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*Via E-mail*

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**Re: Comment on Sustainable Communities Environmental Assessment, Dinah's Sepulveda Project (ENV-2021-4938-SCEA)**

Dear Chair Dawson, Honorable PLUM Committee Councilmembers, and Mr. Song:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")** regarding the Sustainable Communities Environmental Assessment ("SCEA") prepared for the Dinah's Sepulveda Project (ENV-2021-4938-SCEA), including all actions related or referring to the proposed development of an eight-story, 362-unit multi-family residential building, with approximately 3,700 square feet of ground floor restaurant space, located at 6501-6521 South Sepulveda Boulevard and 6502-6520 South Arizona Avenue in the City of Los Angeles ("Project").

After reviewing the SCEA with the assistance of Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, air quality experts Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., of the Soil/Water/Air Protection Enterprise ("SWAPE"), and noise expert Deborah Ju of Wilson Ihrig, SAFER requests that the City of Los Angeles ("City") Planning Division refrain from taking any action on the Project and SCEA at this time because the SCEA's conclusions about the Project's impacts to air quality and noise are not supported by substantial evidence. In addition, we request that the City prepare an environmental impact

report (“EIR”) for the Project pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000, et seq.

Mr. Offerman’s comment and curriculum vitae are attached as Exhibit A hereto and is incorporated herein by reference in its entirety. SWAPE’s comment and the consultants’ curriculum vitae are attached as Exhibit B hereto and are incorporated herein by reference in their entirety. Ms. Ju’s comment and curriculum vitae are attached as Exhibit C hereto and is incorporated herein by reference in its entirety.

## **I. PROJECT DESCRIPTION**

The 96,030-SF (2.205-acre) Project site is located at 6501-6521 S. Sepulveda Boulevard and 6502-6520 S. Arizona Avenue in the Westchester-Playa del Rey Community Plan area (APNs 4110-001-006, 4110-001-007, and 4110-001-024). The site is bounded by an undeveloped parcel and Centinela Avenue to the north, a surface parking lot associated with a hotel to the south, Arizona Avenue to the west, and Sepulveda Boulevard to the east. The northern portion of the Project Site is currently improved with a single-story, multi-tenant commercial plaza and a single-story, multi-tenant industrial/mixed-use building containing a total of approximately 22,222 square feet of commercial space and 1,778 square feet of restaurant space, as well as a small locksmith shop, all with associated surface parking. The southern portion of the site is improved with an existing approximately 7,760-square-foot diner (Dinah’s Family Restaurant) and associated surface parking.

The existing Dinah’s Family Restaurant is a one-story structure constructed in 1957. Dinah’s is eligible for listing in the California Register of Historical Places (California Register) and as a Los Angeles Historic-Cultural Monument. Vehicular access at the site is provided by three two-way driveway cuts, one on Sepulveda Boulevard and two on Arizona Avenue. Regional access to the Project Site is provided via Interstate 405, located approximately 300 feet east of the site.

A SCEA has been prepared for the proposed Project pursuant to Section 21155.2 of the California Public Resources Code (“PRC”).

## **II. LEGAL STANDARD**

### **Sustainable Communities Environmental Assessment under SB 375**

The California Legislature passed SB 375, also known as the Sustainable Communities and Climate Protection Act, in an effort to integrate transportation and land use planning to reduce greenhouse gas (“GHG”) emissions. (*See* California Senate Bill 375, Chapter 728, section 1(a).) SB 375 required the state Air Resources Board to develop regional emission reduction targets for cars and light trucks. (Gov. Code § 65080(b)(2)(A).) In addition, federally-designated metropolitan planning organizations that prepare regional transportation plans were required to include in those plans a “sustainable communities strategy” to achieve the emission targets.

(Gov. Code § 65080(b)(2)(B).)

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 2020, the Southern California Association of Governments’ (“SCAG”) Regional Council formally adopted the Connect SoCal 2020–2045 Regional Transportation Plan/Sustainable Communities Strategy (“2020–2045 RTP/SCS”), which was accepted by the California Air Resources Board (“CARB”) on October 30, 2020, and 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).)

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).)

### III. ANALYSIS

#### A. 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.

##### i. 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 "Bud" 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. 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, p. 2.)

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.*)

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. 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. 6-12.) 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.*, p. 13.) 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 (“*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].)

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 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 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 EIR which discloses and analyzes the health risks that the Project's formaldehyde emissions may have on future residents and identifies appropriate mitigation measures.

- ii. 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 significance 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. 3.) 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. 3-4.) CEQA requires that any changes to the default values must be justified by substantial evidence. (*Id.*, p. 3.)

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. 4.) 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. Failure to Model All Proposed Land Uses. (Ex. B, p. 2.)
2. Unsubstantiated Reduction to Acres of Grading Value. (Ex. B, pp. 3-4.)
3. Unsubstantiated Reductions to Construction Off-Road Equipment Unit Amounts. (Ex. B, pp. 4-5.)
4. Incorrect Application of Construction-Related Mitigation Measures. (Ex. B, pp. 5-7.)

As a result of these errors in the SCEA, 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.

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

The SCEA fails to mention or evaluate the Project's construction-related or operational toxic air contaminant ("TAC") emissions. (Ex. B, p. 7.) Instead, 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 assessment ("HRA") for Project construction and operation. (*Id.*)

Furthermore, the SCEA concluded that the cancer risk to nearby, sensitive receptors would be less than SCAQMD's significance threshold of 10 in one million because emissions associated with Project operation and construction would be below SCAQMD's localized significance thresholds. However, SWAPE found that the SCEA's analysis of the Project's health risks were inadequate for several reasons. (Ex. B, pp. 8-9.)

First, the SCEA's localized significance threshold ("LST") only assess impacts of pollutants at a local level, and therefore can only evaluate impacts from criteria pollutants. (*Id.*, p. 8.) The LST therefore does not address impacts from diesel particulate matter ("DPM"), and thus, renders the SCEA inadequate.

Second, the SCEA fails to quantitatively evaluate construction-related and operational TACs or make a reasonable effort to connect these emissions to potential health risk impacts to nearby existing sensitive receptors. (Ex. B, pp. 8-9.) SWAPE identifies potential emissions from both the exhaust stacks of construction equipment and daily vehicle trips. (*Id.*) In failing to connect TAC emissions to potential health risks to nearby receptors, the Project fails to meet the CEQA requirement that projects correlate increases in project-generated emissions to adverse impacts on human health caused by those emissions. (Ex. B, p. 9; *see also Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.)

Third, the California Department of Justice recommends the preparation of a quantitative HRA pursuant to the Office of Environmental Health Hazard Assessment ("OEHHA"), the organization responsible for providing guidance on conducting HRAs in California, as well as local air district guidelines. OEHHA released its most recent guidance document in 2015 describing which types of projects warrant preparation of an HRA. (*See* "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at*: [http://oehha.ca.gov/air/hot\\_spots/hotspots2015.html](http://oehha.ca.gov/air/hot_spots/hotspots2015.html).) OEHHA recommends that projects lasting at least 2 months be evaluated for cancer risks to nearby sensitive receptors, a time period which this Project easily exceeds. (Ex. B, p. 9.) The OEHHA document also recommends that if a project is expected to last over 6 months, the exposure should be evaluated throughout the project using a 30-year exposure duration to estimate individual cancer risks. (*Id.*) Based on its extensive experience, SWAPE reasonably assumes that the Project will last at least 30 years, and therefore recommends that health risk impacts from the project be evaluated. (*Id.*) An EIR is therefore required to analyze these impacts. (*Id.*)

Lastly, the SCEA's claim that there will be a less than significant impact without having conducted a qualified construction or operational HRA for nearby sensitive receptors also fails under CEQA requirements. (Ex. B, p. 9.) Thus, an EIR should be prepared to quantify the cumulative excess cancer risk posed by the Project's construction and operation to nearby, existing receptors, and compare it to the SCAQMD threshold of 10 in one million. (*Id.*)

iv. 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 failure to conduct any HRA analysis. (Ex. B, pp. 10-14.) SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. (*Id.* at p. 10.) SWAPE used a sensitive receptor distance of 125 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance. (*Id.*, pp. 11-13.)

SWAPE found that the excess cancer risk for infants and children at the closest, sensitive receptor located approximately 125 meters away, over the course of Project construction and operation, is approximately 57.0 and 25.9 in one million. (Ex. B, p. 13.) Moreover, SWAPE found that the excess cancer risk over the course of a residential lifetime is approximately 99.0 in one million. (*Id.*) The infant, child, and lifetime cancer risks exceed the SCAQMD threshold of 10 in one million. (*Id.*, pp. 13-14.) 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. However, given the substantial evidence of a significant health risk impact from the Project's construction-related and operational emissions, the City should prepare an EIR that includes an HRA.

**B. The SCEA's conclusions regarding the Project's noise impacts are not supported by substantial evidence.**

The comment of noise expert Deborah Jue is attached as Exhibit C. Ms. Jue has identified several issues with the SCEA. Ms. Jue's concerns are summarized below. (See, Exhibit C.)

After reviewing the proposed Project, SCEA, and related appendices, Ms. Jue concluded that the Project's construction noise impacts are potentially significant for the following reasons and therefore an EIR should be prepared:

- The noise analysis relies on short-term measurements at four locations; these data are not adequate to determine the existing CNEL or range of existing hourly values. The SCEA significance thresholds for noise are based on increases over the ambient. (Table XIII-4, and Appendix G). (Ex. C, p. 1.)
- The SCEA mentions the City of Los Angeles Municipal Code limits on amplified noise (page 5-146), but does not further contain any analysis of the potential impact of music from outdoor amplified sound systems. The SCEA does not appear to include the aggregate effect of sound systems complying with the Municipal Code into a composite noise analysis. Compliance with the municipal codes notwithstanding the noise from music and elevated human voice from active life celebrations are potentially significant and should be discussed in the SCEA. (*Id.*)

- The SCEA cites WHO guidance for interior noise: 45 dBA (events) and 30 dBA Leq, and the SCEA should show that noise from the outdoor event areas will be controlled to comport with these standards. (*Id.*)

Ms. Jue's expert comments constitute substantial evidence of potentially significant construction and operational noise impact as a result of the Project that was not adequately disclosed, analyzed, or mitigated in the IS/MND. Thus, an EIR is required for this Project.

#### **IV. CONCLUSION**

For the foregoing reasons, the City should prepare an EIR and recirculate that EIR for public comment prior to any project approvals. We reserve the right to supplement these comments, including but not limited to at public hearings concerning the Project. *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997).

Sincerely,



Victoria Yundt  
LOZEAU DRURY LLP