

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

kfederman@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

January 27, 2023

Via Email and Hand Delivery

City of Long Beach City Council
Mayor Rex Richardson
Vice Mayor Cindy Allen
Councilmember Mary Zendejas
Councilmember Kristina Duggan
Councilmember Daryl Supernaw
Councilmember Megan Kerr
Councilmember Dr. Suely Saro
Councilmember Roberto Uranga
Councilmember Al Austin
Councilmember Dr. Joni Ricks-Oddie
City Manager Thomas B. Modica
City Clerk Monique De La Garza
411 West Ocean Blvd.
Long Beach, CA 90802

mayor@longbeach.gov;
district2@longbeach.gov;
district1@longbeach.gov;
district3@longbeach.gov;
district4@longbeach.gov;
district5@longbeach.gov;
district6@longbeach.gov;
district7@longbeach.gov;
district8@longbeach.gov;
district9@longbeach.gov;
citymanager@longbeach.gov;
Cityclerk@longbeach.gov

Via Email Only

Scott Kinsey, AICP, Project Planner
Scott.kinsey@longbeach.gov

Re: Appeal to City Council of Planning Commission Decision to Approve the Mosaic Project (23-009PL, 450 The Promenade North)

Dear Mayor Richardson, Vice Mayor Allen, Councilmembers: Zendejas, Duggan, Supernaw, Kerr, Dr. Saro, Uranga, Austin, Dr. Ricks-Oddie, City Manager Modica, City Clerk De La Garza, and Mr. Kinsey:

We are writing on behalf of **Coalition for Responsible Equitable Economic Development Los Angeles** to appeal the City of Long Beach Planning Commission's January 19th, 2023 decision to approve the Mosaic Project (SCH No. 2009071006) ("Project"), located at 450 The Promenade North/501-599 Long Beach Blvd. proposed by Oren Hillel for Waterford Property Company and Long Beach Center Loan, LLC (collectively, "Applicant").¹ This Appeal is taken from the following actions, and is accompanied by the payment of the required appeal fee of \$432.00:

¹ City of Long Beach, Planning Commission, Staff Report, Agenda Item No. 1, (January 19, 2023), <http://longbeach.legistar.com/View.ashx?M=F&ID=11576482&GUID=90AC49BA-C7C9-4B77-9469-D7740D27570A> ("Staff Report").

- 1) Planning Commission's January 19, 2023 approval of the Addendum (EIRA-02-22) to the Downtown Plan Program Environmental Impact Report (SCH No. 2009071006) ("Downtown Plan PEIR")²,
- 2) Planning Commission's January 19, 2023 approval of Site Plan Review for the construction of three (3) eight (8)-story apartment 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 (SPR22-060),
- 3) Planning Commission's January 19, 2023 approval of Vesting Tentative Parcel Map No. 83693 to subdivide one 170,736-square-foot lot into two lots of 101,724 and 68,712 square feet (TPM22-002), located at 450 The Promenade North/501-599 Long Beach Blvd. in the Downtown Plan Planned Development District (PD-30).

The Project proposes the complete demolition of on-site improvements, including removing all 197,513 square feet of existing commercial and retail uses in two buildings. The Project proposes to develop two eight-story mixed-use buildings and one residential building, and a standalone retail pavilion. The Project includes a total of 900 residential units. The Project includes 31,195 square feet of common indoor open space, 62,027 square feet of common outdoor open space, and 29,747 square feet of private open space. Additionally, the Project proposes to develop 38,405 square feet of leasable commercial/retail space, including a 2,405 square-foot, one-story plus-mezzanine retail pavilion on the north side of 5th Street at the intersection with The Promenade North, separate from the three eight-story buildings. The Project is located at 450 The Promenade North/501-599 Long Beach Blvd. in the Downtown Plan Planned Development District (PD-30).

This Appeal letter, and CREED LA's oral comments at the Planning Commission hearing on January 19, 2023,³ demonstrate that the Project may result

² City of Long Beach, The Mosaic Project Downtown Plan Program EIR Addendum (December 2022), <http://longbeach.legistar.com/View.ashx?M=F&ID=11596311&GUID=6A73A66A-6DF0-4400-90BE-22F901626769> ("Addendum").

³ Godfrey Wachira on behalf of CREED LA – Testimony at 56:45 Planning Commission hearing January 19th, 2023, https://longbeach.granicus.com/player/clip/13510?view_id=84&redirect=true&h=5ca5a816027cab4ad84e4641a6c7c433 ("We have some concerns about the environmental clearance for the Project. It is inadequate as the Drury letter says. Our experts are reviewing the Addendum for issues related to air quality, greenhouse gas emissions, noise impacts and public health impacts. We do reserve the right to provide additional comments and we incorporate all comments in the administrative record.

in significant environmental impacts that were not analyzed or mitigated in the Downtown Plan PEIR, or are more severe than previously analyzed, and require preparation of a subsequent or supplemental environmental impact report ("EIR"). In particular, the Addendum fails to adequately disclose, analyze, and mitigate the Project's new and more severe air quality, greenhouse gas, and public health impacts. Therefore, the City lacks substantial evidence to support its decision that an Addendum is appropriate, and a subsequent or supplemental EIR is required for the Project.

I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations, including Godfrey Wachira and others, live, work, recreate, and raise their families in the City of Long Beach, City of Los Angeles, and other surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

CREED LA seeks to ensure a sustainable construction industry over the long-term by supporting projects that have positive impacts for the community, and which minimize adverse environmental and public health impacts. CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more

Just as an example of our concerns, with regards to air quality, the City uses Tier 4 emissions standards in its air quality emissions calculations, yet such equipment is not required in the mitigation measures. So because Tier 4 obviously has less emissions, the calculation makes the Project not have significant impacts. But if it's not required in the mitigation measures what guarantees are there that Tier 4 equipment will be used during construction? That's an inadequate mitigation measure right there. There are many more. Also, the Project is using the Downtown Plan EIR and the Commission can use a statement of overriding considerations to require local hire.")

difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. THE PLANNING COMMISSION'S RELIANCE AN ADDENDUM FOR PROJECT APPROVAL VIOLATED CEQA

CEQA has two basic purposes, neither of which are satisfied by the Addendum. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.⁴ The EIR is the “heart” of this requirement.⁵ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”⁶

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”⁷ An adequate EIR must contain facts and analysis, not just an agency’s conclusions.⁸ CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.⁹

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.¹⁰ If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.¹¹ CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible

⁴ 14 Cal. Code Regs. § 15002(a)(1) (“CEQA Guidelines”); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁵ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

⁶ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁷ CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

⁸ See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

⁹ Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).

¹⁰ CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets*, 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass’n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

¹¹ Pub. Resources Code §§ 21002.1(a), 21100(b)(3).

project alternatives or mitigation measures.¹² Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.¹³ A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.¹⁴ This approach helps “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”¹⁵

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering, or other appropriate process can be used for analysis of the project’s environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.¹⁶ CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹⁷ A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project “would not have a significant effect on the environment.”¹⁸

When an environmental document has already been prepared for a project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;

¹² *Id.*, §§ 21002-21002.1.

¹³ CEQA Guidelines § 15126.4(a)(2).

¹⁴ *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

¹⁵ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

¹⁶ CEQA Guidelines §§ 15060, 15063(c).

¹⁷ *See, e.g.*, Pub. Resources Code § 21100.

¹⁸ *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).

- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.¹⁹

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified 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 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

¹⁹ Pub. Resources Code § 21166.

- (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.²⁰

Only where *none* of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum, or no further documentation.²¹

Here, the City's decision to prepare an Addendum, rather than a subsequent or supplemental EIR, for the Project, was not supported by substantial evidence. The Addendum does not simply provide "some changes or additions" to the EIR. Rather, it includes project-level analysis for construction of a new three (3) eight (8)-story apartment 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. Accordingly, the Project may have new or more severe significant impacts than previously analyzed in the Downtown Plan PEIR, and has site-specific impacts that were not analyzed in the program EIR and required project-level review at this stage pursuant to CEQA.²² And as described below, the Addendum's site-specific analysis conducted for the Project is also flawed in several ways. Therefore, the Planning Commission's reliance on the Addendum for Project approval was an abuse of discretion and contrary to law. The Planning Commission's decision to adopt the Addendum should be vacated, and a subsequent or supplemental EIR prepared for the Project.

A. The Project May Result in New and More Significant Project-Level Impacts than Previously Analyzed

The Project involves the construction of three (3) eight (8)-story apartment 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. The Addendum relies on the Downtown Plan PEIR, which contemplated 5,000 units of additional housing, and has already approved more than 3596 units under the

²⁰ CEQA Guidelines § 15162(a)(1)-(3).

²¹ CEQA Guidelines § 15162(b).

²² *Id.*; § 15164.

Downtown Plan PEIR.²³ However, construction of this Project may cause the City to exceed the 5,000 units contemplated in the Downtown Plan PEIR, and the Addendum does not analyze the impacts of this exceedance.

The Addendum also recognizes that the Project exceeds the CAAP screening threshold for annual greenhouse gas (“GHG”) emissions, but concludes that Project impacts to GHG emissions would be less than significant with implementation of Mitigation Measures AQ-1, AQ-2, GHG-1(a) and GHG-2(b).²⁴ But, the Addendum does not provide substantial evidence to support this conclusion. The Project may require a backup generator due to its size and scale, but the Air Quality and GHG modeling does not account for backup generator emissions which may be significant under CEQA. Further, the Addendum fails to adequately analyze and mitigate the Project’s construction and operational air emissions. For these reasons, and as discussed herein, the Planning Commission’s decision to approve the Project and adopt the Addendum was not supported by substantial evidence and should be vacated. The City must prepare a subsequent or supplemental EIR for the Project before the Project can be reconsidered for approval.

B. The City’s Air Quality Analysis Fails to Disclose Back-Up Generator Emissions, thus Underestimating the Project’s Potentially Significant Air Quality, GHG, and Health Impacts

CEQA Guidelines Section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”²⁵ Courts have explained that a complete description of a project must “address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable* consequence[s] of the initial project.”²⁶ “If a[n]...EIR...does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA and the final EIR is inadequate as a matter of law.”²⁷

²³ CEQANet, SCH Number 2009071006, Downtown Long Beach Community Plan (EIR-04-08), <https://ceqanet.opr.ca.gov/Project/2009071006>.

²⁴ Addendum p. 83.

²⁵ CEQA Guidelines § 15378.

²⁶ *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

²⁷ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

The Addendum fails to accurately disclose whether backup generators will be used during project operation. The Addendum's Air Quality and Greenhouse Gas Analysis states that "the proposed project does not include any emergency generators."²⁸ But, Table M of the Addendum details the number of hours that will be utilized for Building Construction – Generator Sets which may be used up to 8 hours per day.²⁹ Backup generators will certainly be used for Project construction. And emergency backup generators may also be required for Project operation due to the Project's size and scope. The Project may be required to have an emergency backup generator to supply emergency power to the elevator system in the case of a loss of power.

Such generators can significantly impact air quality, GHG emissions, and public health through DPM emissions.³⁰ Therefore, since the Project involves the reasonably foreseeable use of a back-up generator, the Addendum's failure to disclose the impacts of emissions resulting from the use of such a generator is a failure to disclose all "reasonably foreseeable consequence[s] of the initial project."³¹

These consequences may include significant air quality, GHG emissions, and public health impacts. According to SCAQMD Rules 1110.2³² and 1470,³³ back-up generators are allowed to operate for up to 200 hours per year, and operate for maintenance up to 50 hours per year.

²⁸ Addendum, p. 1.

²⁹ *Id.* at 59.

³⁰ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> ("When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts)").

³¹ *Laurel Heights I*, 47 Cal. 3d 376, 398.

³² Available at <http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1110-2.pdf>.

³³ Available at <https://www.aqmd.gov/docs/default-source/rule-book/reg-xiv/rule-1470.pdf?sfvrsn=4>.

Further, a back-up generator would operate during unscheduled events like Public Safety Power Shutoff (“PSPS”) events and extreme heat events (“EHEs”). Although such events are unscheduled, they occur frequently enough in California that they are reasonably foreseeable. For example, the total duration of PSPS events in California lasted between 141 hours to 154 hours in 2019. In 2021, two EHEs have been declared so far, which lasted 120 hours combined. These two EHEs would have tripled the calculated yearly DPM emissions from the Project. These conditions are expected to increase in severity.³⁴ Therefore, a failure to consider this source of emissions drastically underestimates the Project’s air quality, GHG, and public health impacts. A subsequent or supplemental EIR must be prepared to analyze these potentially significant impacts.

C. The Addendum Incorrectly Claims to Mitigate the Project’s Significant Air Pollution and GHG Impacts with Nonbinding Mitigation

Public agencies must adopt feasible mitigation measures that will substantially lessen or avoid a project’s potentially significant environmental impacts and describe those mitigation measures in the CEQA document.³⁵ A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.³⁶ “Feasible” means capable of successful accomplishment within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.³⁷ Mitigation measures must be enforceable through permit conditions, agreements, or other legally binding instruments.³⁸ CEQA requires an EIR identify mitigation measures which are both effective and enforceable. “Effective” means the measures can reasonably be expected to avoid or reduce a potential significant impact.³⁹ “Enforceable” means the measures are stated as conditions of approval in a permit, agreement or other legally binding document or incorporated into a plan, policy, regulation, or project design.⁴⁰

³⁴ OEHHA, Extreme Heat Events, February 11, 2019, <https://oehha.ca.gov/epic/changes-climate/extreme-heat-events> (showing that frequency of extreme heat events is increasing); NASA Earth Observatory, California Heatwave Fits a Trend, September 6, 2020, <https://earthobservatory.nasa.gov/images/147256/california-heatwave-fits-a-trend> (showing trends toward longer and more intense heatwaves in Southern California).

³⁵ Pub. Res. Code §§ 21002, 21081(a), 21100(b)(3); 14 C.C.R. § 15126.4.

³⁶ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727–728.

³⁷ 14 C.C.R. § 15364.

³⁸ *Id.* § 15126.4(a)(2).

³⁹ 14 CCR § 15126.4(a)(1)(A).

⁴⁰ 14 CCR § 15126.4(a)(1)(A).

Mitigation Measure AQ-1(c) provides that “[a]ll offroad diesel-powered construction equipment greater than 50 hp shall meet the Tier 4 emission standards, where available.”⁴¹ “Where available” is not binding. Mitigation measures must be enforceable through permit conditions, agreements, or other legally binding instruments.⁴² AQ-1 is therefore insufficient mitigation to reduce the Project’s air quality, public health, and GHG emissions to the greatest extent feasible.

Further, Mitigation Measure AQ-4(b) provides that MERV technology will be utilized.⁴³ And includes in another nonbinding section of the Addendum that MERV 13 filters will be utilized.⁴⁴ If the air quality emissions calculations were conducted based on MERV 13 specifications, but MERV 13 filters are not legally required under the MMRP, then the indoor air quality may be worse than estimated in the Addendum. Absent the use of the most protective MERV filter, indoor air quality impacts may be significant and unmitigated. The City must revise MM AQ-4(b) to require the most protective MERV filter available to ensure the safest indoor air quality in binding mitigation before the Project can be approved. An EIR must thus be prepared which adequately analyzes and mitigates Project air quality and GHG impacts.

D. The Addendum Fails to Disclose Potentially Significant Health Risks from Construction Emissions that Are More Severe than Previously Analyzed

An agency must support its findings of a project’s potential environmental impacts with concrete evidence, with “sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.”⁴⁵ A project’s health risks “must be ‘clearly identified’ and the discussion must include ‘relevant specifics’ about the environmental changes attributable to the Project and their associated health outcomes.”⁴⁶

Courts have held that an environmental review document must disclose a project’s potential health risks to a degree of specificity that would allow the public

⁴¹ Addendum, p. 12.

⁴² 14 CCR § 15126.4(a)(2).

⁴³ Addendum, p. 14.

⁴⁴ Addendum Appendix D Mosaic Project Energy Memorandum.

⁴⁵ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

⁴⁶ *Id.* at 518.

to make the correlation between the project's impacts and adverse effects to human health.⁴⁷ In *Bakersfield Citizens for Local Control v. City of Bakersfield* (“*Bakersfield*”), the court found that the EIRs’ description of health risks were insufficient and that after reading them, “the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”⁴⁸ And in *Sierra Club v. County of Fresno* (“*Sierra Club*”), the Supreme Court of California disapproved of an EIR that failed to compare the health effects from exposure to ozone emissions against applicable thresholds.⁴⁹ The Court held that it is insufficient to merely state that “exposure to ambient levels of ozone ranging from 0.10 to 0.40 [parts per million of ozone] has been found to significantly alter lung functions” – the EIR must also compare the Project’s impacts against this threshold.⁵⁰

Mitigation Measure AQ-1(b) provides:

Prior to construction of each development phase of onsite land uses that are proposed within 1,500 feet of sensitive receptors, each project applicant shall perform a project-level CEQA analysis that includes a detailed LST analysis of construction generated emissions of NO₂, CO, PM₁₀, and PM_{2.5} to assess the impact at nearby sensitive receptors. The LST analysis shall be performed in accordance with applicable SCAQMD guidance that is in place at the time the analysis is performed. The project-level analysis shall incorporate detailed parameters of the construction equipment and activities, including the year during which construction would be performed, as well as the proximity of potentially affected receptors, including receptors proposed by the project that exist at the time the construction activity would occur.

Mitigation Measure AQ-1(b) does not provide mitigation for construction generated diesel particulate matter because the proposed LST analysis addresses only criteria pollutants, and not toxic air contaminants like diesel particulate matter. The Measure also constitutes impermissibly deferred analysis of the Project’s air quality impacts. The Planning Commission’s reliance on Mitigation Measure AQ-1(b) to mitigate the Project’s air quality and health risk impacts resulting from the Project’s air emissions was contrary to CEQA and not supported by substantial evidence. The City Council should vacate the Commission’s decision

⁴⁷ *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

⁴⁸ *Bakersfield* at 1220.

⁴⁹ (2018) 6 Cal.5th 502, 517

⁵⁰ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519.

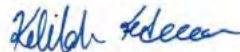
and circulate an EIR which adequately analyzes and mitigates the Project's impacts associated with construction-related diesel particulate matter emissions, before the Project can be approved.

III. CONCLUSION

The Planning Commission failed to proceed in the manner required by law by approving the Addendum and the Project's underlying entitlements in reliance on a legally deficient CEQA document which does not fully analyze or mitigate the Project's significant environmental and public health impacts. As a result, the Planning Commission also lacked substantial evidence to support the findings necessary to approve the Project,

For these reasons, and as will be presented to the City Council at the appeal hearing, we urge the City Council to uphold this appeal, vacate the Planning Commission's approval of the Project and remand the Project to staff to prepare a subsequent or supplemental EIR for the Project before the City considers approval of the Project.

Sincerely,



Kelilah D. Federman

Attachment
KDF:acp

Application For Appeal

An appeal is hereby made to Your Honorable Body from the decision of the

- ☐ Site Plan Review Committee
☐ Zoning Administrator
☒ Planning Commission
☐ Cultural Heritage Commission

Which was taken on the 19 day of January, 20 23.

Project Address: 450 The Promenade North/501-599 Long Beach Blvd., Long Beach, CA 90802

I/We, your appellant(s), hereby respectfully request that Your Honorable Body **reject** the decision and ☐ **Approve** / ☒ **Deny** the application or permit in question.

ALL INFORMATION BELOW IS REQUIRED

Reasons for Appeal: Please see attached.

Appellant Name(s): Kelilah Federman

Organization (if representing) Coalition for Responsible Equitable Economic Development Los Angeles (CREED LA)

Address: Adams Broadwell Joseph & Cardozo 601 Gateway Boulevard, Suite 1000

City South San Francisco **State** CA **ZIP** 94080-7037 **Phone** (650) 589-1660

Signature(s)  **Date** 1/27/23

- A separate appeal form is required for each appellant party, except for appellants from the same address, or an appellant representing an organization.
- Appeals must be filed within 10 days after the decision is made (LBMC 21.21.502).
- You must have established *aggrieved* status by presenting oral or written testimony at the hearing where the decision was rendered; otherwise, you may not appeal the decision.
- See reverse of this form for the statutory provisions on the appeal process.

BELOW THIS LINE FOR STAFF USE ONLY

☐ **Appeal by Applicant** ☐ **Appeal by Third Party**

Received by: _____ **Case. No.:** _____ **Appeal Filing Date:** _____

Fee: _____ ☐ **Fee Paid** **Project (receipt) No.:** _____