CORIN L. KAHN
ATTORNEY AT LAW
506 SANTA MONICA BOULEVARD, SUITE 316
SANTA MONICA, CALIFORNIA, 90401
TELEPHONE: (310) 899-4455

WRITER'S E-MAIL:
CLKESQ@MINDSPRING.COM

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VIA email only clerk.plumcommittee@lacity.org
Clerk, PLUM Committee
City Council
City of Los Angeles
200 N. Spring Street
Los Angeles, California 90012

Re: SECOND OPPOSITION LETTER REGARDING *ENV* 19-5735-*SCEA*; *ZA*-2018-3422-*ELD-CU-DRB-SPP-WDI-SPR (ENV* 2018-3423 MND; and CF 20-1624; Commonly Known as the Belmont Senior Living Center located at 10822 Wilshire Boulevard, Westwood

Dear Clerk:

This firm represents the homeowners of the surrounding residential neighborhood and includes a wider group of residents and homeowners of the single-family neighborhood south of Wilshire Boulevard and east of Westwood Boulevard, which are a unified group of neighbors whose properties are in the residential neighborhood that directly abuts the Proposed development of a 12-story 173-unit Eldercare Facility referred to as the "Belmont Westwood Senior Living Center" (and referred to herein as the "Project") proposed for 10822 Wilshire Boulevard, in the community of Westwood (hereinafter referred to as the "Project Site.")

The purpose of this letter is to set supplement arguments already submitted to this committee under the applicable statutes, guidelines and case law comprising the California Environmental Quality Act (hereinafter referred to as "CEQA"), the Municipal Code and applicable planning documents of the City of Los Angeles (hereinafter referred to as the "City,") and the Southern California Association of Governments ("SCAG") and the facts presented in the record to date.

SUMMARY OF OBJECTIONS

1. The record contains no substantial evidence to support a conclusion the Project is a qualifying residential facility as a TPP; Real Party and City are assuming the population of the Project (clients and employees) will use transit or other alternatives to the automobile, but there is no evidence to support this assumption which constitutes pure speculation and therefore does not constitute substantial evidence;

2. This Council cannot define the legislative intent of the land use character (i.e., regarding an eldercare facility) of a prior Council's enactment of the ordinance to allow an eldercare facility in the R-5 zone; furthermore, this Council lacks jurisdiction to determine whether the State Legislature intended that the Project, as proposed, is a qualifying residential project exempt from CEQA. That is a legal issue that must be determined by the Courts;
3. Each of the components of the Project must separately and jointly meet the qualifying criteria before receiving a right to streamlined CEQA review under the exemption; the administrative building does not qualify as a TPP land use because it is not consistent with the general use designation of the R-1 zone in which it is located;
4. The Project density, comprised of the sum of the proposed dwelling units and the guest rooms, which are the functional equivalent in terms of density "conflicts" with the applicable land use standards;
5. The Project intensity "conflicts" with the applicable land use standards;
6. The Project 12-story height "conflicts" with the applicable 6-story land use standard;
7. The term "consistent" with the general use designation, density, building intensity, and applicable policies specified for the project area used in the legislation creating streamlined environmental review means "not divergent" from; City's review regarding CEQA compliance erroneously uses the "consistency" standard under the Government Code instead of the "conflicts" standard under CEQA, e.g.,; The Initial Study is defective because it cherry picked items that were "consistent" in setting up its analysis based on City's selected thresholds of significance that require identification and consideration of "conflicts" between the Project and relevant plans, policies, and regulations adopted to avoid or mitigate traffic and GHG emissions this process is misleading because it supports a false, or at least misleading, inference that the Project complies with CEQA and is in the public's interest. This false "message" is especially important because it contradicts the fundamental purpose of a complete and transparent analysis providing sufficient information to the public and decision makers who were not involved in the environmental analysis;
8. Real Party has not provided sufficient data and therefore City has not made a sufficiently good faith estimate of the GHG emissions likely to result from the Project; The VMT for employees could be determined and disclosed based on actual data from Real Party's other facilities. The avoidance of providing actual data regarding Project VMT, which in this case is easily ascertainable, does not meet CEQA's requirement of "good faith" estimates of Project GHG;
9. The Real Party and City have failed to offer any legal justification for finding that a large administrative building does not "conflict" with Low Residential Land Use Designation for the lot where it is being proposed;
10. The claim that the new senior residential uses at the Project Site will make it more active and pedestrian-friendly lacks any supporting data, defies common sense, and is inconsistent with admissible data provided by residents of adjacent properties on Wilshire Boulevard and therefore does not constitute substantial evidence

11. In performing the comparison between the Project and those many plans, policies, and regulations chosen by City in its Initial Study to demonstrate alignment between the Project and these matters, there is absolutely no evidence to support the many reoccurring conclusions that the Project will stimulate pedestrian and/or bicycle activity; City can either withdraw those unsupported and misleading speculative statements or support them with actual data; and
12. To the extent the City relies on the regional planning documents or policies in lieu of City's own plans and policies, it has unconstitutionally yielded its police power and therefore is *ultra vires* and void *ab initio*;

SUBASTANTIAL EVIDENCE - THE PROJECT SPONSORS DID NOT DEMONSTRATE THAT THE PROPOSED PROJECT IS A MULTI-FAMILY RESIDENTIAL PROJECT UNDER SB 375

Real Party makes two arguments that the project is a qualifying transit priority residential project:

1. SB 375 does not contain any such concept of "conventional" versus "non-conventional" residential uses; and
2. City has already clearly defined eldercare facilities and each of their constituent senior housing types as residential housing types that include specialized amenity areas, care, and services, as set forth in LAMC Section 12.03

The first argument is irrelevant to anything now before this Committee. Real Party operates a facility that is precisely or at least approximates the Project. It also operates other like kind facilities throughout Los Angeles. It either knows or can easily ascertain the transit profile[1] of its population. The City cannot simply accept an assumption of reduced GHG emissions, it has a duty to make its decision based on facts and data. Furthermore, regarding the importance of the State's efforts to combat climate change, City has a duty to act in good faith regarding its determination. Acting without data and based on speculation is certainly not evidence of good faith.

Regarding the second argument, basing its entire defense to support a streamlined CEQA review on a word, that was chosen without any reference to or relation with the goals and policies behind reducing GHG emissions, is not a serious embrace of a serious issue.

REAL PARTY DID NOT PROVIDE ANY COUNTER TO THE LEGAL ARGUMENT THAT THE LEGISLATURE DID NOT INTENT TO STREAMLINE CEQA REVIEW FOR A PROJECT THAT CANNOT PROVE IT WILL REDUCE GHG

Real Party did not respond to Opponents' many arguments that the zone classification is not dispositive or even substantial evidence supporting Real Party's argument about the character of the land use. Nor did Real Party offer any evidence to contradict the multiple facts contained

[1] Here the term "transit-profile" will refer to the percentage of its population, defined as the combination of clients, employees and visitors, who take transit, walk or bike, or other non-automobile forms of transportation, all of which are the elements that the Legislature demand are present to allow the streamlining of CEQA review.

in the record that Opponents identified that conflict with residential character of the proposed project.

This is a dispute about the Legislature's intent regarding the character of the land use it intended to grant the streamlining exception to under CEQA. While City may opine what City meant when it allowed an eldercare facility in the R-5 zone, it cannot interpret what the State Legislature intended in creating the streamline exception to full CEQA review. Besides, a sitting body cannot interpret the intent of a prior body's legislative action regarding the intent behind the language used in drafting the eldercare ordinance. Both of these involve legal questions that require judicial interpretation.

REAL PARTY HAS NOT PROVIDED ANY ARGUMENT OR LEGAL AUTHORITY HOW A SEPARATE COMPONENT OF THE PROJECT TO BE LOCATED ON A SEPARATE LOT CAN BE APPROVED THAT CLEARLY DOES NOT QUALIFY AS A TPP BECAUSE IT DOES NOT CONFORM WITH THE ZONING OR

Real Party is using an eldercare facility as a Trojan Horse to hide a land use that is grossly incompatible with the surrounding neighborhood. The implicit argument is that if the project taken as a whole qualifies, then its individual parts cannot be independently scrutinized. This is inconsistent with the fundamentals of administrative review of real estate development in California. It cannot have been the intent of the Legislature in creating the streamlining exception to CEQA review for a TPP. Objectors argue the opposite – if any part of the project does not qualify, then the whole project does not qualify.

REAL PARTY DID NOT DEMONSTRATE THAT THE PROPOSED ELDERCARE PORTION OF THE PROJECT COMPLIES WITH DENSITY

Real Party cannot have it both ways. They argue that guest rooms are to be counted as a part of the Project's residential use. But then they turn around and argue guest rooms are not dwelling units, the unit to be used in measuring density and therefore, the Project does not exceed the maximum allowable density. Real Party cannot have it both ways – either the guest rooms are not a residential use or they are in which case they must be counted towards density.

At a minimum, for CEQA full disclosure purposes, the initial study must come clean on this density issue because if the density is not in compliance, then the Project does not quality as a TPP. Objectors argue that the character of the use relative to the purpose of the policy and or regulation dictates how it is to be treated.

Therefore, for purposes of measuring density, a guest room is inseparable from a dwelling unit. The reasons for this were already presented to this Committee. Therefore, the guest rooms must be counted towards density.

For purposes of determining the "residential" character for purposes of determining the qualification for CEQA streamlining because of the previously demonstrated reduction of GHG that was made in the SCS/RTP, the guest rooms have their own unique transit-profile that common sense suggests is not consistent with the assumption its population will take transit. Furthermore, again as already demonstrated, guest rooms generate employee trips by low-wage earners who cannot afford to live close to the Project and who normally drive to work from far-

flung places. Evidence to support this conclusion includes the fact that the Project will build expensive underground parking in excess of the amount required for the zone.

The record is filled with these inconsistencies and City cannot approve the Project without receiving a clear, complete, and transparent disclosure of all of the aspects of the Project that have any bearing on GHG emissions. This record does not meet that standard under CEQA.

BUILDING INTENSITY GREATLY EXCEEDS THE APPLICABLE STANDARD AND THEREFORE, THE PROJECT CANNOT DEMONSTRATE IT QUALIFIES AS A TPP

City of Los Angeles Zoning Ordinance does not define "Intensity of building." But intensity of development is measured with several physical indicators related to how much built area there is on the site. Objectors assume that Section 5.D. Building Area Coverage is an intensity standard. That measure requires that no portion of any building above the fourth story shall be erected so as to have a Lot Utilization of more than 50 percent of the lot area.

The Initial Study concludes that Lot Utilization above 4 stories/50 feet is approximately 44.2% of Lot 2, thereby complying with this standard. This does not seem mathematically correct. If the buildable area of the proposed Eldercare Facility lot (i.e., lot area minus required setbacks for a one-story building) is 32,450 square feet, and the Eldercare Facility's total proposed floor area is 176,580 square feet and it will be 12 stories high, then three-quarters of the building will be located above the 4th floor. Mathematically stated: 176,580 x .75 = 132,435. 132,435/32,450 = 408%. If this mathematical determination reflects the facts, then the Project is 8 times more intense than allowed under Section 5.D. Building Area Coverage.

For the same reasons illustrated above, i.e, each component of the Project must meet the applicable standards and not waltz under the wire without independent scrutiny inside of a Trojan Horse, the building intensity of the Administration building also significantly exceeds applicable standards including required neighborhood compatibility. Real Party is simply incorrect by taking the position this is an issue only to be determined by the Zoning Administrator as part of the discretionary applications. Incompatibility is a land use issue that must be disclosed and considered under CEQA in the Initial Study. The building intensity of the 19,000 square foot Administration building exceeds the existing average massing in the neighborhood by a factor of approximately 7.5 times, which constitutes substantial evidence of size incompatibility, a significant environmental impact.

BUILDING HEIGHT GREATLY EXCEEDS THE APPLICABLE STANDARD SET FORTH IN THE SPECIFIC PLAN, WHICH SERVES AS THE ZONING FOR THE SITE AND THEREFORE, THE PROJECT CANNOT DEMONSTRATE IT QUALIFIES AS A TPP

A specific plan serves as the zoning for the area defined by the plan. As zoning, the specific plan regulates the character of allowable land use including the height. Under the specific plan, the height limit is 6 stories while the Project seeks approval of a 12-story building defending it only by demonstrating that it causes no shade or shadow impact. The intention behind limiting height was to stop the "canyonization" of Wilshire Boulevard in response to a strong citizen sentiment. This was a policy commitment the City made to its citizens. It cannot

simply be ignored and dismissed solely based on a shade and shadow analysis. The record will demonstrate that the City was responding to a broader issue than that limited one.

WHEREVER THE PUBLIC RESOURCES CODE REQUIRES AN ANALYSIS COMPARING THE PROJECT WITH APPLICABLE PLANS, POLICIES, AND REGULATIONS ADOPTED TO AVOID OR MITIGATE AN ENVIRONMENTAL IMPACT, INCLUDING GHG EMISSIONS, THE CITY'S CHOSEN THRESHOLD OF SIGNIFICANCE REQUIRES AN IDENTIFICATION OF THE CONFLICT AND A FULL DISCUSSION OF THE ENVIRONMENTAL CONSEQUENCE OF THESE CONFLICTS; CITY'S USE OF THE "CONSISTENCY" STANDARD UNDER THE GOVERNMENT CODE (*SEQUOYAH*) FAILS TO COMPLY WITH CEQA

This legal argument, previously made in Objector's first letter, was not responded to at all by Real Party. It is important enough to repeat and re-state here because it involves sophisticated concepts under CEQA that warrant close consideration.

Under Guidelines § 15064.4(a), City selected a "conflicts" analysis stated in Appendix G as its thresholds of significance for GHG emissions, and Land Use. Under subsection (2) that selection involves a qualitative or performance-based standard that assumes that the Project would have a significant impact on the environment if it conflicted with a plan, policy, or regulation adopted to avoid or reduce an adverse environmental impact. Non-compliance with a chosen "threshold of significance" means the effect will normally be determined to be significant. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist*. (2016) 2 Cal.App.5th 1067, 1073.

The first issue in examining the insufficiency of the Initial Study regarding the misapplication of the standard of review of the threshold of significance is whether the Project, thoroughly identified all of the relevant conflicts with applicable State, regional and City's policies, plans and regulations adopted to reduce or avoid traffic and GHG emissions. City erred by not identifying many such conflicts, including without limitation:

1. The failure to support with substantial evidence the assumption that the population of users of the Project would take transit simply because it is proximate to the project site leaves unaddressed the Legislature's goal of reducing GHG emissions, which is the sole purpose behind the TPP exemption from full CEQA compliance. Therefore, an unsupported contention of GHG reduction conflicts with the goals of reducing GHG emissions. Real Party has the burden of proof to show that the Project will achieve the Legislature's goals.
2. The administration building is a conflicting land use with the adjacent residential uses. Its mass is incompatible and conflicts with the zoning;
3. Despite Real Party's contention to the contrary, the density of the eldercare facility, which is the combination of dwelling units and guest rooms, exceeds the maximum allowable density – a sharp and important conflict also evidencing incompatibility. City has made an interesting choice to certify the environmental before deciding on the several applications for allowance to deviate from strict application of the applicable zoning measures;
4. Building intensity and height conflict with applicable standard for both buildings; and

5. For every admitted deviation from the applicable land use measures, and there are several identified in the Initial Study, this constitutes an admitted conflict that will not be resolved, if at all, until after the hearing on those applications by the Zoning Administrator.

Under CEQA, City cannot make a commitment to take an action on a discretionary permit without first disclosing the impact of the conflict. In other words, the conflict will remain if the application is not granted. Some or a part of the conflict will remain if the conditions of approval are not sufficient to eliminate all the potential environmental consequences. City is putting the cart before the horse by thrusting an environmental clearance before the finality of the project and its mitigating conflicts have been ascertained.

The second issue is whether City applied the correct legal standard in determining whether the Project had the potential to cause a significant environmental impact by conflicting with applicable State, regional and City's policies, plans and regulations adopted to reduce or avoid traffic and GHG emissions. Instead, City chose to eschew the CEQA "conflicts" analysis clearly stated at Appendix G, CEQA Guidelines §15125(d)[2], and 15064.4(b)(3) and substituted in its place the Government Code standard of "consistency" under *Sequoyah*. There is no legal authority for this substitution. This is a material error that constitutes a failure to proceed in a manner required by law.

In their first letter of objection, Objectors made a significant point of the erroneous use of the *Sequoyah* "consistency" analysis, a Government Code standard, to meet its CEQA duty. The threshold of significance under both the CEQA Appendix G and CEQA Guidelines §15125(d) that City chose to consider the potential for significant environmental impacts regarding GHG, Land Use and Bicycle and Pedestrian Facilities asks for identification of "conflicts"

Whether City's reliance on the Government Code "consistency" in lieu of CEQA "conflicts" requires de novo consideration of the Legislature's intentions regarding these two legislative programs. The substitution of the word "consistent" for the word "conflict" is a distinction with an incredibly significant difference regarding the disclosure and mitigation obligations under CEQA.

Under the Government Code standard of analysis:

> "*An action, program or project is consistent with the general plan, if, considering all its aspects, it will further the objectives and policies of the (general) plan and not obstruct their attainment*."

Because a general plan reflects a range of competing interests a local agency may weigh and balance the plan's competing and even conflicting policies. The findings of "consistency" are subjective value-based decisions. It is a liberal standard giving utmost deference to the findings of the local agency. The Government Code "consistency" standard reflects a purely local interest.

CEQA is the enactment of the State's policy to "take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state." Petitioner pointed out that the purpose of CEQA differs materially "*to afford the fullest possible protection to the environment*

[2] CEQA. § 15125(d) states: *The EIR shall discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans.* (See, *Pfeiffer v. City of Sunnyvale City Council*, (2011) 200 Cal. App. 4th 1552, 1566.)

within the reasonable scope of the statutory language.. CEQA elevates one policy – maximum protection of the environment wherever feasible - above all others. CEQA "conflicts" analysis advances the State's interest. The State's emphatic commitment to fight climate change using CEQA, illustrated by the State's dependence on local agencies to advance the State's commitments stated in SB 375, demonstrates this difference in so far as some degree of local discretion is surrendered. CEQA requires an objective determination based on facts, data, science, and studies. CEQA compliance requires discrete analysis of each and every aspect of a "project." CEQA allows the much less deferential "fair argument" standard of review where there is evidence of any conflict with a plan, policy or regulation enacted to reduce or avoid an environmental impact report, without deference to the local interest. It is immediately apparent that the Government Code standard is inimical to the Legislature's CEQA objectives.

CEQA is "implemented by an extensive series of administrative regulations (title 14, division 6, chapter 3 of the California Code of Regulations referred to as the "CEQA Guidelines") promulgated by the Secretary of the Natural Resources Agency" ("OPR") under *Public Resources Code* Section 21083. In interpreting CEQA, courts accord the Guidelines great weight except where they are clearly unauthorized or erroneous." Appendix G all use the word "conflicts" in four of its subject matter areas: Air, GHG Emissions, Land Use and Transportation pertaining to bicycles and pedestrian infrastructure. The approach taken in CEQA Guidelines 15125(d) is from the opposite direction but it is intended to uncover the same disclosures.

Discarding policies that were adopted to avoid or mitigate an adverse environmental effect in favor of finding "consistency" with other policies – cherry picking, which is what the Initial Study has done - intrinsically will obstruct and obscure full and transparent disclosure of environmental impacts. For an example, City supported its "consistency" argument based on a series of goals and objectives that had nothing to do with GHG emissions. This is false or at best it is misleading as it tends to skew the analysis by suggesting a high degree of a good thing, "consistency" whereas that is completely beside the point regarding CEQA compliance. In this way, City failed to meet the duty to fully disclose all the impacts of the Project including particular and its duty to full inform the decision makers and the public with a full, complete and transparent disclosure of impacts. This constitutes a separate failure to meet the duties of the sufficiency of the environmental document.

THE INITIAL STUDY FAILED TO PROCEED AS REQUIRED UNDER CEQA IGNORING THE LONG-TERM IMPACT OF IGNORING THE ACTUAL GHG EMISSIONS OF A PROJECT IN LIEU OF A MULTI-FAMILY APARTMENT PROJECT THAT IS LIKELY TO REDUCE MORE GHG EMISSIONS THAN THE PROJECT

The principal behind the duty to discuss foreseeable impacts was established long ago in *Laurel Heights,* where the Supreme Court held:

> *We hold that an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be*

significant in that it will likely change the scope or nature of the initial project or its environmental effects.[3]

Because CEQA requires consideration of all reasonably foreseeable impacts including the long-range impacts, and in light of the State's emphatic commitment to combat climate change, the Initial Study was required to consider the opportunity cost of placing a building populated by persons who are unlikely to use transit that could otherwise have been populated with persons who would make full use of transit (see admission in analysis of Objective 3.2 that "*trip reduction rates will be lower than a typical high-rise apartment building*; again, the variation between the proposed use and the *typical high-rise apartment building* can and therefore must be determined and disclosed.

The Project will fill a coveted location in terms of opportunity to utilize transit when, in a couple of years, Metro will be operating a fixed rail service at long last to Westwood Village. The citizens of the region have made and continue to make a considerable financial investment in this transit service. Based on the lack of substantial evidence of transit use by the population of the Project, it will go to waste by not substantially contributing to the State's emphatic effort to reduce GHG. The long term impact includes the opportunity cost of not utilizing the transit that will be serving the area in the near future combined with the long-term failure to contribute to GHJG reduction.

CONCLUSION

For all of the reasons stated herein, it is respectfully requested that the decision makers require the preparation of an EIR prior to considering whether and how to approve the Project.

Very truly yours,

(signed by)

CORIN L. KAHN

cc: Hon. Councilman Paul Kortez (by email paul.koretz@lacity.org)
City Clerk (by email CityClerk@lacity.org)
Planning Staff (by email dylan.sittig@lacity.org)
Clients (by email)

[3] While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can." (Guidelines, § 15144.)