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***Via Email***

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**Re: Comment on Sustainable Communities Environmental Assessment, Sunset and Everett Project (ENV-2023-5529-SCEA) (Construction of Mixed-Use Residential and Commercial Development); July 11, 2024, City Planning Commission Meeting - Agenda Item No. 7**

Dear President Lawshe, Vice President Zamora, Honorable Commissioners, and Planner 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-20230-5529-SCEA) ("Project"), which proposes the 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.

On April 15, 2024, SAFER submitted comments ("April 15 Letter") regarding the SCEA's failure to adequately analyze the Project's significant environmental impacts as well as

a failure to impose all feasible mitigation measures to reduce the Project's impacts.[1] On July 2, 2024, the Department of City Planning issued a Recommendation Report, which included a response to SAFER's April 15 Letter. SAFER remains concerned that the SCEA fails to comply with CEQA.

## 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

[1] SAFER's April 15 Letter is attached as Exhibit A

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).

## DISCUSSION

### Comment 3

In the City's response to Comment 3, it contends that SAFER misconstrues the qualifying criteria for the use of a SCEA. However, it is the City that misunderstands the qualifying criteria for the use of a SCEA. The City may only rely on a SCEA if "[the project] is consistent with the general use, designation, building intensity, and applicable policies specified for the project area." (Pub. Res. Code § 21155(a).)

Here, the Project is not consistent with building intensity and density. It has a floor area ratio ("FAR") of 3.0, double the allowed 1.5 FAR, and a height of 91-feet, far above the allowed 57-feet. The City contends that the additional density is allowed under the Density Bonus Law. While this may be true, it does not mean that the City can rely on a SCEA. The SCEA is a streamlined CEQA process allowed only for projects that comply with otherwise allowed density and building intensity, which this project does not.

The City cannot rely on a SCEA because waivers may be required under the Density Bonus Law. The Project was simply not analyzed in the prior EIR because the prior EIR did not analyze projects of this height and density. As such, supplemental CEQA review is required. (*See Save Our Access v. City of San Diego* (2023) 92 Cal. App. 5th 819 [supplemental CEQA review required for project that exceeded heights analyzed in program EIR].)

To the extent that the City relies on the *Wollmer v. City of Berkeley* (2011) 193 Cal. App. 4th 1329 case, that case is inapposite. In that case, the court held that the city could rely on the CEQA infill exemption, despite the fact that the project received waivers under the Density

Bonus Law. Unlike the case here, that case did not rely on tiering off of a prior EIR. This case is similar to *Save Our Access* because the SCS EIR did not analyze project impacts for the height and density for this Project.

Additionally, *Wollmer* addressed a CEQA Guideline, which is a regulation. The court held that the Density Bonus Law effectively trumped local zoning. (193 Cal. App. 4th at 1345.) In this case, the SCEA law and the Density Bonus Law are both statutory provisions. A SCEA may only be used for projects that comply with the density and intensity allowed by the general plan and zoning. (Pub. Res. Code § 21155(a).) The Density Bonus Law does not purport to preempt the SCEA law, or vice-versa. In such situations, the courts are clear that both laws must be afforded equal weight and must be harmonized. It is a basic rule of statutory construction that statutes should be interpreted to harmonize rather than to conflict whenever reasonably possible. "To overcome the strong presumption against the implied repeal of conflicting statutes, the two statutes 'must be irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation. The courts are bound, if possible, to maintain the integrity of both statutes if the two may stand together.'" (7 Witkin, Summary of Calif. Law, p. 57, §94(d), quoting, *Stop Youth Addiction v. Lucky Stores* (1998) 17 Cal.4th 553, 569.) Thus, the City must comply with both the Density Bonus Law, CEQA and the SCEA law. This is easily done. The City must grant the requested waivers under the Density Bonus Law. However, as a result of those waivers, the Project does not qualify for a SCEA because it does not comply with the density and intensity allowed by the general plan and zoning. Therefore, subsequent CEQA review is required, and the city may not rely on the SCEA. In this way, the Project may still proceed under the Density Bonus Law, but the city must analyze and mitigate its environmental impacts under CEQA. This interpretation harmonizes the statutes and gives each statute equal dignity.

**Comment 4**

In the City's response to Comment 4, it ignores the plain language of the statute. Under Pub. Res. Code § 21155.2 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"). The statute is clear that in order for a project to be eligible for a SCEA, the project must implement all feasible mitigation measures, yet the Project fails to implement mitigation measures and performance standards required by the Sustainable Communities Strategy ("SCS"). (Pub. Res. Code § 21155.2.)

Here, the City does not dispute that it failed to implement the mitigation measures in the SCS, but instead argues that it is not required to implement these measures. While the City may exercise its discretion to abandon mitigation measures set forth in the SCS, under the plain

language of the SCEA statute, if it does so, it may not rely on a SCEA, and must instead prepare a CEQA document for the project.

**Comment 5-9**

Again, the City ignores the plain language of the SCEA statute. Goal 5 of the SCS is to reduce greenhouse gases ("GHGs") and requires projects to promote low emission technologies such as electric vehicles ('EVs"). (SCEA p. 4-20; 4-19). The SCS also requires projects to include solar energy and power storage. (SCEA p. 4-20). By failing to implement plainly feasible GHG reduction measures, it fails to comply with the SCS. While the Project includes a "solar-ready" roof, the Project must install solar panels to be consistent with the SCS, which is clearly feasible. As such, the city may not rely on the SCEA and must prepare a project-specific CEQA document. Furthermore, the City ignores the recent case of *Nat. Res. Def. Council, Inc. v. City of Los Angeles* (2023) 98 Cal. App. 5th 1176, review denied (Apr. 24, 2024), which held that an agency must implement mitigation measures unless the city provides substantial evidence that the mitigation measures are infeasible. Here, the City provides no evidence of any kind that the proposed measures are infeasible. As such, the city must implement the measures.

**Comment 11**

In its response to Comment 11, the City simply ignores the law. 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 SCS EIR. Here, the SCEA failed to mitigate numerous impacts to a level of insignificance. Under the plain language of the statute, project level CEQA review is required to analyze and mitigate these impacts.

Furthermore, the fact that *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98 concerned a different statute is irrelevant. The language and principles at issue are the same. The City cannot rely on a prior CEQA document that did not mitigate impacts adequately, and project level CEQA review is required. This requirement is set forth clearly in the SCEA statute.

## CONCLUSION

The SCEA 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 EIR. Therefore, SAFER respectfully requests that the Planning Commission recommend that the Project undergo CEQA review so as to ensure compliance with CEQA.

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Sincerely,

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