

Landmark Apartments

Golden State Environmental Justice Alliance Comments On the Partially Revised Final EIR

A. Comment Letter

Subsequent to the close of the comment period on the Recirculated Energy Analysis, November 19, 2018, Golden State Environmental Justice Alliance (GSEJA) provided an additional comment letter dated January 14, 2019. The City has no obligation to respond to late comment letters. (Pub. Resources Code, § 21091 (d)(1); Pub. Resources Code, § 21092.5(c) (“Nothing in this section requires the lead agency to respond to comments not received within the comment periods specified in this division, to reopen comment periods, or to delay acting on a negative declaration or environmental impact report.”).) Although a lead agency is not required to respond to late comments, it may choose to do so. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1110, citing Pub. Resources Code, § 21091 (d)(1); CEQA Guidelines, § 15088; *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911, 925, fn. 10.) Each of the comments raised in GSEJA’s comment letter are set forth below, followed by the City’s response to each of the written comments provided for information purposes only.

Comment No. 1

On behalf of the Golden State Environmental Justice Alliance and neighbors of the project, this is to comment under the California Environmental Quality Act (“CEQA”) upon the above-captioned Landmark Apartments Recirculated Final Environmental Impact Report (“RFEIR”) in connection with the City’s Energy Analysis for the Landmark Apartments Project (“the Project”).

Response to Comment No. 1

This introductory comment is noted for the administrative record and will be forwarded to the decision-makers. It is not clear whether or which “neighbors of the project” the author represents. The law firm that submitted the letter represents the Golden State Environmental Justice Alliance, an entity that does not have members and whose Executive Director resides outside of Los Angeles County.

Comment No. 2

City Review

The RFEIR's Notice of Availability indicates that comments on the RFEIR "will be included in the case file for the record and will be provided to the decision-maker for consideration," yet it does not indicate who that decisionmaker is or whether or when there will be a hearing.

Response to Comment No. 2

The Los Angeles City Council was the final decision-maker for all of the Project Approvals, including the certification of the Project EIR. The Court's June 28, 2018, Ruling/Order (Court Ruling) ordered the City only to decertify the Project energy impact analysis (and subsequently recertify the Recirculated Energy Analysis). As such, the decision-maker is again the Los Angeles City Council on behalf of the City. The Planning and Land Use Committee of the City Council will hold a public hearing at 2:30 p.m. on February 12, 2019, as will be appropriately noticed, for the City Council to consider decertifying the energy impact analysis in the EIR and certifying the Recirculated Energy Analysis.

Comment No. 3

The City's process in issuing an RDEIR without vacating any of its approvals of the Project violates CEQA, as the Supreme Court made abundantly clear in *Save Tara v. City of West Hollywood* (2008) 45 Cal. 4th 116. In *Save Tara*, the City of West Hollywood publicly indicated that it intended to approve a housing development project for low-income seniors, and entered into an agreement with the developers to do so conditioned upon CEQA review. The Supreme Court held the City's actions contravened CEQA:

In Laurel Heights Improvement Ass'n v. Regents of University of California [("*Laurel Heights I*") (1988) 47 Cal. 3d 376 [394]... [w]e... observed that at a minimum an EIR must be performed before a project is approved, for "[i]f post approval environmental review were allowed, EIR's would likely become nothing more than post hoc rationalizations to support action already taken."

45 Cal. 4th at 130. The Court then wrote that:

[L]imiting approval to unconditional agreements that irrevocably vest development rights would ignore what we have previously recognized, that postponing environmental analysis can permit "bureaucratic and financial momentum" to build irresistibly behind a proposed project, "thus providing a strong incentive to ignore environmental concerns."

45 Cal. 4th at 135, quoting *Laurel Heights I*, 47 Cal. 3d at 395. Here, the City actually has entered into an unconditional development agreement, and the Court's concerns apply here. The *Save Tara* Court concluded,

The full consideration of environmental effects CEQA mandates must not be reduced "to a process whose result will be largely to generate paper, to produce an EIR that describes a journey whose destination is already predetermined."

...[P]ostponing EIR preparation until after a binding agreement for development has been reached would tend to undermine CEQA's goal of transparency in environmental decisionmaking. Besides informing the agency decision makers themselves, the EIR is intended "to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action." When an agency reaches a binding, detailed agreement with a private developer and public commits resources and governmental prestige to that project, the agency's reservation of CEQA review until a later, final approval stage is unlikely to convince public observers that before committing itself to the project the agency fully considered the project's environmental consequences. Rather than a "document of accountability," the EIR may appear, under these circumstances, a document of post hoc rationalization.

45 Cal. 4th at 135-136, quoting *Natural Resources Defense Council, Inc. v. City of Los Angeles* (2002) 103 Cal. App. 4th 268, 271; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 86; *Laurel Heights I*, 47 Cal. 3d at 392. This is precisely what the City of Los Angeles engages in here, and this is why the City should have rescinded its approvals and reconsidered them, neither of which it appears to be doing. As in *Save Tara*, the City has already "contracted away its power to consider the full range of alternatives and mitigation measures required by CEQA" regarding energy analysis. 45 Cal. 4th at 138. And as in *Save Tara*, the City's delegation of the decisionmaking that it has referred to is inadequate absent a provision for appeal to the City Council. See *Save Tara*, 45 Cal. 4th at 141, citing *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 307.

Response to Comment No. 3

The Court Ruling and subsequently issued October 2, 2018 Writ of Mandate were clear that all of the Project Approvals stand and that only the energy analysis of the EIR was to be decertified. Thus, the commenter is correct that the City is not vacating any of the Project Approvals. The commenter is incorrect, however, that the City was required to do so, even under the *Save Tara* case. There simply cannot be a post hoc rationalization here, where the Project has already been approved and those Project approvals remain valid. *Save Tara* concerned the opposite situation, action by the City that appeared to set a course of action for project approval before environmental impact analysis. Here, full

environmental impact analysis was conducted for the Project before the City approved the Project, and the Court Ruling upheld all of the Project Approvals and all of the environmental impact analyses in the EIR, except the energy impact analysis. In response to the Court Ruling, the City prepared and recirculated the Recirculated Energy Analysis, which corrects the factual error cited by the Court. Like the original EIR, the Recirculated Energy Analysis concludes that the Project's energy impacts will be less than significant and thus no additional project design features or mitigation measures are warranted. The City Council will consider the Recirculated Energy Analysis and retains the discretion to disagree with its conclusions and decline to certify it or to require additional project design features or mitigation measures.

Comment No. 4

Further Comments on the RFEIR

Our further comments generally track their appearance in the RFEIR.

Response to Comment No. 2-2 asserts that CEQA Guidelines Appendix F “does not contain a significance threshold and nor does Public Resources Code (PRC) section 21100(b)(3).” We disagree. See, e.g., *California Clean Energy Comm. v. City of Woodland* (“CCEC”) (2014) 225 Cal. App. 4th 173, 209, citing Appendix F, § I, requiring the “wise and efficient use of energy.” We further disagree with your assertion, without support, that you comply with CCEC and *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal. App. 5th 256.

Response to Comment No. 4

As discussed in Response to Comment No. 2-2 of the Partially Revised Final EIR, the Recirculated Energy Analysis was prepared in compliance with the Court Ruling as well as CEQA Guidelines section 15088.5. Appendix F does not contain a significance threshold, nor does Public Resources Code (PRC) section 21100(b)(3). Rather, Appendix F was prepared in response to the requirement in PRC section 21100(b)(3), which states that an EIR shall include a detailed statement setting forth “[m]itigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.” To the extent that PRC section 21100(b)(3) and/or Appendix F can be read to suggest an appropriate threshold of significance, such threshold would be whether the Project would consume energy in a wasteful, inefficient or unnecessary manner. This mirrors precisely one of the two thresholds employed by the City. In any event, lead agencies have full authority under CEQA to choose thresholds of significance deemed most appropriate for the entity, the project and the project locale. (See CEQA Guidelines § 15064(b)(1); *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068; *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655; *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 192; See also

Guidelines § 15064.7(b) [“Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects.”].) In exercising this discretion, a lead agency must make its determinations based to the extent possible on scientific and factual data. (CEQA Guidelines § 15064(b)(1).) Here, there is clear evidence that the significance determinations are based on scientific and factual data.

The City exercised such lawful discretion by using two energy significance thresholds based upon Appendix F, PRC section 21100(b)(3) and the 2006 LA CEQA Thresholds Guide:

Significance Threshold No. 1—With regard to energy infrastructure, the Project would result in significant impacts if it would result in an increase in demand for electricity or natural gas or other sources of energy that exceed available supply or distribution infrastructure capabilities that could result in the construction of new energy facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

Significance Threshold No. 2—The Project would result in significant impacts with regard to energy use and consumption, if it would cause wasteful, inefficient, and unnecessary consumption of energy.

These significance thresholds are consistent with the holdings in *Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal. App. 4th 173, and *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal. App. 4th 256. Both cases required that the energy analysis address the many considerations required under Appendix F. While the commenter may disagree, Appendix F does not provide an adopted significance threshold for energy use and the cited cases do not establish significance thresholds, but rather concern what analysis is/may be required. The Recirculated Energy Analysis contains a thorough analysis of the criteria outlined in Appendix F.

Comment No. 5

Response to Comment No. 2-3 cites to the RDEIR for the proposition that “As shown in Table 3 on page 18, the project design features would reduce electricity demand by 7 percent, natural gas demand by 5 percent, and transportation energy demand by 16 percent.” Your claim that energy demand is reduced by these percentages is not based on substantial evidence and is opaque as to where these numbers come from. See *Cmties for a Better Env’t v. City of Richmond* (2010) 184 Cal. App. 4th 70, 85 (discussing “virtually unreadable chart” “with no narrative explaining the data or providing any reference to source documents”).

Response to Comment No. 5

Response to Comment No. 2-3 of the Partially Revised Final EIR correctly cited, in Table 3 on page 18 of the RDEIR, the project design features that would reduce electricity demand by 7 percent, natural gas demand by 8 percent and transportation energy demand by 16 percent. Footnotes b through d of Table 3 of the RDEIR provide a description of the specific project design features for each source of energy use.

The calculations in Appendix B-3, Summary of Energy Efficiency, of the RDEIR provide further details and the modeled results were provided in the CalEEMod Output files. As shown therein, the reduction in electricity reflects implementation of CalGreen and Project Design Feature C-1 (LEED Silver), which together result in a 10 percent reduction in Title 24 source electrical usage or four percent in total building electricity (i.e., total of Title-24, non-Title 24, and lighting sources). Electricity from water usage (i.e., electricity required to supply, treat, and distribute water) is reduced by 20 percent, consistent with the City of Los Angeles Green Building Code (Chapter IX, Article 9, of the LAMC). The total combined electricity usage for the Project (i.e., building and water usage) is thus reduced by seven percent as a result of these measures. Similar to electricity, the reduction in natural gas reflects implementation of CalGreen and Project Design Feature C-1 (LEED Silver), which together result in a 10 percent reduction in Title 24 source natural gas usage or eight percent in building natural gas usage. In addition, Project Design Feature C-2 prohibits installation of fireplaces within the residences. The total combined natural gas usage for the Project is reduced by eight percent as a result of these measures.

Project design includes characteristics that would reduce mobile source energy usage through a reduction in vehicle miles travelled (VMT) as compared to a standard project within the Air Basin as measured by the air quality model (CalEEMod). CalEEMod is a statewide land use emissions computer model designed to provide a uniform platform for government agencies, land use planners, and environmental professionals to quantify potential criteria pollutant and GHG emissions associated with both construction and operations from a variety of land use projects. CalEEMod was developed in collaboration with the air districts of California, which provided data (e.g., emission factors, trip lengths, meteorology, source inventory, etc.) to account for local requirements and conditions. The model is considered by the SCAQMD to be an accurate and comprehensive tool for quantifying air quality and GHG impacts from land use projects throughout California.¹

CalEEMod provides VMT reduction measures from CAPCOA's guidance document, *Quantifying Greenhouse Gas Mitigation Measures*,² which identifies the VMT reductions for

¹ California Air Pollution Control Officers Association, *California Emissions Estimator Model, CalEEMod™*, www.caleemod.com.

² CAPCOA, *Quantifying Greenhouse Gas Mitigation Measures*, 2010.

a project site relative to the standard VMT rates in CalEEMod. As discussed in the CalEEMod User's Guide,³ "the user checks the box next to each mitigation measure and fills in the appropriate information as required." The 16 percent VMT reduction associated with project design features reflects the transit/walk credit provided in the Traffic Study (Appendix B-2 of the RDEIR) and CAPCOA Measures LUT-1 (Increase Project Site Density) and LUT-6 (Integrate Below Market Rate Housing) provided in Appendix B-1 of the RDEIR (Calculation of Vehicular Trips and VMT Reduction Measures).

Comment No. 6

Response to Comment No. 2-5 claims that the revisions to the CEQA Guidelines regarding energy impacts had not been adopted. This is not actually true. The Guidelines revisions were adopted by the Secretary of Natural Resources in November of 2018; they became law on the day you issued your Responses to Comments, January 3. Your RDEIR should have complied with their guidance.

The Response to Comment states that the City need not comply with these Guidelines because "they were proposed well after the Project Notice of Preparation." First, the premise is false: the newly adopted amendments to the CEQA Guidelines were first proposed in December of 2013. Second, the presumption that the law regarding CEQA is frozen in time for a project as of the date a Project's Notice of Preparation is issued is unsound. While it may be true that a project's *baseline* is *sometimes* set as of the time of the Notice of Preparation, the *law of CEQA* is not.

The Response to Comment also alleges that several of the state plans for energy efficiency which GSEJA mentioned in its comment letter were supposedly "statewide GHG policies" which the DEIR "fully assessed" in the GHG section of the DEIR, upheld by the Court. As discussed further below, that an energy policy *also* concerns GHGs does not mean that the City can get away with not addressing it in terms of energy policy. The two are related, as Appendix F has always made clear in its requiring the consideration of renewable energy.

Response to Comment No. 6

As discussed above in Response to Comment No. 4, the Recirculated Energy Analysis was prepared in compliance with the Court Ruling as well as CEQA Guidelines section 15088.5. The CEQA Guidelines provide that revisions to the Guidelines are prospective and the new requirements will apply to steps in the CEQA process not yet undertaken by the effective date of the revisions. (CEQA Guidelines, § 15007, subd. (b).) "If a document meets the content requirements in effect when the document is set out for public review, the document shall not need to be revised to conform to any new content

³ CAPCOA , *CalEEMod User's Guide*, November 2017.

requirements in guideline amendments taking effect before the document is finally approved.” (CEQA Guidelines, § 15007, subd. (c).) The amendments became effective on December 28, 2018, per the Governor’s Office of Planning and Research website, which also confirms this information⁴:

“The revised Guidelines will apply to a CEQA document only if the revised Guidelines are in effect when the document is sent out for public review. (CEQA Guidelines, § 15007, subd. (c).)”

Therefore, the amendments to the Guidelines would only have applied if the Recirculated Energy Analysis had not yet been circulated for public review and comment before the Guidelines changes became effective. The City circulated the Recirculated Energy Analysis in October 2018, months before the effective date of the amendments. Therefore, the amendments do not apply.

Furthermore, the recent amendments to the CEQA Guidelines do not appear to include new substantive requirements related to energy. The amendments merely mirror the holdings in *Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal. App. 4th 173, and *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal. App. 4th 256, both of which require energy analysis consistent with CEQA Guidelines Appendix F. The Recirculated Energy Analysis fully comports with the court decisions and Appendix F. The two energy checklist questions added to CEQA Guidelines Appendix G also do not add substantive requirements since they are based on the pre-existing Appendix F, and lead agencies are not obligated to employ Appendix G questions as thresholds of significance anyhow, but are free to fashion their own thresholds based upon their experience and professional judgment.

Finally, the allegation that the Recirculated Energy Analysis is deficient for failing to comport with the amended CEQA Guidelines fails because the Recirculated Energy Analysis is in fact wholly consistent with such amended Guidelines. New CEQA Guidelines § 15126.2(b), entitled “Energy Impacts,” provides that an EIR’s energy analysis should consider the information presented in Appendix F. The Recirculated Energy Analysis does that.

Appendix F does not contain a significance threshold, nor does Public Resources Code (PRC) section 21100(b)(3). Rather, Appendix F was prepared in response to the requirement in PRC section 21100(b)(3), which states that an EIR shall include a detailed statement setting forth “[m]itigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient,

⁴ Governor’s Office of Planning and Research, *Current CEQA Guidelines Update*, <http://www.opr.ca.gov/ceqa/updates/guidelines/>, viewed January 25, 2019.

and unnecessary consumption of energy.” Here, the City exercised its lawful discretion to use two energy significance thresholds based upon Appendix F, PRC section 21100(b)(3) and the 2006 LA CEQA Thresholds Guide:

Significance Threshold No. 1—With regard to energy infrastructure, the Project would result in significant impacts if it would result in an increase in demand for electricity or natural gas or other sources of energy that exceed available supply or distribution infrastructure capabilities that could result in the construction of new energy facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

Significance Threshold No. 2—The Project would result in significant impacts with regard to energy use and consumption, if it would cause wasteful, inefficient, and unnecessary consumption of energy.

While there is no requirement that the City must rely on the CEQA Guidelines Appendix G checklist questions as significance thresholds, the Recirculated Energy Analysis does answer the two questions in the amended Guidelines Checklist on Energy, section VI:

VI. ENERGY.

Would the project:

- a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation?
- b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

The first question on whether the Project would result in “wasteful, inefficient, or unnecessary consumption of energy resources” was directly employed as a significance threshold in the Recirculated Energy Analysis. (See Recirculated Energy Analysis, pp. 5, 15 and Significance Threshold No. 2, set forth above.)

As for the second question in the checklist as to whether the project would “conflict with or obstruct a state or local plan for renewable energy or energy efficiency,” it was not expressly identified as a threshold in the Recirculated Energy Analysis. However, it was addressed in the analysis. For example, the Recirculated Energy Analysis discusses the Los Angeles Department of Water and Power’s (LADWP) policies regarding energy

efficiency as a result of SB 350's objective to procure electricity from renewable sources. It states:

One of the objectives of SB 350 is to increase procurement of California's electricity from renewable sources from 33 percent to 50 percent by 2030. Accordingly, LADWP is required to procure at least 50 percent of their energy portfolio from renewable sources by 2030. The current sources of renewable energy procured by LADWP include wind, solar, and geothermal sources. These sources account for 29 percent of LADWP's overall energy mix in 2016, the most recent year for which data are available. This represents the available off-site renewable sources of energy that would meet the Project's energy demand.

(Recirculated Energy Analysis, p. 17, 20-21.) Thus, the analysis addresses consistency with both state and local plans for renewable energy.

The Project would also comply with the regulatory requirements for design of new buildings, such as CALGreen Code and California Building Energy Efficiency Standards (p. 16-17), Section 110.10 of Title 24, mandatory requirements for solar-ready buildings, and Corporate Average Fuel Economy standards, which would result in more efficient use of transportation fuels (lower consumption) (p. 20). Thus, the analysis addresses consistency with plans for energy efficiency.

Regarding which state plans should be analyzed for energy efficiency within the Recirculated Energy Analysis, Response to Comment No. 2-5 of the Partially Revised Final EIR correctly identified that SB 32, Executive Order B-55-18 and the 2017 CARB Scoping Plan all concern statewide GHG policies. The EIR fully assessed all applicable GHG plans and policies concerning the Project and determined that the Project would be consistent with, and would not obstruct the implementation of, those plans and policies. The Recirculated Energy Analysis did specifically address SB 350 on pages 20 and 21. There was no need to repeat the analysis of consistency with plans and policies that was set forth in the GHG section of the EIR that was specifically upheld and left undisturbed by the Court Ruling. The Project is consistent with such plans and policies whether one considers the purpose of them to be to curtail GHGs, save energy and increase the renewable energy portfolio, reduce transportation emissions, or any other function. Based on the well-supported analysis and given that there is no evidence that the Project would conflict with or obstruct a state or local plan for renewable energy or energy efficiency, the second new CEQA Guidelines Appendix G energy checklist question has been fully addressed.

To summarize, the amendments to the CEQA Guidelines did not legally pertain to the Recirculated Energy Analysis; such amendments made no fundamental changes to the manner in which energy impacts are to be assessed in an EIR; and, in any event, the Project EIR, as altered by the Recirculated Energy Analysis, is completely consistent with the amended CEQA Guidelines.

Comment No. 7

Response to Comment No. 2-6. We commented that the RDEIR's thresholds were significantly more lenient than those permitted under Guidelines Appendix F. This is true whether you are looking to the new or the old Guidelines because Appendix F did not change. The City has no discretion to ignore the CEQA Guidelines. While the City claims that "The Commenter wrongly characterizes the City's significance thresholds as 'lenient tests' while providing no basis or evidence for its characterization," our letter is replete with law, evidence and examples as to why the City's tests are too lenient.

Response to Comment No. 7

Appendix F does not contain a significance threshold, nor does Public Resources Code (PRC) section 21100(b)(3). Here, the City exercised its lawful discretion to use two energy significance thresholds based upon Appendix F, PRC section 21100(b)(3) and the 2006 LA CEQA Thresholds Guide. As discussed above, in Response to Comment No. 6, the updates to the CEQA Guidelines were not required to be considered in the Recirculated Energy Analysis, but the analysis within that document nonetheless comports with such amended regulations. The Commenter still wrongly characterizes the City's significance thresholds as "lenient tests" while providing no basis or evidence for its characterization. The fact that the City's thresholds use language directly from CEQA Guidelines Appendix F and from the new CEQA Guidelines section 15126(b) on energy analysis shows that the City's thresholds are not too lenient or inappropriate in any way.

Comment No. 8

Response to Comment No. 2-7. The Response states: "Regarding whether the 'Project would conflict with adopted energy conservation plans,' the 2006 LA CEQA Thresholds Guide identifies this as a screening criteria [sic], not a significance threshold." Well then, see LA CEQA Thresholds Guide section M.4.2.a, "Significance Threshold," which includes as a consideration, "The degree to which the project design and/or operations incorporate energy conservation measures, particularly those that go beyond City requirements." See also Section M.4.2.b., "Methodology to Determine Significance," providing that the City should have provided under "Environmental Setting" a "Summary of adopted energy conservation plans and policies relevant to the project." The City's Project conflicts with energy conservation plans and policies, and therefore mitigation should have been adopted (and it is required for all projects under Appendix F and Pub. Res. Code § 21100(b)(3)).

Response to Comment No. 8

The City exercised its lawful discretion to use two energy significance thresholds based upon Appendix F, PRC section 21100(b)(3) and the 2006 LA CEQA Thresholds Guide. The Comment does not raise any analytic or evaluative issues with the Recirculated Energy Analysis. As discussed in Response to Comment No. 2-7 of the Partially Revised

Final EIR, the 2006 LA CEQA Thresholds Guide identifies whether the “Project would conflict with adopted energy conservation plans,” as a screening criteria, not a significance threshold. If the answer is yes, then “further study in an... EIR may be required.” Although the Project would not conflict with adopted energy conservation plans as demonstrated in the Recirculated Energy Analysis (and the commenter provides no evidence to the contrary), the Recirculated Energy Analysis provides the “further study” that the 2006 LA CEQA Guidelines suggest.

The 2006 LA CEQA Guidelines recommends that a determination of significance shall be made on a case-by-case basis, considering the following factors: (1) the extent to which the project would require new (off-site) energy supply facilities and distribution infrastructure, or capacity enhancing alterations to existing facilities; (2) whether and when the needed infrastructure was anticipated by adopted plans; and (3) the degree to which the project design and/or operations incorporate energy conservation measures, particularly those that go beyond City requirements. The Recirculated Energy Analysis considered the first two factors under the discussion of Significance Threshold No. 1 and concluded that construction and operation of the Project would not result in an increase in demand for electricity, natural gas, or transportation energy that exceeds available supply or distribution infrastructure capabilities that could result in the demand for the construction of new energy facilities or expansion of existing facilities, the construction of which could cause significant environmental effects. Therefore, Project impacts related to energy infrastructure and facilities would be less than significant.

The Recirculated Energy Analysis considered the third factor under the discussion of Significance Threshold No. 2 and concluded that construction and operation of the Project would not cause wasteful, inefficient, and unnecessary consumption of energy during construction or operation. As shown in Table 3 on page **Error! Bookmark not defined.** of the Recirculated Energy Analysis, the project design features would reduce electricity demand by 7 percent, natural gas demand by 8 percent and transportation energy demand by 16 percent. As discussed above in Response to Comment No. 5, project design features implemented for the Project “go beyond City requirements.” Examples include Project Design Feature C-1 (LEED Silver), which results in a 10 percent reduction in a building’s electrical and natural gas usage for Title 24 sources. Project Design Feature C-2 prohibits installation of fireplaces within the residences. Mobile source energy use reduction reflected transit/walk credits and CAPCOA Measures LUT-1 (Increase Project Site Density) and LUT-6 (Integrate Below Market Rate Housing). These project design features all “go beyond City requirements.” This comment does not provide evidence to the contrary.

As discussed above in Response to Comment No. 6, the RDEIR correctly identified that SB 32, Executive Order B-55-18 and the 2017 CARB Scoping Plan all concern statewide GHG policies. The Project EIR fully assessed all GHG plans and policies applicable to the Project and determined that the Project would have a less than significant

GHG impact, and the Court Ruling upheld that analysis and determination. So, while the GHG impact analysis within the Project EIR considered consistency with relevant policies in compliance with CEQA Guidelines section 15064.4, the energy significance thresholds are not policy consistency thresholds. Please note that the Recirculated Energy Analysis did specifically address SB 350 on pages 20 and 21.

Comment No. 9

Response to Comment No. 2-8 claims that credit may be taken for the reduction of the number of hearths in residences because the South Coast Air Quality Management District assumes that 90% of new residences have hearths. This is throughout the District and not in the City of Los Angeles, where they are truly not expected in apartment units.

Response to Comment No. 9

Consistent with Project Design Feature C-2, this Project has been designed to include up to four common area natural gas fire pits instead of including natural gas hearths within the residences. As discussed in Response to Comment No. 2-8 of the Partially Revised Final EIR, SCAQMD's CalEEMod default input for residential fireplaces within the South Coast Air Basin is 90 percent (e.g., 90 percent of new residential units would include fireplaces). CalEEMod does not provide specific input values for the City of Los Angeles and the most representative geographical area for the Project Site is the County of Los Angeles. The County of Los Angeles default input also includes an assumption that 90 percent of new residential units would include fireplaces. As the City of Los Angeles is within the County of Los Angeles, the default factor within CalEEMod would apply. As such, it was appropriate for the Recirculated Energy Analysis to include, in the New Residential Uses and Amenities Without Project Design Features Scenario, the SCAQMD's CalEEMod default for residential fireplaces as it accurately reflects the City's location within the South Coast Air Basin and the County. As CalEEMod allows default inputs to be modified to reflect project-specific information, it was also appropriate to assume no residential fireplaces in the New Residential Uses and Amenities With Project Design Features scenario. This comment does not provide evidence to the contrary.

Comment No. 10

Response to Comment No. 2-12 concerns the City's use of the "former" supermarket and our assertion there is no basis for concluding that the supermarket closed, as opposed to moving elsewhere. There isn't. While you claim our assertion is "speculation," one could more easily assign that term to the conclusion that the supermarket closed and did *not* move elsewhere.

Response to Comment No. 10

This comment again provides no evidence that the former supermarket use “moved elsewhere.” To make such an assumption is sheer speculation, and CEQA does not require the analysis of speculative impacts. (CEQA Guidelines Section 15145.) In response to GESJA’s November 16, 2016 comment letter, additional information was provided documenting the closing of the former supermarket (Eyestone January 2017 Response to GESJA Comment). Specifically, in Response to Comment 3:

[D]ocumentation, in the form of the lease documents, a letter from ABM Parking Management Company, the parking operator on the site, and a news article on the closing of the supermarket, that substantiates the use of the supermarket for more than six months between November 27, 2011, and November 27, 2013, the date of LADOT's approval of the MOU for the Project traffic study, is attached as Appendix B hereto. As set forth in the documentation, Pavilions opened for business on November 8, 1989, and closed on March 9, 2013.

The news article, a March 12, 2013 Patch article titled “West L.A. Pavilions Closes,” includes a quote from the Vons spokesman: “Our Wilshire Pavilions simply did not meet expectations and we have decided to permanently cease operations.” This is substantial evidence that the supermarket was not moved elsewhere as the commenter speculates. In any event, Chapter VI, Baseline Discussion, of the Project EIR addressed Project impacts, including energy impacts, assuming that there was no baseline supermarket use (and thus no credit taken against Project impacts for removal of the supermarket) and concluded less than significant energy use impacts.

Comment No. 11

The City argues in *Response to Comment No. 2-13* that we supposedly “misconstrue[d] information from the CCEC and Ukiah Citizens cases” because, the City claims, “There [sic], the issue with title 24 as that it does not address transportation energy.” This is false. See CCEC, 225 Cal. App. 4th at 211 (“Here, a requirement that [the project] comply with the Building Code does not, by itself, constitute an adequate assessment of mitigation measures that can be taken to address the energy impacts during construction and operation of the project.” See also *Ukiah Citizens*, where the Court ruled that “The EIR also improperly relies on compliance with the building code to mitigate operational and construction energy impacts, without further discussion of the CEQA Guidelines Appendix F criteria.”

Response to Comment No. 11

This comment still misconstrues information from the CCEC and Ukiah Citizens cases. In those cases, the issue with Title 24 was that it does not address transportation energy use from construction and operation. As discussed above in Response to

Comments No. 5 and 8, the Project energy reduction features go well beyond code compliance. As shown in Table 1, Summary of Energy Use During Project Construction, of the Recirculated Energy Analysis, a total of 6,013 kWh of electricity, 69,074 gallons of gasoline, and 121,885 gallons of diesel is estimated to be consumed during Project construction. The Recirculated Energy Analysis goes far beyond consistency with the California Building Code and CALGreen, including design features to achieve LEED silver status, the prohibition of gas hearths in residences, and sustainable design features to reduce vehicle miles traveled. This analysis complies with mandates of CCEC and Ukiah Citizens and demonstrates substantial evidence supporting the City's determination of less than significant energy use impacts under both Significance Thresholds Nos. 1 and 2.

Comment No. 12

In *Response to Comment No. 2-15*, where we pointed out the City has required no appliances or products be Energy Star labeled, as there is no mitigation measure and the PDFs only refer to dishwashers, the City asserts that the certification would apply to "air purifiers, clothes dryers, clothes washers, dishwashers, freezers, and refrigerators." However, there actually is no mitigation measure, and this violates CEQA under *Lotus v. Dept. of Transportation* (2014) 223 Cal. App. 4th 645, 656 & n.8. The City also states here that SB 350 was adopted after the NOP for the Project but that does not mean that the City need not comply with it (or to assess compliance with it under CEQA), as discussed earlier.

The DEIR for this Project was very clear that the developer did not intend to install, and the City did not intend to require, solar panels. The RDEIR made the situation unclear, because the City asserted at pages 17 to 19 that the Project "would specifically include 2,700 square feet of solar panels, or 25 percent of the roof area," and on page 21 that it would not:

It is estimated that a 2,700-square-foot solar area would be capable of generating no more than approximately one to two percent of the residential building's energy needs. Therefore, such an area would not generate enough energy to offset meaningfully the energy use on the Project Site.

Response to Comment No. 12

The *Lotus* case is distinguishable and does not apply in this case. According to the Court of Appeal in the *Lotus* case, the EIR's fatal flaw was that it "fails to identify any standard of significance, much less apply one to an analysis of predictable impacts from the project." Here, the Recirculated Energy Analysis clearly identified significance thresholds for the Project's energy impacts and concluded that the Project's impacts would be less than significant based on these thresholds.

The Project was designed to be energy efficient, to achieve both efficient design and compliance with numerous regulatory standards. It is customary and reasonable for a

residential project to incorporate energy-saving measures at the outset in order to decrease energy costs and to appeal to increasingly-sophisticated, environmentally-conscious housing consumers that demand such features. To these ends, the design included various energy reducing project design features such as Project Design Feature C-1 (specific mandatory requirements of being capable of achieving LEED Silver Certified). As the City determined energy impacts under both significance thresholds are less than significant, no mitigation measures are necessary or required. Thus, the LEED project design feature is not a mitigation measure (although it is enforceable as a project condition). As such, there is no *Lotus* violation because the City has not adopted mitigation measures for significant impacts that were not analyzed and disclosed.

As discussed in Response to Comment No. 2-15 of the Partially Revised Final EIR, SB 350 requires doubling of energy efficiency savings from electricity and natural gas end-uses by 2030. This reduction will largely be implemented through more stringent requirements in subsequent CALGreen Codes and State regulations and would not be applicable to the Project. SB 350 was specifically addressed in the Recirculated Energy Analysis at pages 20 and 21.

The Recirculated Energy Analysis provided additional clarification regarding solar panels. Compliance with Title 24 Section 110.10 requires a residential high rise to provide at least 15% of the roof area to be solar ready – it does not require the installation of solar panels. Separately, the Recirculated Energy Analysis evaluated the amount of available roof area where solar panels could be installed – 2,700 square feet, which equates to 25% of the roof area. There is sufficient space to comply with the Section 110.10 mandate for solar ready. The Recirculated Energy Analysis unintentionally omitted the term “infrastructure” from the statement “would specifically include 2,700 square feet of solar panels” consistent with the beginning of the sentence. The complete, corrected statement should read “Furthermore, the Project would comply with Section 110.10 of Title 24, which includes mandatory requirements for solar-ready buildings, and would specifically include 2,700 square feet of solar panel infrastructure, or 25 percent of the roof area.” Further, the Recirculated Energy Analysis determined the potential electricity output from 2,700 square feet of solar panel and compared that to the total Project electricity demand concluding that this limited area would not generate enough energy to meaningfully offset Project electricity demand.⁵ Again, as the City determined energy impacts under both significance thresholds were less than significant, no mitigation measures were necessary or required.

However, the Recirculated Energy Analysis provided clarification as to why solar panels would not be effective on the Project site (as well as other renewable sources). In

⁵ *It is acknowledged that the language on pages 17-19 of the Partially Revised Final EIR is ambiguous as to what is in fact being installed related to solar. All Section 110.10 requires is that at least 15% of the roof area be “solar ready” – thus, the installation of solar infrastructure, not the actual solar panels. The Project will comply with Section 110.10.*

addition, as noted on page 21 of the Recirculated Energy Analysis, the current sources of renewable energy procured by LADWP include wind, solar, and geothermal sources and account for 29 percent of LADWP's overall energy mix in 2016, the most recent year for which data are available.⁶ This represents the available off-site renewable sources of energy that would help meet the Project's energy demand.

Comment No. 13

Response to Comment Nos. 2-18 and 2-24 do not make the situation any clearer. The RDEIR and RFEIR include no enforceable mitigation measures, and they *are* required under Appendix F and Pub. Res. Code § 21100(b)(3) because it provides a substantive mandate. The RDEIR does not include the solar panels as either an unenforceable PDF or as a proper mitigation measure and the RDEIR is invalid under *Lotus*.

Response to Comment No. 13

As the City determined energy impacts under both significance thresholds are less than significant, no mitigation measures are necessary or required. However, as clarified in Response to Comment No. 12 above, the Project would comply with Section 110.10 of Title 24, which includes mandatory requirements for solar-ready buildings.

Comment No. 14

In *Comment No. 2-23* we wrote that "While the RDEIR claims that there is enough natural gas for 80 years of consumption in the U.S. (at 2015 rates) and enough oil for 50 years of consumption, apparently worldwide, this completely ignores what it will do to the planet if this consumption occurs. The RDEIR is therefore incredibly misleading in making these benign claims." The City responded that "Global energy demand and use is well beyond the impact issues of this Project and not required under CEQA," and that, supposedly, "[t]he commenter merely speculates, without evidence, regarding 'planetary' impacts." It is the City's response, not our comment, which lacks a substantial evidence basis. The RDEIR plainly *does* rely on "[g]lobal energy demand and use" because it states at 20 that "According to the U.S. Energy Information Administration (EIA), the United States currently has over 80 years of natural gas reserves based on 2015 consumption," and that "Transportation fuels (gasoline and diesel) are produced from crude oil, which is imported from various regions around the world," and that "Based on current proven reserves, crude oil production would be sufficient to meet over 50 years of consumption" (footnotes omitted).

⁶ *California Energy Commission, Utility Annual Power Content Labels for 2016, www.energy.ca.gov/pcl/labels/2016_index.html.*

We actually agree with the RFEIR that global energy demand and supply should not be relevant, because this Project is based in California, where several laws including Pub. Res. Code § 21100(b)(3) and the CEQA Guidelines including Appendix F require more than just assuring there is adequate supply. However, the City made the issue relevant in its RDEIR.

As to the assertion we “merely speculate[d], without evidence, regarding ‘planetary’ impacts, the writer of the Response appears to lack a basic understanding of science, the law in California, and the contents of the Landmark DEIR on GHGs. Addressing these points in reverse order, the Landmark DEIR concedes that:

Scientists studying the particularly rapid rise in global temperatures have determined that human activity has resulted in increased emissions of GHGs, primarily from the burning of fossil fuels (from motor vehicle travel, electricity generation, consumption of natural gas, industrial activity, manufacturing, etc.), deforestation, agricultural activity, and the decomposition of solid waste.

...

In August 2007, international climate talks held under the auspices of the United Nations Framework Convention on Climate Change (UNFCCC) led to the official recognition by the participating nations that global emissions of GHG must be reduced. According to the “Ad Hoc Working Group on Further Commitments of Annex I Parties under the Kyoto Protocol,” avoiding the most catastrophic events forecast by the United Nations Intergovernmental Panel on Climate Change (IPCC) would entail emissions reductions by industrialized countries in the range of 25 to 40 percent below 1990 levels.

...

If emissions from GHGs are not reduced substantially, the warming increase could have the following consequences in California:

- The Sierra snowpack would decline between 70 and 90 percent, threatening California’s water supply;
- Attainment of air quality standards would be impeded by increasing emissions, accelerating chemical processes, and raising inversion temperatures during stagnation episodes;
- Erosion of California’s coastlines would increase as well as sea water intrusion;
- Pest infestation and vulnerability to fires of the state’s forests would increase; and

- Rising temperatures would increase power demand, especially in the summer season.

DEIR at IV.C-1 to IV.C-5.

Regarding California law, in Health & Safety Code § 38501 (A.B. 32), the Legislature found and declared that

- (a) Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other human health-related problems, [and that]
- (b) Global warming will... also increase the strain on electricity supplies necessary to meet the demand for summer air-conditioning in the hottest parts of the state.

Finally, regarding climate science, we refer the City to the Summaries for Policymakers from the U.N. International Panel for Climate Change's *Climate Change 2014 Synthesis Report and Global Warming of 1.5° C Special Report*,

- “Anthropogenic greenhouse gas emissions... are extremely likely [defined as a 95%–100% probability] to have been the dominant cause of the observed warming since the mid-20th century,”
- “Continued emissions of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems,”
- “It is very likely [defined as a 90%–100% probability] that heat waves will occur more often and last longer, and that extreme precipitation events will become more intense and frequent in many regions,”
- “A large fraction of species faces increased extinction risk due to climate change during and beyond the 21st century, especially as climate change interacts with other stressors (*high confidence* [defined as either reflecting high agreement with medium evidence or medium agreement with robust evidence]),”

- “In urban areas, climate change is projected to increase risks for people, assets, economies and ecosystems, including risks from heat stress, storms and extreme precipitation, inland and coastal flooding, landslides, air pollution, drought, water scarcity, sea level rise and storm surges (*very high confidence* [defined as high agreement with robust evidence]),”
- “Global warming is *likely* [defined as 66%–100% probability] to reach 1.5° C between 2030 and 2052 if it continues to increase at the current rate (*high confidence*),”
- “Future climate-related risks... are larger [in the aggregate] if global warming exceeds 1.5° C before returning to that level by 2100... Some impacts may be long-lasting or irreversible, such as the loss of some ecosystems (*high confidence*),”
- “Pathways that limit global warming to 1.5° C with no or limited overshoot show clear emission reductions by 2030 (*high confidence*).... The lower the emissions in 2030, the lower the challenge in limiting global warming to 1.5° C after 2030 with no or limited overshoot (*high confidence*).”

The City’s approach to its energy analysis makes this discussion necessary, and the Legislature’s findings in support of A.B. 32 inform what is or is not the “wise or efficient use of energy,” or what is “wasteful, inefficient, or unnecessary” consumption of energy under Guidelines Appendix F and Public Resources Code § 21100(b)(3).

Response to Comment No. 14

This comment primarily pertains to global GHG impacts associated with use of petroleum-based fuels. The Project EIR fully assessed GHG impacts and determined that the Project would have a less than significant GHG impact, and the Court Ruling upheld that analysis and determination. The discussion in the Recirculated Energy Analysis cited in this comment focused on the effects of the Project on energy resources that are to be used to supply the Project’s energy demands. The Recirculated Energy Analysis provides substantial evidence that there is enough natural gas for 80 years of consumption in the U.S. (at 2015 rates) and enough oil for 50 years of consumption. Furthermore, Table 3 on page 18 of the Recirculated Energy Analysis shows that the project design features would reduce transportation energy by 16 percent. Footnote B of this table clearly shows the 16-percent reduction is based on project characteristics consistent with CAPCOA guidance measures. Appendix B of the Recirculated Energy Analysis provides additional clarification. Specifically, LUT-1 (Increase Density) and LUT-6 (Integrate Below Market Rate Housing) CAPCOA measures were included in the Recirculated Energy Analysis for the Project. Therefore, Project operation would not cause wasteful, inefficient, and unnecessary use of energy. Global GHG impacts associated with global energy demand and use is well beyond the impact issues of this Project and not required under CEQA.

Comment No. 15Conclusion

Please advise us when the City will vacate and reconsider its approvals, given this revised EIR. Since the City has allowed the developer to continue building the project even before a correct EIR was completed or considered, we suspect the City might never follow its duty to vacate and reconsider its previous approvals of this project in light of the revised EIR. The City seems to want this building to be constructed regardless of what any revised EIR might say.

Unless we receive some assurance by end of month that the proper decisionmakers at the City will review the previous approvals for this project in light of the revised EIR, we will be forced to seek a court order to this effect.

Please give us notice of any City decisionmaker's intention to take action, or of any notice of determination that is filed, at collins@blumcollins.com and bentley@blumcollins.com. Thank you for your consideration.

Response to Comment No. 15

As noted in Response to Comment Nos. 2 and 3, the City will not be vacating the Project Approvals as the Court Ruling did not so order. A hearing to decertify and recertify the energy impact analysis will be noticed for February 12, 2019.

B. Conclusion

As demonstrated by the responses herein, no new significant information (as defined by CEQA Guidelines Section 15088.5) that would require recirculation of the Draft Recirculated Energy Analysis portion of the Project EIR has been identified. Specifically, upon review of all of the comments received and analyzed, there are no new significant environmental impacts from the Project or from a mitigation measure that were identified. In addition, upon review of all comments received and analyzed, there are no substantial increases in the severity of any of the significant environmental impacts analyzed in the Recirculated Energy Analysis. Further, there is no feasible project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the significant environmental impacts of the Project, but the Project's proponents decline to adopt it. Nor was the Recirculated Energy Analysis so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded, as evidenced by the public comments to the Recirculated Energy Analysis.