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**VIA email only**

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Clerk, PLUM Committee  
City Council  
City of Los Angeles  
200 N. Spring Street  
Los Angeles, California 90012

**Re: OPPOSITION LETTER REGARDING *ENV 19-5735-SCEA*; *ZA-2018-3422-ELD-CU-DRB-SPP-WDI-SPR* (*ENV 2018-3423 MND*); and *CF 20-1624*; Commonly Known as the Belmont Senior Living Center located at 10822 Wilshire Boulevard, Westwood**

Dear Clerk:

This firm represents the homeowners of the surrounding residential neighborhood and includes a wider group of residents and homeowners of the single-family neighborhood south of Wilshire Boulevard and east of Westwood Boulevard, which are a unified group of neighbors whose properties are in the residential neighborhood that directly abuts the Proposed development of a 12-story 173-unit Eldercare Facility referred to as the "Belmont Westwood Senior Living Center" (and referred to herein as the "Project") proposed for 10822 Wilshire Boulevard, in the community of Westwood (hereinafter referred to as the "Project Site.")

The purpose of this letter is to set forth the arguments under the applicable statutes, guidelines and case law comprising the California Environmental Quality Act (hereinafter referred to as "CEQA"), the Municipal Code and applicable planning documents of the City of Los Angeles (hereinafter referred to as the "City,") and the Southern California Association of Governments ("SCAG.") A prerequisite to the lawful consideration of the Project and the supporting environmental documentation under CEQA is a series of revisions to address the material flaws in the supporting materials (hereinafter referred to as the "Record") rendering legally inadequate the documents prepared in support of the Project, including without limitation the full consideration of impacts on the environment.

The arguments contained within this letter rely for its support and for the exhaustion of administrative remedies on the totality of the record already submitted to the City, including without limitation, the many letters, emails (both from sources outside of the City and intra-City), oral and written testimony at prior hearings and community meetings, and other forms of communication that have been presented in whatever form to either the City's environmental

and/or planning units regardless of the source or date of submittal. To the extent this opposition letter is limited in scope is without waiver of additional submittals or other arguments already raised or which will be raised in the future. The undersigned specifically reserves the right to supplement this letter with additional argument, evidence, data, and other materials relevant to any issue(s) raised in opposition to the Project.

### **SUMMARY OF THE OPPOSITION**

Are museums, churches, and high schools equivalent land uses to a multi-family apartment or condominium project? Nobody would seriously argue any of these three land use examples is a “residential land use.” But all three are allowed within the high-density residential zone. Thus, it cannot be the zoning that defines the land use.

More to the points raised herein, when considering whether the Project fits within the dictates of SB 375, i.e., whether the Project qualifies as a TPP, we do not simply look at the zoning. The Project is not a “residential land use” qualifying for a SCEA simply because it is allowed within a residential zone. Just as nobody would take seriously an application by a museum to qualify as a TPP.

Beneath the policy furthered by SB 375, are the Legislature’s intentions to intensify residential development near transit, employment, and life’s necessities because of the increased likelihood of the use of alternative forms of transportation as one of the State’s important strategies to reduce vehicle miles travelled (“VMT”) and therefore greenhouse gas emissions (“GHG”) to address global climate change.

The analysis of both the Project’s case to qualify for a SCEA and its potential environmental impacts, both under CEQA, requires a full and detailed consideration of how the Project will function. Did the Legislature intend that a hospital or a hotel qualify as a TPP? Like an eldercare facility, each of them has beds, considerable staff and clientele who spend the night. So while these three land uses may share more characteristics with a multi-family apartment than does a museum, again, these land uses are not a TPP. It is the nature of the activities and the legislative purpose that dictates the land use character.

When considering the “conflicts” between the Project and the policies, plans and regulations adopted to avoid or mitigate an adverse environmental impact, giving full consideration to the Project’s actual functionality will be material to comply with the requirements of CEQA to fully identify, analyze, and mitigate the Project’s environmental impacts.

### **SUMMARY OF ISSUES**

1. An Eldercare Facility is not a multi-family residential project despite the fact that it is an allowable use in the R-5 Zone;
2. By enacting SB 375, the Legislature intended to provide a streamlined environmental review process for multi-family residential land use, not an eldercare or childcare facility. Although it is conceivable that substantial evidence could demonstrate that another type of “land use” could also achieve the Legislature’s purpose, that is not the case with the proposed Project;

3. The findings cannot be made that the Project is a Transit Priority Project and therefore it cannot be considered or approved based on a SCEA;
4. The Project density and intensity are not consistent with the surrounding single-family neighborhood or the applicable land use standards;
5. Substantial evidence supports a “fair argument” that the Project has the potential to cause adverse environmental impacts necessitating the preparation of an EIR, including meeting the thresholds of significance related to land use conflicts;
6. The Project Description does not provide full and complete detail about its functionality to allow for a complete and fully informed substantive analysis under CEQA to qualify for a SCEA or to properly identify and assess all of the potential environmental impacts of the Project requirements, including, without limitation:
  - a. Full disclosure of the services proposed including considerable food service;
  - b. Full disclosure about the number of the employees and their skills for the church administration, childcare facility and eldercare facility;
  - c. Full disclosure about the density and intensity of the Project; and
  - d. Full disclosure about the users of the Childcare Facility.
7. The Initial Study does not comply with substantive CEQA requirements such as:
  - a. The Land Use analysis regarding “conflicts” applied the wrong legal standard;
  - b. The Land Use analysis regarding “conflicts” is distorted by its nearly total reliance on policies, plans and regulations not adopted to avoid or mitigate environmental impacts and exclusion of those that meet that standard;
  - c. How transportation staff arrived at the “custom land use” regarding the calculation of the generation of VMT and vehicle trips for the eldercare facility;
  - d. The record does not accurately describe the number of employees and their likely generation of vehicle miles traveled (VMT) and vehicle trip;
  - e. The SCEA Initial Study contains many conclusions and opinions about material issues based on assumptions and speculation instead of facts;

## **LEGISLATIVE BACKGROUND**

### **SB 375**

The Sustainable Communities and Climate Protection Act of 2008, commonly known as Senate Bill No. 375 (2007–2008 Reg. Sess.) (“Senate Bill 375”), sought to integrate transportation and land use planning to reduce greenhouse gas emissions. (Stats. 2008, ch. 728, § 1, p. 5065; Stats. 2009, ch. 354, § 5.) Senate Bill 375 directed the State Air Resources Board to develop regional emission reduction targets for automobiles and light trucks. (Gov. Code, § 65080, subd. (b)(2)(A).) In turn, federally designated metropolitan planning organizations that prepare regional transportation plans must include in those plans a “sustainable communities strategy” to achieve the emission targets. (Gov. Code, § 65080, subd. (b)(2)(B).) Here that study is referred to as the regional transportation plan/sustainable communities strategy (referred to herein as the “RTP/SCS”).

The strategy directs the location and intensity of future land use development on a regional scale to reduce greenhouse gas emissions from motor vehicles. It must “identify the

general location of uses, residential densities, and building intensities within the region,” identify areas within the region sufficient to house the region's future population, and “set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by the [State Air Resources Board].” (Gov. Code, § 65080, subd. (b)(2)(B).) “The reductions mandated by Senate Bill 375 may be achieved through a variety of means, including ‘smart growth’ planning to maximize building densities at locations served by public transit and to locate residences near needed services and shopping to reduce automobile dependency.” (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 506.)

One type of development the Legislature determined can help reduce greenhouse gas emissions from motor vehicles is a transit priority project (referred to herein as a “TPP.”) A TPP is a development project that contains at least 50 percent residential use, provides a minimum density of at least 20 units per acre, and is located within one-half mile of a major transit stop or transit corridor. (Pub. Resources Code, § 21155, subd. (b).)

To encourage the development of transit priority projects, the Legislature in Senate Bill 375 limited the extent of environmental review that a local agency must perform under CEQA to approve them. If a transit priority project (1) “is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area” in the strategy; and (2) incorporates all feasible mitigation measures, performance standards, and criteria set forth “in the prior applicable environmental impact reports” and which were adopted as findings, then the local agency may review the project's environmental effects in a streamlined manner using an SCEA. (Pub. Resources Code, §§ 21155, subd. (a), 21155.2, subds. (a), (b).)

The review is streamlined because an SCEA is not required to analyze certain types of environmental impacts. It is not required to discuss growth inducing impacts or any project-specific or cumulative impacts on global warming or the regional transportation network that may arise from automobile and light-duty truck trips generated by the project. (Pub. Resources Code, § 21159.28, subd. (a).) Also, where the lead agency determines that a cumulative effect has been adequately addressed and mitigated in prior applicable certified environmental impact reports, that cumulative effect shall not be treated as cumulatively considerable and subject to further environmental review. (Pub. Resources Code, § 21155.2, subd. (b)(1).) In addition, the SCEA is not required to analyze offsite alternatives, nor is it required to reference, describe, or discuss a reduced residential density alternative to address the effects of car and light-duty truck trips generated by the project. (Pub. Resources Code, §§ 21155.2, subd. (c)(2); 21159.28, subd. (b).)

However, nothing in Senate Bill 375 transfers land use authority away from the local agency who remains solely responsible for the exercise of the police powers over local land use decisions.

## **CEQA**

Senate Bill 375 streamlined procedures that only apply to a qualified TPP. The Legislature proscribed certain findings that must be made with supporting substantial evidence in the record. Otherwise the exceptions from normal CEQA procedure do not apply.

Assuming the Senate Bill 375 findings are made with full and legally required support in the record, then all of the CEQA substantive and procedural requirements must be met except those specifically exempted by the streamline process. The application of any exemption must be construed narrowly.

CEQA's purpose of full, transparent, and complete disclosure remains the same regarding all non-exempted environmental impacts adequately supported such that the public and the decision makers fully understand the Project, the environmental analysis, and decisions made about it.

The specific substantive and procedural requirements for the approval of a SCEA include the following:

1. An initial study shall be prepared for a SCEA to identify all significant impacts or potentially significant impacts, except for the following: a. Growth-inducing impacts, and b. Project-specific or cumulative impacts from cars and light trucks on global warming or the regional transportation network.<sup>2</sup> Note: All relevant and applicable RTP/SCS PEIR mitigation measures shall be incorporated into the Project prior to conducting the initial study analysis.

2. The initial study shall identify any cumulative impacts that have been adequately addressed and mitigated in a prior applicable certified EIR. Where the lead agency determines the impact has been adequately addressed and mitigated, the impact shall not be cumulatively considerable.

3. The SCEA shall contain mitigation measures that either avoid or mitigate to a level of insignificance all potentially significant or significant effects of the project required to be identified in the initial study.

4. A draft of the SCEA shall be circulated for a public comment period not less than 30 days, and the lead agency shall consider all comments received prior to acting on the SCEA.

5. The SCEA may be approved by the lead agency after the lead agency's legislative body conducts a public hearing, reviews comments received, and finds the following:

- a. All potentially significant or significant effects required to be identified in the initial study have been identified and analyzed, and

- b. With respect to each significant effect on the environment required to be identified in the initial study, either of the following apply:

- i. Changes or alternations have been required in or incorporated into the project that avoid or mitigate the significant effects to a level of insignificance.

- ii. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency

6. The lead agency's decision to review and approve a TPP with an SCEA shall be reviewed under the substantial evidence standard.

**THE PROPOSED PROJECT IS NOT A MULTI-FAMILY RESIDENTIAL  
PROJECT UNDER SB 375**

The Record Lacks Substantial Evidence for a Finding of 50% Residential Land Use

The Project Does Not Provide 50% Residential Land Use

The Project consists of at least 4 different land uses: church; eldercare facility consisting of independent living, assisted living and Alzheimer/dementia care; childcare facility; and church administration. The best information available regarding floor area for each is as follows:

|                                       |                                 |
|---------------------------------------|---------------------------------|
| EXISTING SANCTUARY:                   | 2,580 square feet               |
| GROUND FLOOR (Fellowship.):           | 7,843 square feet               |
| ELDERCARE FACILITY consisting of:     |                                 |
| Level 1 (50/50Fellowship/Residential: | 16,998 (8,499 square feet each) |
| Independent Living:                   | 60,468 square feet              |
| Assisted Living/Alzheimer:            | 74,231 square feet              |
| CHILD CARE FACILITY:                  | 9,742 square feet               |
| CHURCH ADMINISTRATION                 | 9,825 square feet               |
| AMENITY/DINING                        | 12,325 square feet              |

**SUBTOTALS**

**Residential/Non-Residential Land Uses**

|                                                    |                           |            |
|----------------------------------------------------|---------------------------|------------|
| Non-Residential:                                   | 50,814 square feet        | 27.4%      |
| Non-Conventional Residential                       |                           |            |
| (Assisted Living/Alzheimer):                       | <u>74,231 square feet</u> | <u>40%</u> |
| <b><u>SUBTOTAL</u></b> Quasi- and Non-Residential: | 125,045 square feet       | 67.4%      |

Conventional Residential

|                     |                    |             |
|---------------------|--------------------|-------------|
| Independent Living: | 60,468 square feet | 32.5% Total |
|---------------------|--------------------|-------------|

These figures are based on incomplete data provided in the Entitlement Package at page G-020. At a minimum, the Applicant should provide the record with complete, accurate, and verifiable data to finalize these figures before consideration is given to the Project.

The first required finding in order to qualify for special TPP status states in part:

*The Project qualifies as a TPP pursuant to PRC Section 21155(b) because it contains more than 50 percent residential use;*

However imperfect the calculations derived from page G-010 may be, nevertheless they illustrate that not more than approximately 32.5% of the total land use of the Subject Property even begins to resemble the multi-family residential land use contemplated in Senate Bill 375 necessary to qualify for a TPP. This is not a close call. In the best case scenario, the land use of the Project proposed not much more than one-half of the required “residential” land use.

Zoning Does Not Constitute Substantial Evidence the Project is Residential in Character

The Initial Study makes the unsupported assumption that the character of the land use of the Project is residential. First, the Project Applicant cannot rely on the fact that an Eldercare Facility is an authorized use within the multi-family R-5 Zone to support a finding that the Project is a residential land use.

The Los Angeles Municipal Code for zoning is organized from less to more intense uses. For example, the “R-5” zone allows all uses allowable within the “R-4” plus additional more intense land uses.

LAMC Section 12.11 “R4” Multiple Dwelling Zone allows: Churches (except rescue mission or temporary revival) or philanthropic institutions, with yards as required in Sec. 12.21 under subsection 2; Child care facilities or nursery schools under subsection 3 (Amended by Ord. No. 145,474, Eff. 3/2/74); Schools, elementary and high, or educational institutions, with yards as required in Sec. 12.21 C.3. under subsection 6; and Museums or libraries (non-profit) with yards as required in Sec. 12.21 C.3. under subsection 7. All these enumerated uses are also allowed in the R-5 Zone.

But nobody can reasonably argue that a church, a philanthropic institute, a childcare facility, a high school, or a museum or library is a residential land use. City has made a policy decision that these enumerated land uses may be grouped together, which is a different consideration from determining a land use classification based on activities on the land.

LAMC Section 12.13, the “C-1” Limited Commercial allows Alzheimer's/Dementia Care Housing under subsection (30) and Eldercare Facility under subsection (31). If the characterization of the land use was based solely on the allowance of Alzheimer's/Dementia Care Housing and an Eldercare Facility within the commercial zone, then the SCEA Initial Study must conclude that each is a commercial land use.

Given the extent of services required under the zoning definitions for both Alzheimer/Assisted Living, these two land uses are clearly more intense than large multi-family residential buildings, they are allowed in the more intense zone based under the City’s zoning hierarchy, and they resemble in many ways the character of limited commercial more than they resemble multi-family residential land uses.

LAMC Section 12.21 A.4.d. GENERAL PROVISIONS involving off-street automobile parking requirements refers to “Any Eldercare Facility” as an institutional use. If the zoning was dispositive or even evidentiary support for the argument that the Project is a residential land use solely because it is allowed in the most intense residential zone, then what conclusions may be drawn from the fact that the parking provisions of the LAMC also refers to the Eldercare facility as an “institutional” land use regarding parking requirements? Based on an examination of this portion of the zoning code, the Project is an “institutional” land use akin to a hospital, sanitarium, or museum. This characterization, buoyed by the list of like kind institutional land uses, comes closer to a common sense understanding of the nature of the total land use proposed for the Project.

All of these examples regarding the zoning code illustrate why a finding that the Project is a residential land use cannot be supported at all by the zoning classification. Such a finding

must be supported by substantial evidence based on the functionality and character of the activities on the land, not its zoning designation.

This is not a novel argument. The court in *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal. App. 4<sup>th</sup> 1301 rejected a similar effort to use the zoning to characterize the nature of the land use differently from its actual functionality. The Court held that “the fact that the property is zoned for mixed uses does not convert the otherwise purely residential project into a mixed-use project.” The same logic applies equally here.

Characteristics of Both the Alzheimer Care and the Assisted Living Are Not Similar to Multi-Family Residential

The definitions sections at LAMC 12.03 of the City’s zoning provisions describe relevant terminology which provide some insight into the character and nature of the land uses being proposed. The Opponents argue that substantial evidence demonstrates that two out of the three land uses comprising the Project: Alzheimer/Dementia Care Housing and Assisted Living Care Housing - do not qualify as residential land uses under Senate Bill 375.

The following are some helpful definitions under the LAMC:

- 1) ALZHEIMER'S/DEMENTIA CARE provides 24-hour care for people suffering from Alzheimer's disease or other disorders resulting in dementia;
- 2) ASSISTED LIVING CARE is for people 62 years of age or older who require assistance with two or more non-medical activities of daily living; and
- 3) SENIOR INDEPENDENT consists of dwelling units for persons 62 years of age and older and may include common dining areas or other community rooms.
- 4) DWELLING UNIT. A group of two or more rooms, one of which is a kitchen, designed for occupancy by one family for living and sleeping purposes.
- 5) GUEST ROOM. Any habitable room except a kitchen, designed or used for occupancy by one or more persons and not in a dwelling unit.

The structure of the City’s zoning ordinance provides additional substantial evidence that the Project is not simply a land use functional equivalent of a multi-family residential land use. The City has a simple structure by which each zone allows progressively greater intensity. Whereas multi-family apartments are allowed Under LAMC Section 12.10 “R-3” zone, Section 12.11 “R-4” zone, and Section 12.12 “R-5” zones, Alzheimer's/Dementia Care is **not** allowed in the “R-4” zone.

From this land use limitation, it is easy to infer that Alzheimer's/Dementia Care is only allowed in a zone of greater intensity, i.e., the “R-5” zone or greater. The City’s requirements that allow multi-family projects in the “R-3” and “R-4” zones but prohibit Alzheimer's/Dementia Care in those zones, demonstrate the significantly greater land use intensity the later land use is by comparison. This illustrates that it is the function, activities, and intensity of a proposed project that matter in determining the character of the land use.

Food Service Constitutes Substantial Evidence the Project is Not Residential in Character

The Project proposes 45 Alzhiemer Dementia Care units and 76 Assisted Living units all of which will be guest rooms (none will be dwelling units.) these numbers combine to equal 70%

of the total of 175 units proposed by the Project. Therefore, 70% of the units will not have kitchens and instead will rely on dining services provided on the 11<sup>th</sup> Floor.

This character and nature of this functionality resembles more closely a hotel or a hospital than a multi-family residential use. The food service activities necessary to provide at least 3 meals, snacks, and beverages, require initial food delivery, preparation, cooking, serving, and cleaning. The direct impacts of these activities include: food delivery, exhaust, solid waste, and vehicle miles travelled by the significant number of employees necessary to provide these services throughout all of the day and well into the evening.

Other similar Belmont facilities tout the quality of their cuisine. (See Exhibit C, attached.) This aspect of the Project, undoubtedly intentional and inarguably foreseeable, will increase visitation. Also, staff, including from the church administration and from the Childcare facility, may access the food service – we simply are not given any information. One important fact that we are provided consistent with the materiality of this activity is that approximately square feet are devoted to food service.

But the scale of these activities is not normal in a multi-family apartment/condominium project. All of these facts contribute substantial evidence to support the conclusion that the Project cannot qualify as a TPP.

#### Guest Services Constitutes Substantial Evidence the Project is Not Residential in Character

By the zoning definition, the Project is required to provide each Alzheimer/Dementia guest 24-hour care. Also, under the zoning definition for Assisted Living, the Project is required to provide all its guests with two or more non-medical activities of daily living. There undoubtedly will be a range of capabilities among the persons requiring assisted living – ranging between those who will require help with almost every life function and those who simply require non-medical therapies of various sorts.

There is nothing in the application materials that limits the number of guests in each guest room, whether in the Alzheimer Dementia ward of the Assisted Living ward. The application materials demonstrate that many of the guest rooms, if not the majority, have two large rooms, each of which could easily be used as a bedroom. Thus, if guests double up in double rooms than the total population within the Assisted Living units could be considerably higher than the total number of units. There is no limitation on the number of guests in these units. We are not provided the number of beds as some other applicants under the eldercare ordinance have done. Since the guest rooms make up 70% of the occupancy, then it is entirely possible that more than 70% of the total number of guests will be Alzheimer or Assisted Living clients – we simply are not given enough information to determine this. Given these uncertainties, we cannot say with much confidence how many employees will work at the Project.

These services, which zoning requires, must be provided to at least 70% and possibly many more of the total population of the Project, also do not in any way resemble a conventional multi-family residential use. These facts must be fully considered in making the determination on the appropriateness of granting the Project a TPP exception from CEQA.

These required food and non-food guest services for no fewer than 70% of the total population, plus independent living clients, guests, and perhaps plus staff, demonstrate why City cannot find the Project is the land use equivalent of a residential land use. Just the staff requirements necessary to meet the food and non-food service needs required by both the Project design and by the zoning code, demonstrate a very different land use intensity from an apartment building.

The Number of Employees Constitutes Substantial Evidence the Project is Not Residential in Character

The application materials are not forthcoming with the number of employees who are expected to provide services at the Project. But based on facts highlighted above, there is substantial evidence that the foreseeable numbers of employees at the Project will be significant and constitutes substantial evidence separating the functionality and the land use character of Project from a multi-unit residential apartment/condominium project.

The numbers of employees plus the nature of the work they will provide will add to the potential environmental impacts of the Project. Employees at an eldercare facility have a very different transportation profile from residents of a high-end Wilshire Boulevard multi-unit apartment/condominium project. Food service workers are notoriously low-paid workers. The same is generally true for many health care workers (see Bureau of Labor Statistics for the wages of the same at Exhibit B, attached.) The price for housing on the Westside of Los Angeles is notoriously high and the supply of low or moderate housing, the type affordable to those who will provide the food and non-food services to the Project, is notoriously low. Where will these workers come from? In what numbers are they likely to take transit, especially if they live long distances away from the Project? In addition, the record demonstrates that a significant number of employees will be on the job 24-hours a day and even larger numbers during the long hours that food preparation and related services will occur. The application materials do not provide any information to consider these facts that will relate directly to very foreseeable environmental impacts.

One related troubling missing fact is that the number of parking spaces intended was not revealed. The application materials state that the minimum parking requirement will be met – but not the actual number of spaces. Staff knows the cost of one underground parking space is not trivial. It can be inferred that parking spaces above the required number have been determined to be necessary to meet unspecified parking demand by the Project – perhaps staff, guests, special events, or other things the undersigned cannot come up with. But one inarguable indirect impact of the determination that more parking spaces are needed is more vehicle trips and less transit use. Yet again, the transportation profile, the number and demographics of the employees and their shifts and their pay all provide powerful substantial evidence of a material functional difference and therefore land use character between the Project and the typical high-rise apartment building.

Buried in the appendices is the fact that as many as 172 person will be employed over a 24-hour period. Assuming for argument sake, the best case for the Project, which is not conceded by the Opponent, the total possible client population is 252, then the ratio of clients to employees will be 1.5:1. This employment intensity is totally unlike any multi-family residential land use.

The effect of providing these required services results in a significant increase of the intensity of the land use over and above that normally experienced in a multi-family residential development. These facts regarding the activities that will occur at the Project demonstrate why it is not a residential land use.

The Project Does Not Meet the Definition of “Residential Land Use” stated in Senate Bill 375

At the outset, a residential project qualified to apply for TPP status is defined in the Public Resources Code § 21159.25 as follows:

*(a) For purposes of this section, the following definitions apply:*

*(1) “Residential or mixed-use housing project” means a project consisting of multifamily residential uses only or a mix of multifamily residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use. (Emphasis has been added.)*

The Legislature spelled out, with precision, the definition of a qualifying residential land use. There are only two possibilities: a) *multifamily residential uses only*; or b) *a mix of multifamily residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use*. The Project seeks approval of a Childcare/Church Admin (19, 567 square feet and 10.6 % of the total land use), a new sanctuary and Fellowship (16,342 square feet and 8.8% of the total land use), and restaurant and dining services (12,325 square feet and 6.7% of the total land use) for a total of approximately 50,814 square feet and 27.4% of the total land use of the Project. This language is unambiguous.

The Project cannot argue it meets the first definition because 72.6 % of the Project is not equal to 100% “multi-family uses” and therefore it does not meet that qualification. Regarding the second qualification, as demonstrated above, the character of the actual zoning-required service-intensive Alzheimer and Active Living land uses, which constitute 70% of the entire Project area, cannot meet the threshold requirement of at least two-thirds of the square footage of the development designated for residential use. The inability to show compliance with the simple and straight-forward definition of a qualifying “[re]sidential or mixed-use housing project” also constitutes substantial evidence the Project is not residential in character under SB 375.

The Application Materials Fail to Provide Substantial Evidence to Support a Finding the Project Meets the Legislative Intent to Qualify as a TPP

The Legislative purpose of Senate Bill 375 is very clear, it is to:

*... reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by the [State Air Resources Board].” (Gov. Code, § 65080, subd. (b)(2)(B).*

This strategy is intended to direct the location and intensity of future land use development on a regional scale in coordination with transit investment in order to reduce greenhouse gas emissions from motor vehicles.

The decision by the Legislature to include **only** multifamily residential uses or the proscribed mix of predominantly multifamily residential (67%) and nonresidential uses could not be more clearly stated. The plain meaning controls and there is no reason to resort to extrinsic sources of interpretation. (*Tract 19051 Homeowners Assn. v. Kemp* (2015) 60 Cal.4th 1135, 1143.)

There is no ambiguity in the word “only.” It is a word of exclusion and those uses not enumerated are expressly excluded. In any event, it is well established that CEQA is “to be interpreted . . . to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259 accord, *People ex rel. Younger v. Local Agency Formation Com.* (1978) 81 Cal.App.3d 464, 476.)

However, even if there was ambiguity in the limiting statement of allowable land uses stated in § 21159.25 (a)(1), which Opponents deny, then the construction of both this section and of the entire statutory scheme created by Senate Bill 375 requires an examination of the legislative purpose, which is to increase transit use to assist the State to meet its goal to reduce greenhouse gas emissions from automobiles. Easy access between high-density traditional residential land use and employment centers allows commuters to eschew the automobile thereby reducing vehicle trips, and with it traffic congestion, improved air quality, and reduced greenhouse gas emissions.

There is no substantial evidence that any of the Project’s many proposed land uses is likely to use transit. Common experience can constitute substantial evidence especially if it is not contradicted by expert testimony.

We can draw a reasonable conclusion, supported by the zoning requirement for 24-hour care, that the Alzheimer/Dementia guests are not going to take transit. With respect to the independent living and assisted living guests, common experience also allows a reasonable inference constituting substantial evidence that most if not all nonagenarians and octogenarians, and most septuagenarians will not be taking transit. The memo prepared by the Project’s traffic engineers dated January 15, 2021, admits as much. It states:

*Residents typically utilize the Belmont Village shuttle service, which will be provided for residents for medical, dental, and other appointments as well as shopping and recreational activities. Concierge service will also be provided on-site to arrange other transportation needs/services.*

Common experience also allows a reasonable inference constituting substantial evidence that applies to the 105 pre-school children who are expected to attend the Childcare Facility. These persons also will not be taking transit.

Based on the transportation profile of the consumers of the Project – pre-school children, Alzheimer patients and the elderly, which are facts well supported by substantial evidence, the Project is unlikely to generate any or any appreciable amount of transit use.

In any event, the Project does not provide data to conclude otherwise. Instead, throughout the Initial Study, conclusions were reached based on the false and in any event, unsubstantiated assumption that the Project will generate transit use simply because transit opportunities are located nearby.

Substantial evidence includes facts, and reasonable assumptions predicated upon facts, but it does not include speculation or unsubstantiated opinion or evidence which is clearly erroneous or inaccurate. (CEQA Guidelines, § 15384, subd. (a) *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App. 4<sup>th</sup> 903, 928-929.

As ably demonstrated above, the Project is not a “residential land use” and in any event, it is not the type of “residential land use” contemplated by the Legislature in adopting SB 375. Every assumption and conclusion stated in the Initial Study that assumes otherwise, and the Initial Study is filled with conclusions based on assumptions not supported by facts and unsubstantiated opinion evidence, is not supported by substantial evidence. (See discussion below.) The assumption the Project is a residential land use that qualifies as a TPP is contrary to the substantial evidence in the record that proves the invalidity of that assumption.

Following the ruling in *Concerned Dublin Citizens*, the facts regarding the function and character of the totality of the Project, including all or at least 70% of those components that Project Applicant might wish the City to call “residential” do not resemble residential land use, at least not envisioned in SB 375. Therefore, the Project cannot be called a residential project despite being located within a high-density residential zone. The record lacks any substantial evidence to support a conclusion to the contrary.

Regarding the Proposed Childcare Facility, the Application Materials Fail to Provide Substantial Evidence to Support a Finding the Project is Consistent with the General Use Designation, Density, Building Intensity, and Applicable Policies Specified for the Project Area in the RTP/SCS Prepared by SCAG

Within the R-1 zone on the south side of the Subject Property, The Project would construct a new two-story, 19,703-square foot Education Center containing 10,238 square feet of classroom, administrative, and multipurpose/group space and 1,845 square feet of church related administrative offices on the southern portion of the project site at 10812 Ashton Avenue. To allow for construction of the Education Center, a Church-owned single-family residence located at 10812 Ashton Avenue would be demolished.

The proposed density of this portion of the Project seeks to utilize LAMC Floor Area calculations in lieu of LAMC Residential Floor Area calculations with a corresponding 1.24:1 FAR in lieu of the 0.45:1 FAR otherwise permitted.

Further, the proposed Childcare Facility seeks a proposed building height of 33 feet, 3 inches exceeds the 28 feet height limit with an encroachment plane height limit established by LAMC Sections 12.21.1 and 12.08 C.5(A);

Consistent side yard setbacks of 5 feet in lieu of those setback dimensions and building plane break dimensions otherwise required by the R1 zone LAMC Section 12.08 C.2 and LAMC Section 12.21 C.3; and

Floor area of 19,703 square feet (utilizing by LAMC Section 12.08 C.5(a);

The Land Use Chapter of the Framework Element identifies the Low Residential land use designation, such as the R-1 zone, as allowing single-family dwelling uses, along with supporting uses such as parks, schools, and community centers. An administrative office for a church, as proposed by the Project, is **not** an allowable land use nor is it alike in character any land use allowed within the R-1 zone. For considering the consistency of the proposed approximately 20,000 institutional use with the single-family land use designation required under SB 375, it is of no consequence that there is currently an existing approximately 2,500 square foot childcare facility operating within a single-family home on the north side of the Property.

The character and functionality of the proposed land uses is necessary to determine such things as compatibility, character, and neighborhood preservation. The progressive intensity zoning system built into the LAMC provides a means to measure the intensity of the proposed land use provides insight into that determination.

A childcare facility first appears in the range of increasing intensities of the LAMC as an allowable land use in the very intense R-4 “Multi Family and in the C-1 Limited Commercial zones. Thus, the City’s zoning classification system codifies the commonsense notion that a childcare facility is much more intense than a single-family home. It cannot be argued credibly that the “R-1” zone is consistent with “R-4” zone. They each allow different land uses.

The term “consistency” is not defined as a part of SB 375. Its meaning, as it is used here, must be derived out of the context in which it is being used.

The commonly understood definition that is derived from the Government Code which allows a finding of “consistency” in support of a discretionary approval with a general plan provided it is consistent with the overall intent of the plans and not preclude the attainment of its primary goals as stated in *Sequoia Hills Homeowners Association v. City of Oakland*, (1993) 23 Cal.App.4th 704, 719, cannot possibly apply here. Under that use of the word “consistency” the local agency is required to balance a series of oftentimes competing objectives such as economic development versus environmental preservation.

But the Legislature’s designs for CEQA was “maximum protection for the environment” and “transparency”, “full disclosure” – different objectives from economic development that are normally conflicting. There is no rule of law that necessarily requires the same meaning to be given to the same word used in different places in the same statute" (*Sunset Tel. & Tel. Co. v. Pasadena*, (1911) 161 Cal. 265, 275), much less the same word used in different statutes relating to essentially different matters and subject to different construction.

In this context, the term must be understood as: *An argument or set of ideas that is **consistent** is one in which no part contradicts or conflicts with any other part.* (<https://www.collinsdictionary.com/us/dictionary/english/consistent>) Divining the Legislature's intentions regarding its use of the word "consistent here, another rule of construction must be considered: ". . . where a statute is susceptible of two constructions, one leading inevitably to mischief or absurdity, and the other consistent with justice, sound sense and wise policy, the former should be rejected and the latter adopted." (*Jacobs v. Department of Motor Vehicles*, (1958) 161 Cal.App.2d 727, 731.)

SB 375 was codified as a part of the Public Resources Code – CEQA. Therefore, its interpretation must be determined considering the purposes behind that legislative scheme. The environmental impacts of a childcare facility serving 105 pre-school children is not the same as those created by a family living in a single-family home. Noise is an obvious impact which the Project admits by seeking to mitigate by seeking a zoning exception to raise its front-yard wall from 3 ½ feet to 6 feet in the front yard.

Applicants seek an exception to raise the wall by applying for a conditional use permit ("CUP.") By definition, a CUP is required where it has been predetermined that the proposed use and/or structure is incompatible in the zone.

In this case, an aesthetic impact will be caused by that over-in-height wall, which Applicant seeks to obtain by a proposed zoning exception raising the height from 28 feet to 33.5 feet, a 20% increase, and by a building massing consisting of nearly 20,000 square feet on the same residential block where the prevailing massing is not more than 2,400 square feet (See Exhibit A, attached which shows the size of the single-family homes, their lot size, and their floor area ratio for the homes on the same block as the proposed Childcare Facility to provide data and context from which to consider these zoning exceptions. These aesthetic impacts cannot be mitigated to insignificance.

Traffic is another obvious impact which the Project admits by submitting extensive signage plans to direct ingress and egress, which may mitigate to some degree, but not eliminate the impact. The Project also admits traffic is an impact by its argument that the impact is limited in time (morning and afternoon) and in days (weekdays that are not holidays.)

Based on these three impacts alone (there are others), it cannot be reasonably or fairly said that the proposed Childcare Facility does not "*contradict or conflict with*" the existing single family land use of the neighborhood. As another of the required finding to qualify the Project as a TPP that cannot be supported by substantial evidence, examination of the Project under CEQA cannot be by a SCEA.

There is more evidence to support the argument that the Childcare Facility is not a consistent land use with the surrounding single-family neighborhood for CEQA purposes. Within the zoning definition, a childcare facility is not a residential use. This zoning definition adds further substantial evidence that the Childcare Facility is inconsistent in function and character with the zoning under the LAMC of the Property and of the surrounding single-family neighborhood.

In addition to all of this, it remains that the Legislature's purpose of SB 375 – is to reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by the [State Air

Resources Board].” (Gov. Code, § 65080, subd. (b)(2)(B).) Considering SB 375 from a distance, everything in it is focused on residential development and its relationship to transportation infrastructure including the promotion of active transportation and other alternatives to the use of the automobile. A childcare facility does not easily fit within the normal neighborhood serving land uses. Unlike a Starbucks, a bodega, or a dry cleaner, not all of the 105 children attending the Childcare Facility will be coming from the immediate neighborhood. Or at least, this cannot be presumed without supporting data. (See, *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 506)

Indeed, without supporting data, it cannot be speculated that daily delivery and pick up from childcare reduces vehicle trips or vehicle miles travelled (VMT) at all as opposed to increasing both of these measures of traffic. It is highly speculative to assume that childcare parents will select transit or a bicycle for that purpose. It is unlikely the data will support anything of this kind.

In addition to the inconsistent land uses, the density and intensity are widely divergent and therefore cannot be found to be consistent as part of any finding required under the Public Resources Code, including support for a SCEA. The LAMC Sec.12.08. “R1” one-family zone Subsection 5. Maximum Residential Floor Area and Massing, subsection (a) states:

*For lots outside of a Hillside Area or Coastal Zone, the maximum Residential Floor Area contained in all buildings and accessory buildings shall not exceed 45 percent of the lot area (a Residential Floor Area ratio of 0.45).*

The Floor Area Ratio Analysis of the Entitlement Package, regarding the proposed South Campus on the R-1 single-family lot, at page G-10, states that the allowable buildable area is 16,358 square feet, the ground level pre-school proposed is 9,742 square feet and the second floor proposed is 9,825 for a total proposed floor area of 19,567 square feet which equates a 1.2:1 residential FAR.

The residential FARs for the 6 single-family homes listed on Exhibit A, which are those closest to the Project range between FAR .357:1, the highest residential FAR and FAR .32:1, the lowest. The Project exceeds the neighborhood FAR by approximately 364% and the allowable massing by 266%. By any objective measure, the proposed massing that exceeds the maximum required by 266% of allowable and 364% of existing is extraordinary and cannot meet the definition of “consistency” set forth above or as it must be interpreted in considering CEQA regarding an SB 375 analysis. These figures, including an approximately 20,000 square foot next to 2,400 square foot homes, combine to illustrate that the massing of the Project is way out of scale with the residential neighborhoods in the vicinity of the Project.

The function and character of the “R1” one-family zone is self-explanatory – one family. Over the years, the definition of a family has changed. But it has never expanded to the point it would include 105 children. It would be an extraordinary reach to try to make a finding that the character of 105-pupil childcare is consistent with the prevailing character of a single-family neighborhood. For a graphic representation of the divergent massing, compare the photograph number 10 at page G-40 of the entitlement package, depicting existing single-family homes surrounding the Project and compare it to the proposed rendering of the massing found in the Entitlement package.

Despite a conflict could not be more apparent. And yet, the SCEA Initial Study erroneously and without substantial evidence in support concluded: “[a]ccordingly, the siting and design of the Project would maintain the prevailing scale and character of the residential neighborhoods in the vicinity of the Project Site.”

For all of the reasons stated herein, City has not provided support in the record for making the required findings that the Project qualified as a Transit Priority Project under SB 375 necessary to avoid a complete environmental analysis. To summarize:

1. The Project does **not** qualify as a TPP pursuant to PRC Section 21155(b) because it contains less than 50 percent residential use;
2. The Project is **not** a residential or mixed-use project as defined by PRC Section 21159.28(d); and
3. The Project is **not** consistent with the general use designation, density, building intensity, and applicable policies specified for the Project area in the RTP/SCS prepared by SCAG;

Based on the record, the Project has not met the Legislature’s objectives set out in SB 375. There is no substantial evidence to support a determination that the Project is consistent with the applicable strategy set forth in the RTP/SCS. Therefore review and approval of the Project cannot proceed to demonstrate compliance with CEQA using the streamlined process of a SCEA.

To encourage the development of transit priority projects, the Legislature in Senate Bill 375 limited the extent of environmental review that a local agency must perform under CEQA to approve them. Only if a transit priority project findings can be made, which is disproven above, then the local agency may review the project's environmental effects in a streamlined manner using an SCEA. (Pub. Resources Code, §§ 21155, subd. (a), 21155.2, subds. (a), (b).) The Legislature provided the CEQA streamlining provisions in Senate Bill 375 to “encourage developers to submit applications and local governments to make land use decisions that will help the state achieve its climate goals ... , assist in the achievement of state and federal air quality standards, and increase petroleum conservation.” (Stats. 2008, ch. 728, § 1, p. 5065.)

The review is streamlined because an SCEA is not required to analyze certain types of environmental impacts. It is not required to discuss growth inducing impacts or any project-specific or cumulative impacts on global warming or the regional transportation network that may arise from automobile and light-duty truck trips generated by the project. (Pub. Resources Code, § 21159.28, subd. (a).) Also, where the lead agency determines that a cumulative effect has been adequately addressed and mitigated in prior applicable certified environmental impact reports, that cumulative effect shall not be treated as cumulatively considerable and subject to further environmental review. (Pub. Resources Code, § 21155.2, subd. (b)(1).) In addition, the SCEA is not required to analyze offsite alternatives, nor is it required to reference, describe, or discuss a reduced residential density alternative to address the effects of car and light-duty truck trips generated by the project. (Pub. Resources Code, §§ 21155.2, subd. (c)(2); 21159.28, subd. (b).)

Subdivision (b) “does not relieve a public agency of the requirement to analyze a project's potentially significant impacts with the exception of those expressly excused as stated

above, including in particular transportation impacts related to air quality, noise, safety, or any other impact associated with transportation.” But it clarifies that the adequacy of parking and the issue of aesthetics regarding a project shall not support a finding of significance pursuant to this section.” (§ 21099, subd. (b) and (d).)

In CEQA, the Legislature sought to protect the environment by the establishment of administrative procedures drafted to “[e]nsure that the long-term protection of the environment shall be the guiding criterion in public decisions.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74 (*No Oil*).) At the “heart of CEQA” (CEQA Guidelines, § 15003, subd. (a)) is the requirement that public agencies prepare an EIR for any “project” that “may have a significant effect on the environment.” (§ 21151, subd. (a); see *id.*, §§ 21080, subd. (a), 21100, subd. (a).) The purpose of the EIR is “to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” (Pub. Resources Code, § 21061.) The EIR thus works to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made,” thereby protecting ““not only the environment but also informed self-government.”” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392 (*Laurel Heights*)).

Under CEQA and its implementing guidelines, an agency generally conducts an initial study to determine “if the project may have a significant effect on the environment.” CEQA Guidelines, § 15063, subd. (a).) If there is substantial evidence that the project may have a significant effect on the environment, then the agency must prepare and certify an EIR before approving the project. (*No Oil, supra*, 13 Cal.3d at p. 85; see also Pub. Resources Code, § 21151 [local agencies].) On the other hand, no EIR is required if the initial study reveals that “there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.” (CEQA Guidelines, § 15063, subd. (b)(2).) The agency instead prepares a negative declaration “briefly describing the reasons that a proposed project ... will not have a significant effect on the environment and therefore does not require the preparation of an EIR.” (*Id.*, § 15371; see *id.*, § 15070.) Even when an initial study shows a project may have significant environmental effects, an EIR is not always required. The public agency may instead prepare a mitigated negative declaration (MND) if “(1) revisions in the project plans ... before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (Pub. Resources Code, § 21064.5.)

CEQA requires agencies to prepare an EIR for any project that will have a significant effect on the environment. (§ 21151.) “If a project is not exempt from CEQA and there is a reasonable possibility the project may have a significant environmental impact, the public agency must conduct an initial threshold study. If that study shows there will be no significant environmental impact, the agency may issue a negative declaration for the project.” (*Sierra Club v. California Dept. of Forestry & Fire Protection* (2007) 150 Cal.App.4th 370, 380 (*Sierra*

*Club*.) A decision by an agency to adopt a negative declaration is essentially a determination that the project will not have a significant environmental impact. (*Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.) Therefore, CEQA mandates “a low threshold requirement for preparation of an EIR.” (*No Oil*.) “[A] public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project ‘may have a significant effect on the environment.’” (*Laurel Heights*.)

It is well established, that an initial study is the preliminary environmental analysis (see [CEQA] Guidelines, § 15365) and its purposes include ‘[p]rovid[ing] the lead agency with information to use as the basis for deciding whether to prepare an EIR or negative declaration,’ ‘[e]nabl[ing] an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration,’ and ‘[p]rovid[ing] documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment.’ CEQA Guidelines, § 15063, subd. (c)(1), (2), (5)” (*Lighthouse Field Beach Rescue V. City Of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1180.)

The issue raised in this opposition is whether there is substantial evidence in support of a “fair argument” of potential environmental impacts. Substantial evidence “‘means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion. Substantial evidence does not include argument, speculation, or unsubstantiated opinions or concerns about a project’s environmental impact.’” (*Sierra Club, supra*, 150 Cal.App.4th at p. 381.) “Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” (§ 21082.2, subd. (c).) “‘Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence . . . .’” (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 730.) “[I]n the absence of a specific factual foundation in the record, dire predictions by nonexperts regarding the consequences of a project do not constitute substantial evidence.” (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1417.) “The fair argument standard is a ‘low threshold’ test for requiring the preparation of an EIR. . . . with a preference for resolving doubts in favor of environmental review.” (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.)

The analysis of the Project begins with an accurate, complete, stable, and finite project description. Without this, there is no foundation on which to analyze the impacts of the Project, solicit and obtain meaningful comment from the public and public agencies and satisfy the Legislature’s purpose in enacting CEQA of providing the public with transparency regarding the environmental decisions of the City and the decision makers with substantial evidence to support their decision. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App. 185, 192-193

The Project Description contained within the Initial Study, and the many supporting appendices, provide a superficial description of the Project that is legally flawed because it omits material facts that relate to whether the Project has the potential for significant environmental impacts. These omissions, many of which are described below, have resulted in a truncated and distorted environmental analysis.

The following is not an exhaustive list of missing material information critical to fully evaluate the potential environmental impacts of the Project:

- The stated number of dwelling units is misleading. Many of the guest rooms are the identical size as the dwelling units. Dwelling units have a kitchen while guest rooms do not. In many cases, the floor area ratio is the same between the, But, without any factual basis in support, the later were excluded from demonstrating compliance with maximum allowable density. A zoning definition does not provide factual support for the distinction regarding this purpose.
- Potential total resident capacity was not provided. Many similar projects discuss the number of beds, this one has many guest rooms that have the same floor plan as a 2-bedroom dwelling until and thus could have 2 (or more) residents in a room
- The foreseeable demographics for the guest population was omitted.
- A complete Project Setting was omitted. This information is also relevant to consider the likelihood or unlikelihood of the Project clients walking to Westwood Village, i.e., how long is the walk? Do the residents of the nearby tower walk to Westwood? Will seniors perceive Wilshire Boulevard as a safe and easy walk? Are most of the buildings along the route high-rise office buildings? Where are the Westwood Village neighborhood conveniences located and are they frequented by seniors?
- What are the statistics regarding the ambulatory capacity of the anticipated guests? i.e., the numbers who are likely to walk to Westwood Village to gain access to neighborhood services?
- Do the children who currently attend the childcare live in the neighborhood and walk to and from the facility? If not, then provide the relevant statistics regarding the distance between home and the childcare service?

There is no description of the services normally provided at Belmont Living Centers (See Exhibit C, attached.)

- such as:
  - Full daily calendar of fitness, social, creative and educational activities;
  - Off-site trips to favorite local destinations and events;
  - Full-service salon;
  - Professionally supervised fitness center with wellness programs and speech, physical and occupational therapy services by licensed therapists;
  - Seniors who need some assistance with activities of daily living; and
  - help managing health needs and medications

- How many persons are required to provide all of these services? what are the numbers for each shift and the total number of persons who will work at the Project?
- There is nothing contained within the Project Description regarding the Project's food service ("signature dining" featuring 24+ daily, chef-prepared menu options.) And how many guests will the restaurant quality food service be made available to - all of its residents, their guests, staff members, and perhaps the other Project occupants including the church, and the administration for the church? What is the capacity for the dining facility? What is the purpose of the kitchen on the lower floors?
- Describe the function(s) of the Fellowship Hall(s)? Are assemblies or special events anticipated, if so when, how many events and what is the maximum capacity for the hall(s)?
- What does "providing 24-hour care" for Alzheimer/dementia guests entail? Is there licensed medical service on-site, psychiatric services, how many health care workers are necessary during each shift?
- What are the statistics regarding compensation for the persons providing what appear to be low-wage work? And how does that compensation relate to the cost of housing in Los Angeles?

Without complete information including, without limitation, the many pieces described above, the Initial Study has not fulfilled its function in the CEQA process.

A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal. . . and weigh other alternatives in the balance. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App. 185, 192-193

### **SUBSTANTIAL EVIDENCE OF SIGNIFICANT LAND USE IMPACTS**

The Initial Study gave short shrift to examining land use conflicts. The many shortcomings regarding that substantive issue outlined below fail to comply with CEQA.

That failure begins with the SCEA Initial Study mis-applying the standard required in the CEQA land use analysis. The correct standard is does the Project "**conflict** with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect" (Emphasis added.) Instead, the SCEA Initial Study used a "consistency" analysis, erroneously relying on the ruling in *Sequoyah Hills* to support the wrong standard.

Beginning with the plain meaning of the words: "conflict" and "consistent," what is required by both their divergent usage and by the law are a material difference in structure, criteria and outcome. For purposes of CEQA, the conflicts are what will identify the potential environmental impacts. Whereas "consistency" will, by definition, avoid identification of potential environmental impacts.

For example, if the Project is consistent with half of the local agency's plans, programs and regulations but the Project conflicts with those items for which there is a land use plan,

policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect, then use of the consistency analysis would conceal that impact and has the potential to cause a significant direct or indirect impact on the environment. An extremely common example occurs when an agency can make a finding of “consistency with social and/or economic goals while at the same time conflicting with traffic, noise, air quality, and GHG emissions.

The theoretical underpinning of the “consistency” analysis owed under the Government Code discussed in *Sequoyah Hills* is not the same as that which underlies the statutory duties owed under CEQA. These are two entirely separate and different statutory duties. They serve independent functions, which when both performed independently, will provide both the public and the decision makers a fulsome understanding of the environmental values of the elected officials and the environmental consequences of their decisions.

When a public agency is required to make a consistency finding under the Government Code, its job is to balance many, and oftentimes, competing goals and policies. By necessity, choices have to be made that leads to implementation of some goals and indifference to or even conflict with others.

Under the “consistency” standard owed under the Government Code, to the extent an examined project fails to implement certain policies, in other words they are not being advanced by the project in exchange for the advancement of others, the applicable standard is simply whether the project does not “obstruct the attainment” of the unadvanced and competing goals and policies.

However, the statutory purpose of CEQA is entirely different. Its purpose is to identify the potential for significant environmental impacts, identify feasible mitigation and or alternatives to avoid the identified significant environmental impacts or where alternatives and mitigation is not feasible or is acceptable, then decision makers may adopt a transparent statement of acceptance of the adverse environmental impacts based on the choices to elevate some objectives over others.

The proof the SCEA Initial Study utilized the “consistency,” analysis instead of the “conflicts” analysis is in its Land use impacts statement: “[r]ather, to be ‘consistent,’ the project must be ‘compatible with the objectives, policies, general land uses, and programs specified in the applicable plan,’ meaning that a project must be in ‘agreement or harmony’ with the applicable land use plan to be consistent with that plan (p 4.0-113-114)

This point is well-illustrated in the SCEA Initial Study “no conflict” analysis. First, many of the policies selected for examination appear to be global and aspirational having no relationship to policies, plans and regulations adopted to avoid or mitigate an environmental impact. Therefore, they are irrelevant and provide no insight to the CEQA considerations presented by the Project.

Second. The selections are not grounded in environmental impacts on affected adjacent properties. For examples taken from the City’s Framework Element – Land Use are the following:

Objective 3.1: Accommodate a diversity of uses;

Objective 3.2: Provide for the spatial distribution of development that promotes an improved quality of life; and

Objective 3.3: Accommodate projected population and employment growth within the City.

These are perfect examples of the types of policies the decision maker will consider to balance the Project in relationship with the applicable plans and policies as a part of the separate, unrelated and subsequent analysis required under the Government Code. It is subsequent in the sequence of examination because the decision makers and the public must first be fully apprised of the environmental consequences of the Project before being in a position to do the required balancing.

But these policies are entirely inappropriate considerations for CEQA purposes, i.e., identification of all significant environmental impacts, how to mitigate them including alternatives that can avoid or lessen them. Only then, i.e., based on fully informed balancing, may there be consideration whether to make a statement of overriding considerations where all of the identified impacts cannot feasibly be avoided or mitigated.

The SCEA Initial Study, as with so many of City's environmental analyses, fails to sufficiently consider the potential significant environmental impacts related to land use conflicts. This omission constitutes an especially significant and prejudicial error when considering CEQA compliance under a SCEA. This is because the whole SB 375 statutory scheme is built on the recognition of the linkage between land use and transportation investment.

Senate Bill No. 375's findings and legislative declarations, quoted in part below, emphasize the necessity for changed land use patterns and improved transportation to meet Assembly Bill No. 32 goals:

\* \* \*

(c) Greenhouse gas emissions from automobiles and light trucks can be substantially reduced by new vehicle technology and by the increased use of low carbon fuel. However, even taking these measures into account, it will be necessary to achieve significant additional greenhouse gas reductions from changed land use patterns and improved transportation. *Without improved land use and transportation policy, California will not be able to achieve the goals of AB 32.*" (Gov. Code, § 14522.1, italics added.)

As demonstrated by the Legislature's intentions enacting SB 375, the importance of considering all aspects of land use have never been more important. To overlook the conflicts is to conceal the considerable legislation that has been adopted to install the necessary plans, policies and regulations that constitute the baseline for protecting the environment.

The first and primary example of an unexamined conflict between the Project and an important plan enacted to avoid or reduce an environmental impact is the above well-illustrated "inconsistency" (conflict) between the Project and the RTP/SCS which was enacted by the Legislature to be implemented by lead agencies to promote residential land uses near transit. (The RTP/SCS does not directly require local government to take particular actions in planning, regulating, and permitting land development. (Gov. Code Sec. 65080 subd. (b)(2)(k) ["nothing in a[n] SCS] shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region."))

Senate Bill 375 instructs each MPO to prepare a sustainable communities strategy that, among other things “shall ... set forth a forecasted development pattern for the region, which, when integrated with the transportation network, and other transportation measures and policies, will reduce the greenhouse gas emissions from automobiles and light trucks to achieve, if there is a feasible way to do so, the greenhouse gas emission reduction targets approved by the [Board].” (§ 65080, subd. (b)(2)(B)(vii).) Senate Bill 375's emphasis on the creation of a “forecasted development pattern for the region” within a regional transportation plan indicates the Legislature intended the MPOs would meet their regional targets by using land use and transportation plans and policies to reduce emissions.

As the evidence discussed above demonstrates, the Project will yield little or at best limited transit use. Therefore, the approval of the Project at that site constitutes an “opportunity cost” i.e., the loss of a key site to provide high-density multi-family proximate to a significant investment in the transit system nearby. Had the SCEA Initial Study identified this adverse land use conflict, the public and the decision makers could better evaluate possible mitigations or alternatives and ultimately the wisdom of one decision or another.

The evidence presented herein presents a fair argument to support a material land use conflict with locally enforced land use plans and policies enacted to avoid or lessen the emission of GHG, and other air quality impacts under SB 375.

The land use conflicts would have been made clear had the SCEA Initial Study adequately, fully, and accurately described all of the activities and functions that are required under the zoning and that are normally provided by this operator – food, health care, living assistance, etc. for the proposed Eldercare Facility are not residential in function and character.

On its face, the proposed Project exceeds the height limit of 6-stories or 75 feet as set forth in the Wilshire-Westwood Scenic Corridor Specific Plan (“Specific Plan”). Table 4-18 Consistency with Wilshire-Westwood Scenic Corridor Specific Plan Policies and Standards (p 4.0-132) examines consistency with Specific Plan Sections 4.A. Specific Plan subsection A. Jurisdiction states:

*No building or structure shall exceed six stories or 75 feet in height, except that in the event applications are filed for Projects wherein the height of any structure would exceed six Wilshire - Westwood Scenic Corridor Specific Plan 4 stories or 75 feet within the Specific Plan Area, no building permit shall be issued for any such Project unless such Project has been reviewed and approved in accordance with the Specific Plan Procedures of Section 11.5.7 E or F (Adjustments or Exceptions) of the Los Angeles Municipal Code and pursuant to the procedures enumerated in Subsection B below*

The means to obtain a “deviation” from this requirement are spelled out in law: “. . . in accordance with the Specific Plan Procedures of Section 11.5.7 E or F (Adjustments or Exceptions) of the Los Angeles Municipal Code . . .”

The SCEA Initial Study states that the Project does not seek an adjustments or an exception but rather seeks approval from the Zoning Administrator under the Eldercare Facility zoning law of a 12-story and 153-foot building. The SCEA Initial Study then concludes that with these approvals, there will be no “conflict.”

The emptiness of that statement must be measured against both the general purposes of CEQA - to identify the potential for significant impacts, mitigations and alternatives of any project, and the specific purposes of the land use “conflicts” analysis - to identify conflicts between the Project and policies, plans, and regulations adopted to avoid or mitigate an environmental impact. The assignment of discretion to double the height of a project does not relieve the duty to expose and fully consider the environmental impacts at the earliest opportunity. City has adopted a policy of separating Council review of CEQA compliance (scheduled for March 2, 2021 before the Planning and Land Use Management Committee of the City Council) with the land use issues presented to the Zoning Administrator (scheduled for March 25, 2021.) It is impermissible under this separation for the Council to assume that the land use conflict between the Project’s 12-story proposal and the Specific Plan 6-story height policy will be mitigated by an approval that has not yet occurred. Either that pre-determines the outcome making the public hearing and project review process a sham; or the Council must accept the conflict in which case it constitutes substantial evidence of a fair argument of a significant land use conflict and requires an EIR.

In any event, the Eldercare Facility ordinance does not supersede the land use conflicts analysis duties owed under CEQA. But more to the point, the SCEA Initial Study finding of “no conflict,” because it will be examined by the Zoning Administrator confirms the conflict between 6-stories/75 feet without permission and possibly 12-stories/173 feet with it. This obvious land use conflict raises issues of density, intensity, and growth-inducing precedence within the neighborhood. CEQA does not predetermine the outcome of the City’s consideration of this substantive issue. But it does strive to ensure informed decision making and accountability to the electorate. The required land use “conflicts” analysis regarding the proposal to double the height cannot be shirked by utilization of a specious “conflicts” analysis.

There is a distortion in the application regarding the “density” of the Eldercare Facility. “Density” is a much-used term, but it escapes precise definition. At its simplest, “density” is a measure of the number of units allowed within a given area. However, there are no agreed-upon standard definitions of “density,” rather each location has come up with an idiosyncratic view.

The issue of density regarding the Project is raised in this opposition because of a misleading representation in the application materials that the entitlements seek only 54 dwelling units which the application claims is less than 94 allowed based on a ratio of 100 dwelling units per acre. (Entitlement Package G-010) Specific Plan Section 5.B. Density. States: “*No building shall be erected, or enlarged which exceeds a density of 100 dwelling units per acre of lot area.*”

But the facts regarding the Project demonstrate that this figure is grossly misleading as it prevents a full understanding of the actual density because it eliminates from the actual count the majority of the units of the Eldercare Facility and therefor distorts the density analysis of land use impacts. Whether deliberately misleading or not, while the Project might be limited to 54 “dwelling units” a narrowly defined term in the City’s zoning ordinance, in fact the Project proposed 176 “units” that will be occupied by the clients of the Project. 176 greatly exceeds the maximum number of units of 94 allowed on the site. Thus, the Project relies on a narrow definition that has nothing to do with density to distort the true facts regarding this land use issue.

First, the remaining 121 units out of the 175 total units proposed constitute 69% of the total proposed units. But that nearly 70% of the total are overlooked when the consideration of density is artificially limited to “dwelling units.”

A dwelling unit is defined in the LAMC 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. (Amended by Ord. No. 107,884, Eff. 9/23/56.) By contrast, a guest room is defined in the LAMC as “Any habitable room except a kitchen, designed or used for occupancy by one or more persons and not in a dwelling unit. Neither a “dwelling unit” nor a “guest room” is defined by size. Both a “dwelling unit” and a “guest room” may have multiple occupants.

For the Project, many of the “dwelling units” are the exact same size, footprint and could house as many of the “guest rooms.” The absence or presence of a kitchen has no rational relationship to the measure of density of a building. The density limitation stated in the Specific Plan did not take into account the requirement of a kitchen when it unwittingly chose to use the term “dwelling units.” Taking advantage of an untended loophole the Project application has excluded all of the units lacking a kitchen from the count of the total residential quarters being proposed in its Specific Plan density analysis, regardless of size, total number of habitable rooms, or the potential number of occupants.

The identical size and footprints of each of the residential quarters on floors 6, 7, 8, and 9, set out on Entitlement Package pages ENT 108 and 109, appear to be identical from one floor to the other (in other words, the position of one room in the same position on the floor is the same regardless of which of these floors it is on.) All of Floor 6 provides “assisted living.” All of Floor 7 provides “independent living.” ENT 108 which depicts both Floors 6 and 7 depicts at least 10 residential units that have 2 rooms plus a bathroom for the assisted living” units on Floor 6. At least 6 out of these 10 assisted living” units on Floor 6 have the exact same number of rooms, footprint, and floor area, as the units directly above them on the “independent living” units on Floor 7. Yet the residential units on Floor 7 are identified as “dwelling units” while those exact same sized units located below on Floor 6 are called “guest rooms.”

For a full, transparent, and complete land use analysis, there is no defensible or rational definition of “density” that distinguishes between two units the same in area and occupancy where one unit has a kitchen and the other does not have a kitchen. To the extent the size and occupancy is the same, the density impact, measured in area, population, and massing should be identical. There is nothing in the Specific Plan suggesting that the Section 5 density limitation intended to limit the number of kitchens. Here, for those units lacking a kitchen, there will be on-site meal service provided. Conversely, the Specific Plan is genuinely concerned with both population and massing, both of which involve density. The use of the term “dwelling units” in Section 5 was not intended to be limited by the LAMC definition.

However, the Project seeks to take advantage of a definitional loophole by eliminating the assisted living residential units from analysis of compliance with the Wilshire Boulevard Specific Plan, Section 5 density limitation.

Because the ENT sheets are exceedingly difficult to read, this letter does not include a detailed analysis of how many residential units have been omitted to provide an accurate count of the number of residential units regarding compliance with the Wilshire Boulevard Specific

Plan, Section 5 density analysis but it is possible the Project may exceed the maximum allowable.

Regardless, to provide a full consideration of the actual land use issues, the SCEA Initial Study owes the public and the decision makers a full picture of the density, not one artificially truncated by an inapplicable definition.

Note that LAMC Sec. 7. Subparagraph (5) of Paragraph (d) of Subdivision 4 of Subsection A of Section 12.21 of the Los Angeles Municipal Code requires the same parking for dwelling units as for guest rooms.

All of the same principals apply regarding the proposed Childcare Facility. The failure in the Environmental Setting section of SCEA Initial Study to provide a full and accurate description of the residential land uses immediately adjacent to and on the same block as the facility have subverted a proper conflicts analysis between the approximately 20,000 square feet proposed and the residential neighborhood protection policies inherent in the LAMC Section 12.24 Conditional Use Permits.

City may not grant a conditional use or other approval for this Project without finding:

*2. that the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety.*

Intensity of land use is a well-recognized and valid city concern and relates to both health and safety factors and to proper zoning practice. Statutory recognition of this concern is found in Government Code section 65850, subd. (c), which provides that the legislative body of any county or city by ordinance may regulate the intensity of land use. (*Van Sicklen v. Browne* (1971) 15 Cal. App. 3d 122, 128.) The character and function of the single-family land use and the proposed Childcare/Church Administration land uses sharply conflict. This evidence constitutes substantial evidence to support a fair argument that an EIR is required to consider the impacts, mitigations, and alternatives to the Project.

In addition to conflicting land uses, the density and intensity are widely divergent and therefore are in conflict for purposes of considering the potential adverse impacts arising out of land use conflicts. The LAMC Sec. 12.08. "R1" one-family zone Subsection 5. Maximum Residential Floor Area and Massing, subsection (a) states:

*For lots outside of a Hillside Area or Coastal Zone, the maximum Residential Floor Area contained in all buildings and accessory buildings shall not exceed 45 percent of the lot area (a Residential Floor Area ratio of 0.45).*

The Floor Area Ratio Analysis of the Entitlement Package, regarding the proposed South Campus on the R-1 single-family lot, at page G-10, states that the allowable buildable area is 16,358 square feet, the ground level pre-school proposed is 9,742 square feet and the second floor proposed is 9,825 for a total proposed floor area of 19,567 square feet which equates a 1.2:1 residential FAR.

The residential FARs for the 6 single-family homes listed on Exhibit A, which are those closest to the Project range between FAR .357:1, the highest residential FAR and FAR .32:1, the lowest. The Project exceeds the neighborhood FAR by approximately 364% and the allowable

massing by 266%. By any objective measure, the proposed massing that exceeds the maximum required by 266% of allowable and 364% of existing is extraordinary and cannot be overlooked in considering “conflicts: with applicable regulations enacted to avoid adverse environmental impacts. These statistics, including an approximately 20,000 square foot on the same block as 2,400 square foot homes, also constitute substantial evidence that that this aspect of the Project is not “consistent” in making the necessary findings of a TPP under CEQA regarding the SB 375 analysis. For a graphic representation of the divergent massing, compare the photograph number 10 at page G-40 of the entitlement package, depicting existing single-family home within the surrounding neighborhood and compare it to the proposed rendering of the massing depicted in the entitlement support package. Attached as Exhibit A is a representative sample of the lot sizes, structure sizes, and residential density for those properties abutting the Project and on Ashton Avenue that will be directly impacted by the density and intensity of the Childcare Facility taken from ZIMAS.

The function and character of the “R1” one-family zone is self-explanatory – one family. Over the years, the definition of a family has changed. But it has never expanded to the point it would include 105 children. It would be an extraordinary reach to try to make a finding that the character of 105-pupil childcare is consistent with the prevailing character of a single-family neighborhood.

Under the Public Resources Code, these uses cannot be found to be anything other than in conflict as part of any finding required including support for a SCEA. The substantial evidence of the conflict between the intensity of the proposed Childcare Facility and the surrounding small scale single-family neighborhood involves an adverse impact on the City’s land use policy and zoning regulations enacted to protect and preserve existing single-family neighborhoods.

The record contains evidence of intensity creating adverse land use conflicts including the noise impact the Project Applicants have admitted will occur to the point of requiring mitigation by seeking approval of an over-in-height wall in the of the front yard. The proposed circulation scheme also constitutes substantial evidence of intense traffic during the peak morning drop-off and afternoon pick-up periods that is not functionally or characteristically part of the normal single-family neighborhood. The evidence of adverse traffic intensity includes the provision of several contact points reflecting the need for more than one. From experience with other schools, we know that the morning drop-off in particular is very intense involving automobile queuing on 60-foot-wide Ashton Avenue, idling engines, radios, and urgency caused by late arrivals and anxious mid-commute parents.

None of these conditions are normal in a single-family neighborhood. and all of them are inconsistent with the environmental conditions City seeks to protect in their single-family neighborhoods. All of them constitute substantial evidence to support a fair argument that an EIR is required to consider the impacts, mitigations, and alternatives to the Project. By failing to perform the required land use conflicts analysis the significance of the application for these land use exceptions from the applicable zoning provisions by the conditional use permit regarding density and intensity will get swept under the rug in violation of CEQA.

The nearly double in height front wall, which must be masonry to attenuate the sound Project Applicants admit will occur, will stand out as a fundamental change to the character of the front yards in the surrounding neighborhood. Although aesthetic impacts may not be considered as “significant” for CEQA purposes, nevertheless, the significant land use “conflict” between the wall and the policies and regulations enacted to protect and preserve the character of the single-family neighborhoods constitutes additional substantial evidence to support a fair argument of the need to prepare an EIR.

In any event, the exclusion of aesthetic impacts from consideration of “significance” is not an exclusion from addressing the impact altogether. To fulfill CEQA’s full disclosure obligations, the adverse aesthetic impacts of all of the increased massing elements: front yard wall, excess building height, reduced setbacks, and extraordinary FAR must be described and examined for “conflicts” with the applicable environmental plans, policies and regulations. The substantial evidence regarding these conflicts also supports the fair argument for preparing an EIR.

Based on these facts well-documented in the record, these many conflicts cannot be more apparent. And yet, the SCEA Initial Study erroneously and without substantial evidence in support concluded: “[a]ccordingly, the siting and design of the Project would maintain the prevailing scale and character of the residential neighborhoods in the vicinity of the Project Site.” There is nothing in the SCEA Initial Study explaining the baffling conclusion that there is no conflict between the proposed 20,000 square foot Childcare Facility and City’s Policy 3.2.4 designed to maintain the prevailing scale and character of the City’s stable residential neighborhood.

Another important defect in the SCEA Initial Study involve the many findings repeated throughout the SCEA Initial Study and heavily relied upon to support the Project as follows:

*The Project would develop residential units and institutional uses in a HQTa and a transit priority area. Specifically, the Project Site is located less than one-quarter mile (approximately 900 feet) from the intersection of Wilshire and Westwood Boulevards, which is served by at least two major bus lines (e.g., Santa Monica Big Blue Bus 12 and Metro Rapid 720) with frequency of service intervals of 15 minutes or less during the morning and afternoon peak commute periods. In addition, this intersection would be served by the Westwood/UCLA station of Metro’s Purple Line Extension currently scheduled to open in 2027.*

As proven above based on substantial evidence, this statement is only partially true. But more importantly for CEQA purposes, the presumptions and conclusions derived from it are patently false. The substantial evidence demonstrates it is not true the Project would develop residential units. The character and function of the proposed Project is not residential. Certainly, it cannot reasonably be said about most of the Project. Therefore, its location within a HQTa and all that it implies is irrelevant – the consumers of the services provide by the Project will not be taking transit. Furthermore, few will be walking to the Westwood Village.

The age and physical and mental conditions of the Project occupants including the children; the distance and walking conditions between the Project and neighborhood conveniences, and where the children live; and the demographics of transit users including both the wealthy aged consumers of the eldercare facility and the wealthy consumers (parents) of the

childcare services, must be provided before the SCEA Initial Study can rely on that so-called analytical conclusion that the Project is a TPP and that Air Quality, Greenhouse Gas, Transportation and Land Use impacts are insignificant because of the proximity to transit.

Buried deep within the appendices but significantly not a part of the Project Description is a statement that the residents will be 75 years or older. There is no data in the record to support the assumption that septuagenarian, octogenarian, and nonagenarian residents will be taking buses and ultimately the subway. This factual omission predictably materially distorts the foreseeable impacts of the Project.

Given the substantial evidence supporting a fair argument of significant land use impacts and the importance of those impacts regarding the evaluation of a project for CEQA compliance under SB 375, and their relationship with Air Quality, Transportation, and the emissions of GHG, City cannot make or support the last four findings not discussed above as follows:

*4. The Project incorporates all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable environmental reports and adopted findings made pursuant to PRC Section 21081, including the 2016-2040 RTP/SCS Program EIR;*

*5. All potentially significant or significant effects required to be identified and analyzed pursuant to CEQA have been identified and analyzed in an initial study; and*

*6. With respect to each significant effect on the environment required to be identified in the initial study, changes or alterations have been required in or incorporated into the Project that avoid or mitigate the significant effects to a level of less than significant.*

#### **SUBSTANTIAL EVIDENCE OF SIGNIFICANT GHG IMPACTS**

The SCEA Initial Study checklist contains a threshold of significance that operates very similarly and therefore operates very much like the “conflicts” threshold of significance involving land use conflicts. Resembling the land use conflicts threshold, it states:

*b) Would the project conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?*

The SCEA Initial Study concluded that the Project GHG impact is “Less Than Significant Impact.”

California's landmark legislation addressing global climate change, the California Global Warming Solutions Act of 2006, the Legislature emphatically established as state policy the achievement of a substantial reduction in the emission of gases contributing to global warming." (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 215.) Consequently, climate-change impacts are "significant environmental impacts requiring analysis under CEQA." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 908.) Such impacts include analysis of a project's greenhouse gas emissions. (*Center for Biological Diversity v. Department of Fish & Wildlife, supra*, 62 Cal.4th at pp. 216-217. SB 375 requires local lead agencies to carry out this urgent and emphatic State policy.

As more fully developed above, the Project is not a TPP because it is not a qualifying land use. That fact having been established with support by substantial evidence, the Project conflicts and therefore all of that same substantial evidence supports a fair argument that review and consideration of the Project requires the preparation of an EIR. For all the same reasons, this conflict also constitutes a conflict with the RTP/SCS.

### **SUBSTANTIAL EVIDENCE OF SIGNIFICANT TRANSPORTATION IMPACTS**

The SCEA Initial Study mistakenly repeats the same missteps it took in the Land Use conflicts analysis – it turned the consideration into “consistency” with a list of global, aspirational, and non-environmental goals such as: Safety First, world class infrastructure, fair access, and collaboration, all of which are wonderful in their own right but in conformity with the substantive purpose or procedural requirements owed under CEQA.

The first example of an unsupported claim allegedly demonstrating “consistency” states: *The Project encourages non-motorized travel through provision of short- and long-term bicycle parking and promotes transit usage by developing new senior housing opportunities as well as an expanded preschool within walking distance of multiple existing rapid and local bus lines as well as the future Metro D (Purple) Line Westwood/UCLA station.*

As already demonstrated above, without supporting evidence that septuagenarians, octogenarians and nonagenarians (never mind those with Alzheimer’s disease) will be riding bicycles along Wilshire Boulevard and into Westwood Village (the City’s Mobility 2035 Plan does not include Wilshire Boulevard as part of the BICYCLE ENHANCED NETWORK (LOW STRESS NETWORK), a highly unlikely and therefore improper speculation, the provision of bicycle infrastructure, like the proximity to transit already considered in this letter, are of no environmental consequence. They are pleasing words on a piece of paper – that is all they are.

The serious sin directly impairing environmental analysis is stated in the false conclusion based on the false premise:

*... thereby reducing the number of trips made by vehicle and therefore reducing overall vehicle miles traveled (VMT), consistent with City and State transportation and greenhouse gas (GHG) policies and objectives.*

This simply will not be the case. All the factors that are raised in this speculation are measurable, they can be quantified. The SCEA Initial Study fails to provide any substantial evidence to allow the speculation and therefore the conclusion.

The SCEA Initial Study finds that LAMC Section 12.26.J, the City’s TDM Ordinance, which establishes trip reduction requirements for non-residential projects in excess of 25,000 square feet does not apply because “. . . the Project’s new non-residential component would not exceed 25,000 square feet.” The evidence discussed above is fundamentally at odds with this conclusion. Moreover, buried in the appendices is an estimate that the Project will require in excess of 270 employees in total. The scale of the nonresidential activity, including in particular the total number of employees anticipated strongly support the need for a full and transparent analysis of whether TDM would contribute to reduce VMT and vehicle trips of what otherwise seems likely the Project will generate VMT and vehicle trips far in excess of transportation and GHG policies and objectives.

The SCEA Initial Study error in analyzing for “consistency” is illustrated by its discussion of consistency with the Walkability Checklist erroneously concluding:

*Because the Project would include many of the recommended strategies, the Project is consistent with City of Los Angeles Walkability Checklist.*

But the recommended improvements for a sidewalk adjacent to the Project include:

- 2. Create a buffer between pedestrians and moving vehicles by the use of landscape and street furniture (benches, newspaper racks, pedestrian information kiosks, bicycle racks, bus shelters, and pedestrian lighting).*
- 3 Provide adequate sidewalk width that accommodates pedestrian flow and activity yet is not wider than necessary.*
- 4. Utilize street furnishings to create a consistent rhythm (i.e., consistent height of light poles or consistent shade pattern of trees).*
- 5. Incorporate closely planted shade-producing street trees. They may be interspersed with existing or proposed palms.*
- 6. Plant parkways with ground cover, low-growing vegetation or permeable materials that accommodate both pedestrian movement and car doors.*

None of these “walkability” enhancements is required of the Project. Therefore, the Project “conflicts” with all of them, which conflicts undermine the conclusion that the Project is consistent with the Walkability Checklist. (The SCEA Initial Study states that Appendix K contains a *Transportation Impact Study* or “TIS.” But there is nothing contained within Appendix K labelled as such. If the record does not contain the TIS, then every conclusion based on what appears to be a missing study, is unsupported by the facts and does not constitute substantial evidence notwithstanding any connection with an expert.)

As argued above, there is a material difference between looking for and finding consistencies as opposed to meeting the CEQA requirement of looking for and finding conflicts that have potential environmental impacts. The purpose of CEQA is to identify potential project adverse impacts and avoid them. Finding harmonies between a proposed project and the applicable plans, policies and regulations would never require avoidance clearly demonstrating why the consistency approach simply does not comply with CEQA.

Here the Project boasts active transportation opportunities between the Project and the Westwood Village. But as already shown, this is highly unlikely and purely speculative. The failure to fully address the Walkability Checklist only contributes additional substantial evidence that undermines the speculation that Project occupants will walk as an alternative to a vehicle and thus reduce VMT and vehicle trips.

Another issue not well supported by substantial evidence in the record is the assumption regarding the number of “pass-by trips.” “Pass-by trips” are defined as “*intermediate stops on the way from an origin to a primary trip destination without a route diversion.*” Normally these involve stopping at a convenience store, market, coffee purveyor, dry cleaners, etc. in the middle of a commute. The Source: LADOT policy on pass-by trip adjustments, Transportation Impact Study Guidelines, LADOT, December 2016, describes” Source: LADOT policy on pass-by trip adjustments, Transportation Impact Study Guidelines, LADOT, December 2016. Pass-by trips are attracted from the traffic passing the site on an adjacent street or roadway that offers direct access to the site.

That does not sound like daily delivery and picking up of a child from Day Care. Those trips do not meet the City's definition of a "pass-by trip. Until this claim is objectively quantified, there simply is no substantial evidence that the parents stop at the Project site will not constitute a route diversion between home and work. Without objective substantiation, the 10% discount applied to unsubstantiated Pass-by trips is speculative.

The Appendix K to the Transportation Impacts analysis states something that is very important because of what it reveals:

*According to the City's Transportation Assessment Guidelines, a development project's daily vehicle trips should be estimated using the City's VMT Calculator. It should be noted that the Eldercare Facility and Education/Day Care Center land uses are not standard land uses contained in the City's VMT Calculator. Following discussions with LADOT staff, a custom land use was employed for the Eldercare Facility. . . (Emphasis added.)*

This formulation of the issue provided unaccountable discretion to invent a replacement for VMT examination. It took place effectively in a black box.

However, because that methodology has not been identified, or scrutinized by the public, it fails to comply with CEQA substantively and it cannot constitute substantial evidence. Even expert opinion is not substantial evidence without supporting facts. In this case, supportive evidence is missing. The choice of the methodology is lacking substantial evidence in support. The conclusions reached based on this *ad hoc* VMT calculator constitute speculation.

In addition to challenging the undisclosed methodology, the December 11, 2019, VMT Calculator misstates the total number of employees as 56. This is the stated number of employees in one shift. The record also states that during a 24-hour time period the Project will have approximately 170 employees. Therefor the total Daily Vehicle Trips, stated as 464, and the Daily VMT, stated as 3,056, are severely understated by an estimated factor of at least 3. The incorrect conclusions reached in the "Work VMT per Employee of 2.9 are unsupported by the record and therefore do not constitute substantial evidence.

Another problem with its efficacy in measuring relative VMT is built into the facts discussed above that the eldercare facility is not a residential use, and certainly not a normal residential land use within the APC. Comparing the forecast VMT of the Project with single-family homes in the West Los Angeles area is nonsensical – it is meaningless in terms of the goal of reducing vehicle trips and VMT. There is no rational relationship between the criteria applied and the goal intended to be met.

We are not provided data regarding the range of wages/salaries that will be paid to the health care and food service workers, who will make up most of the employees of the Project. However, the Bureau of Labor Statistics shows that health care workers, even those who have skills, are not paid commensurate with the cost of housing in the West Los Angeles APC. (See Exhibit B attached hereto.)

This means that Project employees will be commuting long distances from areas where the cost of housing is commensurate with these low wages. Some will undoubtedly take transit. But transit ridership figures show demand for transit is declining. It is well

established that transfers discourage transit use so the incidence of transit will depend on the directness of the route between home and the Project. An unintended but observable consequence of the huge investment in rail transit in Los Angeles is the sky-rocketing increase in the cost of housing near this transit. Without factual support showing the likely use of transit by the employees of the Project, the assumption that they will and the calculation of per employee VMT is mere speculation and does not constitute substantial evidence. The conclusion that the Project does not exceed the VMT threshold for work is not supported by substantial evidence.

Another distortion of the “conflicts” analysis repeatedly used in the SCEA Initial Study is to ask, for example, will the Project have an adverse impact on transit:

*The Project would not introduce features that would conflict with existing policies, plans, or programs for pedestrian, bicycle, or public transit services or reduce performance or safety of such facilities. No impact with respect to public transportation or alternative transportation plans, policies, or programs would occur.*

This formulation of the relevant environmental impact question is ludicrous on its face.

Of course, a 176,000 square foot 12-story eldercare facility will not interfere with the transit system. Indeed, as discussed above, given the demographics of the Project occupants, it is unlikely they will have any impact on ridership whatsoever.

The more compelling question involves the potential ridership of the employees. This is the section in the SCEA Initial Study where forecasted transit usage should be provided in order to meet the information-disclosure purposes of CEQA. It is not a stretch to say that approving a non-residential project in a HQT, TPA or TPP zone conflicts with the goals and purpose of SB 375 regarding the promotion of transit use. The record lacks substantial evidence to show that any aspect of the Project will generate increased use of transit. Without that evidence, there is nothing to support the argument that the project is entitled to streamlined environmental review or approval based on a SCEA.

The exact same circumstances apply to bicycle and pedestrian facilities. Will the Project involve these forms of active transportation in lieu of the automobile in any aspect of its functioning so as to contribute to reduction of GHG emissions?

As has been extensively discussed above regarding an inadequate Land Use “conflicts” analysis, the same flaws mar the relevance to the “consistency” analysis between the Project and transportation impacts. For one glaring example, the SCAG 2020-2045 RTP/SCS Implementation Strategies. SCAG’s RTP/SCS: “Table 4-15 Consistency Analysis with the 2016-2040 RTP/SCS” contains 9 goals, all of which the SCEA Initial Study determined were either “Not Applicable” or “No Conflict” under the inapplicable *Sequoia Hills* analysis.

The 2016-2040 RTP/SCS goals generally involve utilization of the regional transportation system including the promotion of active transportation (defined as walking and bicycling) as an alternative to vehicular travel. The key fact offered in defense of the finding of “No Conflict” is “The Project Site is located in a highly urbanized area with the City of Los Angeles within a High Quality Transit Area (HQT)

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as defined by SCAG and a transit priority area as defined by SB 743 . . . Therefore, the location of the Project encourages a variety of transportation options and access and is therefore consistent with this Goal.”

And again, these same flaws are contained in the Errata recently submitted into the record. The conclusion of “consistency” is based on the availability of transportation infrastructure – transit, buses, bikes, etc. - as alternatives to vehicles. However, as amply demonstrated above, these transportation alternatives to reduce vehicle trips and VMT are inapplicable to the users of both the Eldercare Facility and the Childcare Facility. And the choices of Implementation Strategies are largely irrelevant. The Errata could also have correctly stated that the Project is not in conflict with the Mars mission. It’s true but what does it matter?

## CONCLUSION

For all of the reasons stated herein, it is respectfully requested that the decision makers require the preparation of an EIR prior to considering whether and how to approve the Project.

Very truly yours,

(signed by)

CORIN L. KAHN

|     |                             |                                                                                  |
|-----|-----------------------------|----------------------------------------------------------------------------------|
| cc: | Hon. Councilman Paul Kortez | (by email <a href="mailto:paul.koretz@lacity.org">paul.koretz@lacity.org</a> )   |
|     | City Clerk                  | (by email <a href="mailto:CityClerk@lacity.org">CityClerk@lacity.org</a> )       |
|     | Planning Staff              | (by email <a href="mailto:dylan.sittig@lacity.org">dylan.sittig@lacity.org</a> ) |
|     | Clients                     | (by email )                                                                      |

# EXHIBIT A

Below is a representative sample of the lot sizes, structure sizes, and residential density for those properties abutting the Project and on Ashton Avenue that will be directly impacted by the density and intensity of the Childcare Facility taken from ZIMAS:

|                              |                    |
|------------------------------|--------------------|
| Site Address                 | 10812 W ASHTON AVE |
| ZIP Code                     | 90024              |
| PIN Number                   | 132B153 419        |
| Lot/Parcel Area (Calculated) | 7,294.9 (sq ft)    |
| Building Square Footage      | 2,392.0 (sq ft)    |
| Number of Bedrooms           | 4                  |
| Number of Bathrooms          | 3                  |
| FAR .328:1                   |                    |
| Site Address                 | 10808 W ASHTON AVE |
| ZIP Code                     | 90024              |
| PIN Number                   | 132B153 413        |
| Lot/Parcel Area (Calculated) | 7,096.6 (sq ft)    |
| Number of Bedrooms           | 3                  |
| Number of Bathrooms          | 4                  |
| Building Square Footage      | 2,433.0 (sq ft)    |
| FAR .34:1                    |                    |
| Site Address                 | 10806 W ASHTON AVE |
| ZIP Code                     | 90024              |
| PIN Number                   | 132B153 407        |
| Lot/Parcel Area (Calculated) | 6,867.2 (sq ft)    |
| Number of Units              | 1                  |
| Number of Bedrooms           | 4                  |
| Number of Bathrooms          | 4                  |
| Building Square Footage      | 2,344.0 (sq ft)    |
| FAR .357:1                   |                    |
| Site Address                 | 1251 S MALCOLM AVE |
| ZIP Code                     | 90024              |
| PIN Number                   | 132B153 399        |
| Lot/Parcel Area (Calculated) | 7,288.9 (sq ft)    |
| Number of Units              | 1                  |
| Number of Bedrooms           | 4                  |
| Number of Bathrooms          | 3                  |
| Building Square Footage      | 2,474.0 (sq ft)    |

FAR .339:1

|                              |                       |
|------------------------------|-----------------------|
| Site Address                 | 10813 W WELLWORTH AVE |
| ZIP Code                     | <u>90024</u>          |
| PIN Number                   | 132B153 466           |
| Lot/Parcel Area (Calculated) | 6,618.7 (sq ft)       |
| Number of Units              | 1                     |
| Number of Bedrooms           | 3                     |
| Number of Bathrooms          | 2                     |
| Building Square Footage      | 2,263.0 (sq ft)       |
| FAR .342:1                   |                       |

|                              |                       |
|------------------------------|-----------------------|
| Site Address                 | 10817 W WELLWORTH AVE |
| ZIP Code                     | <u>90024</u>          |
| PIN Number                   | 132B153 473           |
| Lot/Parcel Area (Calculated) | 6,543.7 (sq ft)       |
| Number of Units              | 1                     |
| Number of Bedrooms           | 3                     |
| Number of Bathrooms          | 2                     |
| Building Square Footage      | 2,118.0 (sq ft)       |
| FAR .32:1                    |                       |

**EXHIBIT B**  
**BUREAU OF LABOR STATISTICS FOR HEALTH SUPPORT OCCUPATIONS**

[https://www.bls.gov/oes/current/oes\\_ca.htm](https://www.bls.gov/oes/current/oes_ca.htm)

| Occupation code | Occupation title<br>(click on the occupation title to view its profile) | Level  | Employment | Employment RSE | Employment per 1,000 jobs | Location quotient | Median hourly wage | M or w |
|-----------------|-------------------------------------------------------------------------|--------|------------|----------------|---------------------------|-------------------|--------------------|--------|
| -0000           | <a href="#">Healthcare Support Occupations</a>                          | major  | 364,220    | 1.4%           | 21.415                    | 0.75              | \$17.06            | 18     |
| 31-1011         | <a href="#">Home Health Aides</a>                                       | detail | 24,560     | 10.7%          | 1.444                     | 0.26              | \$14.13            | 16     |
| 31-1013         | <a href="#">Psychiatric Aides</a>                                       | detail | 1,910      | 13.5%          | 0.112                     | 0.29              | \$14.51            | 15     |
| 31-1014         | <a href="#">Nursing Assistants</a>                                      | detail | 99,440     | 2.0%           | 5.847                     | 0.58              | \$15.90            | \$6    |
| 31-1015         | <a href="#">Orderlies</a>                                               | detail | 4,460      | 5.3%           | 0.262                     | 0.76              | \$17.99            | 18     |
| 31-2011         | <a href="#">Occupational Therapy Assistants</a>                         | detail | 2,280      | 10.3%          | 0.134                     | 0.45              | \$33.74            | 32     |
| 31-2012         | <a href="#">Occupational Therapy Aides</a>                              | detail | 740        | 26.6%          | 0.044                     | 0.82              | \$16.22            | 16     |
| 31-2021         | <a href="#">Physical Therapist Assistants</a>                           | detail | 5,150      | 7.2%           | 0.303                     | 0.46              | \$32.45            | 30     |
| 31-2022         | <a href="#">Physical Therapist Aides</a>                                | detail | 6,420      | 7.3%           | 0.378                     | 1.16              | \$13.47            | 14     |
| 31-9011         | <a href="#">Massage Therapists</a>                                      | detail | 15,200     | 13.1%          | 0.894                     | 1.23              | \$16.43            | 19     |
| 31-9091         | <a href="#">Dental Assistants</a>                                       | detail | 53,110     | 3.0%           | 3.123                     | 1.33              | \$18.63            | 19     |
| 31-9092         | <a href="#">Medical Assistants</a>                                      | detail | 92,960     | 2.3%           | 5.466                     | 1.17              | \$17.34            | 18     |
| 31-9093         | <a href="#">Medical Equipment Preparers</a>                             | detail | 6,300      | 4.3%           | 0.370                     | 0.96              | \$22.14            | 22     |
| 31-9094         | <a href="#">Medical Transcriptionists</a>                               | detail | 4,920      | 9.6%           | 0.289                     | 0.78              | \$18.49            | 19     |
| 31-9095         | <a href="#">Pharmacy Aides</a>                                          | detail | 9,480      | 8.7%           | 0.557                     | 2.18              | \$14.17            | 16     |

|         |                                                                               |        |        |      |       |      |         |    |
|---------|-------------------------------------------------------------------------------|--------|--------|------|-------|------|---------|----|
| 31-9096 | <a href="#"><u>Veterinary Assistants and Laboratory Animal Caretakers</u></a> | detail | 12,410 | 6.2% | 0.730 | 1.18 | \$14.78 | 15 |
| 31-9097 | <a href="#"><u>Phlebotomists</u></a>                                          | detail | 12,190 | 5.3% | 0.717 | 0.83 | \$21.15 | 21 |
| 31-9099 | <a href="#"><u>Healthcare Support Workers, All Other</u></a>                  | detail | 12,680 | 5.8% | 0.746 | 1.21 | \$20.50 | 21 |

## **EXHIBIT C**

<https://www.belmontvillage.com/locations/westwood-los-angeles-california/>

### **Senior Living Hospitality and Amenities**

- Exterior dining patio and outdoor swimming pool
- Bistro with daily refreshments
- Chef-prepared dining, 24 daily choices
- Professionally supervised fitness center
- Salon with services for men and women
- Screening room
- Free scheduled transportation daily
- Social and enrichment activities
- Wi-Fi throughout the building
- Studio, 1- and 2-bedroom residence plans
- Pet friendly community
- Housekeeping services

### **Senior Living Programs and Support**

- Licensed nurse on-site 24/7
- Dedicated, well-trained staff
- Medication management
- Assistance with daily living
- Diabetes Center of Excellence
- Physical, speech and occupational therapy services on-site
- [Dedicated Memory Care Neighborhood](#)
- [Whole Brain Fitness Lifestyle](#)
- [Circle of Friends memory support](#)
- No buy-in or long-term contract required.