

From: [Phan, Johnny](#)
To: [Downtown West Project](#)
Subject: FW: Letter re SSE initial comments to revised Rezoning, DA and VTM approval documents
Date: Tuesday, May 18, 2021 2:39:39 PM
Attachments: [Letter to City Attorney re Initial Comments to Rezoning, DA and VTM \(5-17-21\) \(10604865xD701E\).pdf](#)

From: Lucy Lofrumento <lal@lmallp.com>
Sent: Monday, May 17, 2021 8:00 PM
To: Frimann, Nora <nora.frimann@sanjoseca.gov>; Phan, Johnny <Johnny.Phan@sanjoseca.gov>
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Subject: Letter re SSE initial comments to revised Rezoning, DA and VTM approval documents

[External Email]

Dear Nora and Johnny,

Please see the attached letter regarding SSE's initial comments and requested changes to the revised Rezoning, Development Agreement and Vesting Tentative Map approval documents that were posted in the last few days. Please let us know as soon as possible whether our proposed changes are acceptable.

We are reviewing additional documents (including exhibits), and will provide additional comments as soon as we can.

It would probably be helpful for us to have a conference to review the open issues – should we try to schedule a meeting for Wednesday? Our regular Thursday 3:00 meeting is already planned for discussion of construction mitigation.

Thanks very much,
Lucy



Lucy Lofrumento

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May 17, 2021

Nora Frimann, City Attorney
Johnny Phan, Chief Deputy City Attorney
City of San Jose
200 E. Santa Clara St., 16th Floor Tower
San Jose, CA 95113

Re: **SSE Initial Comments on Documents for City Council Hearing of May 25, 2021
Downtown West Mixed-Use Project**

Dear Ms. Frimann and Mr. Phan,

We have made an initial review of some of the materials made available by the City in recent days in regard to the upcoming City Council hearing. We ask that the following specific changes be incorporated into the Rezoning Ordinance, Development Agreement and Vesting Tentative Map. As soon as we have had an opportunity to review more of the materials, we will provide additional comments.

Rezoning Ordinance

The revised text in the rezoning ordinance would transform the existing and future uses by SSE on Lots ABC that are consistent with the AMA into legal nonconforming uses. We appreciate the effort to address SSE's concerns about the effect of the new zoning regulations. However, we believe that classifying uses and structures under the AMA as nonconforming uses and structures would run afoul of AMA Section 12.1.3 defining "Applicable City Policies and Guidelines" because such classification would be inconsistent with, interfere with or make more costly, the operation of the Arena Facilities. A far simpler approach, and one that will avoid future controversy in implementation, is to specify that the General Development Plan and PD Permit do not constitute "Applicable City Policies and Guidelines" under the AMA. As such, we request that the pertinent provision of the rezoning ordinance be revised as indicated below:

Existing Uses and Structures. The City Council does not intend to prohibit any uses and/or structures the City is obligated to allow on Lots ABC pursuant to the Arena Management Agreement by and between the City of San Jose and San Jose Arena Management, LLC, as amended through December 4, 2018 (the "AMA"). The uses the City is required to allow on such property under the AMA, which include parking and supporting entertainment uses, are consistent with General Plan as amended through the effective date of this ordinance, including the applicable Downtown and Commercial Downtown land use designations. ~~All uses and structures the City is required to allow on such property under the AMA, to the extent such uses or structures do not conform to~~ ~~¶~~ The requirements of this ordinance, the applicable GDP and/or the applicable PD Permit, are deemed [not to constitute Applicable City Policies and Guidelines as defined in Section 12.1.3 of the AMA](#) legal non-conforming uses or legal non-conforming structures. The ordinances applicable to legal nonconforming uses and legal nonconforming structures, which are in Chapter 20.150 of the Municipal Code, as that chapter may be amended, shall be applied to such legal nonconforming uses and structures in a manner that does not breach any obligation of the City under the AMA with respect to Lots ABC. Sections 20.150.030 and 20.150.300 through 20.150.320 of the Municipal Code shall not be applicable to such property. Further, if requested by Sharks Sports & Entertainment, the Director of PBCE or designee, in consultation with the City Attorney, may reduce, adjust, or waive any requirement that is necessary to enable the City to comply with its obligations under the AMA.

Development Agreement

- A. For clarity and in concert with existing agreements, please add the following language:

Nothing in this Agreement shall be construed to vitiate or limit in any way the fullest latitude and discretion of the City to freely negotiate with San Jose Arena Management, LLC and its affiliates for the amendment and/or extension of the Arena Management Agreement and with respect to management, operation, alteration and improvement of Lots A, B and C and/or for an Arena-Related Sale as defined in the Option/Negotiation Rights Agreement. The rights and obligations of City and San Jose Arena Management under the Arena Management Agreement shall not be impaired or diminished in any way by this Agreement.

- B. For consistency with other revisions to the Development Agreement, please alter the second-to-last sentence of Section 3.3 concerning subdivision maps as follows:

Developer may pursue approval of Final Maps [for Development Parcels](#) in phases that include only portions of the associated Tentative Map.

C. The City has indicated that it intends to explore area-wide transportation and parking management programs, including alternate methods of funding the TPMP. Absent clarity that the Developer will participate, in any such future programs, the Development Agreement (see Section 5.6.1) could limit the City's ability to include the Developer and its lands in such long term solutions. Therefore, please add the following language:

Notwithstanding any provision in this Agreement to the contrary, Developer shall participate, in a manner commensurate with Project development levels, in any area-wide traffic and parking management plan or program (including but not limited to creation of a special district, new taxes and fees, contribution to plan development and implementation, and revisions to the TPMP); provided that Developer retains its rights as a person and a property owner to participate in the process of development and approval of such plan or program.

D. Please revise Section 14.6 as follows:

Developer shall exercise full dominion and control over the Development Parcels Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

Vesting Tentative Map

Please add a new condition 7.D.11 to read as follows:

Developer shall be responsible to fund any Arena integration measures necessary as a result of construction of Cahill Street (e.g., changes to Arena pedestrian access, stairways, escalators, entrances and exits, etc.), with the requisite Arena integration measures subject to the reasonable approval of the Arena Manager.

We would appreciate confirmation that these changes will be effected prior to the City Council hearing.

We are available to discuss at any convenient time. Thank you.

Sincerely,

/s/ Lucy Lofrumento

Cc: Nanci Klein
Cameron Day