

Justification/Reason for Appeal

1201 North Gower Street Project

(CPC-2023-1539-DB-VHCA; ENV-2023-1540-SCEA)

I. REASON FOR THE APPEAL

The Sustainable Communities Environmental Assessment (“SCEA”) prepared for the 1201 North Gower Street Project (CPC-2023-1539-DB-VHCA; ENV-2023-1540-SCEA) (“Project”) fails to comply with the California Environmental Quality Act (“CEQA”). Furthermore, the approval of the Site Plan Review entitlements, Off-Menu Density Bonus Incentives, and Waivers of Development Standards (CPC-2023-1539-DB-VHCA) was in error because (1) the City of Los Angeles (“City”) must fully comply with CEQA prior to any approvals in furtherance of the Project and (2) the findings are not supported by substantial evidence. Therefore, the City of Los Angeles (“City”) must set aside the Site Plan Review entitlements, Off-Menu Density Bonus Incentives, and Waivers of Development Standards, and prepare and circulate an environmental impact report (“EIR”) prior to considering approvals for the Project.

II. SPECIFICALLY THE POINTS AT ISSUE

For the specific reasons set forth in the attached comment letter dated November 20, 2023, the SCEA fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project’s impacts. Furthermore, proper CEQA review must be complete *before* the City approves the Project’s entitlements. (*Orinda Ass’n. v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171 [“No agency may approve a project subject to CEQA until the entire CEQA process is completed and the overall project is lawfully approved.”].) As such, the approval of the Project’s Site Plan Review entitlements, Off-Menu Density Bonus Incentives, and Waivers of Development Standards was in error. Additionally, by failing to properly conduct environmental review under CEQA, the City lacks substantial evidence to support its findings for the Site Plan Review entitlements, Off-Menu Density Bonus Incentives, and Waivers of Development Standards.

III. HOW YOU ARE AGGRIEVED BY THE DECISION

Members of appellant Supporters Alliance for Environmental Responsibility (“SAFER”) live and/or work in the vicinity of the proposed Project. They breathe the air, suffer traffic congestion, and will suffer other environmental impacts of the Project unless it is properly mitigated.

IV. WHY YOU BELIEVE THE DECISION-MAKER ERRED OR ABUSED THEIR DISCRETION

The City Planning Commission approved the Site Plan Review Entitlements, Off-Menu Density Bonus Incentives, and Waivers of Development Standards and adopted the SCEA for the Project, despite substantial evidence in the record that SCEA fails to adequately analyze the Project’s environmental impacts and fails to incorporate all feasible mitigation measures to reduce the Project’s impacts. The City should have prepared an initial study followed by an EIR or negative declaration in accordance with CEQA prior to consideration of approvals for the Project. The City is not permitted to approve the Project’s entitlements until proper CEQA review has been completed.



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November 20, 2023

Via Email

City of Los Angeles
Hearing Officer
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**Re: Comment on Sustainable Communities Environmental Assessment (SCEA)
Exemption for the 1201 Gower Street Project (ENV-2023-1540-SCEA)**

Dear Hearing Officer:

I am writing on behalf of Supporters Alliance for Environmental Responsibility (“SAFER”) regarding the 1201 Gower Street Project (“Project”), including all actions related or referring to the proposed construction of a mixed-use development consisting of 136 multi-family residential units in two buildings with a total floor area of 306,793 square feet, located at 1201 North Gower Street and 6121 West Lexington Avenue in the City of Los Angeles (“City”).

After reviewing the SCEA, SAFER respectfully requests that the City of Los Angeles (“City”) refrain from taking any action on the Project and SCEA at this time because (1) the SCEA’s conclusions about the Project’s impacts to air quality are not supported by substantial evidence, and (2) the SCEA fails to incorporate all feasible mitigation measures from a prior environmental impact report (EIR). These comments are supported by the expert comments of air quality experts Certified Industrial Hygienist, Francis “Bud” Offermann, PC, CIH, and the environmental consulting firm, Baseline Environmental Consulting (“Baseline”). Mr. Offermann’s and Baseline’s comments are attached and are incorporated herein by reference.

PROJECT DESCRIPTION

The Applicant, CLG Gower LLC, plans to build the Project, which includes the deconstruction of two parking garages and a 28-unit building, maintenance of an existing 44-unit building, and construction of a 180,155-square-foot addition to Building 2 that would include 108 multi-family residential units, of which 16 units (i.e., 15 percent of the base density) would be set aside for very low-income households. The new building addition would be eight above ground levels over one subterranean level, inclusive of six levels of residential uses over two levels of aboveground parking. The subterranean level would be used for storage. The addition would reach a maximum building height of 95 feet.

LEGAL BACKGROUND AND STANDARD

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 §§ 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).)

II. The Project’s SCEA must be supported by Substantial Evidence.

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”). (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).) 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. (PRC § 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. (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).) A SCEA is reviewed under the substantial evidence standard, rather than the "fair argument" standard that is applied to negative declarations. PRC §21155.2(b); *Sacramentans for Fair Planning v City of Sacramento* (2019) 37 Cal.App.5th 698, 722 (applying substantial evidence to review of decision to use sustainable communities environmental assessment as well as content of such assessment).

DISCUSSION

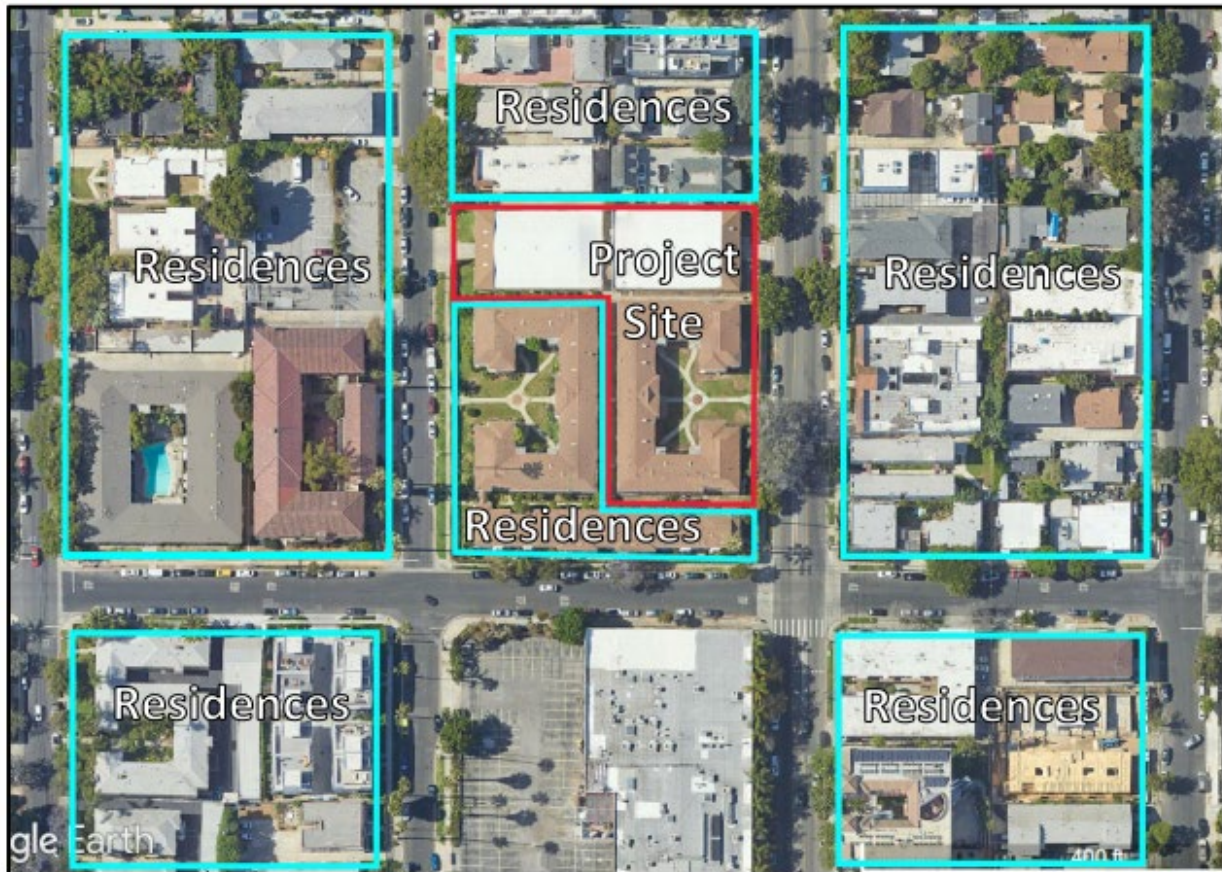
I. Substantial Evidence Shows That the Project Will Likely Have Significant Adverse Indoor Air Quality and Health Impacts.

Indoor air quality expert Francis “Bud” Offermann, PE, CIH, and environmental experts Patrick Sutton, P.E., and Yilin Tian 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 properly model the Project’s emissions and health risks and failed to properly apply the SCEA’s proposed mitigation measures. Baseline’s comment and CVs are attached as Exhibit A. 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 B.

a. The Project Will Have Unanalyzed Health Impacts from Construction Emissions.

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 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, yet 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 how 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. The City should perform a health risk assessment estimating cancer risks associated with higher exposure to short-term DPM emissions during project construction in accordance with OEHHA guidelines.

Furthermore, the SCEA explains that an HRA was not prepared since the Project’s air criteria pollutants would not exceed SCAQMD’s Localized Significance Thresholds (“LST”). However, Baseline explains that the thresholds in SCQAMD’s Localized Significance Threshold Methodology only apply to criteria health pollutants and were not designed to evaluate health risks associated with DPM exposure, which is a toxic air contaminant. The California Air Resources Board explains how in California, only about 8 percent of the average ambient PM2.5 concentration in outdoor air is comprised of DPM. Given how federal and state ambient air quality standards established for fine particulate matter were based on protective human health in ambient conditions and not during periods of higher concentration such as construction, the City failed to provide substantial evidence to support using SCAQMD’s localized significance threshold of PM2.5 to evaluate potential health risks to sensitive receptors exposed to DPM from the exhaust of diesel-powered construction equipment. As shown in the exhibit above, this Project site is adjacent to nearby receptors on all sides of the Project site. Ignoring the health risks due to a misunderstanding of local guidance will ultimately lead to higher exposures to health-related impacts.

Table 1. Health Risks at MEIR During Project Construction

Construction Scenario	Diesel Particulate Matter	
	Cancer Risk (per million)	Chronic Hazard Index
Unmitigated Emissions	103	0.05
Thresholds of Significance	10	1
Thresholds Exceedance?	Yes	No

Source: See Attachment A

Baseline prepared a health risk assessment (“HRA”) to estimate the increased cancer risk at nearby sensitive receptors exposed to diesel particulate matter. As summarized in Table 1 above, “[t]he estimated cancer risk at the [maximally exposed individual resident (“MEIR”)] location from exposure to DPM emissions during project construction emissions is about 103 in a million, **which is over ten times greater than** the SCAQMD’s threshold of 10 in a million.

Therefore, project construction would expose sensitive receptors to substantial pollutant concentrations and the impact would be significant.” (Ex. A, p. 4.)

Baseline’s analysis constitutes substantial evidence that the Project may produce potentially significant air quality and health impacts which the City has failed to address. The City has failed to produce any substantial evidence showing that the Project will not have significant air quality impacts related to DPM. Therefore, the City must prepare an Initial Study to further evaluate the incremental increase in cancer risk at nearby sensitive receptors exposed to DPM emissions during project construction and mitigate these impacts through the consideration of implementing exhaust control measures (e.g., use of Tier 4 final engines) to reduce the Project’s health risks below the SCAQMD’s recommended thresholds of significance for toxic air contaminants.

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 B.

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. B, p. 3.)

Here, the City failed to perform an adequate analysis concerning the cancer risks associated with long-term exposure to carcinogenic TACs because of the Project, for both residents and workers. 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. (*Id.*, 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 cancer-causing organic substances.

Mr. Offermann notes that the high cancer risk that may be posed by the Project's indoor air emissions will be exacerbated by the additional 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. B, 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 the projected traffic noise levels, the 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. (*Id.*, 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. (*Id.*, 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 Will Have Significant GHG-related Air Quality Impacts.

The SCEA failed to adequately analyze the Project's contribution to the state's long-term goal of carbon neutrality by 2045. The SCEA explains that the Project would be in compliance 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).) Thus, 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. (*Id.*, p. 6.) As such, the City fails to adequately analyze consistency with its own Carbon Neutrality goals.

II. The SCEA Violates CEQA Because it Fails to Implement All Feasible Mitigation Measures and Fails to Comply or Analyze Strategies from the 2020 Connect SoCal Program EIR.

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. (PRC § 21155.2.) In 2020, the South California Association of Governments' ("SCAG") Regional Council formally adopted the Connect SoCal 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy ("2020 RTP/SCS"), and the California Air Resources Board accepted it on October 30, 2020. SCAG then adopted the Connect SoCal Program EIR ("2020 PEIR" or "PEIR") for the 2020 RTP/SCS. The 2020 PEIR included a Mitigation Monitoring and Reporting Program ("MMRP") which details regional mitigation measures to be implemented by SCAG and Project-level mitigation measures to be implemented by lead agencies for individual projects (such as the Project at issue here).

Importantly, the MMRP explicitly states that, "for projects seeking to use CEQA streamlining and/or tier from the Connect SoCal Program EIR, project-level mitigation measures included in this Program EIR (or comparable measures) **should be required by the local lead agency as appropriate and feasible.**" (emph. added.) Despite the clear directives under CEQA and the Connect SoCal Program EIR that all feasible mitigation measures included in the PEIR must be implemented for a Project to qualify for a SCEA, numerous Project-level mitigation measures from the 2020 PEIR are not included in the SCEA for this Project. Among the mitigation measures that the 2020 PEIR requires, the following reflects a non-exhaustive list of some of the appropriate and feasible mitigation measures that the SCEA fails to adopt:

- Aesthetics:
 - PMM AES-2: Requiring sound-wall construction and design methods, designing sounds to walls to increase visual interest (RTP/SCS Program EIR, pp. 4-3 to 4-5);
- 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);
- 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);
- Noise:
 - PMM NOI-2: Outfitting construction equipment (*Id.*, pp. 4-51 to 4-52);

For example, for mitigation measures related to reducing air quality impacts, the 2020 PEIR requires all projects “to use Tier 4 Final equipment or better for all engines above 50 horsepower (hp).” (SCEA, pp. 4-8 to 4-9.) The SCEA explains no such mitigation is required because the Project would not generate pollutant emissions in excess of applicable thresholds...” (*Id.*, p. 4-8.) Yet, as Baseline notes above, this conclusion is incorrect and mitigation measures are absolutely required.

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. 3-20);
- Support Implementation of Sustainability Policies: Continue to support long range planning efforts by local jurisdictions (*Id.*);
- 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. 3-21);
- 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.*).

Additionally, the Project’s failure to prepare an HRA means that the SCEA is inconsistent with Policy 4.2.4 of the City’s Air Quality Element of the General Plan, which provides, in part, that air quality impacts be a consideration in the review and approval of all discretionary projects. (SCEA, p. 5-29.) As Baseline explained, the SCEA should conduct further analysis of the Project’s health risk impacts and evaluate the effectiveness of implementing applicable measures to ensure impacts are below significance. Additionally, the SCEA should consider whether the Project can be designed to be carbon neutral by 2045, consistent with the state’s long-term climate goal. This could include measures such as the use of all-electric buildings and the installation of additional EV charging infrastructure. An attached agreement

includes the feasibility of implementing a host of climate-compatible designs into a proposed mixed-use residential development project in the Southern California region. (Exhibit C.)

Without this 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. As such, the SCEA fails to implement a broad suite of feasible mitigation measures included in the PEIR which would further reduce the Project's impacts. The Project thus fundamentally misconstrues the requirements of a SCEA by failing to require implementation of all feasible mitigation measures which were included in the 2020 PEIR.

Therefore, in order to qualify for a SCEA, the City must revise the Project documents to include all feasible mitigation measures from the 2020 PEIR. In doing so, the City must also adopt all feasible mitigation measures related to reducing the indoor air quality impacts as noted by Baseline and Mr. Offermann to a less-than-significant level. Unless and until the City takes this essential step to comply with CEQA, the Project is not eligible for a SCEA.

CONCLUSION

The SCEA is improper because it lacks substantial evidence to support its conclusions that the Project will have less than significant air quality impacts. The SCEA additionally 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. Therefore, SAFER respectfully requests the City to revise the SCEA to comply with CEQA, which includes analyzing and implementing feasible mitigation measures to reduce significant impacts not identified in the SCEA. Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marjan Abubo', with a stylized, cursive script.

Marjan Abubo
LOZEAU DRURY LLP

Exhibit A



November 17, 2023
23224-00

Marjan Abubo
Lozeau Drury LLP
1939 Harrison St., Suite 150
Oakland, CA 94612

**Subject: Review of Air Quality and Greenhouse Gas Impacts Analyzed for the
1201 N. Gower Street Project in the City of Los Angeles**

Dear Mr. Abubo:

Baseline Environmental Consulting (Baseline) has reviewed the Sustainable Communities Environmental Assessment (SCEA) prepared for the 1201 N. Gower Street Project (project) in the City of Los Angeles (City), California to determine whether potential environmental impacts related to air quality and greenhouse gas (GHG) emissions were appropriately evaluated. Based on our review, we have identified flaws in the analysis used to support the significance determinations in the SCEA, as described in detail below.

Health Risks from Construction-Related Air Pollutant Emissions

The SCEA for the proposed project did not evaluate potential health risks to nearby sensitive receptors exposed to toxic air contaminants (TACs) during construction. In 1998, the California Air Resources Board (CARB) identified diesel particulate matter (DPM) from diesel-powered engines as a TAC based on its potential to cause cancer and other adverse health effects.¹ Adverse health effects associated with particulate matter can vary based on factors such as particle size, source, and chemical composition. DPM is typically composed of carbon particles and a variety of organic compounds including more than 40 known cancer-causing organic substances. Additionally, over 90 percent of DPM is less than 1 micron in diameter and can deposit in the deepest regions of the lungs where the lungs are most susceptible to injury.

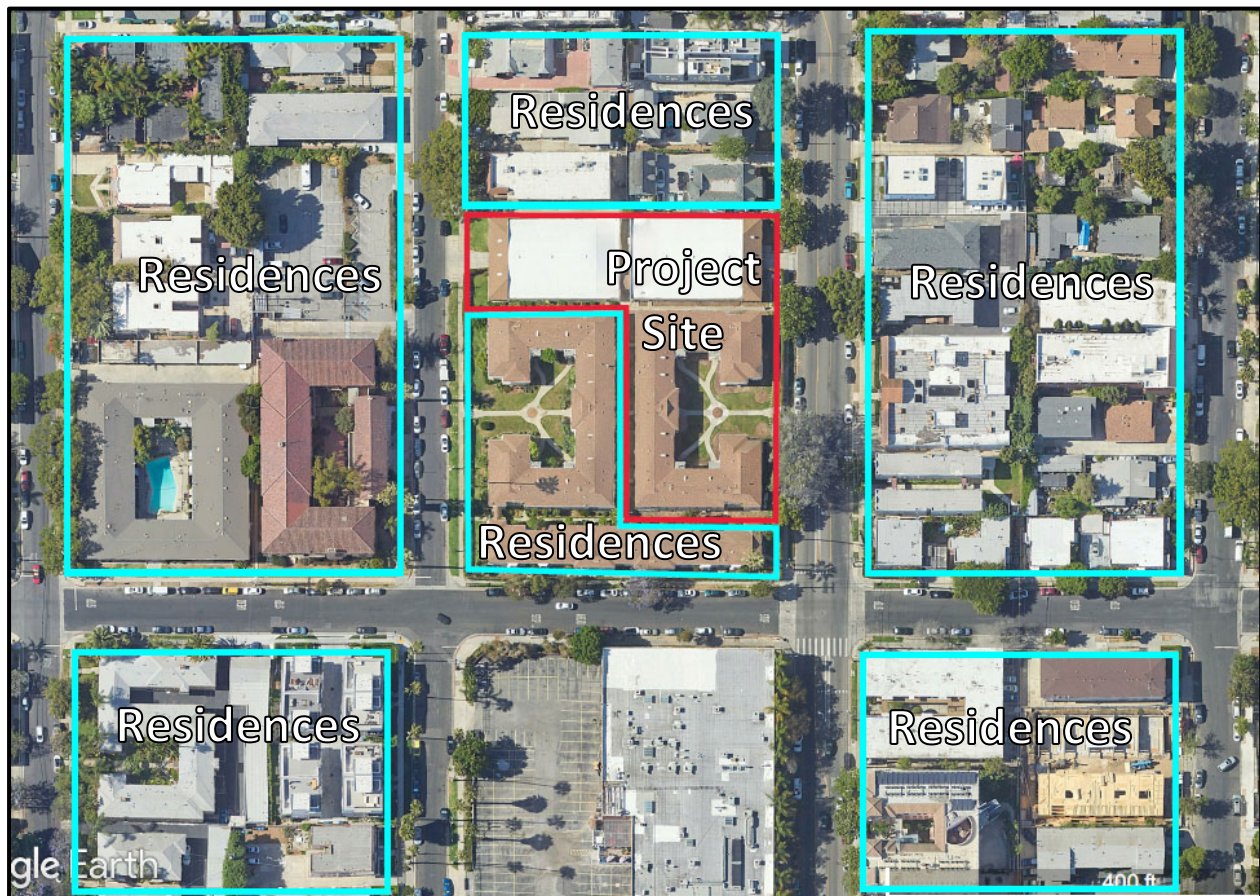
Project construction would generate DPM emissions from the exhaust of off-road diesel construction equipment. The project site is surrounded by sensitive receptors (residences) who could be exposed to DPM emissions generated during project construction (**Figure 1**). However,

¹ California Air Resources Board (CARB), 1998. Initial Statement of Reasons for Rulemaking; Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, June.

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the SCEA did not provide a quantitative evaluation of the health risks to nearby sensitive receptors exposed to DPM emissions generated during project construction.

Figure 1. Sensitive Receptors near the Project Site



On pages 5-33 of the SCEA, it was stated that a health risks assessment for exposure to construction DPM emissions was not conducted for the following reasons:

The primary TAC that would be generated by construction activities is diesel PM, which would be released from the exhaust pipes of diesel-powered construction vehicles and equipment. According 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.

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It appears that the SCEA is suggesting that the duration of exposure to construction emissions is too short to perform a health risk assessment. According to the Office of Environmental Health Hazard Assessment (OEHHA), cancer risk should not be estimated for projects lasting less than two months due to the uncertainty in assessing very short-term exposures.² As stated on page 5-30 of the SCEA, project construction would last approximately 28 months, which is substantially greater than the two-month limitation for short-term exposures recommended by OEHHA. OEHHA also states that there is valid scientific concern that the rate of short-term exposure may influence the risk – in other words, a higher exposure to a carcinogen over a short period of time may be a greater risk than the same total exposure spread over a much longer period. Therefore, the explanation provided in the SCEA for not preparing a quantitative health risks assessment is incorrect.

On pages 5-33 of the SCEA, it is also stated that a health risks assessment was not conducted because the project's construction criteria air pollutant emissions would not exceed the South Coast Air Quality Management District's (SCAQMD's) localized significance thresholds (LSTs), and therefore TAC emissions from project construction would be less than significant. It is important to note that the SCAQMD's LSTs were designed to evaluate localized health risks from exposure to general criteria air pollutant emissions such as fine particulate matter (PM_{2.5}),³ and they were not designed to evaluate localized health risks from exposure to TACs such as DPM. While DPM is a subgroup of PM_{2.5}, the toxicities are not equal and DPM only comprises a relatively small portion of the average PM_{2.5} concentration in outdoor air. For example, in California only about 8 percent of the average ambient PM_{2.5} concentration in outdoor air is comprised of DPM.⁴ Other sources of PM_{2.5} in outdoor air include dust, agriculture, wildfires, and pollen, which are generally less toxic than DPM from the exhaust of construction equipment. As a result, using the SCAQMD's LSTs for PM_{2.5} as a surrogate for DPM emissions during project construction would substantially underestimate the potential health risks to nearby sensitive receptors.

Baseline has prepared a health risk assessment to estimate the incremental increase in cancer risk at nearby sensitive receptors exposed to DPM emissions during project construction. The annual average concentrations of DPM during construction were estimated in the vicinity of the project using the U.S. Environmental Protection Agency's AERMOD air dispersion model. For this analysis, emissions of exhaust coarse particulate matter (PM₁₀) were used as a surrogate for DPM. Exhaust DPM emissions from off-road diesel construction equipment were obtained

² Office of Environmental Health Hazard Assessment (OEHHA). 2015. Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February.

³ South Coast Air Quality Management District (SCAQMD), 2003 (revised 2008). Final Localized Significance Threshold Methodology. July.

⁴ California Air Resources Board (CARB), 2023. Overview: Diesel Exhaust & Health. <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>. Accessed April 1, 2023.

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from Appendix B of the SCEA. The input parameters and assumptions used for estimating emission rates of DPM from off-road diesel construction equipment are provided in **Attachment A**.

Daily emissions from construction were assumed to occur over the allowable construction hours established by the City of Los Angeles Municipal Code from 7:00 AM to 9:00 PM Monday through Friday and 8:00 AM to 6:00 PM on Saturday. The exhaust from off-road equipment was represented in the AERMOD model as an area source encompassing the project site with a unit emission rate of 1 gram per second, which was later scaled by the average emission rate.

A uniform grid of receptors spaced 10 meters apart with receptor heights at ground-level receptors was encompassed around the project site as a means of developing isopleths (i.e., concentration contours) that illustrate the air dispersion pattern from the various emission sources. The AERMOD model input parameters included five years of SCAQMD meteorological data from Station KCQT (USC/Downtown L.A.) located 5 miles southeast of the project site.

Based on the annual average concentrations of DPM estimated using the air dispersion model, potential health risks were evaluated for the maximally exposed individual resident (MEIR) located in the apartment building adjacent to the east of the project site. The incremental increase in cancer risk from on-site DPM emissions during construction was assessed for an infant exposed to DPM starting from birth. This exposure scenario represents the most sensitive individual who could be exposed to adverse air quality conditions in the vicinity of the project site. It was conservatively assumed that the MEIR would be exposed to an annual average DPM concentration over the entire estimated duration of construction. The input parameters and results of the health risk assessment are included in **Attachment A**.

Table 1 summarizes the estimated health risks at the MEIR due to unmitigated DPM emissions from project construction and compares them to the SCAQMD's thresholds of significance. The estimated cancer risk at the MEIR location from exposure to DPM emissions during project construction emissions is about 103 in a million, which is over ten times greater than the SCAQMD's threshold of 10 in a million. Therefore, project construction would expose sensitive receptors to substantial pollutant concentrations and the impact would be significant.

Table 1. Health Risks at MEIR During Project Construction

Construction Scenario	Diesel Particulate Matter	
	Cancer Risk (per million)	Chronic Hazard Index
Unmitigated Emissions	103	0.05
Thresholds of Significance	10	1
Thresholds Exceedance?	Yes	No

Source: See Attachment A

Mr. Marjan Abubo
November 17, 2023
Page 5

2022 Scoping Plan and Carbon Neutrality by 2045

Based on the California Supreme Court findings for *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) (62 Cal.4th 204), 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. As the Supreme Court held in that case, a project that would be consistent with meeting those goals can be found to have a less-than-significant impact on climate change under CEQA. If a project would contribute its "fair share" of what will be required to achieve those long-term climate goals, then a reviewing agency can find that the impact will not be significant because the project will help to solve the problem of global climate change (62 Cal.4th 220–223).

In December 2022, CARB adopted the *2022 Scoping Plan for Achieving Carbon Neutrality* (2022 Scoping Plan), which identifies strategies for achieving California's long-term climate goal of carbon neutrality by 2045 or earlier. Appendix D of the 2022 Scoping Plan includes recommendations for local government to take actions that align with the State's climate goals, with a focus on three priority areas: transportation electrification, vehicle miles travelled (VMT) reduction, and building decarbonization. According to Appendix D of the 2022 Scoping Plan, residential and mixed-use projects that have all the key project attributes in **Table 2** would accommodate growth in a manner consistent with the State's long-term climate goals: it should be noted that these key attributes only apply to projects in cities that have not adopted a local Climate Action Plan (CAP), such as the City of Los Angeles.

According to page 5-72 of the SCEA, the project would comply with the current Title 24 California Green Building Standards (CALGreen), which includes mandatory requirements for installing EV parking infrastructure. However, CALGreen also includes voluntary measures that are organized into two tiers with their own respective prerequisites and elective measures:

- Tier 1 prerequisites set a higher baseline than CALGreen mandatory measures.
- Tier 2 prerequisites include all of Tier 1 prerequisites plus some enhanced or additional measures.

The Tier 2 EV infrastructure requirements are currently the most ambitious voluntary standard that a residential project would need to implement to be considered consistent with the goals of the 2022 Scoping Plan. Because the proposed project has not committed to implementing the Tier 2 EV infrastructure requirements (or any voluntary requirements), the project would not be consistent with the transportation electrification goals of the 2022 Scoping Plan described in **Table 2**.

According to page 5-72 of the SCEA, the project would consume approximately 1,630,282 cubic feet of natural gas per year. This directly conflicts with the building decarbonization goals of the 2022 Scoping Plan described in **Table 2**.

Table 2. Key Residential and Mixed-Use Project Attributes that Reduce GHGs

Priority Areas	Key Project Attribute
Transportation Electrification	Provides electric vehicle (EV) charging infrastructure that, at minimum, meets the most ambitious voluntary standard in the California Green Building Standards Code (CALGreen) at the time of project approval.
VMT Reduction	Is located on infill sites that are surrounded by existing urban uses and reuses or redevelops previously undeveloped or underutilized land that is presently served by existing utilities and essential public services (e.g., transit, streets, water, sewer).
	Does not result in the loss or conversion of natural and working lands.
	Consists of transit-supportive densities (minimum of 20 residential dwelling units per acre), or is in proximity to existing transit stops (within a half mile), or satisfies more detailed and stringent criteria specified in the region's Sustainable Communities Strategy.
	Reduces parking requirements by: Eliminating parking requirements or including maximum allowable parking ratios (i.e., the ratio of parking spaces to residential units or square feet); or providing residential parking supply at a ratio of less than one parking space per dwelling unit; or for multifamily residential development, requiring parking costs to be unbundled from costs to rent or own a residential unit.
	At least 20 percent of units included are affordable to lower-income residents.
Building Decarbonization	Results in no net loss of existing affordable units
	Uses all-electric appliances without any natural gas connections and does not use propane or other fossil fuels for space heating, water heating, or indoor cooking.

Source: Appendix D of the 2022 Scoping Plan.

By not incorporating two of the three key project attributes from **Table 2** into the project design, the project would not be consistent with the priority GHG reduction strategies in the 2022 Scoping Plan to achieve the State's carbon neutrality goal by 2045 or earlier. We are aware that the SCEA (pages 5-123 through 5-135) attempted to evaluate the project's consistency with the 2022 Scoping Plan, but the SCEA erroneously compared the project design to the statewide actions to achieve carbon neutrality by 2045 instead of the local actions summarized in **Table 2**.

In summary, the SCEA did not properly evaluate the project's consistency with the 2022 Scoping Plan or demonstrate how the project would do its fair share to achieve the State's long-term climate action goal for carbon neutrality by 2045 or earlier. Furthermore, based on review of the SCEA, the project is clearly not designed to be consistent with the priority GHG reduction strategies of the 2022 Scoping Plan for transportation electrification and building decarbonization, and would not do its fair share to achieve the State's long-term climate action

Mr. Marjan Abubo
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goal for carbon neutrality by 2045 or earlier. Therefore, the project would have a potentially significant impact related to GHG emissions.

CONCLUSIONS

Based on our review of the SCEA for the proposed project, a revised analysis should be prepared to properly evaluate the project's construction-related health risks and consistency with the 2022 Scoping Plan and long-term climate action goals. In addition, mitigation measures should be evaluated and implemented to reduce potentially significant impacts related to air quality and GHG emissions to a less-than-significant level.

Sincerely,



Patrick Sutton
Principal Environmental Engineer

ATTACHMENT A

Health Risk Assessment

Summary of AERMOD Model Parameters, Assumptions, and Results for DPM Emissions from Construction

AERMOD Model Parameters and Assumptions			
Source Type	Units	Value	Notes
Area Source: Off-Road Equipment Exhaust (DPM)			
Average Hours/Work Day	hours/day	13.33	Monday to Friday: 7 am to 9 pm; Saturday: 8 am to 6 pm
DPM Emission Rate	gram/second	0.00215	Exhaust PM10 emission obtained from SCEA Appendix B. This average daily DPM emission rate was calculated based on the annual off-road PM10 exhaust emissions and the construction duration of 609 work days. This rate was used as a scaling factor to convert the result from AERMOD, which was based on an emission rate of 1 gram/second.
Release Height	meters	5.0	SMAQMD, 2015
Initial Vertical Dimension	meters	1.4	USEPA, 2022
Population	people	9,818,605	South Coast AQMD Modeling Guidance for AERMOD
AERMOD Model Results			
Sensitive Receptor	Pollutant	Annual Average Concentration	Notes
MEIR (east of project site)	DPM ($\mu\text{g}/\text{m}^3$)	0.3612	DPM concentration from the construction of Parking and Warehouse

Notes:

DPM = diesel particulate matter

PM10 = particulate matter with aerodynamic resistance diameters equal to or less than 10 microns

$\mu\text{g}/\text{m}^3$ = micrograms per cubic meter

Sacramento Metropolitan Air Quality Management District (SMAQMD), 2015. *Guide to Air Quality Assessment in Sacramento County*. June.

U.S. Environmental Protection Agency (USEPA), 2022. *User's Guide for the AMS/EPA Regulatory Model (AERMOD)*.

Summary of Health Risk Assessment at the Maximally Exposed Individual Resident

Health Risk Assessment Parameters and Results				
Inhalation Cancer Risk Assessment for DPM	Units	0-2 Years Old	2-16 Years Old	Notes
DPM Concentration (C)	$\mu\text{g}/\text{m}^3$	0.361	0.361	ISCST3 Annual Average
Daily Breathing Rate (DBR)	L/kg-day	1090	572	95th percentile under age of 2 (OEHHA, 2015)
Inhalation absorption factor (A)	unitless	1.0	1.0	OEHHA, 2015
Exposure Frequency (EF)	unitless	0.96	0.96	350 days/365 days in a year (OEHHA, 2015)
Dose Conversion Factor (CF_D)	$\text{mg}\cdot\text{m}^3/\mu\text{g}\cdot\text{L}$	0.000001	0.000001	Conversion of μg to mg and L to m^3
Dose (D)	mg/kg/day	0.000378	0.000198	$C \cdot \text{DBR} \cdot A \cdot \text{EF} \cdot \text{CF}_D$ (OEHHA, 2015)
Cancer Potency Factor (CPF)	$(\text{mg}/\text{kg}/\text{day})^{-1}$	1.1	1.1	OEHHA, 2015
Age Sensitivity Factor (ASF)	unitless	10	3	OEHHA, 2015
Annual Exposure Duration (ED)	years	2.00	0.33	Based on total construction period of 28 months
Averaging Time (AT)	years	70	70	70 years for residents (OEHHA, 2015)
Fraction of time at home (FAH)	unitless	0.85	0.72	OEHHA, 2015
Cancer Risk Conversion Factor (CF)	m^3/L	1000000	1000000	Chances per million (OEHHA, 2015)
Cancer Risk	per million	100.9	2.2	$D \cdot \text{CPF} \cdot \text{ASF} \cdot \text{ED} / \text{AT} \cdot \text{FAH} \cdot \text{CF}$ (OEHHA, 2015)
Total Cancer Risk	per million	103.1		at MEIR location
Hazard Index for DPM	Units	Value		Notes
Chronic REL	$\mu\text{g}/\text{m}^3$	5.0		OEHHA, 2015
Chronic Hazard Index	unitless	0.07		At MEIR location

Notes:

DPM = diesel particulate matter

REL = reference exposure level

$\mu\text{g}/\text{m}^3$ = micrograms per cubic meter

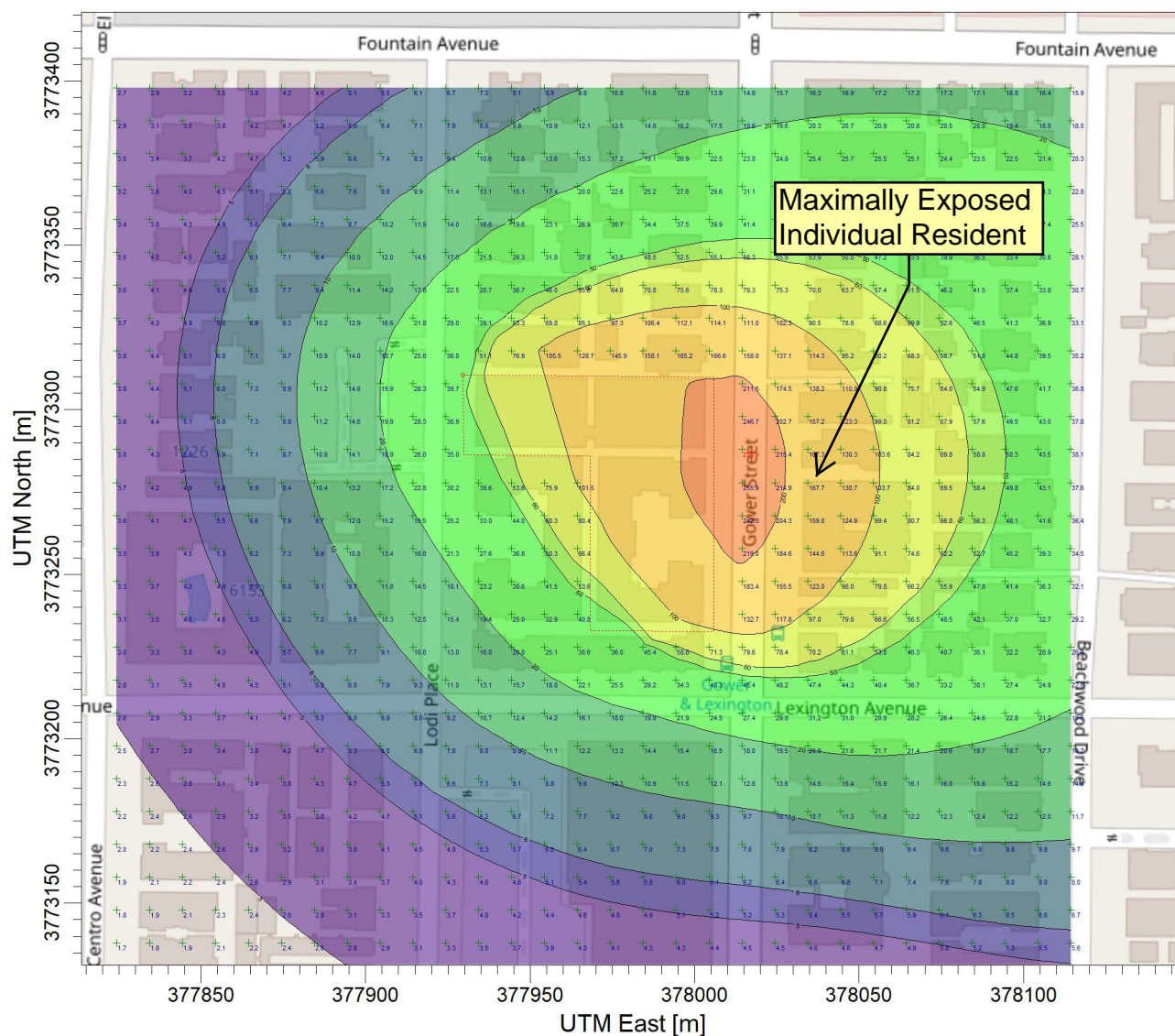
L/kg-day = liters per kilogram-day

m^3/L = cubic meters per liter

$(\text{mg}/\text{kg}/\text{day})^{-1}$ = 1/milligrams per kilograms per day

Office of Environmental Health Hazard Assessment (OEHHA), 2015. *Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments*. February.

PROJECT TITLE:
C:\Users\patrick\Desktop\GowerAERMOD\GowerAERMOD.isc



PLOT FILE OF PERIOD VALUES AVERAGED ACROSS 0 YEARS FOR SOURCE GROUP: ALL

ug/m³

Max: 259 [ug/m³] at (378014.36, 3773287.88)



COMMENTS:

SOURCES:

1

RECEPTORS:

856

OUTPUT TYPE:

Concentration

MAX:

259 ug/m³

SCALE:

1:2,107

0 0.05 km

PROJECT NO.:

ATTACHMENT B

Staff Resume

Patrick Sutton, P.E.

Principal Environmental Engineer



Areas of Expertise

Air Quality, GHGs, Noise, Hazardous Materials, Geology, and Hydrology

Education

M.S., Civil and Environmental Engineering, University of California – Davis

B.S., Environmental Science, Dickinson College

Registration

Professional Engineer No. 13609 (RI)

Years of Experience

20 Years

Patrick Sutton is an environmental engineer who specializes in the assessment of hazardous materials released into the environment. Mr. Sutton prepares technical reports in support of environmental review, such as Phase I/II Environmental Site Investigations, Air Quality Reports, and Health Risk Assessments. He has prepared numerous CEQA/NEPA evaluations for air quality, GHGs, noise, energy, geology, hazardous materials, and water quality related to residential, commercial, and industrial projects, as well as large infrastructure developments. His proficiency in a wide range of modeling software (AERMOD, CalEEMod, RCEM, CT-EMFAC) as well as relational databases, GIS, and graphics design allows him to thoroughly and efficiently assess and mitigate environmental concerns.

For mixed-use development projects, Mr. Sutton has prepared health risk assessments for sensitive receptors exposed to toxic air contaminants based on air dispersion modeling. For large transportation improvement projects, Mr. Sutton has prepared air quality and hazardous materials technical reports in accordance with Caltrans requirements. The air quality assessments include the evaluation of criteria air pollutants, mobile source air toxics, and GHG emissions to support environmental review of the project under CEQA/NEPA and to determine conformity with the State Implementation Plan. The hazardous materials investigations include sampling and statistically analysis of aerially-deposited lead adjacent to highway corridors. Mr. Sutton is also an active member of ASTM International and is the author of the Standard Practice for Low-Flow Purging and Sampling Used for Groundwater Monitoring.

Project Experience

Oakland Downtown Specific Plan EIR. Prepared a program- and project-level Air Quality and GHG Emissions analysis. Developed a mitigation measure with performance standards to ensure GHG emissions from future projects comply with the Citywide 2030 GHG reduction target.

I-680 Express Lanes from SR 84 to Alcosta Boulevard Project. Prepared Initial Site Assessment and Preliminary Site Investigation to evaluate contaminants of potential concern in soil and groundwater. Prepared Air Quality Report to determine the project's conformity to federal air quality regulations and to support environmental review of the project under CEQA and NEPA.

Altamont Corridor Expressway (ACE/Forward) Project EIR/EIS. Prepared a program- and project-level Hazardous Materials analysis for over 120 miles of railroad corridor from San Jose to Merced. Hazardous materials concerns, such as release sites, petroleum pipelines, agricultural pesticides, and nearby school sites were evaluated in GIS.

Stonegate Residential Subdivision EIR. Prepared a project-level Hydrology and Water Quality analysis for a residential development located within the 100-year floodplain. The proposed project included modifications to existing levees and flood channels.

BART Silicon Valley Extension Project. Prepared Initial Site Assessment and Hazardous Materials EIS/EIR section for extending 6 miles of proposed BART service through the Cities of San Jose and Santa Clara.

Exhibit B

Exhibit C

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SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into this 2 day of October, 2023, by and among Supporters Alliance for Environmental Responsibility (“Petitioner”) and MERCURY BOWL, LLC, a California limited liability company and GREEN RIVERA, LLC, a California limited liability company (“Developer”). Petitioner and Developer are sometimes referred to herein as a “Party,” and collectively as the “Parties.”

WHEREAS, Developer submitted an application to the City of Pico Rivera (“City”) for the development and design of the proposed 255 unit mixed-use apartment complex with approximately 4,785 of commercial space featuring a wrap building consisting of residential apartment units “wrapping” around a three to six story parking structure with one level of subterranean parking on a 2.8 acre site located at 8825 Washington Boulevard in Pico Rivera, California, (the “Project”);

WHEREAS, on July 8, 2022, the City issued a Notice of Intent to Adopt a Mitigated Negative Declaration (“MND”) for the Project with a public review period for the MND beginning on July 8, 2022 and ending on August 6, 2022;

WHEREAS, on or about November 17, 2022, the Planning Commission posted its agenda for its November 21, 2022 meeting at which it would consider recommending adoption of the Project’s MND and approval of the Project’s General Plan Amendment, Conditional Use Permit, Zone Reclassification, and Zone Code Amendment (“Associated Approvals”) to the City Council;

WHEREAS, on November 21, 2022, the Planning Commission voted to approve the Project and the MND;

WHEREAS, on or about January 20, 2023, the City Council posted its agenda for its January 24, 2023 meeting at which it considered the Project, the MND, and the Associated Approvals;

WHEREAS, on August 5, 2022, November 21, 2022, and January 23, 2023, Petitioner submitted comments to the City, Planning Commission, and City Council, respectively, regarding the Project stating, *inter alia*, alleging that the MND failed as an informational document, and alleging that there was a fair argument that the Project will have significant adverse indoor and outdoor air quality, diesel particulate matter, greenhouse gas, and energy impacts;

WHEREAS, Petitioner’s August 5, 2022, November 21, 2022, and January 23, 2023 comments noted that the Project required the City to prepare an Environmental Impact Report to analyze and reduce adverse environmental impacts to a less than significant level;

WHEREAS, on January 24, 2023, the City Council of the City of Pico Rivera approved the Project, and the MND;

WHEREAS, on January 26, 2023, the City filed a Letter of Determination for the Project with Los Angeles County officially confirming that all these actions were approved and adopted;

WHEREAS, on February 24, 2023, Petitioner filed its Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition") in Los Angeles County Superior Court challenging the Project and MND, alleging violations under the California Environmental Quality Act ("CEQA") (the "Action"); and

WHEREAS, the City and Developer have denied, and continue to deny, the claims set forth in the Petition.

WHEREAS, the Parties have engaged in settlement negotiations, and have reached terms, as set forth herein, upon which to settle their disputes, and wish to avoid further litigation concerning the Project on the terms set forth herein.

NOW, THEREFORE, the Parties hereby agree as follows:

A. Environmental Protection Measures. In addition to the mitigation measures and conditions required by the City, Developer shall implement the measures in paragraphs A.1 to A.6 below, as set forth in this Agreement:

1. Air Quality and Human Health Measures: The Developer shall, at minimum, use equipment that meets the United States Environmental Protection Agency's (EPA) Tier 4 Interim emissions standards for off-road diesel-powered construction equipment of 50 horsepower or more in use a total of 20 hours or more.
2. Greenhouse Gas and Energy Measures: To facilitate the transition to the use of electric vehicles, the parking spaces that are required by California law to be "EV Ready" (wiring infrastructure in place to each parking space) will be upgraded to "EV Installed" (ready to charge a vehicle). The remaining spaces, all of which have no charging requirement, will be upgraded to EV Ready. Both of these upgrades will be installed voluntarily by the developer to facilitate the transition to, and adoption of electric vehicles.
3. Solar: Developer shall install a solar PV system on the roof of the building, covering not less than fifteen percent (15%) of the roof area.
4. LEED Equivalent Measures: Developer shall incorporate measure into the development and construction of the Project which are equivalent to LEED Silver certification.

5. Water Consumption: Developer shall implement the following measures to reduce water consumption:

- i. Install water-efficient irrigation systems, such as weather-based or soil-moisture-based irrigation controllers and sensors for landscaping.
- ii. Install moderate water using plants/landscaping consistent with the City's landscape standards while eliminating conventional turf from landscaping, other than in pet relief areas.
- iii. Developer shall provide water efficient plumbing fixtures (i.e. toilets, urinals and faucets), that are WaterSense certified.

6. Formaldehyde Emission Measure: All manufactured materials (hardwood plywood, medium density fiberboard and particle board) (but not "finished goods" such a doors or cabinets) shall be made with CARB approved no-added formaldehyde (NAF) based resins (see 17 CCR Section 93120.3(c)) or ultralow emitting formaldehyde (ULEF) resins (see 17 CCR Section 93120.3(d)).

B. Payment of Attorney's Fees and Costs. Within ten (10) business days of the mutual execution and delivery of this Agreement, Developer shall reimburse Petitioner for its legal expenses and costs in the agreed upon amount of Seventy-Five Thousand Dollars (\$75,000). The payment shall be in the form of a check made payable to "Lozeau Drury LLP." Payee shall provide a W-9 Tax Form to Developer in advance of payment. Payment shall be delivered by overnight delivery to the address of Petitioner's counsel provided in Paragraph M below. Except for this payment, each Party must bear its own costs of suit, including attorney's fees, incurred in the Action and any costs incurred during the administrative proceedings or otherwise related to the Project, including the cost of experts.

C. Dismissal of Action. Within five (5) business days of receipt of the payment of Attorney's Fees set forth herein, Petitioner shall file and serve with the Superior Court of California, County of Los Angeles, a request for dismissal of the Action, as to all claims and all Parties. Petitioner shall promptly serve the City and Developer with conformed copies of the Dismissal once entered by the Court.

D. Duty Not to Object or Disrupt Processes for Project.

1. Upon execution of this Agreement, Petitioner on behalf of itself, its affiliates, current and future members, agents, successors, assigns, designees, officers, consultants, experts, and attorneys will not directly or indirectly object, oppose, delay, frustrate, or disrupt the full and complete design, approval, assembly, construction or implementation of the Project, subject to the terms and conditions of this Agreement, nor will it directly or indirectly encourage or fund others to undertake those actions, so long as the Project is consistent with the terms of this Agreement.

2. Petitioner on behalf of itself, its current and future members, agents, successors, assigns, designees, officers, consultants, experts, and attorneys further agrees that it will not submit or provide verbal or written comments to any decision-making body or any other public agency that must issue a Project approval or other decision or any other public communication that are critical of the Project or are intended to object to, oppose or delay the full and complete design, approval, construction, or implementation of the Project, subject to the terms and conditions of this Agreement, so long as the Project is consistent with the terms of this Agreement. Further, Petitioner agrees that it will not directly or indirectly encourage or fund others to undertake any of the aforementioned actions.

E. Mutual General Releases.

1. Petitioner (on behalf of itself, its predecessors and successors) hereby releases Developer and its respective owners, affiliates, members, officers, employees, agents, predecessors, successors, assigns, assignees, successors-in-interest, principals, partners, managers, representatives, attorneys, and all persons and entities acting by, thru, under or in concert with them, or any of them, from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that Petitioner has or had, except as expressly reserved herein, arising out of, or connected to, directly or indirectly to the Project approval or the Action (including the existence, prosecution or defense thereof), whether known, unknown or suspected, and Petitioner hereby waives the provisions of Civil Code section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The release in this Section D(1) is a separate consideration for the release contained in Section D(2), and Petitioner would not have executed this Agreement nor agreed to this Section D(1) but for the release contained in Section D(2).

2. Developer (on behalf of itself, its predecessors and successors) hereby releases Petitioner and its respective owners, affiliates, members, officers, employees, agents, attorneys, and all persons and entities acting by, thru, under or in concert with them, or any of them, from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that Developer has or had, except as expressly reserved herein, arising out of, or connected to, directly or indirectly to the Project approval or the Action (including the existence, prosecution or defense thereof), whether known, unknown or suspected, and

Developer hereby waives the provisions of Civil Code section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The release in this Section D(2) is a separate consideration for the release contained in Section D(1), and Developer would not have executed this Agreement nor agreed to this Section D(2) but for the release contained in Section D(1).

3. Each Party expressly waives and relinquishes all rights and benefits under Civil Code section 1542 and any law or legal principle of similar effect in any jurisdiction, with respect to the claims released hereunder.
4. Each of the Parties has executed this Agreement voluntarily, with full knowledge of its significance, and with the express intention of affecting the legal consequences provided by a waiver of California Civil Code Section 1542.

F. Prospective Claims. The releases in this Agreement are limited releases that apply only to claims relating directly or indirectly to the approvals of the Project and shall not apply to any claims, demands, obligations, responsibilities, suits, actions, or causes of action arising out of the failure of any Party to perform its obligations as set forth in this Agreement.

G. Governing Law; Venue. This Agreement shall be deemed executed and delivered within the State of California; the rights and obligations of the Parties hereunder must be governed, construed and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation must be the Superior Court of California, County of Los Angeles.

H. Enforcement. The Parties agree that money damages would be an inadequate remedy for any breach (or threatened breach) of this Agreement, and agree that this Agreement may be enforced without the requirement of posting a bond by a preliminary or permanent, mandatory, or prohibitory injunction, by a decree of specific performance, or other such order or decree of a court of competent jurisdiction. The agreed remedies set forth herein shall not be construed to limit or derogate from any legal or equitable remedy authorized by applicable law. In any action to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover its legal fees, costs, and expenses, including expert witness fees.

I. Materiality of Breach. Any breach of this Agreement, at the option of any Party, shall be treated as material and a complete failure of consideration, provided, however, that

before any Party may treat any breach as a material breach, such Party must first inform the other Party in writing and give the other Party a reasonable opportunity to cure the breach.

J. Waiver. The waiver of any provision or term of this Agreement shall not be deemed as a waiver of any other provision or term of this Agreement. The mere passage of time, or failure to act upon a breach, shall not be deemed as a waiver of any provision or term of this Agreement.

K. Entirety of Agreement. This Agreement is entered into in full compromise of disputed claims. It is fully acknowledged by all parties hereto that the execution of this Agreement and the payment of consideration and performance hereunder is not and must not be construed in any way as any admission of liability or wrongdoing on the part of any of the parties hereto, and that all parties completely and expressly deny any liability and merely intend by their actions pursuant hereto to avoid prolonged and further litigation. This Agreement represents and contains the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement and supersedes any and all prior written and oral agreements and understandings. This Agreement may be amended or modified only through a writing executed by all the Parties.

L. No Prior Assignments. The Parties hereto represent and warrant that they have not heretofore assigned or transferred, or purported to assign or transfer, to any other person, entity, firm, or corporation whatsoever, any claim, debt, liability, demand, obligation, expense, action, or causes of action herein released.

M. Binding on Successors. This Agreement and its terms shall inure to the benefit of and be binding upon each of the Parties hereto and each and all of their respective successors, assignees, buyers, grantees, vendees, or transferees, and their past or present, direct or indirect, affiliates, partners, joint venturers, subsidiaries, parents, receivers, trustees, officers, directors, employees, agents, and shareholders and each of them, as though they were Parties hereto, wherever located. Any agreement for sale or an agreement for a merger or acquisition, including ownership or control of Developer, shall be subject to the obligations of this Agreement.

N. Notice. Any notice or communication given or permitted to be given under this Agreement shall be provided via e-mail and first-class certified mail. Such notice or communication must be deemed to have been given three (3) calendar days following e-mailing and deposit of such notice or communication in the United States mail with first class postage prepaid, certified mail return receipt requested, and addressed as follows:

If to Developer:

Mercury Bowl, LLC and Green Rivera, LLC
1801 Century Park East, Suite 2100
Los Angeles, CA 90067

If to Petitioner:

Richard Drury
Lozeau Drury LLP
1939 Harrison Street, Suite 150
Oakland, CA 94612
richard@lozeaudrury.com

O. Further Assurances. The Parties shall act in good faith and shall take all further actions reasonably necessary to effectuate the letter and the spirit of this Agreement.

P. No Obligation to Develop. Nothing in this Agreement obligates Developer to proceed with development of the Project, and the Parties acknowledge that the decisions of whether or not to proceed with such development, and the timing of such development, are solely within Developer's discretion.

Q. Severability. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

R. Paragraph Headings. Paragraph headings are provided herein for convenience only and shall not serve as a basis for interpretation or construction of this Agreement, nor as evidence of the intention of the Parties.

S. Authorization. Each individual signing this Agreement represents and warrants that he or she has been authorized to do so by proper action of the party on whose behalf he or she has signed, and no other or further consent or signature is required.

T. Advice of Counsel; Joint Preparation. This Agreement was prepared by all Parties and no Party shall be deemed the drafter or have any ambiguities construed against it. Each Party and each person signing this Agreement represents that it has been advised to consult with, and has consulted with its own independent attorney regarding the meaning and consequences of signing this Agreement. Each Party represents that it has read and understands this Agreement and any attached exhibits, and has entered into and signed this Agreement freely and voluntarily without duress, fraud, undue influence or coercion.

U. Counterparts. This Agreement may be executed in any number of counterparts each of which must be deemed an original and all of which must constitute one and the same agreement, with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and reattached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

MERCURY BOWL, LLC and
GREEN RIVERA, LLC

DocuSigned by:
By: Kamyar Shabani
Name: shabani
Title: Authorized Signatory
Date: 10/2/2023

SUPPORTERS ALLIANCE FOR
ENVIRONMENTAL
RESPONSIBILITY

By: [Signature]
Name: Jon P. Preciado
Title: President / Member
Date: 10/02/2023



LOS ANGELES CITY PLANNING COMMISSION

200 North Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
www.planning.lacity.org

LETTER OF DETERMINATION

MAILING DATE: JANUARY 18, 2024

Case No. CPC-2023-1539-DB-VHCA
CEQA: ENV-2023-1540-SCEA
Plan Area: Hollywood

Council District: 13 – Soto-Martinez

Project Site: 1201 North Gower Street; 6121 West Lexington Avenue

Applicant: CLG Gower LLC
Representative: Matthew Hayden, Hayden Planning

At its meeting of **December 14, 2023**, the Los Angeles City Planning Commission took the actions below in conjunction with the approval of the following Project:

Partial maintenance and partial demolition of an existing multi-family residential complex for the construction of a new eight-story multi-family residential building with 108 new residential units, resulting in a total of 152 units (equal to a net increase of 80 units). 16 units will be set aside for Very Low Income households and two units will be set aside for Low Income households. The Project will provide a total of 99 vehicle parking spaces.

1. **Found**, pursuant to Public Resources Code (PRC), Section 21155.2, after consideration of the whole of the administrative record, including the SB 375 Sustainable Communities Environmental Assessment, No. ENV-2023-1540-SCEA ("SCEA"), and all comments received, after imposition of all mitigation measures there is no substantial evidence that the project will have a significant effect on the environment; **Found** the project is a "transit priority project" as defined by PRC Section 21155 and the project has incorporated all feasible mitigation measures, performance standards, or criteria set forth in prior EIR(s), including SCAG 2020-2045 RTP/SCS EIR Schedule No. 20199011061; **Found** all potentially significant effects required to be identified in the initial study have been identified and analyzed in the SCEA; **Found** with respect to each significant effect on the environment required to be identified in the initial study for the SCEA, changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects to a level of insignificance or those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency; **Found** the SCEA reflects the independent judgment and analysis of the City; **Found** the mitigation measures have been made enforceable conditions on the project; and **Adopted** the SCEA and the Mitigation Monitoring and Reporting Program prepared for the SCEA;
2. **Approved**, pursuant to Section 12.22 A.25 of the Los Angeles Municipal Code (LAMC), a Density Bonus Compliance Review to permit a housing development project consisting of a total of 152 residential units (including 108 new units and 44 existing units to remain), of which a minimum of 16 will be set aside for Very Low Income households, and with the following Off-Menu Incentives and Waivers of Development Standards:
 - a. An Off-Menu Incentive to permit parking stall widths of eight feet six inches without a 10-inch increase where obstructions occur on either side of the longer dimension;

- b. An Off-Menu Incentive to permit vehicle ingress and egress along a designated Collector roadway;
 - c. An Off-Menu Incentive to allow 10,181 square feet of open space in lieu of the otherwise required 13,575 square feet of open space;
 - d. A Waiver to allow a maximum Floor Area Ratio (FAR) of 3.12:1 in lieu of the otherwise permitted 3:1;
 - e. A Waiver of Development Standards to allow a maximum building height of 95 feet in lieu of the otherwise permitted height;
 - f. A Waiver of Development Standards to allow an easterly side yard setback of zero feet in lieu of the otherwise required 11 feet;
 - g. A Waiver of Development Standards to allow a westerly side yard setback of zero feet in lieu of the otherwise required 20 feet; and
 - h. A Waiver of Development Standards to allow a rear yard setback of five feet in lieu of the otherwise required 15 feet;
3. **Adopted** the attached Conditions of Approval; and
4. **Adopted** the attached Findings.

The vote proceeded as follows:

Moved: Noonan
 Second: Mack
 Ayes: Lawshe, Leung, Millman, Zamora
 Recuse: Gold
 Absent: Cabildo, Choe

Vote: 6 – 0



Cecilia Lamas, Commission Executive Assistant II
 Los Angeles City Planning Commission

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

Effective Date/Appeals: The decision of the Los Angeles City Planning Commission related to the Off-Menu Density Bonus Incentives and Waivers of Development Standards are not appealable. Therefore, the decision of the Los Angeles City Planning Commission is final and effective upon the mailing of this determination letter and not further appealable.

Notice: An appeal of the CEQA clearance for the Project pursuant to LAMC Section 11.5.13 is only available if the Determination of the non-elected decision-making body (e.g., ZA, AA, APC, CPC) is not further appealable and the decision is final. For other limitations see LAMC Section 11.5.13.

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Conditions of Approval, Findings, Appeal Filing Procedures (CEQA)

- c: Heather Bleemers, Senior City Planner
 More Song, City Planner

CONDITIONS OF APPROVAL

Pursuant to Section 12.22 A.25 of the LAMC, the following conditions are hereby imposed upon the use of the subject property:

Development Conditions

1. **Site Development.** Except as modified herein, the project shall be in substantial conformance with the architectural plans, landscape plan, renderings, and materials submitted by the applicant, stamped "Exhibit A", and attached to the subject case file.
2. **Residential Density.** The project shall be limited to a maximum density of 152 dwelling units, including existing units, new proposed units, and affordable units.
3. **State Density Bonus Requirements.** A minimum of 16 units, equal to a minimum of 15 percent of the base density, shall be reserved as Very Low Income units, as defined by the State Density Bonus Law per Government Code Section 65915(c)(2), to meet the requirements of the requests herein. In the event of deviations to the requests that change this number of restricted affordable units, the composition/typology of units, and/or vehicle parking numbers, such changes shall be consistent with Government Code Section 65915.
4. **Housing Requirements.** Prior to issuance of a building permit, the owner shall execute a covenant to the satisfaction of LAHD to make 15 percent of the site's base density units, equal to 16 units, available to Very Low Income households, for sale or rental as determined to be affordable to such households by LAHD for a period of 55 years. In addition, the owner shall execute a covenant to the satisfaction of LAHD to make at least two units available to Low Income households, for sale or rental as determined to be affordable to such households by LAHD for a period of 55 years. In the event the applicant reduces the proposed density of the project, the number of required reserved on-site Restricted Units may be adjusted, consistent with Government Code Section 65915, to the satisfaction of Los Angeles City Planning and LAHD. Enforcement of the terms of said covenant shall be the responsibility of LAHD. The applicant will present a copy of the recorded covenant to Los Angeles City Planning for inclusion in this file. The project shall comply with the Guidelines for the Affordable Housing Incentives Program adopted by the City Planning Commission and with any monitoring requirements established by LAHD, as well as any additional requirements in consideration of the Replacement Unit Determination dated August 23, 2022.
5. **Rent Stabilization Ordinance.** The project shall comply with the City's rent stabilization ordinance, and in consideration of the Replacement Unit Determination dated August 23, 2022, to the satisfaction of LAHD.
6. **Incentives:**
 - a. **Parking Stalls.** The project is permitted to provide parking stall widths of eight feet six inches without a 10-inch increase where obstructions occur on either side of the longer dimension.
 - b. **Vehicular Access.** The project is permitted to provide vehicle ingress and egress along a designated Collector roadway.

- c. **Open Space.** The project is permitted to provide 10,181 square feet of open space in lieu of the otherwise required amount of open space.

7. **Waivers of Development Standards:**

- a. **Floor Area Ratio.** The project is permitted a maximum floor area ratio (FAR) of 3.12:1.
- b. **Building Height.** The project is permitted a maximum building height of 95 feet.
- c. **Side Yard Setbacks.** The project is permitted to provide zero-foot easterly and westerly side yard setbacks.
- d. **Rear Yard Setback.** The project is permitted to provide a five-foot rear yard setback.

8. **Parking:**

- a. The project shall not be required to provide any minimum vehicle parking, consistent with AB 2097. The applicant may choose to provide a greater amount of vehicle parking.
- b. **Bicycle Parking.** Residential bicycle parking shall be provided consistent with LAMC 12.21 A.16.
- c. **Unbundling.** Required parking may be sold or rented separately from the units, with the exception of all Restricted Affordable units which shall include any required parking in the base rent or sales price, as verified by LAHD.
- d. All vehicular parking shall provide electric vehicle charging spaces and electric vehicle charging stations in compliance with the regulations outlined in Sections 99.04.106 and 99.05.106 of Article 9, Chapter IX of the LAMC.

9. **Circulation.** The applicant shall submit a parking and driveway plan to the Los Angeles Department of Transportation (LADOT) for approval. The project shall minimize the number of curb cuts on the subject property, to the satisfaction of LADOT.

10. **Signage.** On-site signs shall comply with the Municipal Code. Signage rights are not part of this approval.

11. **Lighting.** Outdoor lighting shall be designed and installed with shielding, such that the light source does not illuminate adjacent residential properties or the public right-of-way, nor the above night skies.

12. **Trash.** Trash receptacles shall be stored within a fully enclosed portion of the building at all times. Trash/recycling containers shall be locked when not in use and shall not be placed in or block access to required parking.

13. **Solar Energy Infrastructure.** The Project shall comply with the Los Angeles Municipal Green Building Code, Section 99.05.211, to the satisfaction of the Department of Building and Safety.

14. **Maintenance.** The subject property, including any trash storage areas, associated parking facilities, sidewalks, driveways, yard areas, parkways, and exterior walls along the

property lines, shall be maintained in an attractive condition and shall be kept free of trash and debris.

Environmental Conditions

15. ARCHEO-1: Inadvertent Discovery of Archaeological Resources

If any archaeological materials are encountered during the course of Project development, all further development activity in the vicinity of the materials shall halt and:

The services of an archaeologist shall then be secured by contacting the South Central Coastal Information Center (657-278-5395) located at California State University Fullerton, or a member of the Society of Professional Archaeologist (SOPA) or a SOPA-qualified archaeologist, who shall assess the discovered material(s) and prepare a survey, study, or report evaluating the impact;

The archaeologist's survey, study or report shall contain a recommendation(s), if necessary, for the preservation, conservation, or relocation of the resource; and

The Project Applicant shall comply with the recommendations of the evaluating archaeologist, as contained in the survey, study, or report.

Project development activities may resume once copies of the archaeological survey, study or report are submitted to the following:

SCCIC Department of Anthropology
McCarthy Hall
477 CSU Fullerton
800 North State College Boulevard
Fullerton, CA 92834

Prior to the issuance of any building permit, the Project Applicant shall submit a letter to the case file indicating what, if any, archaeological reports have been submitted, or a statement indicating that no material was discovered. A covenant and agreement binding the Project Applicant to this condition shall be recorded prior to the issuance of a grading permit.

16. **PALEO-1:** If paleontological resources are encountered, the Applicant would be required to notify the Building Safety Division immediately, and all work shall cease in the area of the find until a qualified paleontologist evaluates the find. Construction activity may continue unimpeded on other portions of the Project Site. The paleontologist shall determine the location, the time frame, and the extent to which any monitoring of earthmoving activities shall be required. The found deposits would be treated in accordance with federal, state, and local guidelines, including those set forth in PRC Section 5097.5.
17. **NOISE-1:** Temporary noise barriers shall be installed along the perimeter of the Project Site along the northern property line, the property line along Lodi Place where construction would face, and along Building 2's frontage with the construction site. The barrier shall achieve at least a 6.2 dBA L_{eq} reduction at off-site sensitive receptors (not including Building 2) and a 14.5 dBA L_{eq} reduction at Building 2. The supporting structure shall be engineered and erected in order to comply with Los Angeles Municipal Code noise

requirements, including those set forth in Chapter XI, Article 2 of the Los Angeles Municipal Code.

18. TCR-1: Inadvertent discovery of tribal cultural resources

In the event that objects or artifacts that may be tribal cultural resources are encountered during the course of any ground disturbance activities (excavating, digging, trenching, plowing, drilling, tunneling, quarrying, grading, leveling, removing peat, clearing, driving posts, augering, backfilling, blasting, stripping topsoil or a similar activity), all such activities shall temporarily cease on the project site until the potential tribal cultural resources are properly assessed and addressed pursuant to the process set forth below:

Upon a discovery of a potential tribal cultural resource, the Applicant shall immediately stop all ground disturbance activities and contact the following: (1) all California Native American tribes that have informed the City they are traditionally and culturally affiliated with the geographic area of the proposed project; (2) and the Department of City Planning at (213) 978-1290.

If the City determines, pursuant to PRC Section 21074 (a)(2), that the object or artifact appears to be tribal cultural resource, the City shall provide any affected tribe a reasonable period of time, not less than 30 days, to conduct a site visit and make recommendations to the Applicant and the City regarding the monitoring of future ground disturbance activities, as well as the treatment and disposition of any discovered tribal cultural resources.

The Applicant shall implement the tribe's recommendations if a qualified archaeologist and by a culturally affiliated tribal monitor, both retained by the City and paid for by the Applicant, reasonably concludes that the tribe's recommendations are reasonable and feasible.

The Applicant shall submit a tribal cultural resource monitoring plan to the City that includes all recommendations from the City and any effected tribes that have been reviewed and determined by the qualified archaeologist and by a culturally affiliated tribal monitor to be reasonable and feasible. The Applicant shall not be allowed to recommence ground disturbance activities until this plan is approved by the City.

If the Applicant does not accept a particular recommendation determined to be reasonable and feasible by the qualified archaeologist or by a culturally affiliated tribal monitor, the Applicant may request mediation by a mediator agreed to by the Applicant and the City who has the requisite professional qualifications and experience to mediate such a dispute. The Applicant shall pay any costs associated with the mediation.

The Applicant may recommence ground disturbance activities outside of a specified radius of the discovery site, so long as this radius has been reviewed by the qualified archaeologist and by a culturally affiliated tribal monitor and determined to be reasonable and appropriate.

Copies of any subsequent prehistoric archaeological study, tribal cultural resources study or report, detailing the nature of any significant tribal cultural resources, remedial actions taken, and disposition of any significant tribal cultural resources shall be submitted to the South Central Coastal Information Center (SCCIC) at California State University, Fullerton.

Administrative Conditions

19. **Approvals, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, reviews or approval, plans, etc, as may be required by the subject conditions, shall be provided to the Department of City Planning for placement in the subject file.
20. **Building Plans.** A copy of the first page of this grant and all Conditions and/or any subsequent appeal of this grant and its resultant Conditions and/or letters of clarification shall be printed on the building plans submitted to the Development Services Center and the Department of Building and Safety for purposes of having a building permit issued.
21. **Notations on Plans.** Plans submitted to the Department of Building and Safety for the purpose of processing a building permit application shall include all of the Conditions of Approval herein attached as a cover sheet and shall include any modifications or notations required herein.
22. **Final Plans.** Prior to the issuance of any building permits for the project by the Department of Building and Safety, the applicant shall submit all final construction plans that are awaiting issuance of a building permit by the Department of Building and Safety for final review and approval by the Department of City Planning. All plans that are awaiting issuance of a building permit by the Department of Building and Safety shall be stamped by Department of city Planning staff "Final Plans". A copy of the Final Plans, supplied by the applicant, shall be retained in the subject case file.
23. **Code Compliance.** All area, height and use regulations of the zone classification of the subject property shall be complied with, except wherein these conditions explicitly allow otherwise.
24. **Covenant.** Prior to the issuance of any permits relative to this matter, an agreement concerning all the information contained in these conditions shall be recorded in the County Recorder's Office. The agreement shall run with the land and shall be binding on any subsequent property owners, heirs or assign. The agreement must be submitted to the Department of City Planning for approval before being recorded. After recordation, a copy bearing the Recorder's number and date shall be provided to the Department of City Planning for attachment to the file.
25. **Corrective Conditions.** The authorized use shall be conducted at all times with due regard for the character of the surrounding district, and the right is reserved to the City Planning Commission, or the Director pursuant to Section 12.27.1 of the Municipal Code, to impose additional corrective conditions, if, in the Commission's or Director's opinion, such conditions are proven necessary for the protection of persons in the neighborhood or occupants of adjacent property.
26. **Definition.** Any agencies, public officials or legislation referenced in these conditions shall mean those agencies, public offices, legislation or their successors, designees or amendment to any legislation.
27. **Enforcement.** Compliance with these conditions and the intent of these conditions shall be to the satisfaction of the Department of City Planning and any designated agency, or the agency's successor and in accordance with any stated laws or regulations, or any amendments thereto.

28. **Expedited Processing Section.** Prior to the clearance of any conditions, the applicant shall show proof that all fees have been paid to the Department of City Planning, Expedited Processing Section.

29. **Indemnification and Reimbursement of Litigation Costs**

Applicant shall do all of the following:

- a. Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.
- b. Reimburse the City for any and all costs incurred in defense of an action related to or arising out of, in whole or in part, the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.
- c. Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the Applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$50,000. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).
- d. Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the Applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (ii).
- e. If the City determines it necessary to protect the City's interest, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the Applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

“City” shall be defined to include the City, its agents, officers, boards, commissions, committees, employees, and volunteers.

“Action” shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions include actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the Applicant otherwise created by this condition.

FINDINGS

Density Bonus / Affordable Housing Incentives Findings

1. Pursuant to Section 12.22 A.25(g)(2)(i)(c) of the LAMC and Section 65915(e) of the California Government Code, the Director of Planning shall approve a density bonus and requested incentive(s) and/or Waiver(s) unless the Director of Planning finds that¹:
 - a. *The Incentives do not result in identifiable and actual cost reductions to provide for affordable housing costs as defined in California Health and Safety Code Section 50052.5 or Section 50053 for rents for the affordable units.*

The record does not contain substantial evidence that would allow the Director to make a finding that the requested incentives do not result in identifiable and actual cost reductions to provide for affordable housing costs per State Law. The California Health & Safety Code Sections 50052.5 and 50053 define formulas for calculating affordable housing costs for very low, low, and moderate income households. Section 50052.5 addresses owner-occupied housing and Section 50053 addresses rental households. Affordable housing costs are a calculation of residential rent or ownership pricing not to exceed 25 percent gross income based on area median income thresholds dependent on affordability levels.

In exchange for reserving at least 15 percent of the base density for Very Low Income households, the applicant is entitled to three Incentives under both Government Code Section 65915 and the LAMC. The project proposes to reserve at least 15 percent of the base density of 101 units for Very Low Income households; accordingly, the project is entitled to the three requested On- and Off-menu Incentives. These requested Incentives provide cost reductions that provide for affordable housing costs because the incentives by their nature increase the scale of the project, which facilitates the creation of more affordable housing units.

Parking Stall Dimension and Clearance

The project proposes to provide vehicle parking stalls without the otherwise required 10-inch column clearance for a reduced drive aisle width. The project proposes to demolish a portion of the existing improvements on the property and construct a new eight-story residential structure, including an underground parking level, on that portion of the property only. As a result, vehicle parking will only be provided on a limited and irregularly shaped parcel of land, and as such requiring parking spaces to provide the otherwise required clearance along with all other engineering and architectural requirements would be infeasible within the subject property and would physically preclude the provision of the proposed 108 new units, including 18 restricted affordable units. In addition, vehicle parking is a desirable amenity that attracts tenants and may potentially increase the value of the market-rate units, thereby supporting and off-setting the costs of providing the restricted affordable units. The requested Incentive enables the development of the proposed project, including the proposed restricted affordable units, along with vehicle parking for residents and guests.

Vehicular Access on Collector Roadway

¹ Pursuant to LAMC Section 12.22 A.25(g)(3), the City Planning Commission is considered the decision-maker for Off-menu density bonus requests. The findings referenced in LAMC Section 12.22 A.25(g)(2)(i)(c) apply to Off-menu requests.

The subject property fronts Gower Street, a designated Collector roadway in the City of Los Angeles Mobility Plan 2035. The project proposes to demolish a portion of the existing improvements on the property and construct a new eight-story residential structure on that portion of the property only, primarily fronting Gower Street. As a result, it is practically necessary to provide vehicular access on Gower Street, and prohibiting such access would result in an infeasible design and layout that would physically preclude the provision of the proposed 108 new units, including 18 restricted affordable units. The requested Incentive enables the development of the proposed project, including the proposed restricted affordable units, along with adequate vehicle access and parking for residents and guests.

Open Space

Based on the number and typology of residential units proposed, the project would be required to provide 13,575 square feet of open space. The project proposes to provide approximately 10,181 square feet of open space that can be counted towards zoning requirements, and accordingly is requesting an Off-menu Incentive for a 25 percent decrease in the required amount of open space. This reduction enables the project to expand the building envelope by utilizing more space for building floor area and provide additional floor space and residential units, thus enabling the provision of more dwelling units. The larger building footprint facilitates the creation of more residential units of all types, including market-rate units which enable the applicant to subsidize and reserve more residential units for lower income levels. Therefore, the incentive supports the applicant's decision to set aside 16 dwelling units for Very Low Income households and two additional dwelling units for Low Income households as proposed. The requested Incentive provides actual and identifiable cost reductions that provide for affordable housing costs because the incentive by nature increases the building envelope of the project so that additional residential units can be provided, resulting in additional affordable housing units.

- b. ***The Incentives and/or Waivers will have a Specific Adverse Impact upon public health and safety or the physical environment or any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the Specific Adverse Impact without rendering the development unaffordable to Very Low, Low and Moderate Income households. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific adverse impact upon the public health or safety (Government Code Section 65915(d)(1)(B) and 65589.5(d)).***

There is no substantial evidence in the record that the proposed Incentives and Waivers will have a specific adverse impact upon public health and safety or the physical environment, or any real property that is listed in the California Register of Historical Resources. A "specific adverse impact" is defined as "a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" (LAMC Section 12.22 A.25(b)). There are no historic resources on the subject property, and although there are historic resources nearby, the project will not adversely affect any other properties and will not result in any change to any existing historic resource. In addition, potential environmental impacts, including impacts to historic resources, have been fully analyzed in the SCEA prepared for the project, which concludes the same. The property is not located on a substandard street in a Hillside area and is not located in a Liquefaction Zone, a Special Grading Area, a Very High Fire Hazard Severity Zone, a Methane Zone, or any other special hazard area. Therefore, there is no

substantial evidence that the proposed project, and thus the requested Incentives and Waivers, will have a specific adverse impact on the physical environment, on public health and safety or the physical environment, or on any Historical Resource. Based on the above, there is no basis to deny the requested Incentives.

- c. **The waiver[s] or reduction[s] of development standards relate to development standards that will not have the effect of physically precluding the construction of a development meeting the [affordable set-aside percentage] criteria of subdivision (b) at the densities or with the concessions or incentives permitted under [State Density Bonus Law]” (Government Code Section 65915(e)(1)).**

A project that meets the requirements of Government Code 65915 may request other “waiver[s] or reduction[s] of development standards that will have the effect of physically precluding the construction of a development meeting the [affordable set-aside percentage] criteria of subdivision (b) at the densities or with the concessions or incentives permitted under [State Density Bonus Law]” (Government Code Section 65915(e)(1)).

Floor Area Ratio

The underlying zoning of the subject property permits a maximum floor area ratio (FAR) of 3:1. At completion, the project will result in a total of approximately 216,259 square feet, equal to a FAR of approximately 3.12:1. This increase permits the project to expand the building envelope and provide additional building floor area, which enables the provision of additional living space and residential units and enables the applicant to reserve more residential units for lower income levels. Therefore, the Waiver supports the applicant’s decision to set aside 16 dwelling units for Very Low Income households and two additional units for Low Income households. The requested Waiver by nature increases the building envelope of the project so that additional residential units can be provided, and the otherwise limited FAR of 3:1 would physically preclude development of the proposed project.

Building Height

The underlying zoning of the subject property (R3-1 and R3-1XL) permits a maximum building height of 45 feet and 30 feet, respectively. The proposed new building is partially located within both zones and will rise to a maximum of 95 feet. This increase permits the project to expand the building envelope and provide additional building floor area, which enables the provision of additional living space and residential units and enables the applicant to reserve more residential units for lower income levels. Therefore, the Waiver supports the applicant’s decision to set aside 16 dwelling units for Very Low Income households and two additional units for Low Income households. The requested Waiver by nature increases the building envelope of the project so that additional residential units can be provided, and the otherwise limited building height would physically preclude development of the proposed project.

Side and Rear Yard Setbacks

The underlying zoning on the project site would require an 11-foot easterly side yard setback, a 20-foot westerly side yard setback, and a 15-foot northerly rear yard setback. The project is proposing reduced yard setbacks of zero feet for the easterly side yard, zero feet for the westerly side yard, and 15 feet for the northerly rear yard. These reductions enable the project to expand the building envelope and provide additional floor space and residential units, thus enabling the provision of more dwelling units. The larger building footprint facilitates the creation of more residential units of all types, including market-rate

units which enable the applicant to subsidize and reserve more residential units for lower income levels. Therefore, the Waiver supports the applicant's decision to set aside 16 dwelling units for Very Low Income households and two additional units for Low Income households as proposed. The requested Waiver by nature increases the building envelope of the project so that additional residential units can be provided, and the otherwise required side and rear yard setbacks would physically preclude development of the proposed project.

Therefore, the requested Waivers of Development Standards relate to development standards that would physically preclude a project otherwise meeting the requirements of State Density Bonus law.

d. The Incentives and/or Waivers are contrary to State/federal law.

There is no substantial evidence in the record indicating that the requested Incentives and Waivers are contrary to any State or federal laws.

Environmental Findings

- 2. SCEA.** The City of Los Angeles finds that the Proposed Project complies with the requirements of CEQA for using an SCEA as authorized pursuant to Public Resources Code Section 21155.2(b). The City of Los Angeles has determined that:

The Project is a Transit Priority Project (TPP) pursuant to PRC Section 21155:

- a. The Project is consistent with the general use designation, density, building intensity, and applicable policies specified in the project area in the current SCAG RTP/SCS.
- b. The Project contains at least 50 percent residential use, based on total building square footage, and if the project contains between 26 percent and 50 percent non-residential uses, a floor area ratio of not less than 0.75;
- c. The Project provides a minimum net density of at least 20 dwelling units per acre;
- d. The Project is within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan, consistent with PRC Section 21155(b). A major transit stop means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. A high-quality transit corridor means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours.

The Transit Priority Project has incorporated all feasible mitigation measures, performance standards, or criteria set forth in the following prior applicable EIRs: SCAG's 2020-2045 RTP/SCS EIR.

An initial study has been prepared and circulated in compliance with PRC Section 21155.2(b). A public hearing on the SCEA, and all comments received on the SCEA, will be considered by the City Planning Commission prior to SCEA adoption and approval of the Project.

All potentially significant or significant effects required to be identified in the initial study have been identified and analyzed.

With respect to each significant effect on the environment required to be identified in the initial study, either of the following apply:

- i. Changes or alterations have been required in or incorporated into the project that avoid or mitigate the significant effects to a level of insignificance.
 - ii. Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- 3. Flood Insurance.** The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that this project is located outside of a flood zone.



LOS ANGELES CITY PLANNING APPEAL FILING PROCEDURES

Entitlement and CEQA appeals may be filed using either the Online Application System (OAS) or in person Drop Off at DSC (Development Services Center).

Online Application System: The OAS (<https://planning.lacity.org/oas>) allows appeals to be submitted entirely electronically online; fee payment is by credit card or e-check.

Drop off at DSC: Appeals of this determination can be submitted in person at the Metro or Van Nuys DSC locations, and payment can be made by credit card or check. City Planning has established drop-off areas at the DSCs with physical boxes where appellants can drop off appeal applications; alternatively, appeal applications can be filed with staff at DSC public counters. Appeal applications must be on the prescribed forms, and accompanied by the required fee and a copy of the determination letter. Appeal applications shall be received by the DSC public counter and paid for on or before the above date or the appeal will not be accepted.

Forms are available online at <http://planning.lacity.org/development-services/forms>. Public offices are located at:

Metro DSC

(213) 482-7077
201 N. Figueroa Street
Los Angeles, CA 90012

Van Nuys DSC

(818) 374-5050
6262 Van Nuys Boulevard
Van Nuys, CA 91401

West Los Angeles DSC

(CURRENTLY CLOSED)
(310) 231-2901
1828 Sawtelle Boulevard
West Los Angeles, CA 90025

City Planning staff may follow up with the appellant via email and/or phone if there are any questions or missing materials in the appeal submission, to ensure that the appeal package is complete and meets the applicable Los Angeles Municipal Code provisions.

An appeal application must be submitted and paid for before 4:30 PM (PST) on the final day to appeal the determination. Should the final day fall on a weekend or legal City holiday, the time for filing an appeal shall be extended to 4:30 PM (PST) on the next succeeding working day. Appeals should be filed early to ensure that DSC staff members have adequate time to review and accept the documents, and to allow appellants time to submit payment.



QR Code to Online
Appeal Filing



QR Code to Forms
for In-Person Filing