Communication from Public

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Council File No:	22-1525
Comments for Public Posting:	Please see the attached letter submitted on behalf of the Project applicant in response to the February 6, 2023 letter submitted by Mitchell Tsai on behalf of the Southwest Regional Counsel of Carpenters.

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February 7, 2023
VIA EMAIL

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Re: Council File: 22-1525
Response to Southwest Carpenters' 02/06/2023 Letter
Triangle Center Mixed-Use project

Honorable Members of the Planning and Land Use Management Committee:

We write to respond to the February 6, 2023 comment letter ("Comment Letter") submitted by attorney Mitchell M. Tsai on behalf of the Southwest Regional Counsel of Carpenters ("Commenter"). The Comment Letter challenges the proposed Sustainable Communities Environmental Exemption ("SCPE") prepared under the California Environmental Quality Act ("CEQA") to analyze the potential impacts of the proposed dual-jurisdiction, mixed-use development located at 3984-3988 S. Meier Street and 12740-12750 W. Zanja Street, Los Angeles, California ("City"). The proposed project includes 104 units in Culver City and 40 units in the City of Los Angeles ("Project"). For the reasons that follow, the Comment Letter fails to establish that the SCPE violates the requirements of CEQA.

To the contrary, substantial evidence in the record supports the adoption of a SCPE for the Project. This substantial evidence is principally set forth in the SCPE Memorandum prepared by environmental consultant Meridian Consultants, dated August 2022, which Planning staff reviewed and recommends for adoption. The SPCE Memorandum includes over 900 pages of analysis and supporting materials and addresses all the applicable statutory criteria for a SCPE under the applicable statute, Public Resources Code Sections 21155 and 21155.1, demonstrating that the Project properly qualifies for a SCPE based on substantial evidence in the record. On the other hand, the Comment Letter fails entirely to carry its burden to demonstrate any error in the SCPE.

As a statutory exemption, the City's adoption of factual findings supporting the adoption a SCPE is judged under the deferential "substantial evidence" test.[1] Under the substantial evidence test, an opponent challenging a City's factual determinations in support of a statutory exemption "must lay out the evidence favorable to the other side and show why it is lacking. Failure to do so is fatal."[2] Here, the Comment Letter

[1] *Great Oaks Water Co. v Santa Clara Valley Water Dist.* (2009) 170 Cal.App.4th 956, 967-68.
[2] *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266.

makes no attempt to discuss the substantial evidence in support of the SCPE set out in the SCPE Memorandum and the other materials provided by City staff in the record, much less lay that evidence out and show why its lacking. For this reason alone, the Comment Letter fails to meet its burden or provide any basis to assert why the Committee should not adopt the SCPE for the Project. For the following reasons, the Comment Letter is also substantively invalid.

Comment No. 1.

The Commenter asserts that the City should require the Project to be built using local union labor in light of union laborers' training and experience and, the City should also mandate the Project to adopt a local hire provision for workers living within 10 miles of the Project site, which would reduce vehicle trips, reduce greenhouse gas emissions, and provide various economic benefits to workers.

Response to Comment No. 1:

The Comment Letter addresses various alleged economic and social benefits of its request that the City mandate that the Project enter into a union project labor agreement and adopt a local hire program. However, CEQA is only concerned with and only requires the evaluation of the environmental impacts of a project; a project's economic and social effects are not treated as effects on the environment under CEQA.[3] Accordingly, to the extent the Commenter addresses social and economic issues, it does not raise valid CEQA issues; a SCPE is not required to evaluate the social and economic effects of its construction.[4]

To the extent the Commenter asserts that requiring a union project labor agreement would reduce the Project's traffic, air emission, and GHG impacts, notably, no evidence is provided that merely entering into a project labor agreement, standing alone, would provide any such alleged environmental benefits. Instead, it would appear that any such benefits would result from utilizing a local hire program, only. In any event, the City is not required by CEQA to mandate that the Project enter into a union project labor agreement with a local hire provision.

[3] Pub. Res. Code, § 21100; CEQA Guidelines, §§ 15131(a); 15382.
[4] See, e.g., *San Franciscans for Reasonable Growth v City & County of San Francisco* (1989) 209 Cal.App.3d 1502, 1516 (City was under no duty to impose mitigation measures concerning child care because need for child care facilities is not environmental impact); *Maintain Our Desert Env't v Town of Apple Valley* (2004) 124 Cal.App.4th 430 (Large national retailer need not be identified as end user in EIR's project description because social, economic, and business competition concerns are not relevant under CEQA unless it is shown that they bear directly in EIR's analysis of effects on the physical environment); *Chico Advocates for a Responsible Economy v City of Chico* (2019) 40 Cal.App.5th 839, 847 (Potential loss of close and convenient shopping is not environmental issue subject to CEQA review).

First, measures to address environmental impacts must be feasible,[5] and CEQA does not expand a lead agency's powers.[6] The Comment Letter does not demonstrate that the City has the legal authority to mandate that the Project enter into a project labor agreement with union groups. In the absence of legal authority to mandate the condition, the suggestion by the Commenter is not legally feasible. On this ground, alone, the City is not obligated to implement the Commenter's suggestion.

In addition, measures to reduce or eliminate environmental impacts are only required to address a project's potential significant impacts,[7] and the Commenter does not provide substantial evidence that the Project would cause significant traffic, air quality or GHG impacts that the City would be required to reduce through mitigation or other appropriate measures.

The Commenter also does not provide any evidence or information to demonstrate such measures would be actually be effective to address any alleged significant impacts.[8] But even if the measures did address a significant environmental effect, which they do not, the City is under no obligation under CEQA to accept any particular environmental impact mitigation measures suggested by third parties.[9]

Finally, the proposed measure of entering into a project labor agreement is, on its face, not intended to mitigate environmental impacts but to provide direct social and economic benefits to the Commenter, a union labor organization, and on that additional basis the Commenter's requested union labor requirements are not valid mitigation under CEQA.[10]

Moreover, entering into a project labor agreement with a union labor organization is not among the methods the state has identified as being required for Transit Priority Projects subject to applicable state statute SB 375 and the SCPE statutory exemption from CEQA. Instead, the statute achieves reductions in GHGs emissions by requiring higher density housing projects, including mixed-use projects with commercial uses that meet various land use and environmental characteristics to be located in designated Transit Priority Areas, which effectively places not just construction workers but future commercial employees and residents in close proximity to transit, thus reducing reliance on individual vehicle trips and achieving attendant reductions in GHG emissions. Entering into a project labor

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[5] To be "feasible," a mitigation measure must be "capable of being accomplished in a successful manner within a reasonable period of time, taking into account" "economic, environmental, legal, social, technological, or other considerations." (Pub. Res. Code, §§ 21081(a)(3), 21061.1; CEQA Guidelines, § 15364.)
[6] *Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 842 ("'CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws.'")
[7] Pub. Res. Code, §21100(b)(3); CEQA Guidelines, § 15126.4(a)(3).
[8] Pub. Res. Code, §§21061, 21100(b)(3); CEQA Guidelines, §§ 15121(a), 15126.4(a); *Napa Citizens for Honest Gov't v Napa County Bd. of Supervisors* (2001) 91 CA4th 342, 365; Sierra Club v County of San Diego (2014) 231 CA4th 1152, 1168 (no evidence that recommendations for reducing greenhouse gas (GHG) emissions would function as enforceable or effective mitigation measures).
[9] *A Local & Reg'l Monitor (ALARM) v City of Los Angeles* (1993) 12 Cal.App.4th 1773, 1809.
[10] CEQA Guidelines, §15370 (Valid mitigation must be designed to avoid significant environmental impacts of projects, and measures to address social or economic benefits are not valid mitigation.)

agreement is not a requirement of a CEQA generally or a requirement for a project to qualify for a SCPE. Accordingly, this comment does not demonstrate any lack of substantial evidence supporting the adoption of a SCPE for the Project, and thus does not warrant a denial of the SCPE for the Project.

Comment No. 2:

The Commenter asserts that the City should require the Project to implement various construction site design, worker testing, and planning requirements to address the COVID-19 pandemic. The Commenter also asserts that the City is required to make a "mandatory finding of significance" due to significant impacts from COVID based on a 2020 study.

Response to Comment No. 2.

The Commenter does not put forth any evidence to demonstrate the Project would cause any health impacts due to COVID-19. The "COVID-19 Crisis" is not an impact of the Project and, to the extent it may be an issue when the Project is constructed, it is, at most, an existing condition of the environment and not an impact of the Project. CEQA only requires the analysis of the impacts of a proposed project on the environment, not the impacts of the environment on a proposed project.[11] On the particular topic of existing environmental hazards, the California Supreme Court has ruled that agencies subject to CEQA are not required to analyze the impact of existing environmental conditions on a project's construction workers, future users or residents, or surrounding communities.[12]

To the extent the Commenter asserts that the Project would cause a significant increase in the transmission of COVID-19, such an assertion is baseless speculation, and speculation is not substantial evidence under CEQA.[13]

The Comment Letter also fails to establish that any purported impact caused by the Project on the spread of COVID-19 would be significant under any valid threshold adopted by the City under CEQA. Moreover, the generic, alleged study from 2020 cited by the Commenter regarding the spread of COVID on construction sites does not address the incremental changes in the Modified Project and is stale evidence in November 2022 as reflected by, among other things, the Governor of California's declaration of the end

[11] *California Bldg. Indus. Ass'n v Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 377; see also, See *In re Bay-Delta Programmatic Envt'l Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1168 (holding that existing environmental conditions "are part of the baseline conditions rather than program-generated environmental impacts"); *Berkeley Hills Watershed Coalition v. City of Berkeley* (2019) 31 Cal.App.5th 880, 892 (Alleged seismic risk to future project residents is an existing condition of the environment and not a CEQA impact).
[12] *California Bldg. Indus. Ass'n v Bay Area Air Quality Mgmt. Dist.*, *supra*, 62 Cal.4th at 377.
[13] Pub. Res. Code, §§ 21080(e)(2), 21082.2(e); CEQA Guidelines, § 15384(a) ("Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.")

to the COVID-19 State of Emergency on October 17, 2022, and the City's declaration of the end to the local state of emergency on October 4, 2022, and the City Council's subsequent January 31, 2023 ordinances identifying a functional end to the pandemic. For the same reasons, the Comment Letter also fails to establish that alleged COVID-19-related impacts from the Project trigger any of the listed "mandatory findings of significance" under Public Resources Code, Section 21083(b) and CEQA Guidelines, Section 15065(a), which findings must be supported by substantial evidence. The Commenter's claims regarding COVID-19 provide no basis to deny the SCPE.

Comment No. 3:

The Commenter asserts that the Project would not qualify for the SCPE because a fire that occurred on the Project Site in 2019 which burned down a former 99 Cent Store onsite may have caused the Project: (1) to not be able to be served by utilities, (2) to have an unusually high risk of fire or explosion; and (3) to cause public health exposures through emissions of toxic chemicals into the air.

Response to Comment No. 3:

The Comment Letter's arguments are presented without any evidence in support, but are rather rooted in only in baseless, senseless speculation, which is not substantial evidence under CEQA.[14] The 2019 fire that burned down the former 99 Cent Store onsite: (1) is not part of the Project and, thus, any impacts associated with the fire are not impacts of the Project but of a separate event that occurred on the Project site nearly three years ago;[15] (2) occurred nearly three years ago, so there is no reason to believe any air emissions or other health risks from the fire – to the extent they ever existed - present any existing health risk that would need to be addressed in the SCPE; and (3) there is no factual or evidentiary basis to support the argument that an onsite fire that occurred three years ago would affect the ability of the City or Culver City utilities to serve the Project, or that such a condition would present any current risk of additional fire or explosion.

The Comment Letter falls far short of meeting its burden to show any error in the SCPE reviewed by staff and recommended for Commission approval. The SCPE proposed for approval by staff is valid and should be approved by the Commission.

[14] Pub. Res. Code, §§ 21080(e)(2), 21082.2(e); CEQA Guidelines, § 15384(a).
[15] Pub. Res. Code, §21100(b)(1); CEQA Guidelines, §§15126.2(a), 15143; see also, *California Bldg. Indus. Ass'n,* 62 Cal.4th at 377; see also, See *In re Bay-Delta,* 43 Cal.4th at 1168 (holding that existing environmental conditions "are part of the baseline conditions rather than program-generated environmental impacts"); *Berkeley Hills Watershed Coalition,* 31 Cal.App.5th at 892 (Alleged seismic risk to future project residents is an existing condition of the environment and not a CEQA impact).

We are available to answer any questions you may have and thank you for your time and attention.

Best regards,

Andrew Brady

cc. Juliet Oh (*juliet.oh@lacity.org*)