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**RE: Appeal filed for PLN23-0031 (440 Peralta, CUP for Monopine)**

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**From** Alison Cantor <acantor@tepgroup.net>

**Date** Thu 1/9/25 11:30 AM

**To** Li, Wayland <WLi@sanleandro.org>; McLaughlin@wfca.com <McLaughlin@wfca.com>; m.pauley@pstctowers.com <m.pauley@pstctowers.com>; Mike Mounphiphak <mmounphiphak@tepgroup.net>

**Cc** Juarez, Lourdes <LJuarez@sanleandro.org>

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Hello Wayland,

As discussed on the phone earlier today, please see below response from PSTC regarding the letter submitted by Greenfire Law on January 5<sup>th</sup>. We request that both the Greenfire letter and our below response regarding the Appellant's procedural deficiencies be submitted to the City Attorney for their review. Please let us know if you would like to have a meeting call to discuss these items further.

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PSTC is in receipt of both the initial appeal of the Planning Commission's ("Commission") decision issued on November 7, 2024 submitted by the Madison Firm on behalf of Mr. Russo on November 20, 2024 ("Appeal Form"), and the subsequent letter submitted on Mr. Russo's behalf by Greenfire Law on January 5, 2025 (the "Greenfire Letter"). While we believe this appeal is nothing more than an attempt to force PSTC to move the planned tower to Mr. Russo's property, enabling him to receive revenue in connection therewith, we are prepared to address each of the claims/allegations made, which are inaccurate, provided without any evidentiary support in the record, and do not in any way justify any modification to the Commission's original approval of PSTC's application.

With that said, there appear to also be a number of procedural deficiencies with the Appellant's filings for failure to comply with the City of San Leandro Zoning Code, which ultimately would justify the Commission denying the appeal in its entirety without the necessity of addressing Mr. Russo's allegations, or at a minimum not giving any consideration to the Greenfire Letter as late filed.

First, based on Section 5.20.108 of the Zoning Code, all appeals must be filed within 15 days of the date of the decision. While the Appeal Form appears to have been timely filed, the subsequent Greenfire Letter was submitted significantly outside of the required filing window, rendering it null and void. As a result of this deficiency, the Greenfire Letter should not be considered as part of the appeal. It is also important to note that the Greenfire Letter would not be considered a submission of a public comment which would be considered by the Commission, but rather an addition to Mr. Russo's appeal, which appeal documentation is required by the Zoning Code to be filed within the 15 day prescribed timeframe.

Second, in accordance with Section 5.20.116(A) of the Zoning Code, the public appeals hearing must be scheduled within 60 days of the Commission's receipt of the appeal unless both the appellant and applicant agree to schedule to a later date. Based on Appellant's late filed Greenfire Letter, the appeals hearing scheduled for January 6, 2025 was

cancelled and rescheduled for January 21, 2025, which is more than the required 60 days. In accordance with Zoning Code Section 5.20.116(F), a failure to act within the prescribed time limits shall result in the affirmation of the original Commission Decision. Because Mr. Russo directed the Greenfire Firm to file the Greenfire Letter one day before the scheduled hearing (a hearing that Mr. Russo was well aware of), it effectively forced cancellation of such hearing now resulting in a scheduled hearing outside the 60 prescribed requirement without mutual agreement by the Appellant and the Applicant. For this reason, the original Commission decision can be affirmed once the 60 days has passed.

Finally, even if the Commission were to consider the appeal, it should only consider the original Appeal Form based on the deficiencies noted above, and provide no consideration to the late filed Greenfire Letter. PSTC thus notes that the original Appeal Form included effectively 4 allegations in opposition to the Commission's approval of PSTC's application, none of which has any merit or any evidentiary support.

1. Mr. Russo was not provided sufficient notice of the initial Commission meeting on November 7, 2024. As we understand it, compliant notice was provided by the Commission.
2. The placement of the tower which is the subject of the application would provide health concerns based on emitted RF radiation and the size and placement of the tower. No evidentiary support for these allegations was provided. Mr. Russo does not even assert that the RF radiation emission violates FCC regulations, but rather that the "FCC guidelines for RF emissions, which this project relies upon, are outdated and fail to reflect modern research on long-term exposure risks." While there is certainly no support for that statement, that would be an issue to raise with the FCC not the Commission in this proceeding. As noted in PSTC's application, at all times, the tower and all related RF emissions will comply with all FCC requirements. Mr. Russo also simply states that the "the tower's height and structure pose potential hazards in the event of earthquakes or extreme weather conditions." This statement is made without any justification or factual support of any kind, and arguably could undermine the approval of every tower constructed in or about populated areas within the state of California.
3. The approved application conflicts with Mr. Russo's plans to develop a condominium and apartment complex at 523 San Leandro Blvd. The Appeal Form goes on to argue that the tower would deter potential residents, reduce property values and create economic challenges to the broader community. He also complains that the tower is not compatible with the "aesthetic character" of the neighborhood. Again, these statements are provided without any study, research, or factual justification of any kind, but are simply suppositions made by the Appellant in his obvious economic favor, and without any consideration of the significant benefits that will be afforded by construction of the tower, particularly to overall health and public safety of the community.
4. That no Environmental Impact Report ("EIR") was commissioned pursuant to CEQA. However, as this Commission is aware, the tower fully qualifies as an exempt site not requiring the completion of an EIR.

For the noted reasons, we believe the Commission is well within its authority to deny the appeal and affirm its original approval of PSTC's application. If the Commission would like to discuss further or requires additional information, PSTC is fully prepared to counter all arguments raised by Mr. Russo, including in the Greenfire Letter.

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Thank you,

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Alison Cantor

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