



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
richard@lozeaudrury.com

*Via Email*

April 15, 2024

Esther Ahn  
City Planner  
Expedited Processing  
City Planning Department  
City of Los Angeles  
201 N. Figueroa Street, 4th Floor  
Los Angeles, CA 90012  
Esther.ahn@lacity.org

**Re: Comment on Sustainable Communities Environmental Assessment,  
Sunset and Everett Project (ENV-2023-5529-SCEA)**

Dear Ms. Ahn:

This comment is submitted on behalf of **Supporters Alliance for Environmental Responsibility (“SAFER”)** regarding the Sustainable Communities Environmental Assessment (“SCEA”) prepared for the Sunset and Everett Project (ENV-2023-5529-SCEA) (“Project”), which proposes construction of two 7 story mixed-use residential and commercial buildings with a total of 327 residential units and 263 on-site parking spaces: one subterranean, one partially subterranean, and one at-ground and above-grade level on a vacant asphalted parcel located at 1185 Sunset Boulevard; 1185, 1187, 1193, 1195, 1197, 1201, 1205, 1207, 1211, 1215, 1221, 1225, 1229, 1233, 1239, 1243, 1245, 1247 W. Sunset Boulevard and 917 N. Everett Street in the City of Los Angeles.

SAFER is concerned that the SCEA fails to adequately analyze the Project’s potentially significant environmental impacts, and fails to impose all feasible mitigation measures to reduce the Project’s impacts. SAFER requests the Planning Development Department prepare an environmental impact report (“EIR”) for the Project rather than a SCEA.

SAFER reserves the right to supplement these comments throughout the administrative process. *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997).

## I. 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.

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

[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, 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 Regional Council for the Southern California Association of Governments (“SCAG”) 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

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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. DISCUSSION

### **A. The City May Not Rely on the SCEA Because the Project is Not Consistent with the General Plan.**

The City may only rely on a SCEA if [The project] is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area. Pub. Res. Code § 21155(a).

The Project is not consistent with the general plan density and building intensity. The zoning allows a floor area ratio (FAR) of 1.5:1. However the Project has a FAR of 3:1 – double the FAR allowed by the zoning. (SCEA p. 3-12).

The zoning allows a maximum building height of 57-feet. The Project is proposed to be 91-feet in height. (SCEA p. 2-13).

Since the Project is not consistent with the General Plan and zoning, the City may not rely on a SCEA.

### **B. The City May Not Rely on the SCEA Because the Project is Inconsistent with the SCS.**

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 community environmental assessment (“SCEA”). Pub. Res. Code § 21155.2.

The Project fails to implement mitigation measures and performance standards required by the Sustainable Communities Strategy (SCS).

SCS Goal 5 is to reduce greenhouse gases (GHGs) and improve Air Quality. (SECA p. 4-20). The SCS requires projects to promote low emission technologies such as electric vehicles (EVs). (SCEA p. 4-19). The SCS requires projects to include solar energy and power storage. (SCEA p. 4-20).

**Solar Panels:** Despite these requirements, the Project includes only a “solar-ready” roof. This means that the roof can support solar photo-voltaic panels, but no such panels will necessarily be installed. Installing solar panels is clearly feasible, and so should be required for the Project to be consistent with the SCS.

**EV Charging:** Despite the above policies in the SCS, the Project only includes the bare minimum 10% electric vehicle charging. (SCEA p. 3-17). While additional parking spaces are EV-ready, they will not be equipped with EV charging stations. 100% EV charging is feasible and should be required. Not only would this comply with SCS Goal 5, but also SCS Goal 8: Leverage new transportation technologies. (SCEA p. 4-19).

**Battery Storage:** Despite the above SCS policies, the Project does not appear to include any battery storage. The SCS requires solar energy and power storage. (SCEA p. 4-20). Battery storage is feasible and should be included in the Project along with solar PV.

**Heat Island:** The SCS requires projects to reduce the heat island effect. (SCEA p. 4-21). The Project does not include standard measures to reduce heat island, such as low albedo roofs and parking areas. Such measures are feasible and should be included in the Project.

**Wildlife Connectivity:** The SCS requires projects to preserve and enhance wildlife connectivity. (SCEA p. 4-21). The SCEA contends that this goal is not relevant because the Project is located in an urban area. This is simply untrue. The Project site is a vacant parcel in an urban area. As discussed by wildlife biologist, Dr. Shawn Smallwood, Ph.D., such parcels are critical to wildlife connectivity, particularly for avian (bird) species. The few bits of open space in urban areas provide important resting and stopover habitat for avian species. The SCEA fails to analyze this impact at all. Dr. Smallwood concludes that the Project would adversely affect wildlife connectivity. Thus, the Project does not “preserve and enhance” wildlife connectivity, and is inconsistent with the SCS.

### **C. The City May Not Rely on the SCEA Because the Project has Significant Impacts Unique to the Project and Not Addressed in the SCS.**

#### **1. Project-Level CEQA Review is Required for Impacts that were not Mitigated to Insignificance in the SCS EIR.**

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). Thus, to the extent that the SCS EIR admitted significant unmitigated impacts, further project-level CEQA review is required to analyze and mitigate those impacts on a project level because these impacts were not “mitigated to a level of insignificance” in the Connect SoCal EIR.

In the case of *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125, the court of appeal held that when a “first tier” EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later phases of the project to ensure that those unmitigated impacts are “mitigated or avoided.” (Id. citing CEQA Guidelines §15152(f)) The court reasoned that the unmitigated impacts were not “adequately addressed” in the first tier EIR since they were not “mitigated or avoided.” (Id.) Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been “adequately addressed,” in a way that ensures the effects will be “mitigated or avoided.” (Id.) Such a second tier EIR is required, even if the impact still cannot be fully mitigated and a statement of overriding considerations will be required. The court explained, “The requirement of a statement of overriding considerations is central to CEQA’s role as a public accountability statute; it requires public officials, in approving environmental detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support.” (Id. at 124-125)

The EIR for the SCS admitted significant and unavoidable impacts in several areas, including:

- Aesthetic (Connect SoCal Draft PEIR, p. 2.0-18);
- Agricultural Resources (Id., p. 2.0-20);
- Air Quality (Id. p. 2.0-23);
- Biological Resources (Id. p. 2.0-25);
- Cultural Resources (Id. p. 2.0-34);
- Geology and Soils (Id. p. 2.0-37);
- Greenhouse Gases (Id. p. 2.0-40);
- Hazards and Hazardous Materials (Id. p. 2.0-43);
- Hydrology and Water Quality (Id. p. 2.0-49);
- Land Use (Id. p. 2.0-52);
- Mineral Resources (Id. p. 2.0-54);
- Noise (Id. p. 2.0-55);
- Population and Housing (Id. p. 2.0-58);
- Fire Services (Id. p. 2.0-59);
- Police Services (Id. p. 2.0-60);
- Schools (Id. p. 2.0-61);
- Library Services (Id. p. 2.0-61);
- Recreation (Id. p. 2.0-61);
- Transportation, Traffic and Safety (Id. p. 2.0-63);
- Tribal Cultural Resources (Id. p. 2.0-66);
- Solid Waste (Id. p. 2.0-67);
- Wastewater (Id. p. 2.0-68);
- Water Supply (Id. p. 2.0-69);
- Wildfire (Id. p. 2.0-70);

CEQA review is required to analyze and mitigate the above impacts at the project level because they were not mitigated to a level of insignificance in the Connect SoCal EIR.

## **2. Substantial Evidence Shows that the Project Will Likely Have Significant Air Quality Impacts.**

Air quality experts Matt Hagemann, P.G., C.Hg. and Dr. Paul E. Rosenfeld, Ph.D. of the environmental consulting firm SWAPE reviewed the SCEA and concluded that the Project will likely have significant air quality impacts due to diesel particulate matter (DPM) emissions. SWAPE's comments and expert CVs are attached as Exhibit A. As discussed above, the SCS EIR did not mitigate air quality impacts to less than significant levels, therefore project-specific CEQA review is required.

The SCEA fails to address potential health-related impacts resulting from the Project's likely air emissions. This is problematic because operation of construction equipment during construction of the proposed Project, as well as daily truck trips during future operations, will release diesel particulate matter ("DPM") emissions into the air, affecting local and regional air quality. DPM is a known human carcinogen which poses unique health risks to nearby sensitive receptors. Importantly, CEQA requires a quantified analysis to determine whether a Project's toxic air contaminant ("TAC") emissions—including DPM emissions—will have potentially adverse impacts on human health. *Sierra Club v. Cty. of Fresno* (2018) 6 Cal. 5th 502, 518 (an EIR must make "a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.")

Current guidance by the Office of Environmental Health Hazard Assessment ("OEHHA"), the agency responsible for setting statewide standards to measure health risks under CEQA, recommends that a quantified Health Risk Assessment ("HRA") be prepared to evaluate potential cancer risks for any short-term construction project lasting more than two months, and for the lifetime of any long-term project lasting more than six months. OEHHA guidance also recommends that an exposure duration of 30 years should be used to estimate the individual cancer risk affecting the maximally exposed individual resident ("MEIR") near a proposed Project site. (*Id.*, p. 7.) A project's creation of health risks for impacted MEIRs must be further evaluated according to various sensitive receptors' age and pregnancy status. (*Id.*, p. 11.)

Construction of the proposed Project is expected to last 30 months, and it is reasonable to assume, in the absence of any contrary assertion by the SCEA, that future building operations will continue for at least 30 years, during which time there will be ongoing emissions from delivery trucks, passenger vehicles, water heaters, cooking appliances and other sources. (SWAPE, p. 3).

Contrary to this established regulatory framework, however, the SCEA failed to prepare a quantified HRA for the Project's planned construction and operations. The SCEA also improperly relied on South Coast Air Quality Management District's ("SCAQMD") localized significance thresholds ("LSTs") to evaluate the Project's construction-related

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health risk impacts. This approach is incorrect, however, because LSTs only evaluate emissions of criteria air pollutants—NO<sub>x</sub>, CO, PM<sub>10</sub>, and PM<sub>2.5</sub>—but do not measure the effect of TAC emissions, including DPM emissions, upon sensitive receptors. (*Id.*, p. 2.) As such, the SCEA fails to present substantial evidence showing that the Project will not have a significant health impact. The SCEA additionally “fails to compare the Project’s excess cancer risk” as it compares to the South Coast Air Quality Management District’s (“SCAQMD”) established significance threshold of 10 per million. (*Id.*, p. 2.)

DPM has been listed as a known human carcinogen by the California Office of Health Hazard Assessment (“OEHHA”). DPM contains 40 toxic chemicals, including benzene, arsenic and lead. ([www.p65warnings.ca.gov/fact-sheets/diesel-engine-exhaust](http://www.p65warnings.ca.gov/fact-sheets/diesel-engine-exhaust).) DPM is listed separately by the State of California as a toxic air contaminant known to cause cancer in humans. (<https://oehha.ca.gov/media/downloads/proposition-65/p65chemicalslistsinglelisttable2021p.pdf>.) According to the U.S. Environmental Protection Agency, “Exposure to diesel exhaust can lead to serious health conditions like asthma and respiratory illnesses and can worsen existing heart and lung disease, especially in children and the elderly. These conditions can result in increased numbers of emergency room visits, hospital admissions, absences from work and school, and premature deaths.” (<https://www.epa.gov/dera/learn-about-impacts-diesel-exhaust-and-diesel-emissions-reduction-act-dera>).

As explained above, the SCEA used LSTs to evaluate the Project’s construction-related health risk impacts. However, LSTs analyze only criteria air pollutants, not toxic air contaminants (TACs). Although LSTs analyze localized impacts of PM-10 and PM-2.5, there is no LST for DPM – the pollutant that forms the basis of SWAPE’s analysis. Although PM-2.5 is a constituent of DPM, it is only one of 40 toxic chemicals in DPM. PM-2.5 itself is not listed by the State as a cancer-causing chemical.

Therefore, SWAPE found that the SCEA’s evaluation of the Project’s potential health risk impacts, as well its conclusion that the Project will have a less-than-significant air quality impact conclusion, are methodologically flawed and are thus not supported by substantial evidence. (*Id.*, p. 2.) As such, the City must prepare a revised SCEA or conduct an initial study to more accurately characterize the significance of the Project’s impacts. Unless and until the City can present substantial evidence showing that the Project’s impacts are less than significant, the use of a SCEA is improper. Pub. Res. Code §21155(b)(1)-(2).

SWAPE conducted a screening-level risk assessment using AERSCREEN, a modeling tool which is recommended by both OEHHA and the California Air Pollution Control Officers Association (“CAPCOA”) for the development of Level 2 Health Risk Screening Assessments (“Level 2 HRSA”). According to SWAPE, “A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.” (*Id.*, pp. 3-4.)

Following this recommended approach for modeling potential future health risks, SWAPE presented substantial evidence showing that Project construction and operations would result in excess cancer risks for pregnant individuals during the third trimester of pregnancy, as well as for infants, children, and adults when those individuals are maximally exposed to Project-related emissions, or located approximately 75 meters from the Project site. (*Id.*, p. 5.) SWAPE calculates that the excess cancer risks for the 3rd trimester of pregnancy, infants, children, and adults at the MEIR located approximately 75 meters away, over the course of Project construction and operation, are approximately 18.0, 388, 25.5, and 2.83 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years) is approximately 434 in one million. The 3rd trimester, infant, child, and lifetime cancer risks exceed the SCAQMD threshold of 10 in one million, resulting in a potentially significant impact not previously addressed or identified by the SCEA. (*Id.* p. 7).

Therefore, SWAPE concludes that the “screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact,” and as such, “a revised SCEA should be prepared to include a refined health risk analysis which adequately and accurately evaluates health risk impacts associated with both Project construction and operation.” (*Id.*, p. 8.) SWAPE proposes numerous mitigation measures to reduce the Project’s DPM impacts, which should be considered in a project-level EIR. (*Id.* pp. 8-11).

### **3. Substantial Evidence Shows that the Project Will Likely Have Significant Biological Impacts.**

Wildlife biologists, Dr. Shawn Smallwood, Ph.D. and Noriko Smallwood, M.S., conclude that the Project will have significant biological impacts on special status species. Dr. Smallwood’s comments and expert CVs are attached as Exhibit B. As discussed above, the SCS EIR did not mitigate biological impacts to less than significant levels, therefore project-specific CEQA review is required.

Noriko Smallwood conducted a site visit on April 7, 2024. Noriko detected 30 species of vertebrate wildlife at or adjacent to the project site, including four species with special status. Noriko saw Cooper’s hawk and red-tailed hawk (Photos 4 and 5), California gull (Photo 6), Allen’s hummingbird and hooded oriole (Photos 7 and 8), Cassin’s kingbird and California scrub-jay (Photos 9 and 10), house sparrow and California towhee (Photos 11 and 12), white-throated swift and barn swallow (Photos 13 and 14), lesser goldfinch (Photos 15 and 16), mourning dove and Eurasian collared-dove (Photos 17 and 18), house finch and northern mockingbird (Photos 19 and 20), Canada goose (Photo 21), European starling (Photo 22), acorn woodpecker and common raven (Photo 23 and 24), California ground squirrel (Photo 25), among the other species listed in Table 1.

Signs of breeding on and near the site abounded. California towhee, house finch, and house sparrow were actively gathering nest material from the site for nests on and near the site. Lesser goldfinches were paired up and will likely nest on or near the site. Northern mockingbirds were very territorial and will likely nest on or near the site. An Allen’s



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hummingbird displayed to another Allen’s hummingbird and was very territorial, indicating they will likely nest on or near the site. Cassin’s kingbirds chased each other indicating they will likely nest soon. Birds were very busy on site and the site has a large capacity to support nesting and foraging birds.

Dr. Smallwood states,

Based on Noriko’s survey findings, I am certain that at least four sensitive species of vertebrate wildlife occur at the project site. Making direct use of the trees and shrubs on the project site were special-status species including Allen’s hummingbird and red-tailed hawk. The project site is habitat of these species.

California gull, Cooper’s hawk, Allen’s hummingbird, and red-tailed hawk made use of that portion of the aerosphere that the proposed buildings would displace. The aerosphere of the project site is habitat of these species.

(Smallwood Letter, p. 11).

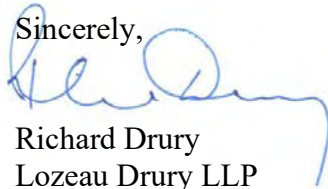
Dr. Smallwood concludes that the Project will adversely affect these species through direct habitat loss, (Id., p. 19), interference with wildlife movement (Id. p. 20), window collisions due to extensive glazing, (Id., p. 21), and cumulative impacts with other projects. (Id. p. 24). Dr. Smallwood predicts that the Project will cause 760 bird deaths annually due to window collisions alone. (Id.).

Dr. Smallwood proposes several mitigation measures that could reduce the Project’s impacts to sensitive species, including the use of bird-safe glass, pre-construction surveys to detect species, worker training programs, funding for wildlife rehabilitation facilities and other measures. (Id. 24-28). These impacts and mitigation measures should be analyzed in a project-specific CEQA document.

## CONCLUSION

The SCEA fails to comply with CEQA because it fails to incorporate “all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable environmental impact reports,” namely, the 2020 Connect SoCal Program EIR. The SCEA is additionally improper because it lacks substantial evidence to support its conclusions that the Project will have less than significant impacts to air quality and biological impacts. Therefore, the City must prepare an initial study to determine the appropriate level of environmental review for the Project. Thank you for considering these comments.

Sincerely,



Richard Drury  
Lozeau Drury LLP