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September 15, 2020

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

SUSTAINABLE COMMUNITIES PROJECT EXEMPTION REQUEST FOR A PROPOSED PROJECT AT 623 - 671 SOUTH LA BREA AVENUE; CASE NOS. ZA-2019-1744-CU-MCUP-SPR-TOC, VTT-82618-CN & ENV-2019-1736-SCPE; COUNCIL FILE NO. 19-1533

On November 26, 2019, the Director of Planning submitted the justification (and supporting documents) for a Sustainable Communities Project California Environmental Quality Act (CEQA) Exemption (SCPE) for a proposed project located at 623 - 671 South La Brea Avenue. Subsequent to that submission, multiple comment letters have been submitted to the Council File (C.F. No. 19-1533) regarding the appropriateness of the use of the SCPE for the proposed project. Additionally, on January 24, 2020, the Director of Planning submitted a response to comment letters that were submitted to the Council File (C.F. No. 19-1533). The following is a response, in part, to additional comments that were submitted to Council File (C.F. No. 19-1533).

Project Meets Sustainable Communities Project Exemption Criteria

Public Resources Code (PRC) Section 21155.1, states that a project qualifies as a Sustainable Communities Project and is therefore exempt from CEQA analysis if it meets the following summarized criteria:

1. The project is consistent with the general use designation, density, building intensity, and applicable policies for the project area in the Southern California Association of Governments' adopted Sustainable Communities Strategy per PRC Section 21155(a).
2. The proposed project is a Transit Priority Project (TPP) as defined by PRC Section 21155(b).
3. The Transit Priority Project complies with all of the environmental criteria per PRC Section 21155.1(a).
4. The Transit Priority Project meets all of the land use criteria per PRC Section 21155.1(b).
5. The Transit Priority Project meets at least one of the criteria per PRC Section 21155.1(c).

PRC Section 21155.1, further states that if the legislative body finds, after conducting a public hearing, that a transit priority project meets the requirements mentioned above, then the transit priority project is declared to be a sustainable communities project and shall be exempt. There are no explicit or implied requirements for a decision to be issued by an authorized decision maker for the requested entitlement prior to the legislative body's determination of the SCPE.

There were comments received that suggests that the SCPE cannot be approved or final until the City approves the underlying project entitlements. This is incorrect. CEQA requires environmental review prior to a decision on a discretionary action.

The requested entitlements must be acted upon by the authorized decision maker. In this case as per Los Angeles Municipal Code (LAMC) Section 17.03 the Advisory Agency is charged with approving, conditionally approving or denying a tentative map. Likewise, Section 12.24-W authorizes the Zoning Administrator as the decision-maker for the requested Conditional Use permits. In this case, the review and approval of the requested SCPE is before the legislative body and not the Zoning Administrator who is the decision maker for the requested discretionary actions. The review and adoption of the SCPE is necessary to shape the decision maker's discretion in making a decision on the project.

State Law requires approval of the SCPE by the legislative body. Additionally, the NOE is filed in conjunction with an approved entitlement and an adopted environmental clearance and therefore would not be filed unless a determination in the affirmative is issued by the respective decision maker which is the Zoning Administrator for this case. Therefore, a public hearing must be held by City Council prior to declaring a project to be a Sustainable Communities Project and the City Council is required to find the necessary criteria are met in Subsections (a), (b) and (c) of PRC Section 21155.1. Unlike other CEQA clearances, the SCPE must be approved by the City Council, even if the initial decision-maker or appellate body is a lower decision-making body or officer.

For entitlement cases that require a public hearing prior to a decision, a public hearing on the SCPE may be, but is not required to be, conducted simultaneously with the entitlement case. Following the public hearing the SCPE proceeds to City Council for the SCPE hearing. Alternatively, the SCPE may be heard by City Council prior to the decision-maker holding the public hearing for the entitlement. Noticing requirements for the SCPE shall follow the entitlement notification requirements per the code.

There is no formal comment period for SCPE. However, as part of the hearing process members of the public are given the opportunity to submit comments. The determination is made by the legislative body based on the project meeting the criteria set forth by state law.

Fix the City claims against SCPE

- 1. Fix the City argues that this proposed project and other projects approved prior to the approval of the transit priority project cannot be served by existing utilities.**

The project site is located within an urbanized area of the City and is currently adequately serviced by the LADWP, the Bureau of Sanitation, Southern California Gas Company, and telecommunications companies as the project site entails existing commercial and office uses and is adequately served by the existing utility infrastructure. The proposed development of the site would not require the new utilities to accommodate the proposed development. Additionally, the Bureau of Sanitation reviewed the project and concluded that the sewer/storm drain lines that serves the

area has no potential connection problems to structures or maintenance. Additionally, LADWP issued a letter stating that water can be supplied to the project site and is subjected to the payment of regular connection charges. All required water mains have been installed.

The proposed project was reviewed by various utility agencies. In a letter dated September 11, 2020, the Los Angeles Department of Water and Power indicated that electric service is available and will be provided for the proposed project. There were no other communications received from these agencies indicating that the project site and other pending projects could not be adequately served by existing infrastructure.

In addition, in order to qualify for the SCPE the proposed project must be 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations and the buildings and landscaping are designed to achieve 25 percent less water usage than the average household use in the region.

2. Fix the City indirectly argues that FAR/TOC calculations allow this proposed transit priority project to exceed 200 residential units.

The project is a mixed-use development consisting of 121 residential dwelling units and 125 hotel guest rooms (the commercial component) and is therefore not subjected to the 200 residential unit maximum to meet the criteria of a SCPE.

The LAMC Section 12.03 defines a dwelling unit as “a group of two or more rooms, one of which is a kitchen, designed for occupancy by one family for living and sleeping purposes”. Conversely, a guestroom is defined as “any habitable room except a kitchen, designed or used for occupancy by one or more persons and not in a dwelling unit”. As the hotel rooms do not include kitchens, they are not considered dwelling units.

The requested entitlements will be acted upon by the authorized decision maker; the Advisory Agency will approve, conditionally approve or deny the tentative map. Likewise, the Zoning Administrator will conditionally approve or deny the Conditional Use permits and the requested TOC entitlement. The review and approval of the requested SCPE is the only request before the legislative body.

The public record remains open for Case No. ZA-2019-1744-CU-MCUP-SPR-TOC and all correspondence received regarding the requested entitlements before the Zoning Administrator such as comments regarding the FAR and TOC calculations will be included in the case file for the decision maker’s review and consideration.

3. Fix the City argues that the proposed project is not capable of providing acceptable response times for fire protection and emergency responses services and fails to include General Plan Framework mitigation measures.

First, the Los Angeles Fire Department (LAFD) has not established response times standards for emergency response, nor adopted the National Fire Protection Association (NFPA) standard of 5 minutes for EMS response and 5 minutes, 20 seconds for fire suppression response. The City’s current average response times would not be considered deficient because the City considers a variety of factors when evaluating adequate response times for fire and emergency response services, such as response distance, adequate emergency access, and fire flow to evaluate impacts

to fire protection services. In addition, roadway congestion, intersection level of service (LOS), weather conditions, and construction traffic along a response route can affect response time. Generally, multi-lane arterial roadways allow emergency vehicles to travel at higher rates of speed and permit other traffic to maneuver out of a path of an emergency vehicle. Additionally, the LAFD, in collaboration with Los Angeles Department of Transportation (LADOT), has developed a Fire Preemption System (FPS), a system that automatically turns traffic lights to green for emergency vehicles traveling along designated City streets to aid in emergency response. The City of Los Angeles has over 205 miles of major arterial routes that are equipped with FPS.

Second, although response time is considered to assess the adequacy of fire protection services, LAFD utilizes a variety of other criteria, including required fire flow, response distance from existing fire stations, and the LAFD's judgement for needs in an area. If the number of incidents in a given area increases, it is the LAFD's responsibility to assign new staff and equipment, as necessary, to maintain adequate levels of service. In conformance with the California Constitution Article XIII, Section 35(a)(2) and the *City of Hayward v. Board Trustee of California State University* (2015) 242 Cal, App. 4th 833, 847 ruling, the City is meeting its constitutional obligation to provide adequate public safety services, including fire protection and emergency medical services.

Third, the need for or deficiency in adequate fire protection and emergency medical services in and of itself is not a CEQA impact, but rather a social and/or economic impact. Where a project causes a need for additional fire protection and emergency medical services resulting in the need to construct new facilities or additions to existing facilities, and the construction results in a potential impact to the environment, then the impact would need to be assessed. Again, there is no need to construct a new facility given that Station No. 61 is approximately 0.6 miles northwest of the project site.

Lastly, the project will be required to comply with all applicable regulatory measures, including compliance with the Fire Code, which will ensure any potential impact is less than significant.

4. Fix the City argues that the proposed project is not consistent with the Wilshire Community Plan.

Under PRC Section 21155.1, a SCPE does not require a determination of consistency with the Wilshire Community Plan, but with the SCAG RTP/SCS which requires compliance with land use and the environmental criteria, rather than preparing impact analyses caused by the proposed project.

Unite Here claims against SCPE

1. Unite Here challenges the proposed project's water and energy efficiency assumptions and claims project fails to justify Title 24 calculations.

According to SCAG the water efficiency analysis that was completed for the RTP/SCS analyzed hotel use as a commercial use. This information is in the 2016 RTP/SCS Urban Footprint Water Analysis.

The 2019 Plumbing Code became effective on January 1, 2020 and applies to projects submitted after January 1, 2020. The proposed project's entitlement application, construction plans and SCPE analysis were submitted to the City prior to January 1, 2020 and is therefore not subjected to the 2016 Plumbing Code.

Included in the SCPE are attachments F.1 (Energy Reduction Report) and F.2 (Total Water Use Reduction Report), both of which analyze and confirm that the proposed project would result in 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations and the buildings and landscaping are designed to achieve 25 percent less water usage than the average household use in the region, as assumed in the "Metropolitan Water District Water Tomorrow Annual Report to the California State Legislature, Covering Fiscal Year 2017/18".

2. Unite Here argues that SCPE lacks analysis demonstrating consistency with the RTP/SCS.

The analysis provided in Case No. ENV-2019-1736-SCPE (Section 4.0 Project Consistency with SCAG 2016-2040 RTP/SCS Mitigation Measures) demonstrates that the proposed project will incorporate applicable performance standards or criteria set forth in SCAG's 2016-2040 RTP/SCS environmental impact report through the implementation of various Regulatory Compliance Measures set forth by the California Air Resources Board, the South California Air Quality District, and other local, state and federal regulations.

3. Unite Here argues that SCPE fails to provide any modeling of greenhouse gas emissions/CalEEMod modeling or confirm whether the project will achieve the necessary per capita GHG emissions reductions mandated under SB 375.

None of the criteria to qualify as a SCPE require a detailed analysis of a project's potential impacts to Greenhouse Gas Emissions (GHG). Instead, in consideration of a project's potential impacts to GHG, the SCPE environmental clearance primarily relies on three (3) criteria which includes that any applicable mitigation measures or performance standards or criteria set forth in the prior environmental impact reports, and adopted in findings, have been or will be incorporated into the transit priority project; that the transit priority project is located within one-half mile of a rail transit station or a ferry terminal included in a regional transportation plan or within one-quarter mile of a high-quality transit corridor included in a regional transportation plan; and that the buildings in the transit priority project are 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations and the buildings and landscaping are designed to achieve 25 percent less water usage than the average household use in the region. Additionally, SCAG 2016-2040 RTP/SCS considered hotels as a commercial use.

4. Unite Here argues that this SCPE cannot be approved until the City approves the underlying project entitlements. Unite Here further argues that the Legislative Body must concurrently consider the project entitlements at this hearing.

Petitioner mistakenly cites to *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408 which stands for the proposition that a Notice of Exemption must be filed after project approval. Here, a SCPE is not a Notice of Exemption as described

under Cal. Code Regs., tit. 14, Section 15062. Instead, a SCPE is governed by Public Resources Code Section 21155.1. Further, no NOE has been prematurely filed on the related project entitlements. The NOE will be filed after approval of the project.

5. Project does not qualify for Exemption because project exceeds 200 residential units.

See related Fix the City response above. The project is a mixed-use development consisting of 121 residential dwelling units and 125 hotel rooms (the commercial component) and therefore does not reach the 200 residential unit maximum to meet the criteria of a SCP.

6. Project is inconsistent with applicable land use policies.

See related Fix the City response above. The public record remains open for Case No. ZA-2019-1744-CU-MCUP-SPR-TOC and all correspondence received regarding the requested entitlements before the Zoning Administrator such as any land use comments will be included in the case file for the decision maker's review and consideration.

Sincerely,

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Oliver Netburn
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VPB:ON:MC