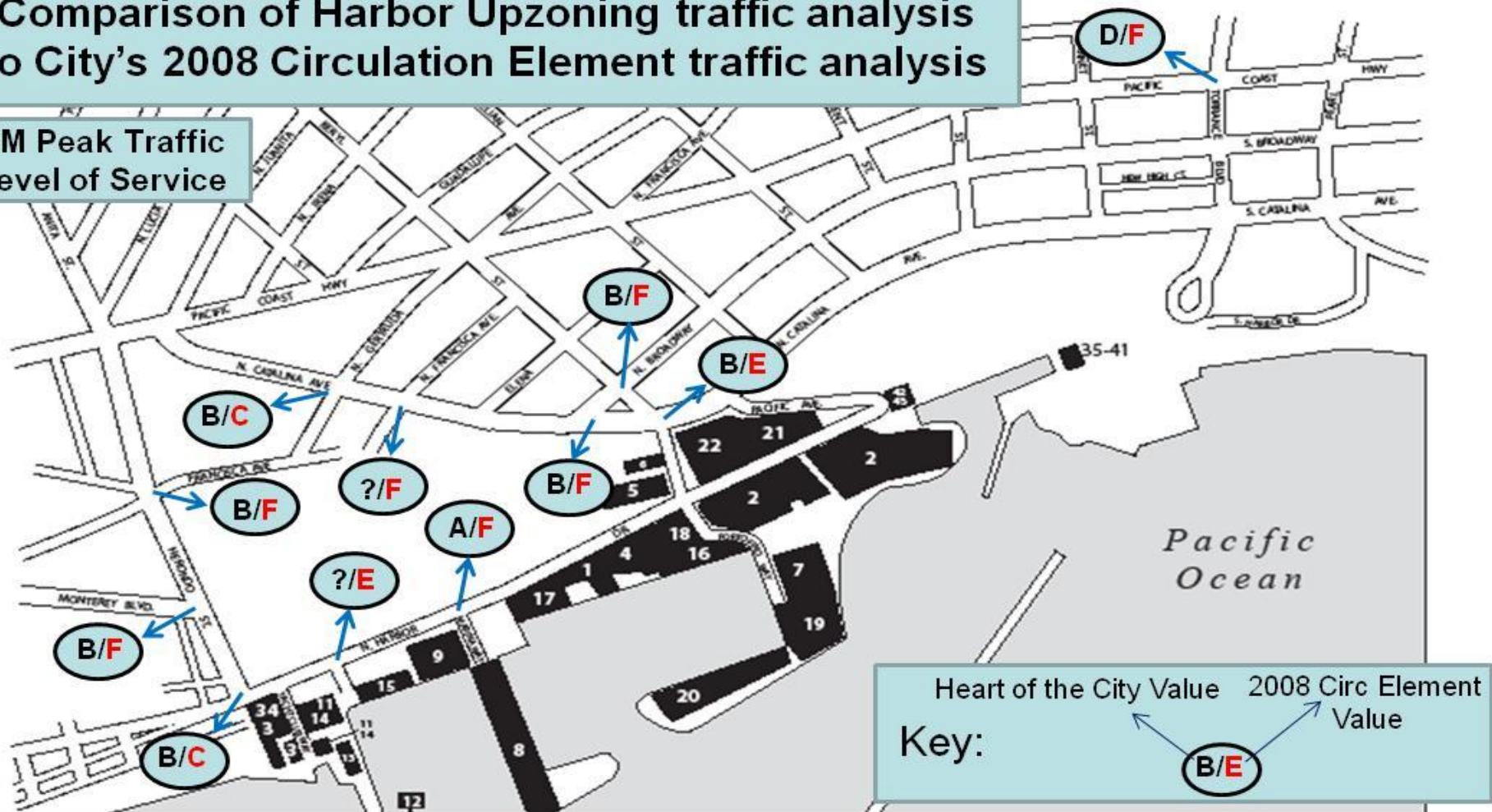
cc: Michael Webb, City Attorney (by email -- michael.webb@redondo.org)
Aaron Jones, Planning Director (by email -- aaron.jones@redondo.org)

Enc.: 1

⁶ This map was prepared by Jim Light of Building a Better Redondo.

Comparison of Harbor Upzoning traffic analysis to City's 2008 Circulation Element traffic analysis

PM Peak Traffic Level of Service



Recent City Study shows Harbor Rezoning Impact Analysis Understates Impacts.

This map compares the old Heart of the City traffic analysis (used as the impacts of harbor upzoning) to the city's new 2008 Circulation Element analysis (which also includes the new harbor upzoning). The new study shows impacts not predicted or analyzed for mitigation under the HOC EIR. The HOC EIR is inadequate for this upzoning.