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December 2, 2024

***Via Email***

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Heather Hutt, Councilmember  
Katy Yaroslavsky, Councilmember  
Imelda Padilla, Councilmember  
Kevin De Leon, Councilmember  
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**Re: Comment on Sustainable Communities Environmental Assessment, Sunset and Everett Project (ENV-2023-5529-SCEA) (Construction of Mixed-Use Residential and Commercial Development); 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, appearing to read "Kylah Staley". The signature is fluid and cursive, with the first name "Kylah" being more prominent than the last name "Staley".

Kylah Staley  
Lozeau Drury LLP