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*Via Email*

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**Re: Comment on Sustainable Communities Environmental Assessment (SCEA)  
2311 N. Hollywood Way Mixed-Use Project  
Planning Board Hearing, Sept. 27, 2021**

Dear City of Burbank Planning Board and Mr. Medina:

I am writing on behalf of the **Supporters Alliance for Environmental Responsibility ("SAFER")** concerning the Sustainable Communities Environmental Assessment ("SCEA") prepared for the 2311 N. Hollywood Way Mixed-Use Project ("Project") in the City of Burbank ("City") to be heard at the Planning Board's meeting on September 27, 2021.

After reviewing the SCEA with the assistance of Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, and air quality experts Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., of the Soil/Water/Air Protection Enterprise ("SWAPE"), SAFER requests that the Board refrain from taking any action on the Project and SCEA at this time because (1) the SCEA fails to incorporate all feasible mitigation measures from prior environmental impact reports; (2) the SCEA's conclusions about the Project's impacts to air quality are not supported by substantial evidence; and (3) the Project's requested waiver to accommodate first-floor commercial uses is not proper under the State Density Bonus Law.

### **PROJECT DESCRIPTION**

The 2311 North Hollywood Way Mixed-Use Project proposes a mixed-use development with office, commercial, and residential uses within four buildings, totaling approximately

937,613 square feet (sf). The Project Site is currently developed with a large commercial building that was constructed in 1962 and has housed the existing Fry's Electronics Store since 1995. The Project Site has approximately 45 on-site trees and 14 trees in the City's right-of-way.

The Project proposes 776,163 sf of residential uses within two buildings totaling 862 units. Residential Building 1 would reach a maximum height of 75 feet 6 inches and would include 424 residential units (155 studio, 202 one-bedroom, 51 two-bedroom, and 16 three-bedroom). Residential Building 2 would reach a maximum height of 77 feet 5 inches and would include 438 residential units (179 studio, 162 one-bedroom, 87 two-bedroom, and 10 three-bedroom). Of the 862 residential units proposed, 80 units, which is approximately 13.2 percent of the base density, would be Very Low Income units that would be deed restricted as affordable housing for 55 years. The two residential buildings will each include a five-story parking structures.

The Project proposes approximately 8,200 sf of restaurant uses within Residential Building 2 and in a separate 1,500 sf building north of Residential Building 1 fronting Vanowen Street. The Project also proposes 151,800 sf of office uses in a single building located on the southwestern portion of the Project Site. The proposed office building would be approximately five-stories high reaching a maximum of 70 feet 11 inches in height.

## LEGAL BACKGROUND

### I. Sustainable Communities Environmental Assessment under SB 375

CEQA allows for the streamlining of environmental review for "transit priority projects" meeting certain criteria. (Pub. Res. Code §§ 21155, 21155.1, 21155.2.) To qualify as a transit priority project, a project must

- (1) contain at least 50 percent residential use, based on total building square footage and, if the project contains between 26 percent and 50 percent nonresidential uses, a floor area ratio of not less than 0.75;
- (2) provide a minimum net density of at least 20 dwelling units per acre; and
- (3) be within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan.

(Pub. Res. Code § 21155(b).) A transit priority project is eligible for CEQA's streamlining provisions where,

[The transit priority project] is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board . . . has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas

emission reduction targets.

(Pub. Res. Code § 21155(a).) In 2016, the Southern California Association of Governments (“SCAG”) adopted the 2016–2040 Regional Transportation Plan/Sustainable Communities Strategy (“2016 RTP/SCS”), which was accepted by the California Air Resources Board (“CARB”) on June 28, 2016. In 2020, SCAG’s Regional Council formally adopted the Connect SoCal 2020–2045 Regional Transportation Plan/Sustainable Communities Strategy (“2020 RTP/SCS”), which was accepted by CARB on October 30, 2020.

If “all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable environmental impact reports and adopted in findings made pursuant to Section 21081” are applied to a transit priority project, the project is eligible to conduct environmental review using a sustainable communities environmental assessment (“SCEA”). (Pub. Res. Code § 21155.2.) A SCEA must contain an initial study which “identif[ies] all significant or potentially significant impacts of the transit priority project . . . based on substantial evidence in light of the whole record.” (Pub. Res. Code § 21155.2(b)(1).) The initial study must also “identify any cumulative effects that have been adequately addressed and mitigated pursuant to the requirements of this division in prior applicable certified environmental impact reports.” (*Id.*) The SCEA must then “contain measures that either avoid or mitigate to a level of insignificance all potentially significant or significant effects of the project required to be identified in the initial study.” (Pub. Res. Code §21155(b)(2).) The SCEA is not required to discuss growth inducing impacts or any project specific or cumulative impacts from cars and light-duty truck trips generated by the project on global warming or the regional transportation network. (Pub. Res. Code § 21159.28(a).)

After circulating the SCEA for public review and considering all comments, a lead agency may approve the SCEA with findings that all potentially significant impacts have been identified and mitigated to a less-than-significant level. (Pub. Res. Code § 21155(b)(3), (b)(4), (b)(5).) A lead agency’s approval of a SCEA must be supported by substantial evidence. (Pub. Res. Code §21155(b)(7).

## **II. Waivers of Development Standards Under the State Density Bonus Law**

The State of California has adopted the Density Bonus Law which allow developers of residential units to receive a density bonus when a portion of the units are rented or sold at affordable rates. (Gov. Code, § 65915(b).) In addition to the density bonus, qualifying developments are also entitled to “incentives and concessions” as well as “waivers or reductions of development standards.” (*Id.*)

The Density Bonus Law allows a developer of a qualifying development to submit “a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of [the Density Bonus Law].” (Gov. Code, § 65915(e)(1).) Such waivers or reductions of development standards are not to be granted “if the waiver or reduction would have a specific, adverse impact, as

defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.” (Gov. Code, § 65915(e)(1).)

## DISCUSSION

### **I. The SCEA is not adequate under CEQA because it fails to require all feasible mitigation measures from the 2016 RTP/SCS and 2020 RTP/SCS.**

CEQA is clear that a SCEA is only appropriate where “all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable environmental impact reports and adopted in findings made pursuant to Section 21081” are applied to the Project. (Pub. Res. Code § 21155.2.) In 2016, SCAG adopted the 2016–2040 Regional Transportation Plan/Sustainable Communities Strategy Program Environmental Impact Report (“2016 RTP/SCS PEIR”), including a Mitigation Monitoring and Reporting Program (“MMRP”). Similarly, in 2020, SCAG Connect SoCal 2020–2045 Regional Transportation Plan/Sustainable Communities Strategy Program Environmental Impact Report (“2020 RTP/SCS PEIR”), which also included a MMRP. Both MMRPs included regional mitigation measures to be implemented by SCAG and project-level mitigation measures to be applied by lead agencies to specific projects (such as the Project here).

Despite CEQA’s clear directive that *all* feasible mitigation measures from prior EIRs must be applied to a project to qualify for a SCEA, numerous feasible mitigation measures from the 2016 RTP/SCS PEIR and 2020 RTP/SCS PEIR are not being applied to the Project. A comment on the draft SCEA submitted on behalf of the Southwest Regional Council of Carpenters specifically identified about three dozen mitigation measures from the PEIRs that are not being applied to this Project. (Response to Comments (“RTC”), p. RTC-67 to RTC-74.) These mitigation measures include measures identified in the PEIRs to mitigate impacts to air quality, greenhouse gasses, traffic, and hazards. (*Id.*)

As one example regarding air quality, the 2016 RTP/SCS PEIR required mitigation that diesel construction equipment meet CARB’s Tier 4 certified engines or cleaner. (2016 RTP/SCS PEIR, MM-AIR-2(b).) Similarly, the 2020 RTP/SCS PEIR required that projects “use Tier 4 Final equipment or better for all engines above 50 horsepower (hp). In the event that construction equipment cannot meet to Tier 4 Final engine certification, the Project representative or contractor must demonstrate through future study with written findings supported by substantial evidence that is approved by SCAG before using other technologies/strategies.” (2020 RTP/SCS PEIR, MM-AQ-1.) However, the SCEA makes no mention of requiring Tier 4 equipment to mitigate the Project’s air quality impacts. Instead, the SCEA claims that the Project will comply with existing regulations that have been identified and are required by the Southern California Air Quality Management District (SCAQMD) and the California Air Resources Board (CARB). Rather than apply all feasible mitigation measures as required by CEQA, the SCEA claims that compliance with SCAQMD and CARB regulations will ensure compliance with the PEIRs’ mitigation measures. (Draft SCEA, pp. 4-7 to 4-8, 4-93.)

The SCEA fundamentally misconstrues the requirements for an SCEA by not requiring *all* feasible mitigation measures from the PEIRs. For air quality, the SCEA concludes that compliance with SCAQMD and CARB regulations “would be equal to or more effective than” the mitigation required by the 2020 RTP/SCS PEIR and 2016 RTP/SCS PEIR. (Draft SCEA, pp.4-10, 4-95.) However, such a conclusion does not explain why feasible mitigation from the prior PEIRs was not included. In the City’s response to the Southwest Regional Council of Carpenters’ comment on this issue, the City claims that because the prior PEIRs did not require application of all mitigation measures to future projects, the City is under no obligation to apply such measures now. (RTC, p. RTC-115 [“SCAG determined that a lead agency can and should consider these mitigation measures, as applicable and feasible, where the lead agency has identified that a project has the potential for significant effects. SCAG does not require implementation of all feasible mitigation measures as the commenter suggests, but rather leaves the decision of inclusion of these measures at the discretion of the lead agency.”].) However, the proper question is not whether the prior PEIRs required application of these measures. Rather, the question is whether the mitigation measures identified in the PEIRs are *feasible* for this Project. If a measure from the PEIRs is feasible for this Project, it must be applied in order for the Project to qualify for a SCEA. Because the SCEA here fails to apply all feasible mitigation from the PEIRs (*see* RTC, p. RTC-67 to RTC-74), the SCEA is improper and the City must instead prepare a negative declaration or environmental impact report (“EIR”).

**II. The SCEA’s conclusions regarding the Project’s air quality impacts are not supported by substantial evidence.**

Indoor air quality expert Francis “Bud” Offermann, PE, CIH, and air quality experts Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., of the Soil/Water/Air Protection Enterprise (“SWAPE”) reviewed the SCEA and found that the SCEA’s conclusions as to the Project’s air quality impacts were not supported by substantial evidence. Mr. Offermann found that the SCEA failed to address and mitigate the human health impacts from indoor emissions of formaldehyde. Mr. Offermann’s comment and CV are attached as Exhibit A. SWAPE found that SCEA failed to properly model the Project’s emissions and failed to properly evaluate the Project’s health risk impacts from emissions of diesel particulate matter. SWAPE’s comment and CVs are attached as Exhibit B.

**A. The SCEA failed to discuss or mitigate the Project’s significant indoor air quality impacts.**

The SCEA fails to discuss, disclose, analyze, and mitigate the significant health risks posed by the Project from formaldehyde, a toxic air contaminant (“TAC”). Certified Industrial Hygienist, Francis Offermann, PE, CIH, conducted a review of the Project, the SCEA, and relevant documents regarding the Project’s indoor air emissions. Mr. Offermann is one of the world’s leading experts on indoor air quality, in particular emissions of formaldehyde, and has published extensively on the topic. As discussed below and set forth in Mr. Offermann’s comments, the Project’s emissions of formaldehyde to air will result in very significant cancer

risks to future residents of the Project's residential component and employees in the Project's commercial and office components. Mr. Offermann's expert opinion demonstrates the Project's significant health risk impacts, which the City has a duty to investigate, disclose, and mitigate in the SCEA prior to approval. Mr. Offermann's comment and curriculum vitae are attached as Exhibit A.

Formaldehyde is a known human carcinogen and listed by the State as a TAC. SCAQMD has established a significance threshold of health risks for carcinogenic TACs of 10 in a million and a cumulative health risk threshold of 100 in a million. The SCEA fails to acknowledge the significant indoor air emissions that will result from the Project. Specifically, there is no discussion of impacts or health risks, no analysis, and no identification of mitigations for significant emissions of formaldehyde to air from the Project.

Mr. Offermann explains that many composite wood products typically used in home and apartment building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential, office, and retail building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." (Ex. A, pp. 2-3.)

Mr. Offermann found that future residents of the Project's residential units will be exposed to a cancer risk from formaldehyde of approximately 120 per million, ***even assuming that*** all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. (Ex. A, pp. 4-5.) This is more than 12 times SCAQMD's CEQA significance threshold of 10 per million. (*Id.*)

Mr. Offermann found that future employees of the Project's commercial spaces will be exposed to a cancer risk from formaldehyde of approximately 17.7 per million, ***even assuming that*** all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. (Ex. A, p. 4.) This exceeds SCAQMD's CEQA significance thresholds 10 per million. (*Id.*)

Mr. Offermann concludes that these significant environmental impacts must be analyzed and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. (Ex. A, pp. 5-6, 12-13.) He prescribes a methodology for estimating the Project's formaldehyde emissions in order to do a more project-specific health risk assessment. (*Id.*, pp. 5-10.). Mr. Offermann also suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily available. (*Id.*, pp. 12-13.) Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. (*Id.*) Since the SCEA does not analyze this impact at all, none of these or other mitigation measures have been considered.

When a Project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes substantial evidence that the project will have a significant adverse environmental impact. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. (*See, e.g. Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 [County applies Air District's "published CEQA quantitative criteria" and "threshold level of cumulative significance"]; *see also Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 ["A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant"].)

The California Supreme Court made clear the substantial importance that an air district significance threshold plays in providing substantial evidence of a significant adverse impact. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 ["As the [South Coast Air Quality Management] District's established significance threshold for NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact."].) Since expert evidence demonstrates that the Project will exceed the SCAQMD's CEQA significance threshold, there is substantial evidence that an "unstudied, **potentially significant environmental effect**]" exists. (*See Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 958 [emphasis added].) As a result, the City must address this impact and identify enforceable mitigation measures prior to approving the SCEA. (*See Pub. Res. Code* § 21155.2(b)(5) [SCEA must mitigate all impacts to level of insignificance].)

The failure of the SCEA to address the Project's formaldehyde emissions is contrary to the California Supreme Court's decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("CBI"). In that case, the Supreme Court expressly holds that potential adverse impacts to future users and residents from pollution generated by a proposed project **must be addressed** under CEQA. At issue in CBI was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. (*CBI*, 62 Cal.4th at 800-01.) However, to the extent a project may exacerbate existing environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. (*Id.* at 801.) In so holding, the Court expressly held that CEQA's statutory language required lead agencies to disclose and analyze "impacts on **a project's users or residents** that arise **from the project's effects** on the environment." (*Id.* at 800 [emphasis added].)

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. People will be residing in and working in the Project's buildings once built and emitting formaldehyde. Once built, the Project will begin to emit formaldehyde at levels that pose significant direct and cumulative health risks. The Supreme Court in *CBI* expressly finds that this type of air

emission and health impact by the project on the environment and a “project’s users and residents” must be addressed in the CEQA process. The existing TAC sources near the Project site would have to be considered in evaluating the cumulative effect on future residents of both the Project’s TAC emissions as well as those existing off-site emissions.

The Supreme Court’s reasoning is well-grounded in CEQA’s statutory language. CEQA expressly includes a project’s effects on human beings as an effect on the environment that must be addressed in an environmental review. “Section 21083(b)(3)’s express language, for example, requires a finding of a ‘significant effect on the environment’ (§ 21083(b)) whenever the ‘environmental effects of a project will cause substantial adverse effects *on human beings*, either directly or indirectly.” (*CBIA*, 62 Cal.4th at 800.) Likewise, “the Legislature has made clear—in declarations accompanying CEQA’s enactment—that public health and safety are of great importance in the statutory scheme.” (*Id.* [citing e.g., PRC §§ 21000, 21001].) It goes without saying that the future residents and employees at the Project are human beings and their health and safety must be subject to CEQA’s safeguards.

The City has a duty to investigate issues relating to a project’s potential environmental impacts. (*See County Sanitation Dist. No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98. [“[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts.”].) The proposed buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose future residents and employees to cancer risks potentially in excess of SCAQMD’s threshold of significance for cancer health risks of 10 in a million. Currently, outside of Mr. Offermann’s comments, the City does not have any idea what risks will be posed by formaldehyde emissions from the Project or the residences. As a result, the City must include an analysis and discussion in an updated SCEA which discloses and analyzes the health risks that the Project’s formaldehyde emissions may have on future residents and employees and identifies appropriate mitigation measures.

- B. The SCEA cannot be relied upon to determine the significance of the Project’s air quality impacts because the SCEA’s air model underestimated the Project’s emissions.

SWAPE’s review of the SCEA found that it underestimated the Project’s emissions and therefore cannot be relied upon to determine the significant of the Project’s air quality impacts. The SCEA relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2020.4.0 (“CalEEMod”). (Ex. B, p. 1) This model, which is used to generate a project’s construction and operational emissions, relies on recommended default values based on site specific information related to a number of factors (*Id.*, pp. 1-2.) CEQA requires that any changes to the default values must be justified by substantial evidence. (*Id.*)

SWAPE reviewed the Project’s CalEEMod output files and found that the values input into the model were inconsistent with information provided in the SCEA. (Ex. B, p. 2.) This results in an underestimation of the Project’s emissions. (*Id.*) As a result, the SCEA’s air quality



analysis cannot be relied upon to estimate the Project's emissions.

Specifically, SWAPE found that the following values used in the SCEA's air quality analysis were either inconsistent with information provided in the SCEA or otherwise unjustified:

1. Unsubstantiated Changes to the Default CO2 Intensity Factors (Ex. B, pp. 2-4.)
2. Unsubstantiated Reduction to Gas Fireplace Value (Ex. B, p. 4.)
3. Underestimated Net Weekday Vehicle Trip Rate (Ex. B, pp. 4-5.)
4. Improper Application of Operational Mitigation Measures (Ex. B, pp. 5-7.)

As a result of these errors in the SECA, the Project's construction and operational emissions are underestimated and cannot be relied upon to determine the significance of the Project's air quality impacts.

C. The SCEA inadequately analyzed the Project's impact on human health from emissions of diesel particulate matter.

The SCEA concluded that the Project would result in a less-than-significant health risk impact based on quantified health risk assessment ("HRA") for construction of the Project. The SCEA concluded that the cancer risk to nearby sensitive receptor would be 1.58 in one million, less than SCAQMD's significance threshold of 10 in one million. However, SWAPE found that the SCEA's analysis of the Project's health risks were inadequate. (Ex. B, pp. 8-9.)

First, the SCEA fails to include a quantified HRA to evaluate the Project's health risks to nearby sensitive receptors for the entirety of Project operation. (Ex. B, p. 8.) The Project would generate approximately 6,256 average daily vehicle trips, yet the SCEA vague does not disclose or discuss the concentrations at which such pollutants would trigger adverse health effects. (*Id.*) Thus, the SCEA is inconsistent with CEQA's requirement to correlate the increase in emissions generated by the Project with the potential adverse impacts on human health. (*Id.*)

Second, the failure of the SCEA to provide a quantified HRA is inconsistent with the most recent guidance of the Office of Environmental Health Hazard Assessment ("OEHHA"). OEHHA recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident ("MEIR"). (Ex. B, pp. 8-9.) Therefore, the SCEA must be revised to include an analysis of health risks resulting from operation of the Project. (*Id.*)

Lastly, the SCEA failed to sum the cancer risk calculated for each age group for the entirety of Project construction and operation together. (Ex. B, p. 9.) OEHHA guidance requires that "the excess cancer risk is calculated separately for each age grouping and then summed to yield cancer risk at the receptor location." (*Id.*) As such, the SCEA should have quantified and

summed the cancer risks from construction *and* operation of the Project.

- D. When taken together, the health risks from construction and operation of the Project exceed SCAQMD's significance threshold.

SWAPE prepared a screening-level health risk assessment (“HRA”) to evaluate potential DPM impacts from the construction *and* operation of the Project, as opposed to the SCEA’s HRA which only evaluated the Project’s construction impacts. (Ex. B, pp. 9-11.) SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. (*Id.* at p. 13.) SWAPE used a sensitive receptor distance of 200 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance. (*Id.* at pp. 10-11.)

SWAPE found that the excess cancer risk for children, at the closest sensitive receptor located approximately 200 meters away, over the course of Project construction and operation, is approximately 62.7 in one million. (Ex. B, p. 11.) Moreover, SWAPE found that the excess cancer risk over the course of a residential lifetime is approximately 70.9 in one million. (*Id.*) The child and lifetime cancer risks exceed the SCAQMD threshold of 10 in one million. Because a SCEA is only appropriate where all impacts have been mitigated to a level of insignificance, the City must prepare a revised SCEA to mitigate this impact or otherwise prepare an EIR.

### **III. The SCEA inadequately addresses the Project’s greenhouse gas impacts.**

The SCEA relies on the Project’s consistency with CARB’s 2017 Climate Change Scoping Plan, SCAG’s 2020-2045 RTP/SCS, the City’s Green Building Program, and the City’s Greenhouse Gas Reduction Plan (“GGRP”) in order to conclude that the Project would result in a less-than-significant greenhouse gas (“GHG”) impact.

However, although the SCEA claims that the Project would be consistent with the City’s GGRP, nothing in the SCEA *requires* such consistency. For example, the SCEA claims that the Project will be consistent with the GGRP because,

The Project would provide both short-term and long-term bicycle parking spaces for both residential and office uses and the Project would include supporting future EVSE and EV charging stations. The Project would also provide for a pedestrian friendly design to activate the street with approximately 60 trees planted in the City’s right-of-way and 230 interior and canopy trees.

(Draft SCEA, p. 5-72.) As noted by SWAPE, this discussion of Project consistency is toothless unless such measures (e.g. trees, bicycle parking, and charging stations) are required as formal mitigation measures. (Ex. B, pp. 14-15.) In the absence of formal mitigation measures, it is not possible to conclude that the Project will necessarily be consistent with the GGRP.

In order to properly address the Project’s GHG impacts, the City should ensure that all Project design features are included as formal mitigation measures to ensure that the measures will be implemented and enforceable.

**IV. The Project's request for a waiver for commercial uses is not proper under the State Density Bonus Law.**

Under the State Density Bonus Law, the Project's designation of 80 units as Very Low Income entitles the Project to a density bonus as well as to concessions/incentives and waivers of development standards. (Govt. Code § 65915.) According to the SCEA, the Project is seeking a waiver "to permit residential uses without ground floor commercial." (Draft SCEA, p. 1-3.) However, the Density Bonus Law only allows proponents of a project to seek a development standard waiver if application of the standard "will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section." (Govt. Code § 65915(e)(1).)

Nothing about requiring ground floor commercial uses physically precludes construction of this Project at the proposed density. The requirement of ground floor commercial would only mean that affected residential buildings would need to be one story higher to accommodate the commercial use. Indeed, the Project is already seeing an incentive to exceed the allowable building height. (Draft SCEA, p. 1-3.) Because the Project could obtain the same density while complying with the requirement for ground floor commercial, the City should refrain from granting the waiver.

**CONCLUSION**

For the foregoing reasons, the SCEA for the Project should be revised prior to any further action on the Project by the Planning Board. Furthermore, the City should refrain from granting the Project's requested waiver to allow for residential uses without ground floor commercial. Thank you for considering these comments.

Sincerely,



Brian B. Flynn  
Lozeau Drury LLP