

July 20, 2012

Comments on SCH# 2010061036: Final Environmental Impact Report : Village Trailer Park

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### **Master Response**

#### **REGULATORY FRAMEWORK:**

(1) The FEIR implies that the VTP project will have less significant environmental impact because it complies with the general plan or its surrogate planning documents-LUCE and a Development Agreement. Compliance with the LUCE and CEQA are independent requirements. The mere fact that a project is consistent with an adopted general plan surrogate does not mean that its environmental effects cannot be significant. That is especially true when that surrogate is required to be supplemented by a Development Agreement in order to concretize the visioning dynamic of the other document.

(2) Approval of the project is a nullity because of a defective General Plan. The General Plan sits atop the hierarchy of law regulating land use. References to LUCE, Bergamot Area Plan Workshops, and even a Development Agreement as being required for "the guiding inspiration" for project implementation absent a General Plan are ample substantiation of the nullity of any approval given this project.

(3) (i) An accurate, stable and finite description of a project is basic to an informative and legally sufficient EIR. As this is still not available to the public, the responses provided to public comments in all categories of the subject matter of this document -SCH# 2010061036 are inadequate. Therefore a legally sufficient EIR has not been provided for this project.

(ii) Basic to environmental review is that it occur early enough in the planning stages of a project to enable environmental concerns be related to the project's program and design, yet late enough to provide meaningful information for environmental assessment. (CEQA Guidelines, § 15004, subd. (b).). This has not occurred. In fact future development is so unspecified and so uncertain, that no purpose can be served by requiring an EIR to engage in the sheer speculation as to future environmental consequences as this FEIR does

Consequently description of the project's environmental impacts presented in all of the responses to public comment is so curtailed and distorted that they stultify the objectives of the reporting process.

(4) Currently locating planning information is an awkward exercise in Santa Monica and is generating "doubt concerning the integrity of the plan" Government Code section 65301 authorizes adopting a single document or a group of documents as a general plan. Although a plan may properly consist of several documents, it must be logically organized. In addition to all responses referred to in the attached table FEIR responses to public comments 3-1,3-4,3-5,3-6,3-7,3-9,3-10,3-11,3-12,3-13,3-

14,3-15,3-16, (pp 432-451) in particular exemplify how planning information displays substantial contradictions and inconsistencies. The documentation cannot serve as an effective plan because those subject to the plan cannot tell what it says should happen or not happen. Current documentation is not consistent on its face. For this reason the FEIR attempts to snow the decision makers.

(5) The current regulatory framework outlined in the FEIR does not explain what standards and policies for future development exist. Standards are not discernible from the LUCE discussion of the land use and circulation elements it embodies. As it purports to be the basis for a regulatory framework and as it does not set forth the required elements of a General Plan in an understandable manner it cannot be deemed to be in substantial compliance with Government Code section 65301. Although the missing information critical to an adequate discussion of statutory criteria is ostensibly being supplied through documents outside the general plan, a clear reference to the outside documents has not been presented in the FEIR. Accordingly responses dealing with traffic, environmental justice, Aesthetics, Air Quality, Biological Resources:, Cultural Resources:, Noise, Population and Housing are defective. The FEIR should not be approved until the required planning regulatory framework for land use be logically organized.

Until then it is difficult at best to identify standards essential to a proper evaluation of this proposed development and to identify conditions which should be imposed upon its land uses. The deficiency in the above regulatory framework cannot be saved by (mentioning) reference to a Development Agreement because nothing in that agreement provides the basis for planning the development. The deficient element in the regulatory framework cannot be saved by consideration or references to consideration of documents which are not relied upon in the solution of that deficiency.

(6) A sewer study that shows that the City's sewer system can accommodate the entire development has not been prepared and is not available for evaluation. This exemplifies that the planning information being made available in the FEIR displays substantial contradictions and inconsistencies and is not logically organized. It generates reasonable doubt concerning the integrity of the regulatory framework being referred to as having the functionality of a General Plan.

(7) A water study that shows that the City's water system can accommodate the entire development for fire flows and all potable needs has not been prepared and is not available for evaluation. This exemplifies that the planning information being made available in the FEIR displays substantial contradictions and inconsistencies and is not logically organized. It generates reasonable doubt concerning the integrity of the regulatory framework being referred to as having the functionality of a General Plan.

(8) A hydrology study of all drainage to and from the site to demonstrate adequacy of the existing storm drain system for the entire development has not been prepared and is not available for evaluation. This exemplifies that the planning information being made available in the FEIR displays substantial contradictions and inconsistencies and is not logically organized. It generates reasonable doubt concerning the integrity of the regulatory framework being referred to as having the functionality of a General Plan.

(9) (i) The analysis used in the FEIR for responding to comments about environmental impacts avoids analyzing the severity of the problem and advocates the approval of this project as if it were in isolation. The analysis purports to be in compliance with CEQA guidelines about cumulative impacts. The standard for a cumulative impacts analysis is defined by the use of the term "collectively significant" in Guidelines section 15355 and the analysis must assess the collective or combined effect of development. The FEIR continues to improperly use the EIR's "ratio" theory, and consequently invalidly concludes that the greater the overall problem, the less significance the project has. In a cumulative impacts analysis, use of this ratio theory is not in accordance with current practices in complying with CEQA guidelines.

(ii) The EIR deliberately minimizes the cumulative impacts by not taking into consideration buildings similar to that proposed by the applicant, but which were still in the planning stages, albeit at the LUCE framework stage. It is an abuse of discretion not to include unbuilt projects which are under review in the cumulative impacts analysis. The FEIR responses dealing with traffic, environmental justice, aesthetics, air quality, biological resources, cultural resources, noise, population and housing therefore deliberately omitted facts relevant to an analysis of the collective effect this and other developments will have upon the community with respect to these categories of impact.

(10) Response 3-32 (FEIR p 452) is absent data indicating the reason for the increased excavation on site and the volume of soil proposed to be removed. It is impossible to evaluate what the impacts of this doubling of excavation will have on the character of the impacts on the environment and whether such impacts will indeed be mitigated by the mitigation measures proposed. For example on p 461, response 3-34 cites existing data for an excavation of up to 27 bgs whereas the volume of soil to be excavate it has been changed from 79,000 to 146,813 (FEIR p.613) cubic yards and no data has been provided for the depth of this increased excavation.

The FEIR states that the Daily Building Volume Demolished: is going to be 8,800 cubic feet for 3 months without giving any supporting data.

Response 3-23 (FEIR) p 453 in referring to the "Phase I Environmental Site Assessment Report" says that "there is no evidence of soil contamination on the project site and soil testing would not be necessary" does not include accurate data because the study did not provide any reliable data.

The FEIR is therefore deficient regarding the impact of a massive increase (FEIR p 613) in excavation now proposed on the site.

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Issue	SMCC Response (FEIR page #)	Adequacy of Response
<b>Comment 1.3</b> the report did not include the mainline analysis	As analyzed in the Traffic Study, the number of trips generated by the project does not meet the CMP threshold for mainline analysis.(424)	Inadequate Uses the "ratio test" to categorize the significance of an impact as insignificant
<b>Comment 1-4:</b> a weaving analysis and queuing analysis are required to determine whether the traffic would worsen weaving problems or cause back up on to the freeway	Based on follow-up discussions held with Caltrans it was determined that a weaving and queuing analysis would not be necessary (425)	Inadequate .No record of these discussions is available for public review
<b>Comment 1-9:</b> In the spirit of mutual cooperation, we would like to invite the lead agency, City of Santa Monica to the Caltrans office to discuss traffic impact	the City of Santa Monica met with Caltrans following receipt of this comment letter. Mitigation measures were considered and many of the them were deemed infeasible due to secondary impacts, such as the need to acquire private property for public ROW and/or elimination of sidewalks. (427)	Inadequate . No record of these discussions is available for public review
<b>Comment 3-1:</b> Draft EIR does not present information "in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed."	The Draft EIR includes over 1,300 pages of text and information, supported by references and appendices. (483)	Inadequate .Does not respond to the issue raised by the comment.
<b>Comment 3-4:</b> there is no statutory authority to assign any property, including but not limited to the subject one, to any LUCE designation.	Until the completion of the comprehensive Zoning Ordinance update, the project site's underlying zoning of R-MH will continue to be inconsistent with the site's land use designation of Mixed-Use Creative District. (435)	Inadequate . The proposed project's land uses, height, and FAR have been altered 3 times since the publication of the FEIR and so no up to date evidence has been presented to justify this statement.
<b>Comment 3-5:</b> no proper pre-existing procedure for making a discretionary zoning decision has been followed ,	Until the completion of the comprehensive Zoning Ordinance update, the project site's underlying zoning of R-MH will continue to be inconsistent with the site's land use designation of Mixed-Use Creative District. (435)	Inadequate . The response says that "it should be noted that the project site has not been rezoned". (p437), and does not present evidence that the subject of rezoning was ever discussed publicly by giving dates and minutes of such discussions..
<b>Comment 3-5:</b> actions were taken such as entering into a "Memorandum of Understanding,"(MOU) which was later treated by the City as a decision to grant a development agreement without any notice at all to the homeowners	No decision to "grant a development agreement" occurred as a result of the MOU (487)	Inadequate Does not respond to the issue raised by the comment.
<b>Comment 3-6:</b> the proposed development including uses other than residential ones violates the	Until the completion of the comprehensive Zoning Ordinance update, the project site's	Inadequate . Dates and minutes of discussions at which the underlying zoning of R-MH can be "brought

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applicable zoning code section	underlying zoning of R-MH will continue to be inconsistent with the site's land use designation (p435)	into consistency" have never been provided, nor are any standards by which that "consistency" might be achieved been related to documents that are logically organized.
<b>Comment 3-7:</b> The Interim Ordinance does not permit community benefits to substitute for any variation from existing zoning ordinances except height limits.	Because development agreements are themselves ordinances, they may supersede existing land use regulations (i.e., zoning standards) (438)	Inadequate . Does not respond to the issue raised by the comment.
<b>Comment 3-8:</b> The violations of the existing R-MH zoning ordinances in the proposed projects are not in any sense limited to height limits, contrary to the Draft EIR's claims at p. 201.	Because development agreements are themselves ordinances, they may supersede existing land use regulations (i.e., zoning standards) (438)	Inadequate . Does not respond to the issue raised by the comment.
<b>Comment 3-8:</b> claimed compliance with the City's Housing Element in the General Plan, discussed at Draft EIR pp. 201-202, has not been related to documents that are logically organized.	a Notice of Preparation (NOP) for an EIR was prepared for the proposed project and distributed on June 10, 2010 for agency and public review for a 30-day review period	Inadequate . Does not respond to the issue raised by the comment.
<b>Comment 3-9:</b> Commenters here must explicitly state that no other elements of a General Plan staff might choose to come up with will in any way correct the defects listed above. It is the regulatory implementation of the General Plan that is missing.	Please see Responses 3-4, 3-5, and 3-7 above	Inadequate . Locating planning information is currently an awkward exercise in Santa Monica. Government Code section 65301 authorizes adopting a single document or a group of documents as a general plan. Although a plan may properly consist of several documents, it must be logically organized to enable public review. Response does not do this and generates more doubt concerning the integrity of the plan, or the regulatory framework being referred to as currently having the functionality of a General Plan.
<b>Comment 3-10:</b> The draft EIR fails to present any evidence that its retention as a mobile home Residential zone would harm the existing character of the neighborhood.	The proposed project does not propose to change the existing land use designation or zoning. (444)	Inadequate Does not respond to the issue raised by the comment.
<b>Comment 3-11:</b> One amazing gerrymander line leaves Mountain View Mobilehome Park as it was	This comment does not pertain to the environmental analysis in the Draft EIR (444)	Inadequate Does not respond to the issue raised by the comment.

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before, zoned as RMH, and another amazing gerrymander line claims to put VTP inside a natural boundary of Santa Monica's industrial core in spite of its being residential for over 60 years,		
<b>Comment 3-12:</b> The LUCE as the City is actually applying it it is just illegal spot zoning.	The City is currently in the process of updating the Zoning Ordinance to reflect the LUCE including rezoning of currently existing zone districts to be in conformance with the LUCE land use designations	Inadequate . Although a plan may properly consist of several documents, it must be logically organized to enable public review. Response does not do this and generates more doubt concerning the integrity of the plan, and the regulatory framework being referred to.
<b>Comment 3-13:</b> The Draft EIR fails to proceed as required by law in that it concludes there is adequate law to approve the proposed project	LUCE Interim Ordinance 2356 is the regulatory mechanism to implement the LUCE.(446)	Inadequate .As this is the only time that a LUCE ordinance has been referred to , this response generates more doubt concerning the integrity of the plan, and the regulatory framework being referred to. in other responses
<b>Comment 3-14:</b> The Draft EIR fails to proceed as required by law in that LUCE does require the MUC District to be 50% housing and 50% commercial or office-studio use,	The LUCE does not require all individual development projects to provide 50 percent housing and 50 percent commercial uses. the LUCE sets forth a targeted ratio of 50 percent residential to 50 percent nonresidential uses (447)	Inadequate . A plan must be logically organized to enable public review. Response does not do this and generates more doubt concerning the integrity of the plan, and the regulatory framework being referred to.
<b>Comment 3-15:</b> If the Village Trailer Park cannot be retained as it is without the specific plan being completed, that is a sign the City is proceeding as not permitted to proceed by law, so is not proceeding as required to proceed	Adjacent property owners did not express an interest in participating in a transfer of development rights or in forming a single ownership entity. (447)	Inadequate . Does not respond to the issue raised by the comment.
<b>Comment 3-15:</b> nothing in LUCE limits the multi-property master plan requirement for exploring the feasibility of retaining the Park as is, to exploring just two adjacent properties.	A TDR program does not yet exist.. Transfer of development rights requires a degree of forecasting not required by CEQA.(448)	Inadequate . Does not respond to the issue raised by the comment.
<b>Comment 3-16:</b> The Draft EIR in trying to justify the proposed project does not comply with law in that there appears to be no Master Plan for Santa Monica in effect at this time complying with Chapter 9.24 of the Santa Monica Municipal Code	The City's General Plan and its constituent elements guide development within the City. (449)	Inadequate . A plan must be logically organized to enable public review. Response does not facilitate public review and generates more doubt concerning the integrity of the plan, and the regulatory framework

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		being referred to.
<b>Comment 3-17</b> The Draft EIR does not comply with law in that the Development Agreement chapter of the Municipal Code, section 9.48.040, in compliance with State Law, Government Code s 65865 (a) requires a person entering into a development agreement with the City to have a legal or equitable interest in the the subject real property.	This comment does not raise an issue that is relevant to the CEQA analysis. (449)	Inadequate . Response 3-9 (p 440) states that development agreements are themselves ordinances. The subject response does not facilitate public review and generates confusion regarding the elements of the planning and regulatory framework for the project.
<b>Comment 3-18:</b> the Draft EIR either claims matters are insignificant without adequate support for the claim, claims matters are significant but will be mitigated to less than significant. again without adequate support for the claim, or states matters are significant and not mitigatable,	The Draft EIR provides an accurate analysis of the proposed project's potential environmental impacts of the proposed project have been accurately analyzed and fully disclosed. (449)	Inadequate .The response (3-18) is incomprehensible as presented. It fails to respond to the issue raised by the comment by not specifying <u>where the basis for classifying</u> matters in the DEIR might be whenever they are deemed insignificant, mitigable, or not mitigable.
<b>Comment 3-19</b> The Draft EIR does not proceed as required by law because it states it is not required to analyze whether there will be adequate water supply for the proposed project	The Draft EIR concluded that the project's water demand would constitute an incremental portion of the forecasted 2010 UWMP demand	Inadequate .Uses the "ratio test" to categorize the significance of this impact as insignificant
<b>Comment 3-20:</b> The Draft EIR does not proceed as required by law because it uses ridiculous and not even attempted to be justified estimates of current water use at VTP	In response to this comment, Section 4.16.1, Utilities & Service Systems, of the Draft EIR has been revised	Inadequate . Uses the "ratio test" to categorize the significance of this impact as insignificant
<b>Comment 3-21</b> 12. The case cited above also requires the public be given information to be allowed to discuss whether or not what is said is true and actually discusses all the environmental impacts of supplying water to the project.	The City is currently preparing a Water Self Sufficiency Study to examine the City's water supply and to develop a plan to achieve 100 percent self-sufficiency on local water sources by 2020.	Inadequate . A water study that shows that the City's water system can accommodate the entire development for fire flows and all potable needs has not been prepared and is not available for evaluation.
<b>Comment 3-22</b> The Draft EIR fails to proceed as required by law on the matter of soil in that the City cannot suggest it has adequately informed the public so it can comment upon the City's analysis of the environmental effects of this project. if there were	CEQA does not require a lead agency to conduct every recommended test and perform all recommended research to evaluate the impacts of a proposed project.	Inadequate . Does not respond to the issue raised by the comment.

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nothing else wrong with the DEIR, when there was no soil testing. This project involves two stories of subterranean excavation and tons of weight on the soil.		
<b>Comment 3-22:</b> we know of our own personal knowledge that for the 15 years previous to 2000 when the owner was forced by a homeowner lawsuit to upgrade the sewer, there were outflows of raw human sewage onto this land at least once, often three times a year. No remediation of the soil has been undertaken since then.. In any event, not even doing a soil test before publishing a Draft EIR for a project of the magnitude of the one proposed here is unconscionable.	A Phase I Environmental Site Assessment was prepared for the project site and soil testing would not be necessary. (453)	Inadequate . Does not respond to the issue raised by the comment. The Phase 1 Environmental Site Assessment did not seek to conclude whether or not a soil test was required. A soil test is mandatory.(p452)
<b>Comment 3-26</b> 14(b): Visual character/quality of the project site and area, scenic vistas, and scenic resources (p.75): just bold statements without any support.	The Initial Study provided in Appendix A of the Draft EIR provides an analysis of the project's potential impacts related to visual character, scenic vistas, and scenic resources, and determined that impacts would not occur or would be less than significant	Inadequate . The "analysis" referred to consists of the very bold statements upon which the comment seeks elaboration . Therefore this response does not respond to the issue raised by the comment.
<b>Comment 3-27</b> 14(c): Water quality standards or waste discharge requirement, cause substantial erosion or siltation off-site, cause flooding on- or off-site, cause substantial polluted runoff, place housing or structures within a 100-year flood plain that would impede or redirect flood flows, or expose people or structures to significant risk involving flooding	Implementation of the proposed project would bring the project site in compliance with Chapter 7.10, <i>Urban Runoff Pollution Control</i> , of the SMMC	Inadequate .No information is presented that would enable the public to evaluate the capacity of the storm water drainage system in the area affected by the proposed project. Therefore this response does not respond to the issue raised by the comment.
<b>Comment 3-39</b> The Draft EIR is fundamentally obfuscatory about the damage through noise pollution which this project is going to bring on this neighborhood No evidence of Mitigation of Construction Noise is presented	The cumulative construction noise impact is presented on page 4.4-16 of the Draft EIR (465)	Inadequate . No information is presented that would enable the public to evaluate the noise pollution caused by changes in the development proposal since publication of this FEIR. In this and other respects this response does not respond to the issue raised by the comment.
<b>Comment 3-40</b>	The Draft EIR proposes compliance	Inadequate .No information is



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No geotechnical engineering review re liquefaction and/or seismic settling is presented	with a regulatory scheme designed to ensure geologic safety.	presented that would enable the public to evaluate the geotechnical suitability of the site for any development. Response does not respond to the issue raised by the comment.
<b>Comment 3-41</b> The Draft EIR fails to proceed as required by law in that it also indicates no attempt by the City to obtain payment from the proposed developers for public facilities	It should be noted that an analysis of the project's environmental impacts on public facilities is provided in Section 4.14, Public Services, of the Draft EIR. The analysis concluded that the project's impacts on public services would be less than significant.	Inadequate (as in responses 3-19,3-20,3-21) Response does not respond to the issue of public facilities raised by the comment.
<b>Comment 3-42:</b> the MOU entered into with the proposed developers in 2007 that they would build the building where all the current tenants of land for homes at the property were going to be given replacement apartments to rent <u>while those current land tenants were allowed to stay on the property.</u>	The Draft EIR does not limit sensitive receptors to school children	Inadequate : Response does not respond to the issue of current home owners as raised by the comment.
<b>Comment 3-43</b> The Draft EIR fails to proceed as required by law as to shadows to be cast onto adjacent properties (pp.75 &76 & Fig.4.1-3).The California solar rights law does not allow a city to keep any resident from putting solar panels on his/her roof unless the City has a specific health and safety reason for doing so.	It would be too speculative to assume that nearby properties would have solar panels installed sometime in the future that could be shaded by the project. Shadow-sensitive uses would not be shaded for more than 4 hours between 9:00 am. and 3:00 pm. during the summer. Therefore, shadow impacts were determined to be less than significant.	Inadequate : Response does not respond to the issue as raised by the comment.
<b>Comment 3-44</b> Types of Failure to Proceed as Required by Law consisting of failing to present substantial evidence that a particular impact is insignificant, or that mitigation is adequate to make it insignificant, or that if it is significant and cannot be mitigated. that community benefits discussed will be adequate to compensate the community for the significant impacts	The analysis of environmental impacts presented in the Draft EIR is based on substantial evidence in the record, as presented in over 1,300 pages of text and information that is supported by references and appendices.	Inadequate. References to material presented in the DEIR refer to "analysis" regarding impacts. The "analysis" referred to consists of the very bold statements upon which the comment seeks elaboration . Therefore this response does not respond to the issue raised by the comment.
<b>Comment 3-45</b> The Draft EIR fails to proceed as	It is unknown at this time as to which specific trees would be	Inadequate : Response does not respond to the issue as raised by

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