

SIERRA CURTIS  
NEIGHBORHOOD ASSOCIATION

March 30, 2010

The Honorable Kevin Johnson, Mayor  
Members of the City Council  
City of Sacramento  
915 I Street  
Sacramento, CA 95814

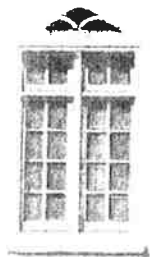
Subject: Curtis Park Village (P04-109)

Dear Mayor Johnson and City Council Members:

You will soon consider the application of Petrovich Development Company for entitlements to develop Curtis Park Village on the 72-acre site in Curtis Park formerly owned by Union Pacific Railroad. The project is a mixed-use, urban infill development that plans to have homes, apartments, offices, retail and open space. Sierra Curtis Neighborhood Association (SCNA) has worked with Mr. Petrovich, neighbors and local businesses, the City of Sacramento, and the site's prior owners over the past 20 years in efforts to plan for the needed development of the site.

Unfortunately, and despite Herculean efforts on the part of SCNA, Mr. Petrovich, and neighborhood residents, SCNA cannot support the Curtis Park Village project in its current form. We oppose the project as proposed to you by Petrovich Development Company and as recommended to you by the Planning Commission. SCNA has made several reasonable recommendations that will improve the project and lessen the adverse effects it will have on the Sierra-Curtis community and surrounding neighborhoods. Those recommendations have been raised in separate correspondence to you and the Planning Commission and will be discussed in public comment on the proposed project when it comes before you.

Through the good offices of Council Member Hammond who represents the Sierra-Curtis neighborhood, we have recently had discussions with Mr. Petrovich's representatives regarding potential modifications of the project that may satisfy the community's objections. In the meantime, however, and as those talks continue, it is necessary for SCNA to state our present objection to the project before you and to identify the ways in which the Environmental Impact Report for this project is inadequate. SCNA has already described some of those issues in our comments on



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The Honorable Kevin Johnson, Mayor  
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March 30, 2010  
Page 2

the Draft Environmental Impact Report. We attach a summary of additional issues that demonstrate that the Final Environmental Impact Report is inadequate for your use in considering the CPV project.

Very truly yours,



Rosanna Herber, President



Michael L. Bledsoe, Chair  
Neighborhood Concerns Committee

**Attachment**

cc: City Attorney  
City Manager  
Director of Community Development Department  
Petrovich Development Company  
California Department of Toxic Substances Control  
Donald B. Mooney, Esq

**SIERRA CURTIS NEIGHBORHOOD ASSOCIATION**  
**COMMENTS ON ENVIRONMENTAL IMPACT REPORT FOR**  
**CURTIS PARK VILLAGE (P04-109)**

March 30, 2010

The City of Sacramento will soon consider the application of Petrovich Development Company (“PDC” or the “developer”) for entitlements to develop Curtis Park Village (“CPV” or the “project”) on the 72-acre site in Curtis Park formerly owned by Union Pacific Railroad and its predecessors. CPV is a mixed-use, urban infill project that is planned for homes, apartments, offices, retail and open space.

The California Environmental Quality Act (“CEQA”) requires that public agencies consider, and eliminate or mitigate when feasible, the significant adverse environmental effects of projects prior to approval. As CEQA requires, an Environmental Impact Report (“EIR”) was prepared for the CPV project. Before the City Council approves the CPV project, it must certify an EIR for the project, consider the potentially significant environmental impacts of the project as well as a reasonable range of alternatives, and adopt all feasible mitigation measures to eliminate or reduce project impacts. The EIR that the City Council considers must be legally adequate as an informational document, or else the Council will not have the ability or opportunity to fully consider the environmental effects of the project. The EIR that was prepared for the CPV project is not legally adequate and cannot be used for approval of this project. These comments identify deficiencies in the EIR. SCNA urges that the City Council direct staff to correct the identified deficiencies in a revised Draft EIR or a Draft Supplemental EIR that is then recirculated for public and agency review.

**Splitting Certification of the EIR from City Council Approval of Entitlements –**

City staff has acceded to the request of the developer and recommends that the City Council separate its action on the EIR from its action on the underlying entitlements for the CPV. Report to Council, dated April 1, 2010 (“Staff Report”), pp. 2, 5. As Mr. Petrovich has stated on behalf of PDC, his concept is that the Council would at its upcoming hearing certify the EIR, but take no action on the developer’s application itself. The California Department of Toxic Substances Control (“DTSC”), acting as a “responsible agency” under CEQA, would then utilize the EIR for its consideration of

PDC's proposal to revise the existing Remedial Action Plan<sup>1</sup> (the "1995 RAP") for the project site, and then, after the 1995 RAP has been revised, PDC would bring the project application to City Council for action in the future. Mr. Petrovich has stated publicly that is his intent. Staff does not disclose why it finds this extraordinary action acceptable. We hope the Council will inquire as to staff's and PDC's rationale for such an unusual step and will direct staff and the applicant to proceed in the normal manner – Council consideration of the EIR and the project entitlements at the same time.

SCNA strongly opposes any such bifurcation of the Council's consideration of the EIR from its action on the project itself.<sup>2</sup> Separating the EIR from the project entitlements would both violate the intent of SB 120 and the Council's intent in urging the Legislature to adopt SB 120.<sup>3</sup> By that legislation, and the City Council's Resolution No. 98-517 in support of the bill by Senator Ortiz, the Legislature and City made it clear that the City has the responsibility and authority to determine the future land use of the former railyard site and that DTSC's decisions on site remediation should facilitate, not impede, the implementation of those plans. It is our belief and understanding that DTSC acknowledges its important role in this process – to assure that the site is remediated in such a way that the public health and safety are protected when Curtis Park Village is built and people are living, working and playing there.

Change in the Project Mitigation Requires Evaluation and Recirculation of the EIR -

One of the most troubling consequences of allowing DTSC to act on the amendment of the 1995 RAP prior to the City acting on the entitlements is the proposal to bury contaminated soil under the proposed 6.8 acre park. In the Final EIR, dated February 2010 ("FEIR"), the City recognizes an important new impact and determines that it requires mitigation. In the FEIR the City deletes the statement in the Draft EIR, dated March 2009 ("DEIR") that restrictions on land use are not required for the park because the soil cap over the "encapsulated" toxic soil is clean. FEIR, p. 3.1-35, Response to Comment 4-13. Instead, it substitutes a new mitigation measure which provides that that Land Use Covenants ("LUCs") will be applied to all areas with contamination left above the unrestricted land use level. Prohibitions against activities such as digging, scraping, or other types of cap disturbance would be included in the LUC. FEIR, pp. 2-44 – 2-45.

This is major change that was not disclosed in the Draft EIR, dated March 2009 ("DEIR"). SCNA has commented repeatedly that LUCs are insufficient to protect the public health in areas that are not covered by hardscape, such as asphalt or concrete. Children playing in the grass or sandbox in a park are hardly expected to refrain from

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<sup>1</sup> Dames and Moore, Final Remedial Action Plan, Union Pacific Railyard, dated June 1995, FEIR, pp. 3.1-383 – 3.1-531. (The 1995 RAP is also available on DTSC's website at: [http://www.envirostor.dtsc.ca.gov/regulators/deliverable\\_documents/5754300773/action\\_plan.pdf](http://www.envirostor.dtsc.ca.gov/regulators/deliverable_documents/5754300773/action_plan.pdf).)

<sup>2</sup> SCNA made known its objections to this unusual approach in its letter to Heather Forest, Community Development Department, dated February 9, 2010.

<sup>3</sup> Copies of SB 120 and City Council Resolution No. 98-517 are found at Attachment 12 of the Staff Report.

digging and scraping in the dirt simply because DTSC has recorded some document that says digging in the park is prohibited. The neighborhood has been promised a park, not a toxic playground. The substitution of LUCs is not sufficient mitigation to protect children playing on the ground, and the public should have the opportunity to explain to the City Council why not. The EIR needs to add an analysis of this change and recirculate it for comment. This change in the project is particularly disturbing because the City Parks staff have represented that the park will have unrestricted uses. (See page 236 of the draft Resolution "Providing Policy Direction for the CPV Project (P04-109) Relating to the Neighborhood Park and Detention Basin and the Amendment to the 1995 Remedial Action Plan," Attachment 11, Staff Report, pp. 229-238.)

Allowing DTSC To Act on the Revision of the 1995 RAP Before the City Council Determines Project Entitlements Risks Ceding Land Use Control to DTSC –

Even more important, deferring action on the project entitlements while DTSC considers how to revise the 1995 RAP *allows the clean-up to drive the land uses at the site*. It is stated throughout the EIR that there can be no revision of the 1995 RAP until the City has determined what the land uses for the site will be because SB 120 requires that the remediation of the site enable the land use development the City desires.<sup>4</sup> Without the Council's action on the entitlements, there is no land use plan for the site and there is no final decision on the project. If it were to revise the 1995 RAP without the entitlements in place, it would only be logical for DTSC to design remediation that would promote the industrial uses present zoning allows. In any case, without a decision on the entitlements, DTSC is not bound by the description of the proposed project, nor by any of the proposed conditions of the entitlements since they are not a final decision of the Council, they are merely staff's recommendations. Thus, the proposed map conditions regarding the preparation of a park master plan and detention basin have no legal effect and cannot prevent the hazardous waste disposal that the developer proposes for the site from driving the ultimate land use. The necessary and proper order of things is for the City to determine the land use, then for DTSC to determine what environmental remediation is needed to protect the health and safety of the community in light of the manner in which the land will be developed and used.

The EIR provides woefully inadequate detail to analyze the impacts from site remediation. To justify its failure to analyze the impacts from site remediation, the City states in the FEIR: "DTSC cannot approve the update to the RAP until the City has approved a land use plan for the project site...Because the specific remedial actions and cleanup standards cannot be determined by DTSC until the City Council approves a land use plan for the Curtis Park Village site this DEIR intentionally does not contain information about the specific actions, such as size/location of the containment cells and types of membranes." FEIR, p. 3.1-533. However, there is nothing to support the City's statement that DTSC cannot approve the update to the RAP until the City has approved the land use plan. As explained earlier in this letter, DTSC cannot determine that the response plan is "complete" until after the City has completed its land use planning process. (SB 120, Ch. 395, stats. 1999.) A determination that the response plan is

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<sup>4</sup> See page 4, below.

complete follows the amendment of the existing response plan, and is a distinct action by DTSC.

### **Remediation of Toxics Remaining at CPV Site –**

#### The EIR Fails To Evaluate the Adverse Environmental Effects of Revising the 1995 RAP –

CEQA requires that decision makers consider the environmental effects of the whole of an action, not just parts of it. CEQA Guidelines, § 15378(a), (c), (d). CEQA prohibits a project proponent from dividing a project into smaller parts so that the full impacts of a project are not fully identified and evaluated. In this case, the EIR divides the CPV project into two parts – the entitlements for which the developer has applied and the remediation of toxics on the site which are a pre-condition to development of the site. The EIR discusses the environmental effects of developing the land uses sought in the entitlements, but does not evaluate the environmental effects of the cleanup of the site or the effects of remediation techniques that DTSC might select for site cleanup.

Section 5.8 of the DEIR addresses the issue of the toxics at the site. DEIR, pp. 5.8-1 – 5.8-15. Under the 1995 RAP, the developer was required, among other things, to excavate contaminated soils from the site and to dispose them off-site.<sup>5</sup> 1995 RAP, pp. 104-105. By 2007, the developer had remediated most of the site to the limits set out in the 1995 RAP and had excavated and disposed off-site about 111,600 tons of contaminated soil. DEIR, p. 5.8-2. The DEIR acknowledges that the discovery of additional toxics at the site, beyond those thought to exist at the time of the 1995 RAP, requires substantially more cleanup work than was anticipated at the time of the 1995 RAP. DEIR, p. 5.8-2. As the City states in the DEIR, “[f]ull implementation of the existing RAP would not remediate all contamination due to supplemental investigations that demonstrated contaminated soils were more extensive than had been estimated.” *Id.* (emphasis added) Indeed, as reported for the first time in the FEIR, approximately 170,000 cubic yards of contaminated soil at the site remains to be remediated. FEIR, p. 3.1-31.

The DEIR then identifies possible cleanup methods for the additional contamination found at the site: excavation and off-site disposal, “encapsulation” on the site (which means placing a cover over contaminated soils which have been disposed in a pit on-site) and in-situ treatment or biodegradation. DEIR, p. 5.8-10. While the DEIR discusses these alternative remediation schemes generically and superficially, it utterly ignores the potential environmental effects that cleanup will cause at this site. The brief paragraphs in the DEIR could apply to dozens of sites across the state; the EIR fails to inform the public what it means at this specific location. Although the amount of additional contamination is great, and was known by the City at the time the DEIR was

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<sup>5</sup> Soils contaminated by diesel fuels and slag in Operating Unit S-5 were to be given in-situ treatment, rather than excavation and removal. 1995 RAP, p. 105.

published,<sup>6</sup> neither the DEIR nor FEIR disclose the impacts of such a major clean-up. Indeed, the DEIR and FEIR do not even identify where the clean-up will occur. The site map disclosed for the first time in the FEIR is unreadable and inadequate to disclose which contaminants remain and where they are located, nor does it include a readable description of where toxics are located on the site. Furthermore, it fails to identify where the contaminants are currently stockpiled, what the public risks with that long-term stockpiling are, or where the contaminants will be stockpiled in the future. Without more detail, the public does not have the information necessary to assess the impacts of locating a public park above the proposed toxics storage facility.

In violation of CEQA, the EIR's discussion of this matter consists entirely of conclusory narrative with no analysis at all. Although the DEIR concludes that the remediation of the site will have less than significant impacts, it provides no facts or explanation as to how its authors reached that determination. CEQA requires analysis so that decision makers can intelligently take into account the environmental consequences of their decisions. CEQA Guidelines, § 15151. CEQA's value as an informational tool is lost if the environmental document merely states conclusions without the analysis necessary for the public and decision makers to understand, and give credence to, the conclusions reached.

#### CEQA Prohibits "Piecemealing" of Projects –

In the FEIR, the City admits that it is piecemealing the project by stating that DTSC will conduct any additional environmental review when it decides on the revision of the RAP. FEIR, p. 2-43. The City makes the same admission in its response to SCNA's comments of the DEIR when it states that the "DEIR examines the potential remedies that could be used to address the additional volumes of contaminated soils...[h]owever, this DEIR does not examine the remedial actions necessary to implement the potential remedies." FEIR, p. 3.1-533 (emphasis in original). Thus, the EIR expressly elects not to consider the environmental impacts of remediating the site even though it is plain that remediation is required in order to develop the site in the manner proposed by the project applicant. The City, instead, would piecemeal this project into two parts, leaving the environmental analysis of the site remediation to DTSC.<sup>7</sup> Such a segmentation violates CEQA.

Even though the City knows that additional remediation is required for the project to be carried out and that additional environmental review of that remediation is required

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<sup>6</sup> The supplemental investigations which identified the additional contamination were completed in December 2008. DEIR, p. 5.8-8. The DEIR was published on March 31, 2009. See, Notice of Availability, March 31, 2009.

<sup>7</sup> It is interesting to note that the City seems to want it both ways, that the EIR covers the impacts from site remediation and, as described above, that the EIR does not need to evaluate those impacts. On the next page of the FEIR, the City notes that it has coordinated with DTSC "to ensure that the EIR...includes the analyses of the potential impacts due to the potential remedies." FEIR, p. 3.1-534. To the same effect, see FEIR at p. 3.1-535, where DTSC comments that it has been "coordinating with the City" to insure that the EIR covers the impacts of the site remediation that will be required under the proposed amendment of the 1995 RAP.