

Channel Law Group, LLP

8383 Wilshire Blvd.
Suite 750
Beverly Hills, CA 90211

Phone: (310) 347-0050
Fax: (323) 723-3960
www.channellawgroup.com

JULIAN K. QUATTLEBAUM, III
JAMIE T. HALL *
CHARLES J. McLURKIN

Writer's Direct Line: (310) 982-1760
jamie.hall@channellawgroup.com

*ALSO Admitted in Texas

November 21, 2022

VIA ELECTRONIC MAIL

Los Angeles City Council
c/o City Clerk
200 N Spring Street, Suite 415
Los Angeles, CA 90012
city.clerk@lacity.org
clerk.plumcommittee@lacity.org
armando.bencomo@lacity.org

**RE: The Sustainable Communities Environmental Assessment (SCEA) for
1050 La Cienega Boulevard (ENV-2022-2280-SCEA, DIR-2022-2279-TOC-
SPR-VHCA – Council Item 22-1098, November 22, 2022**

Dear Members of the City Council

This firm represents the Friends of South Carthay. The City has chosen to process the proposed 1050 La Cienega Boulevard project ("Project") (Council Item 22-1098) as a Transit Priority Project under a Sustainable Communities Strategy. Guidance regarding the implementation of the Sustainable Communities Strategy is provided by Public Resources Code ("PRC") Sections 21155, 21155.1, 21155.2, 21155.3 and 21155.4. Pursuant to that guidance, the proposed Project is not eligible for use of an Sustainable Communities Exemption in part because the Project contains too many residential units, **is not** 15 percent more energy efficient than required by Chapter 6 of Title 24 of the California Code of Regulations and the buildings and landscaping are **not** designed to achieve 25 percent less water usage than the average household use in the region, and the hazardous materials issues associated with the site have not been adequately mitigated. A SCEA or EIR is therefore required for the proposed Project.

Rather than prepare an EIR, the City has chosen to process the proposed Project using a Sustainable Communities Environmental Assessment ("SCEA"). However, as detailed in our October 21, 2022 comment letter, the proposed Project is not eligible for an SCEA. In addition, substantial evidence demonstrates that the proposed Project will have significant environmental impacts which have not been mitigated to a level which is

less than significant. An Environmental Impact Report (“EIR”) is therefore required for the proposed Project.

On November 1, 2022 the applicant’s attorneys, Rand, Paster & Nelson LLP, submitted a response to our October 21, 2022 comments letter. We were only made aware of this letter on November 18, 2022 because the City did not provide notice of any of the public hearings for this Project. Our October 21, 2022 comments documenting why an EIR is required for the Project remain valid and are incorporated herein by reference. This letter responds in part to the Rand, Paster & Nelson letter, and documents the due process issues with the processing of this Project which necessitate that any consideration of the proposed Project being postponed due to lack of proper notice.

1. RESPONSE TO RAND, PASTER & NELSON RESPONSE TO OUR 10/21/2022 COMMENTS

The applicant’s attorneys have provided a disingenuous partial response to our October 21, 2022 comment letter, which misinterprets our comments in an effort to be able to provide a defense thereto.

A. Housing Element Growth Exceeds Growth Anticipated in the Southern California Association of Governments (“SCAG”) Sustainable Communities Strategy (“SCS”)

The applicant’s attorney allege that we argue that growth assumptions underlying the SCAG 2020-2045 RTP/SCS should control the scope of a Housing Element, and local land use decisions. We make no such assertion. Rather, we correctly argue that the City’s 2021-2029 Housing Element as adopted after the 2020-2045 Regional Transportation Plan/Sustainable Communities Plan (RTP/SCS), and that the Housing Element allows for more growth than considered when the RTP/SCS was drafted, and we provide substantial evidence to that effect. We therefore rightly argue that given that the City’s adopted Housing Element will result in growth in excess of that analyzed in the RTP/SCS, further exacerbated by recent State legislation such as SB9, SB10 and SB35, no project which results in additional density within the City of Los Angeles is consistent with the RTP/SCS, since it cannot be shown that the proposed Project in combination with the cumulative development resulting from implementation of the Housing Element and recent State laws will not exceed the SCS growth forecasts for the Project area. It therefore cannot be shown that the Project in combination with cumulative development is consistent with the general use designations, density, building intensity, and applicable policies specified for the project area in the strategy.

Furthermore, pursuant to *Sacramentans for Fair Planning v. City of Sacramento* (2019) 37 Cal.App.5th 698 (“*Sacramentans for Fair Planning*”), our comment letter demonstrated that the proposed Project is not consistent with the development objectives **and definition of** High Quality Transit Areas (HQTAs)¹ or the Livable Corridors² in the

¹ RTP/SCS page 51.

² RTP/SCS page 52.

RTP/SCS, due to its failure to provide context sensitive density. Given the proposed Project's excessive height and density in combination with its location immediately adjacent to an important single-family historic district, the proposed Project is thus not consistent with the density assumptions in the RTP/SCS which are based on context sensitive densities. Whether or not the project is consistent with some of the SCS policies is immaterial given that the proposed Project fails to meet the definition of either High Quality Transit Areas (HQTAs)³ or the Livable Corridors⁴ in the RTP/SCS.

B. Aesthetic Resource Impacts

In an effort to dismiss the substantial evidence of the proposed Project's aesthetic resource impacts provided in our comment letter, the applicant's attorneys argue: "The Friends of South Carthay Letter confuses and conflates aesthetic versus historic impacts and seeks to create a new set of potential historic impacts that would only apply to TPPs predicated on inapplicable and outdated aesthetic impact thresholds." In fact, it is the applicant's attorney's that seek to conflate aesthetic versus historic resource impacts. Our letter does not argue that the proposed Project results in historic resource impacts due to its aesthetic effects. Rather, we correctly argue that the proposed Project is not immune from an analysis of aesthetic resource impacts, since it is located in proximity to historic resources. Our analysis then correctly identifies the potential for significant aesthetic (rather than historic resource) impacts.

The applicant's attorneys argue that the proposed Project is not subject to the City's aesthetic resource impact thresholds in the City's 2006 LA CEQA Thresholds Guide because they have been superseded by Appendix G of the CEQA Guidelines. However, Appendix G is advisory, not compulsory. As specifically noted in Appendix G of the CEQA Guidelines:

NOTE: The following is a sample form that may be tailored to satisfy individual agencies' needs and project circumstances. It may be used to meet the requirements for an initial study when the criteria set forth in CEQA Guidelines have been met. **Substantial evidence of potential impacts that are not listed on this form must also be considered.** The sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance. (Emphasis added).

It should be noted that the City of Los Angeles recently issued a Recirculated SCEA for the Sportsmen's Lodge project,⁵ which includes an aesthetic resource impact analysis using the shade threshold included in the 2006 L.A. CEQA Thresholds Guide, so there is contemporaneous evidence that the City still makes use of these thresholds, even

³ RTP/SCS page 51.

⁴ RTP/SCS page 52.

⁵ See page 70, SCH# 2022070532 available at: <https://ceqanet.opr.ca.gov/2022070532/3>

in SCEAs. In addition, that analysis was focused on assessing aesthetic impacts, not historic resource impacts. Our comment letter provided substantial evidence that the proposed Project results in aesthetic impacts.

It should be noted that Goal 5 of the Wilshire Community Plan is to: provide sufficient open space in balance with development to serve the recreational, environmental, health and safety needs of the Wilshire Community Plan, and protect environmental and aesthetic resources. The Plan thus contains aesthetic resource goals.

C. The SCEA Was Not Available on the City's Website

The applicant's attorney's content that:

The Friends of South Carthay Letter erroneously asserts that the City failed to properly circulate the Project SCEA for a full 30-day public comment period pursuant to Pub. Res. Code Section 21092. A link to access the Project SCEA was provided in the Notice of Availability that was published on September 8, 2022. While the City experienced initial technical issues uploading the SCEA documents to the Planning Department website, the linked Project SCEA documents became accessible to the public on September 21, 2022. The Planning Department website clearly notes that the comment period was correspondingly extended to October 21, 2022⁶, thus allowing a full 30 days access to the SCEA document on the City website.

However, this is not correct. As shown in the following embedded video, also included as **Attachment A** to this letter, the SCEA for the proposed Project can still not be accessed via the link included in the Notice of Availability ("NOA"). Instead, the potential reader is sent in an endless loop between the City's SCEA page and the NOA, never able to access the actual document.

⁶ <https://planning.lacity.org/development-services/environmental-review/scea/1050-la-cienega-boulevard-project>

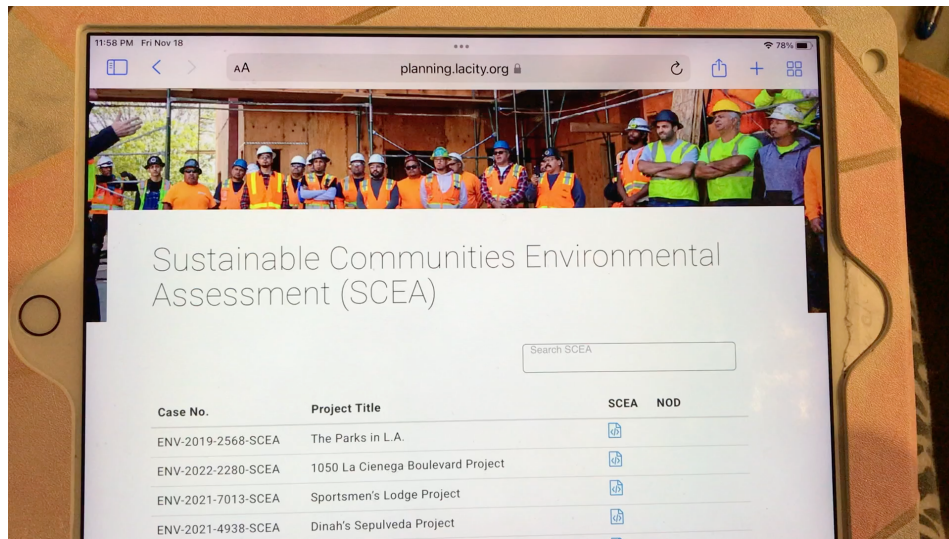


FIGURE 1 – Video Dated November 18th, 2022 Showing SCEA Not Available On City’s Website (click on video to start)

2. DUE PROCESS ISSUES WITH THE PROCESSING OF THIS APPLICATION

Despite the fact that Channel Law Group provided comments on the SCEA for the proposed Project and specifically asked to be included on the interested parties list, the City did not provide notice of either the Planning and Land Use Management Committee (PLUM) hearing on the Project on November 1, 2022, or Tuesday’s City Council hearing on the proposed Project. This is a violation of CEQA, local law and the constitutional due process guarantees. The City Council hearing on the proposed Project should therefore be continued until proper notice has been provide to all individuals and organizations that commented on the SCEA.

Under state law, specifically California Code of Civil Procedure 1094.5, project opponents must be given a fair hearing. This requires an opportunity to be heard “at a *meaningful* time and in a *meaningful* manner.” Further, one court has opined that due process “**contemplates a meaningful opportunity to present evidence contrary [to an application]** and a meaningful consideration of that evidence.” Friends of South Carthay has not had a meaningful opportunity to fully consider the new evidence presented by the applicant’s attorney and present contrary evidence. As such, my clients due process rights will be violated if this hearing is allowed to proceed.

3. THE PLUM FAILED TO “REVIEW” AND “CONSIDER” THE COMMENTS FROM THE PUBLIC ON THE SCEA

Public Resources Code Section 21155.2(b)(4) states as follows: “Prior to acting on the sustainable communities environmental assessment, the lead agency shall **consider** all comments received.” Further, Public Resources Code Section 21155.2(b)(5) requires the lead agency to ‘**review**’ the comments. The PLUM Committee failed to both “consider” and “review” the comments prior to recommending approval to the City Council. The public comment period on the SCEA did not end until Thursday, October 27, 2022 at 4 pm. These public comments were not populated to the Council File Management System until November 1, 2022 – the day before the PLUM hearing. There is no way that the PLUM Committee could have possibly reviewed and considered 429 pages of public comments in such a short period of time. Moreover, in this case, staff did not even prepare a Staff Report that summarized public comments received. The failure to notify most people that commented on the SCEA of the public hearing before PLUM compounded the issue. Public hearings are a primary means by which elected decisionmakers receive public comments on a project. A mere recitation in a PLUM report that such consideration occurred does not make it so.

4. THE SCEA MUST BE APPROVED BY THE SAME BODY THAT WILL APPROVE THE PROJECT ENTITLEMENTS.

The City Council is poised to approve the SCEA for the Project on November 22, 2022. However, the actual project entitlements are still being processed by the Department of City Planning (“DCP”). Approval of the SCEA by the City Council *now* (separate from the project entitlements) would violate this CEQA.

CEQA is violated when the authority to approve or disapprove the project is separated from the responsibility to complete the environmental review. *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 188 (“for an environmental review document to serve CEQA’s basic purpose of informing governmental decision makers about environmental issues, that document must be reviewed and considered by the same person or group of persons who make the decision to approve or disapprove the project at issue”); *Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340, 360 (CEQA violated where the City Council did not make both decisions. Rather, it considered only the mitigated negative declaration.) As explained in *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 731: “[f]or an environmental review document to serve CEQA’s basic purpose of informing governmental decision makers about environmental issues, that document must be reviewed and considered by the **same person or group of persons** who make the decision to approve or disapprove the project at issue. In other words, the separation of the approval function from the review and consideration of the environmental assessment is **inconsistent** with the purpose served by an environmental assessment as it insulates the person or group approving the project 'from public awareness and the possible reaction to the individual members' environmental and economic values.”

The project entitlements consist of both a Site Plan Review and TOC Approval. These entitlements will be acted on by the Director of Planning and/or the City Planning Commission under the Los Angeles Municipal Code. Both Site Plan Reviews and TOC Approvals are appealable to the City Planning Commission. See LAMC Section 16.05(H). In order to comply with CEQA, the “same person or group of persons who make the decision to approve or disapprove the project at issue” must approve the SCEA. As noted in *POET, LLC v. State Air Resources Bd.*, this is necessary for an “environmental review document to serve CEQA’s basic purpose of informing governmental decision makers about environmental issues.”

Public Resources Code Section 21155.2(b)(6) allows for the public hearing to be conducted by the City Planning Commission. This section of the Code states as follows: “The legislative body of the lead agency shall conduct the public hearing **or a planning commission may conduct the public hearing** if local ordinances allow a direct appeal of approval of a document prepared pursuant to this division to the legislative body subject to a fee not to exceed five hundred dollars (\$500).” The City has a CEQA Appeal Ordinance that allows for an appeal of an environmental clearance document to the City Council (Ordinance No. 186338). The City’s CEQA Appeal fee does not exceed \$500.

In sum, the approval of the SCEA by the City Council at this juncture will violate CEQA.

5. EVEN IF THE CITY COUNCIL IS ALLOWED TO APPROVE THE SCEA SEPARATE FROM THE PROJECT ENTITLEMENTS, THE CITY COUNCIL ITSELF MUST CONDUCT A “PUBLIC HEARING.”

As noted above, Public Resources Code Section 21155.2(b)(6) states that “[t]he legislative body of the lead agency shall conduct the **public hearing** or a planning commission may conduct the **public hearing**” Even if the City Council was allowed to approve the SCEA separate from and before the approval of project entitlements (which they are not), it is the City Council itself that must conduct the “public hearing.” However, this matter is NOT agenzized for a public hearing. Rather, it will be voted on as a consent item as the agenda notes that the item has already had a public hearing before PLUM. The failure to conduct a “public hearing” before the legislative body – the City Council – violates Public Resources Code Section 21155.2(b)(6). PLUM is not the legislative body of the City of Los Angeles

6. CONCLUSION

There is substantial evidence in this letter and the administrative record for the Project that the project will result in significant project and cumulative impacts that have not been identified in the SCEA. As detailed in this comment letter and our comment letter of October 21, 2022, the environmental documents for the project fails to provide substantial evidence that impacts can clearly be reduced to a level considered less than significant. Furthermore, as detailed in this letter, the Project does not qualify for the use of an SCEA. An EIR is thus required. Moreover, the City has committed a host of procedural violations.

Please be sure Channel Law is added to the mailing list for notices regarding this Project. I may be contacted at 310-982-1760 or at jamie.hall@channellawgroup.com if you have any questions, comments or concerns.

Regards,

A handwritten signature in black ink, appearing to read "Jamie Hall". The signature is fluid and cursive, with the first name "Jamie" written in a larger, more prominent script than the last name "Hall".

Attachment A – Video Showing SCEA Is Not Available On the City’s Website

Attachment A

Available to view at

<https://www.dropbox.com/s/lg6ui643nco6pg9/Attachment%20A%20-%20Video%20SCEA%20Not%20Available.MOV?dl=0>