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January 18, 2023

City of Long Beach Planning Commission
Erick Verduzco-Vega, Chair
Jane Templin, Vice Chair
Alvaro Castillo, Commissioner
Mark Christoffels, Commissioner
Josh LaFarga, Commissioner
Richard Lewis, Commissioner
Civic Chambers
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Scott Kinsey, AICP
Project Planner
City of Long Beach Planning Bureau
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**Re: Comment on The Mosaic Project (Downtown Plan Program EIR Addendum)
Planning Commission Hearing, January 19, 2023, Agenda Item 1**

Dear Chair Verduzco-Vega, Vice Chair Templin, Honorable Members of the Planning Commission, and Mr. Kinsey:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")** regarding the proposed Addendum to the 2012 Downtown Plan Program EIR, prepared for the Mosaic Project (Project No. 23-009PL) ("Project").

The proposed Project includes all actions related or referring to the proposed construction of three, eight-story buildings with a total of 900 dwelling units and 38,405 square feet of ground floor commercial space, and 1,383 parking stalls in at-grade parking garages, located at 450 The Promenade North/501-599 Long Beach Blvd. in the Downtown Planned Development District in the City of Long Beach.

After reviewing the 2012 Downtown Plan Program EIR ("2012 PEIR"), and the Addendum for the proposed Project ("December 2022 Addendum") we conclude that the Project is not within the scope of the 2012 PEIR and was not analyzed in the 2012 PEIR. Also, the Project will have significant environmental impacts that were not analyzed in the 2012 PEIR and could not have been analyzed in the 2012 PEIR because the Project was not proposed or even contemplated at that time. Therefore, we request that the City of Long Beach ("City") prepare an EIR for the Project pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq.

I. PROJECT DESCRIPTION AND BACKGROUND

The applicant is proposing the construction of three eight-story buildings and a 38,405 square foot retail building on an approximately 5.5-acre site. The Project will include 900 residential units, and each building will contain three levels of above-grade parking. The Project will also include 2,405 square feet of retail space.

The December 2022 Addendum for the Project is based on the City's 2012 Program Environmental Impact Report for the adoption and implementation of the Long Beach Downtown Plan. The 2012 PEIR evaluated impacts for the construction and operation of 5,000 residential units, 1.5 million square feet of office space, 480,000 square feet of retail/commercial space, and 800 hotel rooms. The Project site is zoned as a Downtown Plan Planned Development District (PD-30) and is surrounded by a mix of commercial, retail and residential uses.

The December 2022 Addendum also relies on another Addendum to the 2012 EIR prepared by the City in January 2022 for a project known as the 7th & Locust Mixed-Use Project ("January 2022 Addendum"). The January 2022 Addendum included a "Land Use Equivalency Program" ("LUEP"), which was a response to the exceedance of allowed residential units within the Downtown Plan area as analyzed in the 2012 PEIR. At the time the January 2022 Addendum was proposed, the Downtown Plan area had 5,252 residential units. The LUEP relied on something called a Downtown Plan Equivalency Calculator, which purported to create a mechanism by which the City could re-allocate use designations within the Downtown Plan area from office/commercial/hotel uses to residential uses without exceeding the environmental impacts analyzed in the 2012 PEIR. Under the LUEP, the City was able to continue to approve residential development within the Downtown Plan by making corresponding reductions in commercial/office/hotel development. Under the LUEP, an additional 3,260 residential units (for a total of 8,260 units) could be approved by reducing office uses by 417,060 square feet, commercial uses by 135,320 square feet, and hotel uses by 177 rooms.

II. LEGAL STANDARD

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." (*Bakersfield Citizens*, 124 Cal.App.4th at 1220.) The EIR also functions as a "document of accountability," intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process "protects not only the environment but also informed self-government." (*Pocket Protectors*, 124 Cal.App.4th at 927.)

The City relies on CEQA Guidelines § 15162 and 15164 to claim that no CEQA review is required. The court of appeal recently stated, "The addendum is the other side of the coin from the supplement to an EIR. This section provides an interpretation with a label and an

explanation of the kind of document that does not need additional public review.” “It must be remembered that an addendum is prepared where ‘(2) **Only minor technical changes or additions are necessary to make the EIR under consideration adequate under CEQA; and (3) The changes to the EIR made by the addendum do not raise important new issues about the significant effects on the environment.**’ ([Guideline] 15164, subd. (a).)” (*Save Our Heritage Organization v. City of San Diego*, 28 Cal.App.5th 656, 664–65 (2018) (emphasis added). Even a 15-foot increase in height for a residential building (increasing height from 75 feet to 90 feet) requires a supplemental EIR, not an addendum. “Accordingly, the appropriate protocol is to have the county draft and recirculate a focused supplemental EIR, limited solely to analysis of height and profile-related impacts of the medical clinic, as built and where built to a height of ninety feet.” (*Ventura Foothills Neighbors v. Cty. of Ventura*, 232 Cal.App.4th 429, 434 (2014).)

Section 15164(a) of the State CEQA Guidelines states that “the lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.” Pursuant to Section 15162(a) of the State CEQA Guidelines, a subsequent EIR or Negative Declaration is only required when:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

III. DISCUSSION

A. The Project was not Analyzed in the 2012 PEIR. Therefore, an Addendum is Improper.

The 2012 EIR did not analyze this Project. The 2012 PEIR evaluated impacts for the construction and operation of 5,000 residential units, but the City has already exceeded that amount of construction. A prior CEQA document may only be used for a later project that is “essentially the same project” as was analyzed in the prior document. (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320; *American Canyon Community v. American Canyon*, 145 Cal.App.4th 1062.) The 2012 EIR did not analyze the Project at all. Therefore, the addendum provision does not apply by its own terms.

B. The December 2022 Addendum’s Conclusions Regarding the Project’s Impacts Relative to the 2012 PEIR Are Not Supported by Substantial Evidence.

The significant proposed changes presented cannot plausibly be described as “minor technical changes” to the 2012 PEIR. To the contrary, the December 2022 Addendum proposes the addition of 900 residential units, when the 5,000 residential units originally contemplated by the 2012 EIR have already been constructed, and additional residential units beyond the 5,000 residential units have also been constructed. The December 2022 Addendum fails to explain how the significance of these impacts compares to the severity identified in the 2012 PEIR. By increasing residential uses in the Downtown Plan area, the December 2022 Addendum’s impacts to population and displacement will certainly be greater than the impacts analyzed in the 2012 EIR. The Addendum must address whether the impacts will be more severe.

These proposed changes make clear that the Project involves **new significant environmental effects** and **new information of substantial importance** that make the use of Addendum here entirely inappropriate.

C. The City’s Reliance on the January 2022 Addendum to Conclude that the Project’s Impacts are Less-Than-Significant is Improper.

The City attempts to get around the fact that the proposed Project far exceeds the scope of what was considered in the 2012 PEIR by relying on the LUEP introduced in the January 2022 Addendum. However, the CEQA statute on Addendums refers to a situation when “an EIR has been certified or a negative declaration adopted for a project,” *not* when a *previous Addendum* has been adopted for a Project. (CEQA Guidelines § 15162(a)). Similarly, the sections that follow refer to “major revisions of the previous EIR or negative declaration” (§ 15162(a)(1), (2)), “at the time the previous EIR was certified as complete or the negative declaration was adopted” (§ 15162(a)(3)), and so on. The CEQA Guidelines do not contemplate a situation in which an Addendum is based on *another Addendum*.

Therefore, the impacts of the proposed Project and the December 2022 Addendum must be analyzed as compared to the 2012 PEIR. When compared to the 2012 PEIR, the proposed Project – which includes an additional 900 residential units that go beyond what was

contemplated in the 2012 PEIR – requires major revisions and will involve a substantial increase in the severity of previously identified significant effects.

IV. CONCLUSION

The December 2022 Addendum for the Mosaic Project fails as an informational document. The Project is not within the scope of the 2012 PEIR and was not analyzed in the 2012 PEIR. The Project will have significant environmental impacts that were not analyzed in the 2012 PEIR and could not have been analyzed in the 2012 PEIR because the Project was not proposed or even contemplated at that time. Therefore, we request that the City of Long Beach (“City”) prepare an EIR for the Project pursuant to the California Environmental Quality Act (“CEQA”).

Sincerely,

A handwritten signature in black ink that reads "Amalia Bowley Fuentes". The signature is written in a cursive, flowing style.

Amalia Bowley Fuentes
LOZEAU DRURY LLP