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Via Email

June 17, 2024

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**Re: Appeal of Sustainable Communities Environmental Assessment
1201 Gower Street Project (ENV-2023-1540-SCEA)
PLUM Committee Hearing – June 18, 2024**

Dear Chair Harris-Dawson and Honorable PLUM Members,

I am writing on behalf of **Supporters Alliance for Environmental Responsibility (“SAFER”)**, and its members who live, work, and recreate in and around the City of Los Angeles (“City”). SAFER’s comment is with regard to the proposed Sustainable Communities Environmental Assessment (“SCEA”) prepared for the project known as 1201 Gower Street Project (ENV-2023-1540-SCEA), including all actions referring or related to the construction of a residential building, including 108 residential units equaling approximately 180,155-square-foot (“Project”).

SAFER previously submitted comments on November 20, 2023 which were supported by the expert findings of consulting firm Baseline Environmental Consulting (“Baseline”) and Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, who both argued that the SCEA failed to adequately analyze the Project’s air quality, greenhouse gas impacts as well as the associated and health risks. On December 14, 2023, CAJA Environmental Services LLC (“CAJA”) prepared responses for the City (“Response to Comments”).

After reviewing the SCEA, SAFER requests that the City of Los Angeles refrain from taking any action on the Project and SCEA because there is substantial evidence that the Project

will have potentially significant environmental impacts and the SCEA fails to incorporate all feasible mitigation measures from a prior environmental impact report (“EIR”).

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 (“PRC”) §§ 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.

(PRC § 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.

(PRC § 21155(a).)

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 SCEA. (PRC § 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.” (PRC § 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.” (PRC § 21155(b)(2).)

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. (PRC §§ 21155(b)(3), (b)(4), (b)(5).) A lead agency’s approval of a SCEA must be supported by substantial evidence. (PRC § 21155(b)(7).)

DISCUSSION

I. Substantial Evidence Shows that the Project Will Have Potentially Significant Air Quality and Health Impacts.

The SCEA violates CEQA if it fails to identify and mitigate all potentially significant air quality impacts. Indoor air quality expert Francis “Bud” Offermann, PE, CIH, and environmental experts Patrick Sutton, P.E., and Dr. Yilin Tian, Ph.D. of Baseline reviewed the SCEA and found that the SCEA’s conclusions as to the Project’s air quality impacts were not supported by substantial evidence. Baseline found that the SCEA failed to identify the Project’s health risks because it improperly modeled the Project’s emissions and therefore failed to properly apply the SCEA’s proposed mitigation measures.

Based on the Response to Comments, Baseline not only maintains that the Project will have potentially significant air quality and GHG impacts, but that the City does not adequately address Baseline’s issues raised in SAFER’s previous comment letter. Baseline’s comments and CVs are attached as exhibits A and B. 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 C.

a. There is Substantial Evidence That the Project Will Have Potentially Significant Air Quality Impacts from Diesel Particulate Matter.

Baseline prepared a revised health risk assessment (“HRA”) to estimate the increased cancer risk at nearby sensitive receptors exposed to diesel particulate matter. The HRA evaluated potential health risks for the maximally exposed individual resident (“MEIR”), and an existing residential building would be in operation throughout the construction process, meaning that the nearest sensitive receptor is the existing building on the northeast side of the Project site. (Ex. B,

p. 2.)

Table 1. Health Risks at MEIR During Project Construction

Construction Scenario	Diesel Particulate Matter	
	Cancer Risk (per million)	Chronic Hazard Index
Original Health Risk Assessment	103	0.05
Updated Health Risk Assessment	87.5	0.06
Thresholds of Significance	10	1
Thresholds Exceedance?	Yes	No

Source: See Attachment A

Baseline’s updated HRA revealed that the estimated health risks for the MEIR from Project emissions is 87.5 in a million, an amount that far exceeds the SCAQMD threshold of significance. (Ex. B, p. 2.) Baseline adjusted the Project’s emissions according to refined project construction hours presented in the Response to Comments. With these adjustments, Baseline concluded that the Project’s cancer risks would still far exceed significance thresholds, and the Project will have potentially significant air quality impacts. (*Id.*)

Baseline refutes the City’s HRA analysis prepared by Air Quality Dynamics (AQD). AQD’s analysis concluded that the Project would create cancer risk from DPM of 9.1 per million – just slightly below the 10 per million CEQA significance threshold. However, Baseline explains that AQD’s analysis is riddled with factual errors and inconsistencies with regulatory guidance, which renders the analysis unsupported by substantial evidence. For example, the City’s Response to Comments improperly asserts that Baseline’s HRA should only measure weekdays and not weekends. (Response to Comments, p. 1.) This change in what days should be considered for the purposes of evaluating health exposure would be from 350 days to just 260 days. (*Id.*) This implies that Baseline’s HRA incorrectly assumed the Project construction hours, arguing that construction would occur from 8AM to 4PM Monday through Friday. However, that schedule is nowhere to be found on the SCEA documents, undercutting the credibility of the City’s assertion. As Baseline contends, “the HRA letter is suggesting that the annual average concentration exposure should be ignored. This erroneous assumption would result in a substantial underestimate[ion] of the cancer risk by about 25 percent.” (Ex. B, p. 4.) As such, it is improper for the City to rely on its expert’s findings as accurate and credible. The City must perform additional analysis and produce models that more accurately capture the extent of the Project’s impacts.

Furthermore, the City’s HRA assessment excludes the OEHHA early-life adjustment factors for cancer potency, meaning that the HRA underestimates cancer risk for children and adolescents. (Ex. B, p. 6.) The City contends that these early-life adjustments should not be used to evaluate health risks. (Response to Comments, p. 3.) However, as Baseline highlights, the use of OEHHA guidelines and early-life adjustments are a common practice: “there is strong

June 17, 2024

Comment on Sustainable Communities Environmental Assessment

1201 Gower Street Project

Page 5 of 9

scientific evidence and consensus in California to support the use of OEHHA's early-life exposure adjustments for children exposed to DPM during construction rather than to exclude these critical adjustments factors based on older and justifiably outdated guidance from the U.S. EPA." (Ex. B, p. 6.) In fact, had the City's expert included these factors, as Baseline did in their revised HRA, the conclusions would demonstrate how the Project would exceed SCAQMD's cancer risk threshold. (*Id.*)

Baseline's analysis constitutes substantial evidence that the Project will have potentially significant air quality and health impacts which the City has failed to address. The City has failed to produce credible substantial evidence showing that the Project will not have significant air quality impacts related to DPM. As such, additional mitigation measures must be implemented before the City can approve this Project. Therefore, City cannot rely on a SCEA in its current form and must ensure that all feasible mitigation measures are implemented.

b. The Project Will Have Significant Indoor Air Quality Impacts.

Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH conducted a review of the Project and relevant documents regarding the Project's indoor air emissions. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. Mr. Offermann concludes that it is likely that the Project will expose residents of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde, a known human carcinogen. Mr. Offermann's expert comments and CV are attached as Exhibit C.

Mr. Offermann explains that many composite wood products used in building materials and furnishings commonly found in offices, warehouses, residences, hotels, and commercial spaces contain formaldehyde-based glues which off-gas formaldehyde over a long period of time. He states, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." (Ex. C, p. 3.)

Here, the City failed to perform an adequate analysis concerning the Project's cancer risks associated with long-term exposure to carcinogenic TACs. Mr. Offermann states that future residents of the Project will be exposed to a cancer risk from formaldehyde of approximately 120 per million, even assuming all materials are compliant with the California Air Resources Board's ("CARB") formaldehyde airborne toxics control measure. (Ex. C, p. 3.) This risk level exceeds SCAQMD's CEQA significance threshold for airborne cancer risk of 10 per million. (*Id.*)

Furthermore, the City failed to analyze the additional impacts of motor vehicle traffic and the subsequent increase in exposure to particulate matter ("PM2.5"). In 1998, the State of California identified diesel particulate matter ("DPM") derived from diesel-powered engines as a Toxic Air Contaminant ("TAC") based on its potential to cause cancer. DPM is typically composed of carbon particles and a variety of organic compounds including more than 40 known

June 17, 2024

Comment on Sustainable Communities Environmental Assessment

1201 Gower Street Project

Page 6 of 9

cancer-causing organic substances.

Mr. Offermann notes that the high cancer risk posed by the Project's indoor air emissions will exacerbate the cancer risk that exists as a result of the Project's location within the South Coast Air Basin, a state and federal non-attainment area for PM_{2.5}, and in an area with moderate to high traffic. (Ex. C, p. 11.) Specifically, he notes that "the SCAQMD's MATES V study cites an existing cancer risk of 541 per million at the Project site due to the site's high concentration of ambient air contaminants resulting from the area's high levels of motor vehicle traffic." (*Id.*) Formaldehyde emissions from composite wood products will exacerbate this pre-existing cancer risk.

Mr. Offermann predicts that projected annual average PM_{2.5} concentrations will exceed both state and federal standards, thereby necessitating both additional air quality analyses to determine PM_{2.5} concentrations as well as the installation of technology in order to reduce the impacts to a less-than-significant level. (Ex. C, pp. 11-12.) However, the City again failed to analyze these issues, as well as the cumulative impacts associated with the Project's emissions.

Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins in the buildings' interiors. (Ex. C, pp. 12-14.)

These significant air quality impacts preclude the use of a Categorical Exemption for the Project. These impacts should be reviewed in a full CEQA analysis and mitigation measures should be imposed to reduce the risk of formaldehyde exposure.

c. The SCEA Failed to Adequately Analyze its Consistency with the City's Carbon Neutrality Goals.

The SCEA violates CEQA because it failed to adequately analyze the Project's contribution to the state's long-term goal of carbon neutrality by 2045 and implement mitigation measures to reach such carbon neutrality goals.

The SCEA explains that the Project complies with the current Title 24 California Green Building Standards (CALGreen) (SCEA, p. 5-72.). However, Baseline notes that "CALGreen also includes voluntary measures that are organized into two tiers with their own respective prerequisites and elective measures: (1) Tier 1 prerequisites set a higher baseline than CALGreen mandatory measures; and (2) Tier 2 prerequisites include all of Tier 1 prerequisites plus some enhanced or additional measures." (Ex. A, p. 5.) Baseline's analysis, therefore, found that the Project not only conflicts with the 2022 Scoping Plan's building decarbonization goals due to the high annual consumption of natural gas, but the Project is overall inconsistent with the transportation electrification goals of the 2022 Scoping Plan "[b]ecause the proposed project has

not committed to implementing the Tier 2 EV infrastructure requirements (or any voluntary requirements).” (*Id.*)

Case law makes clear that a Project’s GHG emissions should be evaluated based on its effect on California’s efforts to meet the State’s long-term climate goals. (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204.) Since two of the three project attributes have not been met, the Project fails to remain consistent with the 2022 Scoping Plan as it related to GHG reduction strategies. (Ex. A, p. 6.) As such, the City fails to adequately analyze the Project’s consistency with its own Carbon Neutrality goals.

d. The City’s Conclusion that the Project Will Have Less Than Significant Health Impacts is Incorrect Because it Failed to Analyze Sensitive Receptors.

Baseline reviewed the Project and found that the City failed to analyze how exposure of diesel particulate matter (“DPM”) will impact sensitive receptors surrounding the Project site.

In 1998, the State of California identified DPM derived from diesel-powered engines as a Toxic Air Contaminant (“TAC”) based on its potential to cause cancer. DPM is typically composed of carbon particles and a variety of organic compounds including more than 40 known cancer-causing organic substances. The South Coast Air Quality Management District (“SCAQMD”), the agency responsible for regulating air quality within the South Coast Air Basin—which includes the City of Los Angeles—has established in their Localized Significance Threshold Methodology a cancer risk significance threshold from human exposure to carcinogenic TACs of 10 per million.

Figure 1. Sensitive Receptors near the Project Site



As shown in the graphic above, the Project site is surrounded by sensitive receptors. However, the SCEA failed to provide any quantitative evaluation of the health risks posed on these sensitive receptors and the potential exposure to DPM and the cancer risks associated with long-term exposure to carcinogenic TACs because of the Project. In their justification, the SCEA explains that

“[a]ccording to SCAQMD methodology, health risks from carcinogenic air toxics such as diesel PM are usually quantified in terms of individual cancer risk, which is the likelihood that a person exposed to concentrations of TACs over a 30-year period every day will contract cancer based on standard risk-assessment methodology. However, the anticipated duration of construction activities associated with the Project’s implementation is only approximately 28 months, and daily diesel PM emissions would vary considerably day by day, and by phase.”

(SCEA, p. 5-33.)

While the Office of Environmental Health Hazard Assessment (“OEHHA”) explains that cancer risks should not be estimated for shorter-term projects lasting less than two months, the SCEA explains the Project is expected to last twenty-eight (28) months, which is significantly longer than OEHHA’s recommendation of a two-month limitation (Ex. A, p. 3.) The City did not provide any analysis involving such health impacts from prolonged exposure, nor does it refer to health assessment from a longer-term exposure because of the Project. As such, the City has failed to meet its burden to produce substantial evidence that the Project will result in less-than-significant air quality impacts.

II. The SCEA Violates CEQA because the Project is Inconsistent with Applicable Policies and Mitigation Measures from the 2020-2045 RTP/SCS.

CEQA provides that a transit priority project is only eligible for streamlining pursuant to a SCEA when the 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.” (PRC § 21155(a).) As applied here, the applicable sustainable communities strategy here is the 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy prepared by SCAG Connect SoCal (“2020 RTP/SCS”).

For the foregoing reasons stated above, the Project will have potentially significant air quality impacts. The SCEA’s failure to adequately assess and identify the health risks and air quality impacts associated with the Project means that it has failed to implement all feasible mitigation measures as included in the 2020 RTP/SCS. These include:

- **Air Quality:**
 - **PMM AQ-2:** Using Tier 4 construction equipment, consulting SCAG’s EJ toolbox, installing and monitoring filtration systems, and other related measures (*Id.*, pp. 4-8 to 4-12);

June 17, 2024

Comment on Sustainable Communities Environmental Assessment

1201 Gower Street Project

Page 9 of 9

- **Greenhouse Gas:**
 - **PMM GHG-1:** Implementing mitigation measures that reduce GHG impacts, such as using energy conservation and efficient materials (*Id.*, pp. 4-32 to 4-35);
 - **PMM GHG-2:** Conflict with applicable plan, policy or regulation adopted for the purposes of reducing the emissions of greenhouse gases (*Id.*, pp. 4-35 to 4-36);

Furthermore, the SCEA's failure to adequately assess public health risks and contributions to carbon neutrality renders it inconsistent with the following strategies from the 2020 RTP/SCS:

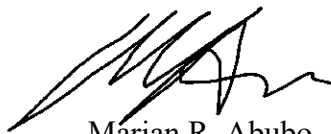
- **Leverage Technology Innovations:** Promote low emission technologies such as neighborhood electric vehicles, shared rides hailing, car sharing, bike sharing and scooters by providing supportive and safe infrastructure such as dedicated lanes, charging and parking/drop-off space (SCEA, p. 3-13);
- **Support Implementation of Sustainability Policies:** Continue to support long range planning efforts by local jurisdictions (SCEA, p. 3-14);
- **Promote a Green Region:** Support development of local climate adaptation and hazard mitigation plans, as well as project implementation that improves community resiliency to climate change and natural hazards (SCEA, p. 3-15);
- **Promote a Green Region:** Support local policies for renewable energy production, reduction of urban heat islands and carbon sequestration (*Id.*); and
- **Promote a Green Region:** Promote more resource efficient development focused on conservation, recycling and reclamation (*Id.*).

Without further analysis and inclusion of feasible mitigation measures, the SCEA fails to meet the stringent requirements for streamlining environmental review, and the City should prepare an updated SCEA or an EIR for the Project.

CONCLUSION

For the foregoing reasons, an EIR or mitigated negative declaration should be prepared by the City prior to any further action on the Project. Thank you for considering these comments.

Sincerely,



Marjan R. Abubo

LOZEAU DRURY LLP