Communication from Public

Name: Jamie Hall
Date Submitted: 02/05/2020 09:52 AM
Council File No: 19-1533
Comments for Public Posting: Please see the attached supplemental comment letter.

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

*ALSO Admitted in Texas

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

February 5, 2020

VIA ELECTRONIC MAIL

Leyla Campos, Legislative Assistant
Michelle Carter, Planner
c/o PLUM Committee Members
Los Angeles City Planning Department
200 N. Spring Street, Room 763
Los Angeles, CA 90012
michelle.carter@lacity.org
clerk.plumcommittee@lacity.org

RE: Supplemental SCPE Comments on La Brea Bliss Project (623-671 South La Brea Avenue); DCP Case Nos. ZA-2019-1744, VTT-82618, ENV-2019-1736; Council File No. 19-1533;

Dear Honorable Planning Land Use Management Committee:

This Office respectfully writes on behalf of UNITE HERE Local 11 and its members (collectively "Local 11") to provide the City of Los Angeles ("City") the following supplemental comments regarding the Sustainable Communities Project Exemption ("SCPE") for the eight-story, 201,123 square foot ("SF") mixed-use Bliss project including 121 residential units and 125 guest rooms ("Project") on a 12-lot site at 623-671 South La Brea Avenue ("Site") proposed by La Brea Bliss, LLC on behalf of CGI Strategies ("Applicant").

In short, the Council cannot approve or finally "determine" the Bliss Project's SCPE exemption now before the actual Bliss Project's land use entitlements[1] (which are still pending a decision before the Zoning Administrator ("ZA") who held a public hearing on October 23, 2019) are considered and approved ("Project Entitlements"). Doing so violates the California

[1] City 10/23/19 Hearing Notice for ZA-2019-1744, VTT-82618 (seeking approval of Vesting Tentative Tract Map, TOC Incentives, Master Conditional Use Permit, Conditional Use Permit, and Site Plan Approval [collectively "Entitlements"]), http://bit.ly/2uE7LEK.

Environmental Quality Act ("CEQA").[2]

The SCPE rules of Pub. Res. Code Sections 21155.1 and 21155.2 obviously envision that the legislative body will decide and approve the SCPE concurrently along with the underlying land use project entitlement approvals – not beforehand with nonsensical split-decisionmaking as is occurring here in violation of CEQA's longstanding informed decisionmaking rules.

The bottom line is the Bliss SCPE cannot be approved or final until the City approves the underlying Bliss Project Entitlements. The City Attorney must concede or clarify this point.

If the City wants to change its existing land use entitlement approval to allow the City Council to simultaneously consider SCPEs along with the Project Entitlements as the initial "lead agency" decisionmaker (supplanting the ZA), so be it. It has had 10 years since the passage of SB 375 to do so. But absent that, the current plan for Bliss' SCPE violates CEQA.

The Council Cannot Hear Only The Bliss SCPE, It Must Also Simultaneously Consider the Bliss Project Entitlements

The Planning Department transmittals for the PLUM agenda[3] for Bliss' SCPE indicates the Council is being asked to make a "determination" on the Bliss SCPE exemption under CEQA[4] – but not the Bliss Project Entitlements. We assume the plan is that Council will finalize the Bliss SCPE and then send it to down to the Zoning Administrator who then will rely on it (presumably once Council makes its "determination" the City will argue the ZA cannot change or modify the SCPE) in deciding the Bliss Project Entitlements.

This plan violates CEQA. *If the Council is going to approve or "determine" the Bliss SCEA, it must also consider the Bliss Project Entitlement approvals at the same time*. Having Council decide the Bliss SCPE without the accompanying Bliss Project Entitlements, and then the ZA later deciding the Project Entitlements relying on an already approved or final SCPE (that the ZA cannot change) violates 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

[2] Inclusive of State CEQA Guidelines, 14 Cal. Code Regs. § 1500 et seq. ("CEQA Guidelines").

[3] http://clkrep.lacity.org/onlinedocs/2019/19-1533_rpt_PLAN_12-02-2019.pdf

[4] The PLUM agenda itself does not indicate if a determination or decision is actually proposed for the Bliss SCEA. https://ens.lacity.org/clk/committeeagend/clkcommitteeagend26137634_01142020.html

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 City's apparent plan of having Council "determine" the Bliss SCPE, and then having the ZA later decide the Bliss Project Entitlements relying on the already approved, final SCPE violates these exact same CEQA split decisionmaking principles. _If the Council is going to approve or "determine" the Bliss SCEA, it must also consider at the same time the Bliss Project Entitlements approvals_. Conversely, if the ZA is going to approve the Bliss Project Entitlements, she must be able to "determine" the CEQA compliance and make any appropriate changes to the CEQA document as necessary – it is unlawful for her as the initial Bliss Project Entitlements decisonmaker to be required to rely on an already decided SCPE that improperly was approved before the Bliss Project Entitlements. To the extent complying with these rules will require a new clarifying City ordinance or approval process for projects needing land use entitlements and SCPEs and SCEAs, so be it. But the current plan for Bliss' SCPE violates CEQA.

Council Cannot Finalize the SCPE Before the Project Entitlements Are Actually Approved

It is well established that an agency cannot approve a CEQA document or trigger the statute of limitations by filing a NOE or NOD for a project before it approves the project itself. *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 423-425, fn. 18 (CEQA document cannot be approved and Notice of Exemption filed before the underlying project actually is approved.) "Requiring project approval before filing a notice of exemption and triggering the challenge period comports with general principles underlying CEQA. A contrary conclusion would be tantamount to requiring opponents to bring challenges before a project is finally approved, lest they be barred by the statute of limitations. It would also thwart attempts to resolve disputes over a project." *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963, fn. 16. "It is not the purpose of CEQA to foment prophylactic litigation." *Id*.

This means Council cannot finalize of finally "decide" the Bliss Project SCPE or SCEA – or trigger any CEQA statute of limitations – before the Project Entitlements are actually approved by the ZA. The bottom line is the Bliss SCPE are not final until and if the ZA approves the Bliss Project Entitlements relying on the SCPE. The City Attorney must concede or clarify this point.

SB 375 Envisions the SCPE Approval And the Project Land Use Entitlement Approvals Are to Be Heard Together

The procedures in SB 375 – PRC Sections 21155.1 and 21155.2 – for approving a project with a SCEA or SCPE require the lead agency to conduct a public hearing and adopt findings. Section 21155.2(b)(6) requires that the public hearing be conducted by the legislative body, with the exception that the public hearing may be conducted by a Planning Commission if "local ordinances allow a direct appeal of approval of a document prepared under [CEQA] subject to a fee not to exceed five hundred dollars ($500)."

PRC Sections 21155.1 and 21155.2(b) obviously envision that the legislative body will be deciding and approving the SCPE or SCEA concurrently along with the underlying land use project approvals – not beforehand with nonsensical split-decisionmaking as is occurring here in violation of CEQA's longstanding informed decisionmaking rules identified above.

For example, Sections 21155.1 and 21155.2 require findings that "any applicable mitigation measures or performance standards or criteria set forth in the prior environmental impact reports, and adopted in findings, have been or will be incorporated into the transit priority project, that the "developer provides sufficient legal commitments" on affordable housing and that "changes or alterations have been required in or incorporated into the project." How can these findings and commitments be made unless the actual project approvals with the actual land use entitlements approval conditions are also accompanying the SCPE or SCEA? The entitlements and SCPE are supposed to be heard together – consistent with CEQA's decisionmaking rules.

As the City Council motion[5] that led to the new CEQA Appeal Ordinance notes: "Inasmuch as many types of land use approvals that could quality as a transit priority project may be eligible for use of a SCEA would not be considered by the City Council as the initial decisionmaker or on appeal, it is inefficient to require a City Council hearing on the SCEA prior to SCEA adoption and project approval." That is exactly right.

If the City wants to change its existing land use approval to allow the Council to simultaneously consider SCPEs and SCEAs along with the Project Entitlements as the initial "lead agency" decisionmaker (instead of the ZA), it should pursue that option. It has had ten years since SB 375 to do so. But absent that, the current plan for Bliss' SCPE appears to violate CEQA.

CEQA Findings Cannot Be Made Without Addressing Local 11's SCPE comments, which is unaddressed in DCP's Jan. 24 Letter

The Department of City Planning ("DCP") letter dated January 24, 2020 does not address Local 11's prior comments concerning the adequacy of the Project's SCPE. Admittedly, a Sustainable Communities Project ("SCP") exempted from CEQA must comply with all criteria listed under PRC Section 21155.1 subdivision (a) and (b) (*see* DCP Letter, p. 2). In short, Local 11's prior comments identified specific performance-based criteria contained in SCAG's RTP/SCS and Program EIR that the Project's SCPE ignores; numerous flaws in the Project's energy and water-efficiency reports; and asked the City to seek clarification from SCAG whether hotel uses were analyzed as residential uses under its RTP/SCS and, thus, the Project's 125-rooms and 121-residential units should collectively be subject to the applicable 200 residential unit limit—*all of which is relevant to the SCP findings here*. *See* PRC § 21155.1 suds., (a)(8), (b)(2), and (b)(5).

Neither the Project's SCPE, nor DCP's letter addresses these issues and, thus, there remain data/analytical gaps showing the Project qualifies as a SCP exempted from CEQA or that the City's analysis is staying in step with evolving scientific knowledge and state regulatory schemes. *See e.g., Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 227-230; *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 518-519; *Cleveland National Forest Foundation v. San*

[5] http://clkrep.lacity.org/onlinedocs/2018/18-0066_mot_01-23-2018.pdf

Diego Assn. of Governments (2017) 17 Cal.App.5th 413, 444. In sum, absent addressing Local 11's concerns, the City lacks substantial evidence to support its CEQA findings here.

Sincerely,

Jamie T. Hall