



Daniel Luna <daniel.luna@lacity.org>

Public Comments Not Uploaded RE: Council File 21-0781, 800-840 S. Fairfax Avenue, ENV-2019-7300-SCEA

1 message

Todd Nelson <Todd@rpnllp.com>

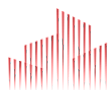
Tue, Dec 6, 2022 at 12:19 PM

Reply-To: clerk.plumcommittee@lacity.org

To: "clerk.plumcommittee@lacity.org" <clerk.plumcommittee@lacity.org>

Cc: Oliver Netburn <oliver.netburn@lacity.org>

Good afternoon, on behalf of the applicant in the above-referenced matter, I am transmitting responses to a recent comment letter submitted by the Southwest Mountain States Regional Council of Carpenters, for submittal to Council File 21-0781. I am also re-sending responses to a comment letter submitted by Fix the City, which were sent yesterday and also are to be submitted to Council File 21-0781. Thank you very much, and please let me know if you have any questions.

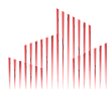
Todd Nelson

R A N D | P A S T E R | N E L S O N

Direct: 213.557.7225 **Mobile:** 310.367.0293633 W. Fifth Street, 64th Floor, Los Angeles, CA 90071**Email:** Todd@rpnllp.com

From: Todd Nelson <Todd@rpnllp.com>**Sent:** Monday, December 5, 2022 3:59 PM**To:** clerk.plumcommittee@lacity.org**Cc:** Oliver Netburn <oliver.netburn@lacity.org>**Subject:** Council File 21-0781, 800-840 S. Fairfax Avenue, ENV-2019-7300-SCEA

On behalf of the applicant in the above-referenced matter, and in advance of the PLUM Committee's consideration of this matter at their December 6, 2022 meeting, attached please find a response to a recent comment letter submitted to the Council File.

Todd Nelson**Partner**

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2 attachments

 **2022.12.06 - CAJA responses to Carpenters Letter.pdf**
263K

 **2022.12.05 - PLUM letter responding to FTC.pdf**
386K



9410 Topanga Canyon Blvd., Suite 101
Chatsworth, CA 91311
Phone 253-495-7350

December 6, 2022

Planning and Land Use Management Committee
Los Angeles City Council
200 N. Spring Street, Room 395
Los Angeles, CA 90012

**Re: Council File 21-0781, 800-840 S. Fairfax Avenue, ENV-2019-7300-SCEA
Response to Southwest Mountain States Regional Council of Carpenters Letter**

Dear Committee Members:

CAJA Environmental Services LLC (“CAJA”) has reviewed the comment letter dated December 5, 2022 submitted to the City by Armita Ariano on behalf of the Southwest Mountain States Regional Council of Carpenters (“SWMSRCC”) in opposition to the Sustainable Communities Environmental Assessment (“SCEA”) prepared for the 800-840 S Fairfax Avenue Project (“Project”). Responses to individual comments in the letter have been prepared by CAJA and are provided in Attachment A.

If you require additional information, do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stacie Henderson', with a long horizontal flourish extending to the right.

Stacie Henderson

Attachment

ATTACHMENT A: RESPONSE TO DECEMBER 5, 2022 SWMSRCC COMMENT LETTER

Comment No. 1: The City Should Require the Use of A Local Workforce

Response to Comment No. 1: This comment requests that the City require the Project to require local hire and use a skilled and trained workforce; however, the composition of a project's construction workforce is not a CEQA issue. The comment also implies that such hiring practices would mitigate unspecified greenhouse gas, air quality, and transportation impacts. However, the commenter does not provide evidence that the Project would result in any such impacts here or elsewhere in their letter. On the contrary, as demonstrated by the extensive impact analyses conducted for the SCEA, the Project would not result in any such environmental impacts.

Comment No. 2: The City Should Impose Training Requirements to Prevent Community Spread of COVID-19

Response to Comment No. 2: The comment does not state a specific concern or question regarding the adequacy of the SCEA in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. Therefore, this comment does not require a detailed response. (CEQA Guidelines, § 15088(c); *Citizens for East Shore Parks v. State Lands Comm'n* (2011) 202 Cal.App.4th 549.)

Comment No. 3: The SCEA Improperly Labels Mitigation Measures as Project Design Features and Does Not Identify Project Design Features in the Mitigation Monitoring Program

Response to Comment No. 3: The commenter claims that the SCEA improperly utilizes project design features to avoid using mitigation measures but provides no further analysis or evidence to support this claim; without any such detail being provided, no response to this objection can be provided. Notwithstanding, in compliance with CEQA and applicable case law, the Project's includes several project design features that are fundamental components of the Project and are clearly described in detail in the SCEA. Furthermore, contrary to the commenter's claim, each of the Project's project design features are identified in the Project's Mitigation Monitoring Program.

Comment No. 4: The SCEA Defers its Biological Resources Mitigation Measure and Fails to Support its Findings with Substantial Evidence.

Response to Comment No. 4: As noted in the comment, a tree letter was prepared for the Project Site by a registered consulting arborist and is included as Appendix B to the SCEA. The Project Site contains four on-site trees with an additional five trees in the public right-of-way, which may potentially provide nesting sites for migratory birds. As stated on page 4-19 of the SCEA, the City determined that the existing regulatory requirements of the Migratory Bird Treaty Act ("MBTA") as well as Section 3503 of the California Department of Fish and Wildlife Code would apply to the Project and are equal to or more effective than the mitigation measures contained in the 2016-2040 and 2020-2045 RTP/SCS EIRs, and that compliance with these existing regulations would ensure impacts related to nesting birds would be less than significant and no mitigation is required.

The commenter claims that the SCEA fails to identify the specific elements of the MBTA that would be applicable to the Project; however, the commenter then immediately quotes language taken directly from the SCEA that specifically recites the MBTA's regulatory requirements that would be applicable to the Project, including requiring biologist monitoring during tree removal activities and implementation of buffer and avoidance protocols to be implemented should active nests be identified. The commenter also states that in order for regulatory compliance to effectively deter potential impacts, a project-specific analysis of such impacts must be provided; however, as noted above, a Project-specific tree report was prepared by a registered arborist and included as part of the SCEA, which identifies the Project-related potential tree removals that would occur. The comment fails to provide any substantial evidence of any deficiency in the SCEA's assessment of potential biological impacts.

Comment No. 5: The SCEA Defers its Paleontological Mitigation Measures

Response to Comment No. 5: A Paleontological Resources Technical Report was prepared for the Project (included in Appendix D-2 of the SCEA) to evaluate the paleontological sensitivity of the Project area and assess the potential for disturbance of any paleontological resources during Project construction activities. The report concluded that the Project would be located in an area with high paleontological sensitivity. Therefore, Mitigation Measures MM-GEO-1 through MM-GEO-4 are required of the Project to ensure that impacts to paleontological resources are less than significant. These measures incorporate relevant portions of Mitigation Measure PMM GEO-1 from the 2020-2045 RTP/SCS EIR and are also based on the Project-specific analysis. The SCEA therefore concluded that with implementation of Mitigation Measures MM-GEO-1 through MM-GEO-4, Project impacts with respect to paleontological resources would be less than significant.

The commenter contends that the SCEA's paleontological mitigation measures are improperly deferred, but it is unclear how their example demonstrates this claim. The comment itself acknowledges that the SCEA's paleontological mitigation measures contain specific, quantitative performance standards and requirements. For example, the commenter cites the language of MM-GEO-1, which requires the retention of a Project Paleontologist meeting the standards of the Society of Vertebrate Paleontology ("SVP") to prepare a Paleontological Resources Monitoring and Mitigation Plan ("PRMMP"), and requires that the PRMMP complies with SVP's Standard Procedures for the Assessment and Mitigation of Adverse Impacts to Paleontological Resources, which establish explicit protocols to be followed during excavation activities.¹ Furthermore, MM-GEO-3 provides explicit standards regarding frequency of paleontological inspections during excavation as well as reporting requirements, and MM-GEO-4 identifies specific avoidance protocols to follow in the case of inadvertent discovery. Thus, the Project's paleontological mitigation is not deferred at all, much less improperly deferred.

Comment No. 6: The SCEA Omits Information and Fails to Support its Findings on Hazardous Materials Impacts with Substantial Evidence

Response to Comment No. 6: A Phase I environmental site assessment ("ESA") was prepared for the Project (included in Appendix E of the SCEA) to evaluate the presence of potential environmental hazards at the Project Site. The Phase I ESA also identified various federal and State regulatory agencies and associated regulatory requirements pertaining to hazardous materials and potentially required

¹ See "Standard Procedures for the Assessment and Mitigation of Adverse Impacts to Paleontological Resources," published by the Society of Vertebrate Paleontology, and available at: https://vertpaleo.org/wp-content/uploads/2021/01/SVP_Impact_Mitigation_Guidelines-1.pdf.

cleanup activities for such materials. As discussed in the SCEA, while the Phase I ESA did not identify any recognized environmental conditions at the Project Site, the construction and operation of the mixed-use Project is anticipated to involve the transport, use, and disposal of limited amounts of certain hazardous materials, including paints, solvents, and equipment fuel during construction activities, and cleaning supplies and fuel for landscaping equipment during operation.

As a mixed-use residential and commercial development, the Project would not involve the use or transport of either significant amounts of hazardous materials or uniquely hazardous materials; notwithstanding, any use of hazardous materials at the Project Site would be conducted in accordance with the same extensive regulatory requirements imposed by federal and state law and discussed in the Phase I ESA. In addition, as discussed on pages 5-123 and 5-124 of the Project SCEA, the Project would also comply with regulations regarding asbestos-containing materials (such as the EPA's National Emission Standards for Hazardous Air Pollutants, federal OSHA regulations, state CAL-OSHA regulations, and SCAQMD Rule 1403), lead-based paint regulations (including both OSHA and CAL-OSHA requirements), and methane regulations (including Ordinance No. 175,790 and Section 91.7102 of the LAMC). Therefore, the SCEA concluded that compliance with applicable laws and regulations would ensure that Project impacts regarding hazardous materials are less than significant. The commenter provides no substantial evidence to support its claim that the Project could potentially result in environmental impacts in connection with hazardous materials at the Project Site, and no further response is required.



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December 5, 2022

VIA EMAIL

Planning and Land Use Management Committee
Los Angeles City Council
200 N. Spring Street, Room 395
Los Angeles, CA 90012

**Re: Council File 21-0781, 800-840 S. Fairfax Avenue, ENV-2019-7300-SCEA
Response to Fix the City Letter**

Dear Honorable Chair Harris-Dawson and Committee Members:

This firm represents the applicant for the above-referenced mixed-use project, which proposes to develop 209 new mixed-income units, including 28 restricted affordable units, as well as ground-level commercial uses ("Project") at the property located at 800-840 S. Fairfax Avenue ("Site"). The Project is fully compliant with the City's General Plan and zoning regulations and utilizes the City's Transit Oriented Communities ("TOC") Program to permissibly achieve increased floor area and density.

The Project qualifies for streamlined processing under the California Environmental Quality Act ("CEQA")¹ and the CEQA Guidelines² pursuant to Public Resources Code Sections 21155 and 21155.2(b). The Sustainable Communities Environmental Assessment ("SCEA") prepared for the Project (Case No. ENV-2019-7300-SCEA) ("Project SCEA") demonstrates with ample substantial evidence that the Project qualifies as a Transit Priority Project ("TPP") and incorporates all applicable mitigation from previously certified Environmental Impact Reports ("EIRs"), including the EIR for the Southern California Association of Governments ("SCAG") 2020-2045 Regional Transportation Plan / Sustainable Communities Strategy ("RTP/SCS"), and other mitigation as necessary to avoid or lessen any potentially significant impacts to less-than-significant levels. At its meeting of December 6, 2022, the PLUM Committee will consider recommending that the City Council adopt the Project SCEA.

This letter responds to recently submitted comments from Fix the City, which claim that the Project's proposed removal of the Project Site's existing housing units does not comply with applicable housing replacement requirements and will result in adverse environmental impacts. Contrary to Fix the City's claims, the Project has been fully reviewed by the City's Housing Department for compliance with applicable housing replacement obligations. As evidenced by the replacement unit determination attached as [Exhibit 1](#), a replacement unit obligation of 28 restricted affordable units has been identified for the Project. The Project will provide these 28 restricted affordable units in full compliance with this

¹ Pub. Res. Code § 21000 *et seq.*

² 14 C.C.R. § 15000 *et seq.*

determination and will also comply with all other relevant City and State laws, including the tenant-protection and relocation assistance requirements of the City's Rent Stabilization Ordinance as well as the State's Ellis Act.

Furthermore, and as described in the Project SCEA, CEQA requires consideration of potential displacement-related effects under the environmental topic of population and housing when a project would result in a net loss of housing.³ The Project would not result in any net loss of housing units, and would instead result in a net increase in housing, including the provision of 28 restricted affordable units. In addition, even if a project did result in a net loss of housing (which the Project does not), the potential social and economic effects of displacement are not CEQA issues, notwithstanding Fix the City's unsupported claim that the Project will result in "urban decay."⁴ Displacement could only be a CEQA issue if it was shown by substantial evidence that the social and economic effects of displacement would result in physical impacts to the environment (*Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal.App.5th 1). Fix the City provides no such substantial evidence, and therefore, their claims that potential displacement-related effects should be considered impacts under CEQA are not valid.

Lastly, the Superior Court case involving the TOC Program and cited by Fix the City is not relevant to the Project, as the Project Site is not located within one of the City's Specific Plan areas that predated the TOC Program.

Thank you for your consideration of these responses, and we respectfully request that you recommend adoption of the Project SCEA.

Sincerely,



Todd Nelson
Partner
of RAND PASTER & NELSON, LLP

³ L.A. CEQA Thresholds Guide, p. J.2-2.

⁴ Under existing CEQA case law, physical impacts directly resulting from economic effects are termed "urban decay," which is typically characterized by visible symptoms of physical deterioration that invite vandalism, loitering, and graffiti that is caused by a downward spiral of business closures and long-term vacancies (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 123 Cal.App.4th 1184


EXHIBIT 1: LAHD REPLACEMENT HOUSING DETERMINATION



Eric Garcetti, Mayor
Rushmore D. Cervantes, General Manager

DATE: September 23, 2019

TO: 830 Fairfax Owner I, LLC, a Delaware limited liability company, Owner
830 Fairfax Owner II, LLC, a Delaware limited liability company, Owner
830 Fairfax Owner III, LLC, a Delaware limited liability company, Owner
840 Fairfax Owner, LLC, a California limited liability company, Owner

FROM: Marites Cunanan, Senior Management Analyst I 
Los Angeles Housing and Community Investment Department

SUBJECT: **AB 2556 (TOC) Determination for
800-840 South Fairfax Avenue, Los Angeles, CA 90036**

Based on the Application for an Affordable Unit Determination (Application) submitted by Matthew Hayden on behalf of 830 Fairfax Owner I, LLC, a Delaware limited liability company (Owner), 830 Fairfax Owner II, LLC, a Delaware limited liability company (Owner), 830 Fairfax Owner III, LLC, a Delaware limited liability company (Owner) and 840 Fairfax Owner, LLC, a California limited liability company (Owner), the Los Angeles Housing + Community Investment Department (HCIDLA) has determined that forty (40) units (as detailed below) are subject to replacement under AB 2556 (formerly AB 2222).

Information about the existing property for the five (5) years prior to the date of the Application is required in order to make a determination. HCIDLA received the Application on August 8, 2019, so HCIDLA must collect data from August 2014 to August 2019.

Owner acquired the property commonly known as:
800-830 S. Fairfax Ave. under APN 5086-008-010, Lot FR LT B Arb 2 on April 8, 2019 per Grant Deed.
840 S. Fairfax Ave. under APN 5086-008-012, Lot FR LT B Arb 1 on June 26, 2019 per Grant Deed.

Department of City Planning (ZIMAS), County Assessor Parcel Information (LUPAMS), DataTree database, Billing Information Management System (BIMS) database, and the Code, Compliance and Rent Information System (CRIS) database, indicates a use code of "0500 – Residential – Five or More Units or Apartments (Any Combination) – 4 Stories or Less" for the property commonly known as 800-830 S. Fairfax Ave. Google Earth images, Internet Search and the Rent Stabilization Ordinance (RSO) Unit confirms that the property contains a multifamily structure.

Department of City Planning (ZIMAS), County Assessor Parcel Information (LUPAMS), DataTree database, Billing Information Management System (BIMS) database, and the Code, Compliance and Rent Information System (CRIS) database, indicates a use code of "2100 – Commercial – Restaurant, Cocktail Lounge – One Story" for the property commonly known as 840 S. Fairfax Ave. Google Earth images, Internet Search and the Rent Stabilization Ordinance (RSO) Unit confirms that the property contains a commercial structure.

The Los Angeles Department of Building and Safety database indicates that the Owner has not applied for either a Building Permit or a Demolition Permit for the project.

Per the Application received by HCIDLA on August 8, 2019, the Owner plans to construct a two hundred and nine (209) unit apartment building, pursuant to Transit Oriented Communities (TOC) guidelines.

ADDRESS	BEDROOM TYPE
800 S. Fairfax Ave. #1	2 Bedroom
800 S. Fairfax Ave. #2	2 Bedroom
800 S. Fairfax Ave. #3	2 Bedroom
800 S. Fairfax Ave. #4	2 Bedroom
800 S. Fairfax Ave. #5	2 Bedroom
800 S. Fairfax Ave. #6	2 Bedroom
800 S. Fairfax Ave. #7	2 Bedroom
800 S. Fairfax Ave. #8	2 Bedroom
800 S. Fairfax Ave. #9	1 Bedroom
800 S. Fairfax Ave. #10	1 Bedroom
800 S. Fairfax Ave. #11	1 Bedroom
800 S. Fairfax Ave. #12	1 Bedroom
800 S. Fairfax Ave. #14	1 Bedroom
800 S. Fairfax Ave. #15	1 Bedroom
800 S. Fairfax Ave. #16	1 Bedroom
800 S. Fairfax Ave. #17	1 Bedroom
800 S. Fairfax Ave. #18	1 Bedroom
800 S. Fairfax Ave. #19	1 Bedroom
800 S. Fairfax Ave. #20	1 Bedroom
800 S. Fairfax Ave. #21	1 Bedroom
800 S. Fairfax Ave. #22	1 Bedroom
830 S. Fairfax Ave. #1	1 Bedroom
830 S. Fairfax Ave. #2	1 Bedroom
830 S. Fairfax Ave. #3	1 Bedroom
830 S. Fairfax Ave. #4	1 Bedroom
830 S. Fairfax Ave. #5	1 Bedroom
830 S. Fairfax Ave. #6	1 Bedroom
830 S. Fairfax Ave. #7	1 Bedroom
830 S. Fairfax Ave. #8	1 Bedroom
830 S. Fairfax Ave. #9	1 Bedroom
830 S. Fairfax Ave. #10	1 Bedroom
830 S. Fairfax Ave. #11	1 Bedroom
830 S. Fairfax Ave. #12	1 Bedroom
830 S. Fairfax Ave. #14	1 Bedroom
830 S. Fairfax Ave. #15	1 Bedroom
830 S. Fairfax Ave. #16	1 Bedroom
830 S. Fairfax Ave. #17	1 Bedroom
830 S. Fairfax Ave. #18	1 Bedroom
830 S. Fairfax Ave. #19	1 Bedroom
830 S. Fairfax Ave. #20	1 Bedroom

No income documents were provided for these unit(s). Pursuant to AB 2556, where incomes of existing or former tenants are unknown, the required percentage of affordability is determined by the percentage of extremely low, very low, and low income rents in the jurisdiction as shown in the HUD Comprehensive Housing Affordability Strategy (CHAS) database. At present, the CHAS database shows 32% Extremely Low (Below 31%

Area Median Income [AMI]), 19% Very Low ([31% to 50% AMI]), and 18% Low ([51% to 80% AMI]) renter households for Los Angeles (for a total of 69%). The balance of these unit(s) (i.e. 31%) are presumed to have been occupied by persons and families above-lower income.

Number of Existing RSO Units within five (5) years of Owner's application = 40
Number of Affordable Replacement Units required per CHAS: 28 (see table)

40 Units x 69%	28 Units
32% Extremely Low	13 Units
19% Very Low	8 Units
18% Low	7 Unit
Market Rate RSO units	12 Unit

Number of Unit(s) presumed to be above-lower income subject to replacement = 12

For Rental:

Pursuant to CHAS, twenty-eight (28) unit(s) need to be replaced with equivalent type, with thirteen (13) units restricted to Extremely Low Income Households, eight (8) units restricted to Very Low Income Households, and seven (7) units to Low Income Households. For the twelve (12) remaining units presumed to have been occupied by an above-lower income person or household, as permitted by California Government Code §65915(c)(3)(C)(ii), the City has opted to require that those unit(s) be replaced in compliance with the City's Rent Stabilization Ordinance (RSO).

Please note that all the new units may be subject to RSO requirements unless an RSO Exemption is filed and approved by the RSO Section. This determination is provisional and subject to verification by the RSO Section.

This AB 2556 determination only applies if the proposed project is a rental TOC project and NOT condominiums. In the event the project changes to condominiums, the owner needs to request an AB 2556 amendment to reflect 100% replacement of the units. In addition, if the project is changed from TOC to Density Bonus or vice-versa, an AB 2556 amendment will also be required.

****WARNING****

LOT TIES AND EXISTING PRE-1978 SINGLE FAMILY DWELLING ON ONE LOT

ISSUE:	Is a LOT TIE required for the NEW project?
IF NO:	Owner's existing Rent Stabilization (RSO) replacement obligation, if any, remains the SAME as above.
IF YES:	Owner's existing RSO replacement obligation, if any, will INCREASE by one and the new project will also be subject to the RSO, unless the existing single family dwelling is demolished before the lots are tied.

NOTE: This determination is provisional and is subject to verification by HCIDLA's Rent Division. If you have any questions regarding this determination, please contact Jacob Comer at Jacob.comer@lacity.org.

- cc: Los Angeles Housing and Community Investment Department File
 830 Fairfax Owner I, LLC, a Delaware limited liability company, Owner
 830 Fairfax Owner II, LLC, a Delaware limited liability company, Owner
 830 Fairfax Owner III, LLC, a Delaware limited liability company, Owner
 840 Fairfax Owner, LLC, a California limited liability company, Owner
 Ulises Gonzalez, Case Management Section, City Planning Department

MAC:jc