

BRENTWOOD RESIDENTS COALITION
ZONING | LAND USE | PLANNING | ENVIRONMENTAL

April 18, 2018

Date: 4-18-18
Submitted in PWGR Committee
Council File No: 17-1342-S1
Item No.: 4
Deputy: public

Los Angeles City Council
Public Works and Gang Reduction Committee
Los Angeles City Hall
200 North Spring Street
Los Angeles, CA 90012
c/o Michael Espinosa
via email: Michael.espinosa@lacity.org, cityclerk@lacity.org

Re: Letter in Opposition to Notice of Exemption
Council File 17-1342-S1
Project: Boring Company Proof of Concept Tunnel Project
Hearing Date: April 18, 2018 (Agenda Item No. 4)

Dear Chairman Blumenfield and Honorable Councilmembers:

The Boring Company has proposed a "Proof of Concept" transportation infrastructure tunnel project with an entry/exit point at 2352-56 Sepulveda Boulevard and beneath the Sepulveda Boulevard public right of way from that address south to the vicinity of Sepulveda and Washington Boulevards in Culver City (the "Project"). The Brentwood Residents Coalition ("BRC")¹ strongly opposes use of an inapplicable Class 32 Categorical Exemption ("CE") rather than the appropriate full Environmental Impact Report ("EIR") for a Project that will unquestionably have very significant environmental impacts.

The nature of the extremely short public notice for the City's proposed action regarding such a substantial and impactful project has not provided sufficient time for BRC or others to fully evaluate the Project's environmental or public policy impacts. One of the primary goals of CEQA is to inform government decision-makers and the public about the potential significant environmental effects of proposed projects and to disclose to the public the reasons for approval of a project that may have significant environmental effects. (Cal. Code Regs., tit. 14, §§ 15002(a)(1), 15002(a)(4)).

¹ BRC is a grass roots, non-profit advocacy group whose purposes are to preserve and enhance the environment and quality of life in Brentwood, to protect the integrity of residential neighborhoods, to assist with planning, to uphold zoning and municipal codes, to encourage traffic safety, and to educate the public on issues that affect quality of life and the environment.

BRENTWOOD RESIDENTS COALITION

Rushing such a significant and potentially impactful project through such an astoundingly brief and nontransparent public process is an affront to this goal and represents terrible public policy.

BRC plans to submit additional information to the record before the Project is considered by the full City Council. We urge the Public Works and Gang Reduction Committee to require additional time in the public process to give Neighborhood Councils, community organizations, and members of the public a proper opportunity to have informational public hearings and sufficient time to evaluate the information presented to provide informed public comment before scheduling the item before the full City Council. Better would be to require a major project such as this to go through the more ordinary and appropriate planning and land use management process of the City of Los Angeles, allowing for noticed informational hearings before the public, input from the City Planning Commission, and a hearing before the Council's Planning and Land Use Management Committee. As a transportation project, the Project must also be heard before the Council's Transportation Committee before it can be considered for approval.

The Project purports to fit within the Class 32 CE for "in-fill development" projects on sites that (1) are consistent with all applicable general plan and zoning designations, policies, and regulations; (2) are no greater than five acres; (3) have no value as habitat for endangered, rare or threatened species; (4) would not result in any significant effects relating to traffic, noise, air quality, or water quality; and (5) can be adequately served by all required public utilities and public services. (Cal. Code Regs., tit. 14, § 15332.) Because the Project is not consistent with several of these requirements, it is improper and unlawful for the City of Los Angeles to approve the Project relying on the Class 32 CE.

Even if the proposed CE were appropriate for a limited test "proof of concept" where no further activity was proposed or expected, and as discussed below it is not, it clearly is not applicable where the proof of concept phase is merely the first part of a multi-phase larger project. One of the fundamental precepts of the California Environmental Quality Act ("CEQA") is that a "project" is broadly defined to enable maximum protection of the environment. "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment . . ." (Cal. Code Regs., tit. 14, § 15378(a).) A public agency may not evade CEQA by dividing a single project into smaller individual sub-projects. (*Tuolumne County Citizens for Responsible Growth, Inc. v City of Sonora* (2007) 155 Cal.App 4th 1214, 1223 ["CEQA cannot be avoided by chopping up proposed projects into bite-size pieces which, when taken individually, may have no significant adverse effect on the environment." (internal quotes omitted).]) Considering a larger project in piecemeal fashion by dividing it up into segments or phases overlooks the cumulative effects of the whole action. (*See, e.g., Bozung v. LAFCO* (1975) 13 Cal. 3d 263.) Project descriptions must give an accurate view of the entire project, not just the smaller piece currently under consideration. (*See, e.g., McQueen v. Board of Dir.* (1988) 202 Cal.App. 3d 1136.)

With respect to the Class 32 CE requirements, the Project is not consistent with all applicable general plan and zoning designations, policies, and regulations. While the entry/exit point located in West Los Angeles is zoned M2-1VL, the Sepulveda Boulevard right of way along the tunnel route is directly adjacent to (and perhaps may ultimately be beneath) a variety of zoning designations,

BRENTWOOD RESIDENTS COALITION

including multi-family R3-1 and R4-1, public facility PF-1XL, commercial C2-1VL, and open space (OS-1XL). It is unclear from the very few project documents whether the tunnel is consistent with the zoning designations and regulations associated with these various zones. In addition, state law gives the Los Angeles County Metropolitan Transportation Authority ("Metro") jurisdiction under Public Utilities Code section 130252(a) of all plans proposed for the design, construction, and implementation of public mass transit systems or projects in Los Angeles County, and nothing in the record suggests that the Project has been vetted or reviewed by Metro.

The claim that the Project is on a site of less than 5 acres is dubious at best. To accept that premise, the applicant suggests that it is appropriate to consider the entry/exit parcel and the precise width of the underground tunnel (14'), as if it required no protective zone around it for safety or to avoid future conflict. The reality is that when public or private infrastructure projects are constructed, easements or rights of way typically provide significant buffer space. It is apparent that if the buffer had only one additional foot of space on each side it would not fit within the 5-acre limitation of the Class 32 CE. To be more clear, a 16' width easement for the tunnel project would utilize approximately 5.23 acres, without even considering the 0.265 acre entry/exit site. It seems obvious that the tunnel length was chosen for the specific reason that it arguably might fit this requirement for a Class 32 CE. It does not.

Even if the proposed segment of the larger tunnel project did fit within 5 acres the entire non-piecemealed Project clearly does not. In materials submitted to and considered by the City Council of Culver City at a preliminary public hearing for the Project in January this year, the initial segment proposal was presented as being approximately 6.5 miles. And that 6.5 mile tunnel was only one small segment of a larger network intended to run from Long Beach to Sherman Oaks, with spur segments to Venice and Marina del Rey, Santa Monica, LAX, Hawthorne (where The Boring Company already has constructed a test tunnel), and along the I-105 Freeway to the I-110 Freeway to downtown Los Angeles with spurs to Leimert Park, USC/Coliseum, Union Station, Echo Park/Silver Lake, and Dodger Stadium.² The entire project is obviously grossly in excess of the small 5-acre limit of the Class 32 CE.

The Class 32 exemption is not intended for projects that would result in any significant environmental impacts related to traffic, noise, air quality, or water quality. Even the small Project segment now considered is expected to generate 80,000 cubic yards of export, requiring 26 haul trucks per day, six days per week, for approximately nine months, or a greater number of haul trucks per day (presumably for a slightly shorter construction period) if the City permits hauling between extended hauling hours. The City of Los Angeles typically requires at least a Mitigated Negative

² The files submitted to the public record for the Culver City public hearing are available at: <https://culver-city.legistar.com/LegislationDetail.aspx?ID=3313441&GUID=C85B611C-54E4-4835-8CEC-889996A11397>; more specifically, the 6.5 mile proposed "proof of concept" tunnel is shown within the "Los Angeles Tunnel Alignment Overview," available at: <https://culver-city.legistar.com/Vicw.ashx?M=F&ID=5736271&GUID=A6659714-B1FC-4918-B6EF-8DF5605CBF35>.

BRENTWOOD RESIDENTS COALITION

Declaration due to the self-evident impact of these types of hauling activities within the City, but here relies on the categorical exemption to evade complete review. And as discussed above, if the project site is considered not only the piecemealed segment, but either the larger 6.5 mile segment originally proposed to Culver City in January, or even more accurately the entire project including the likely phase 2 as described in The Boring Company documents submitted to Culver City (*see* fn. 2, *supra*), the amount of grading export will be grossly in excess of the estimated 80,000 cubic yards.

In addition to being inapplicable because the Project exceeds the scope of what is permitted for a Class 32 exemption, use of it for this Project would set a terrible precedent for future similar projects, and the City should not approve its use in this case. We note also that CEQA strongly suggests that cities provide a list of applicable project types for the various categorical exemptions provided for under CEQA and that the City does not have such a list for the class 32 exemption. (Cal. Code Regs., tit. 14, § 15061(c).)

The Class 32 exemption also arguably does not apply because the subsurface facility contemplated fits the definition of a “pipeline” found in Public Resources Code section 21080.1, and thus by the terms of that section must be considered under CEQA as a pipeline project of more than one mile in length.

Finally, the Class 32 CE is not available for the Project because of the cumulative impact exception of the CEQA Guidelines. (Cal. Code Regs., tit. 14, § 15300.2(b).) With an accurate project description to encompass either the 6.5 mile test tunnel or the more accurate project scope provided to Culver City in January, the cumulative impact analysis would properly show that cumulative impacts of the whole Project restrict it from utilizing the Class 32 exemption.

Jehn Balajadia, a representative of The Boring Company, testified at the Culver City public hearing that the “proof of concept” tunnel was not for the technical project components, but for learning how to work in the public process with multiple jurisdictions (Culver City and the City of Los Angeles) in obtaining project approvals. If this is true, and based on the fact that The Boring Company has already constructed a test tunnel nearby in Hawthorne, there is absolutely no legitimate justification for allowing it to construct a second “proof of concept” tunnel under the City of Los Angeles before appropriate environmental review has been undertaken.³

At that same January public hearing, Culver City Councilmember Meghan Sahli-Wells noted that the project appeared geared more for private transportation than public transit, and described the Project as “half-baked”:

There is a big equity piece that is very concerning, and Metro is working on you know, designing a system that serves everybody. It’s not just cost, it’s access. My fear is that with a private company, private profits on public space, that our community will be left out. And

³ The recorded public hearing is available at: http://culver-city.granicus.com/MediaPlayer.php?view_id=1&clip_id=1173.

BRENTWOOD RESIDENTS COALITION

that the – I don't really trust a private company to watch out for equity because I haven't seen it happen. I haven't.

This is really seductive, right? We all want technology to solve our problems and to make them go away. We've got so many more questions to answer, you know CEQA is one of them, the impacts can be really devastating to communities. As one of the speakers pointed out, you might not be asking for money but you are asking for public space and that is incredibly precious. And so that is something that we'd have to look at very hard and it would be hard to value.

And then there is the Metro system, right? We're, LA County, is leading the biggest infrastructure revolution in the entire country. We've decided to tax ourselves in order to pay for a system that serves us all. And to me this looks like competition for something that, you know, we know actually works.

....

Again, you know from a technology standpoint, from all of the videos you can see online, it looks super-sexy, super-easy, but it's half-baked. It's half-baked from a public perspective.

And public commenter Alex Fisch (recently elected to the Culver City Council), noted the public/private details that must be worked out before it is appropriate for a public agency to consider approving such a project, including the use of an important public asset to a private company, protection against harm to existing infrastructure, and vital safety considerations:

[I]t's great that they don't want to put public cash into the system, but they are absolutely suggesting that we capitalize the investment with public assets, namely underground space that may be useful to the public someday, and additionally may encroach on utilities. And one of the biggest expenses with the 405 widening was unexpected utilities. If a tunneling company strikes an unmapped utility with a million-dollar capitalization, who is left holding the bag?

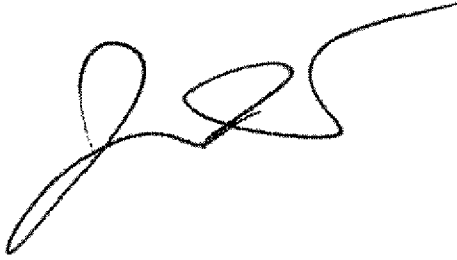
Relatedly, if there is an accident underground, our first responders may be the people who are called to respond in an exotic rescue situation without, potentially without training or with us bearing the expense of training them for tunnel rescues. And if The Boring Company were to go bankrupt and disappear after putting an access hole in Culver City, who is going to guard that hole in the ground?

Based on all of the above, it is evident that the Class 32 Categorical Exemption is not appropriate for the proposed Project and it is premature from a public policy and transparency standpoint for the City to consider approval of the Project without significantly more information presented to decisionmakers and members of the public. We urge the Public Works and Gang Reduction Committee to deny the requested exemption and require the applicant and City to go through a more appropriate and transparent public hearing process for such a highly impactful project.

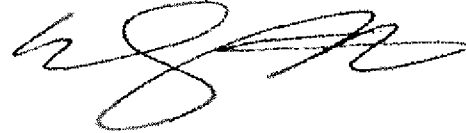
BRENTWOOD RESIDENTS COALITION

Thank you for the opportunity to provide these comments.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large loop followed by several smaller loops and a long horizontal stroke extending to the right.

John P. Given

A handwritten signature in black ink, featuring a large, stylized 'W' followed by several loops and a horizontal stroke.

Wendy-Sue Rosen