

Communication from Public

Name: Supporters Alliance for Environmental Responsibility (SAFER)
Date Submitted: 12/02/2024 05:57 PM
Council File No: 24-1054
Comments for Public Posting: To the Los Angeles Planning and Land Use Management Committee and Planner Ahn: Please find attached a comment submitted on behalf of appellant, Supporters Alliance for Environmental Responsibility (SAFER) in support of SAFER's appeal of the Planning Commission's decision to approve the Sunset and Everett Project (ENV-2023-5529-SCEA) to be heard at the PLUM Committee hearing on December 3, 2024.



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December 2, 2024

Via Email

John S. Lee, Chair
Heather Hutt, Councilmember
Katy Yaroslavsky, Councilmember
Imelda Padilla, Councilmember
Kevin De Leon, Councilmember
Candy Rosales, Legislative Assistant
Planning and Land Use Management Committee
City of Los Angeles
200 N. Spring St
Los Angeles, CA 90012
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Esther Ahn
City Planner
City Planning Department
City of Los Angeles
201 N. Figueroa Street, 4th Floor
Los Angeles, CA 90012
Esther.ahn@lacity.org

Re: Comment on Sustainable Communities Environmental Assessment, Sunset and Everett Project (ENV-2023-5529-SCEA) (Construction of Mixed-Use Residential and Commercial Development); December 3, 2024, City PLUM Meeting - Agenda Item No. 2

Dear Chair Lee, Honorable Councilmembers, and Planner Ahn:

This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility (“SAFER”) regarding the Sustainable Communities Environmental Assessment (“SCEA”) prepared for the Sunset and Everett Project (ENV-20230-5529-SCEA) (“Project”), which proposes the construction of two 7-story mixed-use residential and commercial buildings with a total of 327 residential units and 263 on-site parking spaces: one subterranean, one partially subterranean, and one at-ground and above-grade level on a vacant asphalted parcel located at 1185 Sunset Boulevard; 1185, 1187, 1193, 1195, 1197, 1201, 1205, 1207, 1211, 1215, 1221, 1225, 1229, 1233, 1239, 1243, 1245, 1247 W. Sunset Boulevard and 917 N. Everett Street in the City of Los Angeles.

On April 15, 2024, SAFER submitted comments regarding the SCEA’s failure to adequately analyze the Project’s significant environmental impacts as well as a failure to impose all feasible mitigation measures to reduce the Project’s impacts. On July 2, 2024, the Department of City Planning (the “Department”) issued a Recommendation Report, which included a

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response to SAFER’s April 15 Letter. On July 8, SAFER submitted additional comments in response to the Recommendation Report, explaining SAFER’s concerns regarding the Project’s SCEA eligibility and its environmental impacts. On July 11, the Planning Commission approved the Project and on August 27, SAFER appealed the Planning Commission’s decision. In response to SAFER’s appeal, the Department issued a Staff Report on November 22. SAFER now submits these comments in support of its appeal.

LEGAL BACKGROUND

Sustainable Communities Environmental Assessment under SB 375.

CEQA allows for the streamlining of environmental review for “transit priority projects” meeting certain criteria. Pub. Res. Code §§ 21155, 21155.1, 21155.2. To qualify as a transit priority project, a project must

- (1) contain at least 50 percent residential use, based on total building square footage and, if the project contains between 26 percent and 50 percent nonresidential uses, a floor area ratio of not less than 0.75;
 - (2) provide a minimum net density of at least 20 dwelling units per acre;
- and
- (3) be within one-half mile of a major transit stop or high-quality transit corridor included in a regional transportation plan.

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

[The project] is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy, for which the State Air Resources Board . . . has accepted a metropolitan planning organization’s determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emission reduction targets.

Pub. Res. Code § 21155(a). In 2020, the Regional Council for the Southern California Association of Governments (“SCAG”) formally adopted the Connect SoCal 2020–2045 Regional Transportation Plan/Sustainable Communities Strategy (“2020 RTP/SCS”), which was accepted by CARB on October 30, 2020.

If “all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable environmental impact reports and adopted in findings made pursuant to Section 21081” are applied to a transit priority project, the project is eligible to conduct environmental review using a sustainable communities environmental assessment (“SCEA”). Pub. Res. Code § 21155.2. A SCEA must contain an initial study which “identif[ies] all significant or potentially

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significant impacts of the transit priority project . . . based on substantial evidence in light of the whole record.” Pub. Res. Code § 21155.2(b)(1). The initial study must also “identify any cumulative effects that have been adequately addressed and mitigated pursuant to the requirements of this division in prior applicable certified environmental impact reports.” *Id.* The SCEA must then “contain measures that either avoid or mitigate to a level of insignificance all potentially significant or significant effects of the project required to be identified in the initial study.” Pub. Res. Code §21155(b)(2). The SCEA is not required to discuss growth inducing impacts or any project specific or cumulative impacts from cars and light-duty truck trips generated by the project on global warming or the regional transportation network. Pub. Res. Code § 21159.28(a).

After circulating the SCEA for public review and considering all comments, a lead agency may approve the SCEA with findings that all potentially significant impacts have been identified and mitigated to a less-than-significant level. Pub. Res. Code § 21155(b)(3), (b)(4), (b)(5). A lead agency’s approval of a SCEA must be supported by substantial evidence. Pub. Res. Code §21155(b)(7).

DISCUSSION

A. The Project Does Not Meet the SCEA Eligibility Requirements.

For a project to be eligible for a SCEA it must meet the following criteria: (1) consistency with general use designation; (2) consistency with density; (3) consistency with building intensity; and (4) consistency with applicable policies specified in a sustainable communities strategy. (Pub. Res. Code § 21155(a).) However, city staff ignores the criteria clearly outlined in Section 21155(a), and instead argues that the Project need only be “consistent with the Regional Transportation Plan/Sustainable Communities Strategy (“RTP/SCS”).” Under this interpretation, the Project would only need to meet the fourth criteria listed in Section 21155(a) to be eligible for a SCEA, which disregards the plain language of the statute. In the alternative, city staff argues that while not required, the Project is consistent with the general use designation, density, and building intensity requirements outlined in the General Plan. However, as discussed in SAFER’s July 8 comments, and below, the Project is not consistent with density and building intensity requirements. And even if the Project did meet these requirements, the Project would still be ineligible for a SCEA because the Project fails to implement all feasible mitigation measures and performance standards.

a. The Project is not consistent with density or building intensity requirements.

The Project’s deviations from the allowable density and building intensity requirements render the Project ineligible for a SCEA. Applicable zoning allows a maximum height of 57-feet, while the Project is proposed to be 91-feet. Similarly, the applicable floor area ratio (FAR) is 1.5:1, which the Project exceeds at 3:1. While the City requests these density and building intensity deviations under the Density Bonus Law, the Project still remains ineligible for a SCEA

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because under the Density Bonus Law, the applicable density and building intensity requirements are only waived. This means that under the SCEA statute, the Project would still be inconsistent with density and building intensity requirements set forth by the General Plan. As such, the City may proceed under the Density Bonus Law, but cannot rely on a SCEA and instead must conduct CEQA review.

b. The Project failed to implement all feasible mitigation measures and performance standards required by the Sustainable Communities Strategy.

In its July 8 Comments, SAFER explained that the Project did not qualify for a SCEA because it fails to implement “all feasible mitigation measures, performance standards, or criteria set forth in the prior applicable environmental impact reports” as is required by Pub. Res. Code § 21155.2. In their most recent Staff Report, City staff argues that “[t]here is nothing stated in the SCEA statute or applicable case law which requires the [P]roject to implement every single policy and/or mitigation measure discussed by the [Sustainable Communities Strategy (“SCS”).” While City staff is correct that the Project need not implement every policy and/or mitigation measure in the SCS, that is not what SAFER claimed, nor is it the requirement under Section 21155.2. SAFER simply reiterated what is required by statute –that the Project implement all *feasible* mitigation measures and performance measures in the SCS. Since the Project has yet to implement all feasible mitigation measures and performance standards, the Project remains ineligible for a SCEA.

B. The Project Will Result in Significant Impacts to Biological Resources Not Addressed in the Sustainable Communities Strategy.

A SCEA must “contain measures that either avoid or mitigate to a level of insignificance all potentially significant or significant effects of the project required to be identified in the initial study.” (Pub. Res. Code. § 21155.2(b)(2).) However, in instances such as here, where the SCS EIR admitted significant, unmitigated impacts, project-level CEQA review is required to analyze and mitigate significant impacts that were not mitigated to a “level of insignificance” in the SCS EIR.

Here, SAFER’s expert ecologist, Dr. Smallwood, concluded that the Project would result in significant biological impacts on special status species including the Allen’s hummingbird, red-tailed hawk, and California gull. The impacts Dr. Smallwood identified include direct habitat loss, interference with wildlife movement, window collisions, and cumulative impacts with other projects. In a June 4, report, South Environmental concluded that the Project would not result in significant impacts to special status species because the Project site does not contain habitat for the species observed by Dr. Smallwood’s associate, Noriko Smallwood, during her survey of the site. However, based on Noriko’s survey, Dr. Smallwood concluded that the Project site does contain habitat for the Allen’s hummingbird, red-tailed hawk, and California gull. For example, Noriko observed an Allen’s hummingbird on the Project site being very territorial, indicating that

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they will likely nest on or near the site. This observation is evidence of the Project site being habitat for the Allen's hummingbird. Thus, until the Project mitigates significant impacts to special status species to an insignificant level, the City cannot go forward with a SCEA.

CONCLUSION

Given the Project's deviations from the density and building intensity requirements, the Project is not eligible for a SCEA. Beyond these deviations, the Project also remains ineligible for a SCEA because it has failed to implement all feasible mitigation measures and performance standards required by the SCS and mitigate significant impacts to biological resources. Therefore, SAFER respectfully requests that the Planning and Land Use Management Committee grant its appeal and direct city staff to conduct CEQA review for the Project to ensure compliance with CEQA.

Sincerely,

A handwritten signature in black ink that reads "Kylah Staley". The signature is written in a cursive, flowing style.

Kylah Staley
Lozeau Drury LLP

Communication from Public

Name: James Lloyd
Date Submitted: 12/02/2024 02:58 PM
Council File No: 24-1054
Comments for Public Posting: See attached public comment regarding the proposed housing development project at 1185-1247 W Sunset Blvd, CPC-2023-5528-DB-SPR-MCUP-HCA, Council File 24-1054, for the Dec 3, 2024 PLUM Committee meeting.



Dec 2, 2024

**City of Los Angeles
City Council
200 North Spring Street
Los Angeles, CA 90012**

**Re: Proposed Housing Development Project at 1185-1247 W Sunset Blvd,
CPC-2023-5528-DB-SPR-MCUP-HCA, Council File 24-1054**

To: Submitted electronically to the Council

**Cc: Esther Ahn, City Planner, esther.ahn@lacity.org; City Clerk's Office,
clerk.cps@lacity.org; City Attorney's Office, cityatty.help@lacity.org**

Dear Los Angeles City Council PLUM Committee,

The California Housing Defense Fund ("CalHDF") submits this letter to remind the Council of its obligation to abide by all relevant state laws when evaluating the proposed 327-unit housing development project at 1185-1247 West Sunset Boulevard, which includes 41 units for very low-income households. These laws include the Housing Accountability Act ("HAA") and the Density Bonus Law ("DBL").

The HAA provides the project legal protections. It requires approval of zoning and general plan compliant housing development projects unless findings can be made regarding specific, objective, written health and safety hazards. (Gov. Code, § 65589.5, subd. (j).) The HAA also bars cities from imposing conditions on the approval of such projects that would reduce the project's density unless, again, such written findings are made. (*Ibid.*) As a development with at least two-thirds of its area devoted to residential uses, the project falls within the HAA's ambit, and it complies with local zoning code and the City's general plan. Notwithstanding the appellants' arguments, increased density, concessions, and waivers that a project is entitled to under the DBL (Gov. Code, § 65915) do not render the project noncompliant with the zoning code or general plan, for purposes of the HAA. (Gov. Code, § 65589.5, subd. (j)(3).)

CalHDF also writes to emphasize that the DBL offers the proposed development certain protections. The City must respect these protections. In addition to granting the increase in residential units allowed by the DBL, the City must not deny the project the proposed waivers

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and concessions with respect to floor area ratio, height, stories, and open space, unless it makes written findings as required by Gov. Code, § 65915, subd. (e)(1) that the waivers would have a specific, adverse impact upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Of note, the DBL specifically allows for a reduction in required accessory parking in addition to the allowable waivers and concessions. (Gov. Code, § 65915, subd. (p).) In addition to the relief provided by the DBL, AB 2097 exempts the project from accessory parking requirements given that it is located within ½ mile of a major transit stop. (Gov. Code, § 65863.2.) Additionally, the California Court of Appeal has ruled that when an applicant has requested one or more waivers and/or concessions pursuant to the DBL, the City “may not apply any development standard that would physically preclude construction of that project as designed, even if the building includes ‘amenities’ beyond the bare minimum of building components.” (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 775.)

CalHDF is aware that the project’s environmental review has been appealed to the Council. Be aware that requiring additional environmental study or failing to adopt a negative declaration qualifies as a disapproval of a housing development project, pursuant to the HAA. (Gov. Code, § 65589.5, subds. (h)(6)(D) and (E).) In order to disapprove a housing development project, the Council must make health and safety findings as discussed above. Furthermore, as noted in the record, there is more than sufficient support for the City Planning Commission’s decision to approve the project on the basis of the Sustainable Communities Environmental Assessment. Overturning that approval runs afoul of rules governing CEQA approvals, as projects that are eligible for streamlined CEQA approval on the basis of previously certified environmental review must generally be granted that streamlined approval. (See *Hilltop Group, Inc. v. County of San Diego* (2024) 99 Cal.App.5th 890 [penalizing county for refusal to approve project that was eligible to rely on program environmental impact report].)

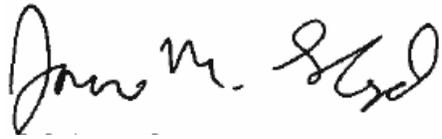
As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. New housing such as this is a public benefit: by providing affordable housing, it will mitigate the state’s homelessness crisis; it will bring new customers to local businesses; it will grow the City’s tax base; and it will reduce displacement of existing residents by reducing competition for existing housing. It will also help cut down on transportation-related greenhouse gas emissions by providing housing in denser, more urban areas, as opposed to farther-flung regions in the state (and out of state). While no one project will solve the statewide housing crisis, the proposed development is a step in the right direction. CalHDF urges the Council to approve it, consistent with its obligations under state law.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dylan Casey', with a long horizontal stroke extending to the right.

Dylan Casey
CalHDF Executive Director

A handwritten signature in black ink, appearing to read 'James M. Lloyd', written in a cursive style.

James M. Lloyd
CalHDF Director of Planning and Investigations