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Via Email

March 10, 2022

Vilia Zemaitaitis
Community Development Department
Planning Division Office
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Re: Comment on Sustainable Communities Environmental Assessment (SCEA)
Lucia Park Project (620 N. Brand Boulevard and 625 N. Maryland Avenue)

Dear Principal Planner Zemaitaitis:

I am writing on behalf of the Supporters' Alliance for Environmental Responsibility ("SAFER") concerning the Sustainable Communities Environmental Assessment ("SCEA") prepared for the Lucia Park Project ("Project") located at 620 N. Brand Boulevard and 625 N. Maryland Avenue in the City of Glendale ("City").

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 the City revise the SCEA prior to approval of the Project because (1) the SCEA fails to incorporate all feasible mitigation measures from prior environmental impact reports and (2) the SCEA's conclusions about the Project's impacts to air quality are not supported by substantial evidence. 1-1

PROJECT DESCRIPTION

The Lucia Park Project proposes the development of a residential apartment building on a 63,760-square-foot site, currently developed with a two-story office building and the six-story Chase Bank office building and an associated parking structure. The Project includes the demolition of the existing parking structure and two-story office building and construction of a 24-story, 294-unit residential building containing 247 one-bedroom and 47 two-bedroom apartments, with a parking garage containing 502 parking spaces, including 373 parking spaces for the proposed apartments in four levels of subterranean parking and two above-ground levels. 1-2

The Project includes 41,625 square feet of residential development open space and 7,064 square feet of landscape area throughout the residential building. A number of community spaces are proposed throughout the building, including outdoor and private terraces and a pool on the fourth floor and a dog park on the fifth floor. Terraces are also proposed on the sixth, seventeenth, nineteenth, and twenty-first floors, including roof terraces on the twenty-third and twenty-fourth floors.

1-2

LEGAL BACKGROUND

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.

1-3

(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).) On September 3, 2020, the Regional Council of the Southern California Association of Governments ("SCAG") adopted the 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy ("2020-2045 RTP/SCS"), which was accepted by the California Air Resources Board ("CARB"). The final program EIR for the 2020-2045 RTP/SCS was certified on May 7, 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).)

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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).

DISCUSSION

I. The SCEA is not adequate under CEQA because it fails to require all feasible mitigation measures from the 2020-2045 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 2020, SCAG adopted the Connect SoCal 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy Program Environmental Impact Report ("2020-2045 RTP/SCS PEIR"), which included a Mitigation Monitoring and Reporting Program ("MMRP"). The MMRP 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 2020-2045 RTP/SCS PEIR are not being applied to the Project. For example, for mitigation measures to reduce air quality impacts, the SCEA simply lists mitigation measure PMM AQ-1 from the 2020-2045 RTP/SCS PEIR. (SCEA, p. 6.0-3 to 6.0-8.) PMM AQ-1, by its own terms, is a list of mitigation measures that the City "should consider" and "may include" for a project. (SCEA, p. 6.0-3.) There is no indication that the City has considered the many mitigation measures in PMM AQ-1 and decided which are feasible to apply to this Project.

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The failure of the SCEA to clearly state which prior mitigation measures will be applied to the Project is compounded by the inconsistencies between the mitigation measures listed in the SCEA. For example, PMM AQ-1 from the 2020 RTP/SCS PEIR suggests that heavy duty off-

road construction equipment should meet "Tier 4 Final" emissions standard set by the EPA. At the same time, the SCEA also lists MM 4.2-2(h) from the Downtown Specific Plan EIR, which only requires that construction equipment meet the much dirtier Tier 2 emissions standard. (SCEA, p. 6.0-14.) Such inconsistencies could be remedied by the City revising the SCEA to make clear *which* prior mitigation measures will be applied to the Project. Indeed, CEQA requires that *all* feasible mitigation measures be applied to a project in order for the City to proceed with a SCEA rather than an EIR or MND.

1-4

The SCEA also fails to require all feasible prior mitigation measures to reduce greenhouse gas ("GHG") impacts. An addendum to the 2020-2045 RTP/SCS in September 2020 included mitigation measure PMM-GHG-1 to reduce GHG impacts. (See Ex. B, p. 16-18.) However, the SCEA makes no mention of PMM-GHG-1 and only relies on mitigation *policies* from the South Glendale Community Plan EIR. (SCEA, pp. 6.0-24 to 6.0-25.) The omission of the GHG mitigation from the 2020-2045 RTP-SCS runs afoul of CEQA's requirement that all feasible prior mitigation measures be applied to a Project in order to proceed with a SCEA rather than an EIR or MND.

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 heath risk impacts from emissions of diesel particulate matter. SWAPE's comment and CVs are attached as Exhibit B.

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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 comment, the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents of the Project. 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.

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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. 3-4.) This is more than 12 times SCAQMD's CEQA significance threshold of 10 per million. (*Id*., at p. 4.) **1-6**

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. 4-5, 11-12.) 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, 110-11 ["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 Mgmt. 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 ("*CBIA*"). 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 *CBIA* 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. (*CBIA*, 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].)

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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 *CBIA* 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 identifies appropriate mitigation measures. **1-6**

B. <u>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</u>.

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. 2.) 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.*, p. 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. 3.) 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. **1-7**

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 Architectural/Area Coating (Ex. B, pp. 3-4.)
2. Unsubstantiated Changes to Construction Phase Lengths (Ex. B, pp. 4-6.)
3. Improper Application of Operational Mitigation Measures (Ex. B, pp. 6-7.)

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 without conducting a quantified construction or operational health risk analysis ("HRA"). (Ex. B, p. 8.) The SCEA concluded that construction-related TAC impacts would be less than significant because emissions of PM2.5 would not exceed localized thresholds. (*Id*.) However, SWAPE found that the SCEA's analysis of the Project's health risks were inadequate. (Ex. B, pp. 9-10.)

First, the localized significance threshold ("LST") methodology relied on by the SCEA does not account for TAC pollutants such as diesel particulate matter ("DPM"). Rather, the LST methodology only covers emissions of NOx, CO, PM10, and PM2.5. (Ex. B, p. 9.) As SWAPE explains, "this method cannot be used to determine whether emissions from TACs, specifically DPM, a known human carcinogen, would result in a significant health risk impact to nearby sensitive receptors." (*Id*.) By not analyzing the impacts of DPM emissions, the SCEA failed to provide substantial evidence that the impacts would be less than significant, as claimed. **1-8**

Second, the SCEA fails to include a quantified HRA to evaluate the Project's health risks to nearby sensitive receptors resulting from construction and operation of the Project. (Ex. B, p. 9.) The Project would generate approximately 1,198 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*.)

Third, 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. 9-10.) Therefore, the SCEA must be revised to include an analysis of health risks resulting from construction and operation of the Project.

D. An updated air quality analysis indicates that the Project will result in significant emissions of VOCs and DPM.

In an effort to accurately determine the proposed Project's construction and operational emissions, SWAPE prepared an updated CalEEMod model that includes more site-specific information and correct input parameters, as provided by the MND. (Ex. B, p. 7.) SWAPE's updated analysis "proportionately altered the individual construction phase lengths to match the proposed construction duration of 35 months, omitted the unsubstantiated changes to the architectural and area coating emission factors and areas, and excluded the incorrect area-related operational mitigation measures." (*Id.*) SWAPE's updated model found that Project's **1-9**

construction-related emissions of volatile organic compounds "VOCs" emissions exceed the applicable CEQA thresholds set by SCAQMD." (*Id*. at pp. 7-8.)

Because the SCEA must "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 must be revised in order to disclose and mitigate the Project's significant VOC emissions.

SWAPE also prepared a screening-level health risk assessment ("HRA") to evaluate potential DPM impacts from the construction and operation of the Project. (Ex. B, pp. 10-12.) SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. (*Id*. at p. 10.) SWAPE used a sensitive receptor distance of 200 feet and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance. (*Id*. at pp. 11-12.)

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SWAPE found that the excess cancer risk for infants, children, and adults at the closest sensitive receptor located approximately 200 feet away, over the course of Project construction and operation, is approximately 233, 127, and 13.4 in one million, respectively. (Ex. B, p. 13.) Moreover, SWAPE found that the excess cancer risk over the course of a residential lifetime is approximately 383 in one million. (*Id*.) The infants, children, adults, and lifetime cancer risks all 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.

CONCLUSION

The SCEA for the Project should be revised prior to any further action on the Project. The SCEA's fails to require all feasible mitigation measures from the 2020-2045 RTP/SCS EIR. Furthermore, the SCEA fails to identify and mitigate the Project's air quality impacts to a less-than-significant level. For those reasons, the SCEA must be revised or, in the alternative, the City may prepare an EIR or MND. Thank you for considering these comments.

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Sincerely,

Brian B. Flynn
Lozeau Drury LLP