



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
richard@lozeaudrury.com

Via Email and Overnight Mail

July 17, 2023

Rex Richardson, Mayor
Mary Zendejas, Councilmember
Cindy Allen, Councilmember
Kristina Duggan, Councilmember
Daryl Supernaw, Councilmember
Megan Kerr, Councilmember
Suely Saro, Councilmember
Roberto Uranga, Councilmember
Al Austin, Councilmember
Joni Ricks-Oddie, Councilmember
City Council
City of Long Beach
411 West Ocean Boulevard
Long Beach, CA 90802

Amy Harbin, AICP Planner
City of Long Beach
411 W. Ocean Blvd.
Long Beach, CA 90802
Amy.Harbin@longbeach.gov

Monique De La Garza, CMC,
City of Long Beach
411 W. Ocean Blvd. (Lobby Level)
Long Beach, CA 90802
cityclerk@longbeach.gov

**Re: Comment on 6700 E. Pacific Coast Highway (Council File No. 23-0762)
CITY COUNCIL PUBLIC HEARING AGENDA ITEM #17 (July 18, 2023)**

Dear Mayor Richardson, Honorable Members of the City Council of Long Beach, Ms. Harbin, and Ms. De La Garza:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")**, a California nonprofit benefit corporation, regarding the proposed mixed-use development at 6700 East Pacific Coast Highway (APNs: 7242-012-006 and 7242-012-007) ("Project"). The Planning Commission has determined that the Project is exempt from the requirement for preparation of environmental documents pursuant to Section 15183 of the California Environmental Quality Act ("CEQA"). The Planning Commission determined that the Project was adequately analyzed in the environmental impact report prepared for the Southeast Area Specific Plan, which was prepared in 2015 and certified in 2017. (SCH No. 2015101075) ("SEASP EIR").

After reviewing the Section 15183 Compliance Memo prepared for the Project, and the SEASP EIR that the Project relies upon, we conclude that the Project does not meet the requirements for an exemption under CEQA Section 15183. The Project fails to comply with the SEASP because it exceeds height and density limit. The Project fails

to implement numerous mitigation measures required by the SEASP. The Project has significant impacts not analyzed in the SEASP.

Notably, on July 13, 2023, wildlife biologist, Noriko Smallwood, M.S., conducted a site visit. Ms. Smallwood positively identified at least five special status species on the Project site. None of these species are identified in the SEASP EIR and there are no mitigation measures for the Project's impacts on these species. Dr. Shawn Smallwood concluded that the Project will have significant adverse impacts on these and other species. (Exhibit A). Also, the City fails entirely to analyze the cumulative impacts of the 6700 PCH project with the 6615 Pacific Coast Highway (6615 PCH) project which is proposed almost directly across the street. Dr. Smallwood concludes that the two projects will have significant cumulative impacts on sensitive species.

SAFER respectfully requests that the City Council deny the applications for Site Plan Review (SPR 22-093) and a Local Coastal Development Permit (LCDP 2208-36) and decline to adopt findings and determinations related thereto for a project within the appealable area of the Coastal Zone consisting of the demolition of all existing structures on the site, and construction of a new mixed-use Project. We urge the City to require preparation of a CEQA environmental review document to analyze and mitigate the Project's environmental impacts prior to issuing any Project approvals.

I. PROJECT DESCRIPTION

The proposed Project involves the demolition of all structures on site to facilitate development of a new mixed-use project consisting of: 281 residential dwelling units, 3,100 square feet of commercial retail space in a building with 592,100 square feet of total area, including parking and an overall building height of 85 feet 6 inches (6 levels over 2 levels of parking). The project includes 507 parking spaces, 143 bicycle parking spaces and approximately 27,534 square feet of common and private open space areas on the property within the MU-CC Zoning District.

The Project would be located in the Coastal Zone, and therefore requires a Local Coastal Development Permit. It is adjacent to the open space area known as the "Pumpkin Patch," and the San Gabriel River, very close to whether the river empties into San Pedro Bay. The Project is immediately adjacent to the sensitive Los Cerritos Wetlands Complex (LCWC). The San Gabriel River contains Environmentally Sensitive Habitat Areas (ESHA). The Project would be located on the scenic Pacific Coast Highway ("PCH"). The Project would replace an existing 2-story building with an 8-story, 85-foot tall building. The Project site is contaminated with several toxic chemicals.

II. CITY FAILS TO CONSIDER THE CUMULATIVE IMPACTS OF 6700 PCH AND 6615 PCH.

At the same time as this Project is being considered, the City is considering another Project almost immediately across the street, at 6615 East Pacific Coast Highway (“6615 PCH”). Indeed, 6615 PCH is being considered by the Planning Commission on July 20, only two-days after the City Council considers 6700 PCH. The two projects will clearly have cumulative impacts. Yet, the environmental review for each project fails even to mention the other (despite the fact that the environmental review documents were prepared by the same consulting firm, Placeworks). 6615 PCH proposes 390 multi-family units in a 6-story wrap-style building with structured parking. 6615 PCH also seeks to avoid CEQA review by relying on the SEASP EIR. By failing to consider the cumulative impacts of these two projects, the City has violated a fundamental requirement of CEQA that a CEQA document must discuss significant cumulative impacts. (CEQA Guidelines section 15130(a); CEQA section 21083). The public hearing notice and CEQA compliance checklist are available on the City’s website at: <https://www.longbeach.gov/globalassets/lbds/media-library/documents/planning/current/public-hearings/pc-public-hearings/nph-6615-e--pch>.

III. 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 (*Pocket Protectors*). 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.

CEQA identifies certain classes of projects which are exempt from the provisions of CEQA. These are called categorical exemptions. 14 CCR §§ 15300, 15354. “Exemptions to CEQA are narrowly construed and [e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.” *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125. The determination as to the appropriate scope of a categorical exemption is a question of law subject to independent, or de novo, review. *San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.*, (2006) 139 Cal. App. 4th 1356, 1375 (“[Q]uestions of interpretation or application of the requirements of

CEQA are matters of law. Thus, for example, interpreting the scope of a CEQA exemption presents ‘a question of law, subject to de novo review by this court.’”)

Here, the City contends that the proposed Project is exempt from CEQA review under Section 15183. Section 15183 of the CEQA Guidelines allows a project to avoid environmental review if it is:

“consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified . . . except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.” 14 CCR 15183 (emphasis added).

The intention of this section is to “streamline” CEQA review for projects and avoid the preparation of repetitive documents. While this section is considered an exemption from CEQA, environmental review is still required for various types of impacts, including those “peculiar to the project or parcel on which the project would be located,” those which “were not analyzed as significant effects in a prior EIR,” “are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR,” or “[a]re previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.” Section (f) of the exemption states that a Project’s environmental effects are not peculiar to a project if “uniformly applied development policies or standards have been previously adopted” which serve to mitigate environmental impacts, **“unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.”** (Emphasis added). The standard set forth by the statute for this analysis is substantial evidence.

Here, there is substantial evidence demonstrating that the Project will have significant impacts which were not addressed in SEASP EIR. The Section 15183 Exemption therefore does not apply, and the City must prepare appropriate CEQA documents for this Project.

IV. DISCUSSION

A. The City May Not Rely on the SEASP EIR Because the Proposed Project is not Consistent with the Density and Zoning Assumed in the SEASP EIR.

The City may only rely on the Section 15183 Exemption if the proposed project is **“consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified.”** 14 CCR 15183(a) (emphasis added). Section 15183 states similarly,

This section shall apply only to projects which meet the following conditions:

- (1) The project is consistent with:
 - (A) A community plan adopted as part of a general plan,
 - (B) A zoning action which zoned or designated the parcel on which the project would be located to accommodate a particular density of development, or
 - (C) A general plan of a local agency

(Section 15183(d)).

However, the proposed Project is plainly inconsistent with the density and zoning assumed in the SEASP EIR. As such, the City may not rely on the SEASP EIR and the 15183 CEQA exemption.

1. Project Exceeds Allowable FAR.

The SEASP and zoning allow a maximum Floor Area Ratio (FAR) of 2.0 in the MU-CC zone. (Compliance Checklist, p.23). However, the proposed Project has a Floor Area Ratio of between 2.3 and 2.8. (Id. p. 24). Since the Project exceeds the FAR, it is clearly not “consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified.” 14 CCR 15183(a). As such, the city may not rely on Section 15183 and an project-specific EIR is required.

The City may argue that it is legally required to allow the excess FAR pursuant to the State Density Bonus Law. (Gov. Code §65915). Even if this is true, this does not mean that the Project is consistent with CEQA section 15183, and is exempt from CEQA review. Under the terms of Section 15183, subsequent CEQA review is required to analyze the increased density since it was not analyzed in the SEASP EIR. While the Project may ultimately be allowed to proceed at its increased density, CEQA review is still required to analyze the Project’s environmental impacts and to propose feasible mitigation measures.

2. Project Exceeds Allowable Height.

The proposed Project exceeds the maximum height allowed in the SEASP. The SEASP allows a maximum of 5-stories for buildings on Pacific Coast Highway (“PCH”). (SEASP p. 92). The SEASP states, “no building or projection shall exceed a maximum of 80 feet in height (including non-habitable spaces such as architectural features or spaces required for mechanical equipment). (SEASP p. 93). By contrast, the proposed Project has an overall building height of 85 feet 6 inches (6 levels over 2 levels of parking). The penthouse elevator rises to 105 feet in height. Thus, the Project vastly exceeds the height allowed by the SEASP. The Project not “consistent with a community plan adopted as part of a general plan, or a zoning action which zoned or

designated the parcel on which the project.” (CEQA Guidelines Section 15183(d)). As such, the City may not rely on the SEASP EIR and Section 15183. A subsequent EIR is required to analyze the impacts of this Project which were not analyzed in the SEASP EIR since it assumed much less dense development.

B. The City May Not Rely on the SEASP EIR Because the Proposed Project will have Significant Cumulative Impacts with the 6615 PCH Project Across the Street.

Section 15183(j) states:

This section does not affect any requirement to analyze potentially significant offsite or cumulative impacts if those impacts were not adequately discussed in the prior EIR. If a significant offsite or cumulative impact was adequately discussed in the prior EIR, then this section may be used as a basis for excluding further analysis of that offsite or cumulative impact.

The City’s CEQA Compliance Checklist fails to mention at all that a similar Project is proposed and being considered two-days later across the street at 6615 Pacific Coast Highway. 6700 PCH and 6615 PCH will clearly have significant cumulative impacts.

Dr. Smallwood concludes that the projects at 6700 PCH and 6615 PCH will have cumulatively significant impacts on wildlife, including special status species. Dr. Smallwood states:

The project would insert a six-story building into the airspace that has been used by volant wildlife for many thousands of years to travel along the coast, and very likely to enter or leave from the nearby wetlands or to fly the shortest distance between Santa Monica Bay and San Pedro Bay. The project would further fragment aerial habitat of volant wildlife, and this would contribute cumulatively to other similar impacts caused by other mid-rise and high-rise buildings in the area. The project would also cause a predicted 558 (95% CI: 331–735) bird-window collision fatalities per year, and would generate a predicted additional 21,481,388 annual VMT, which would contribute cumulatively to the wildlife-automobile collision mortality that is ongoing in the region. A cumulative impacts analysis needs to be completed. (Ex. A, p. 23).

These impacts were not analyzed in the SEASP EIR because the SEASP EIR assumed that buildings would not exceed 5-stories in height and that buildings would have a less dense floor area ratio. Therefore, subsequent CEQA review is required to analyze and mitigate these impacts.

The Project will have significant cumulative air quality impacts. The CEQA Compliance Checklist for 6700 PCH states that the Project will have construction air quality NOx emissions of 41 pounds per day (ppd), which is below the CEQA significance threshold of 100 ppd. (6700 PCH Checklist, p. 51). However, the CEQA Compliance Checklist for 6615 states that this project will have NOx construction emissions of 96 ppd. (6615 PCH Checklist, p. 53). The cumulative emissions of the two projects is 137 ppd, which will obviously exceed the CEQA significance threshold.

Similarly, 6700 PCH will have operational daily CO emissions of 47 ppd, which is slightly less than the CEQA significance threshold of 55 ppd. (6700 PCH Checklist, p. 52). The 6615 PCH CEQA checklist does not quantify operational CO emissions, but it is reasonable to assume that they will be more than 8 ppd, which would make the cumulative CO emissions exceed the CEQA significance threshold of 55 ppd.

Cumulative impacts analysis is critical to CEQA review. A CEQA document must discuss significant cumulative impacts. CEQA Guidelines section 15130(a). This requirement flows from CEQA section 21083, which requires a finding that a project may have a significant effect on the environment if “the possible effects of a project are individually limited but cumulatively considerable. . . . ‘Cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” “Cumulative impacts” are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” CEQA Guidelines section 15355(a). “[I]ndividual effects may be changes resulting from a single project or a number of separate projects.” CEQA Guidelines section 15355(a).

The point is that the City’s CEQA documentation entirely ignores the cumulative impacts of the two projects and does not even attempt to analyze those impacts. As such, the City has failed to comply with Section 15183 and may not rely on the SEASP EIR. Since the CEQA documentation is devoid of any mention of the 6615 PCH project, there is no substantial evidence to support a finding that the 6700 PCH project does not have significant cumulative impacts.

C. The City May Not Rely on the SEASP EIR Because the Proposed Project will have Project-Specific Effects that are Peculiar to the Project or its Site.

The City may not rely on Section 15183 if the proposed Project will have “**project-specific significant effects which are peculiar to the project or its site.**” 14 CCR 15183(a). (emphasis added). The City’s own CEQA Checklist admits that the Project will impacts that are “peculiar to the project or the parcel,” and which were “not analyzed as significant effects in the SEASP PEIR.” (6700 PCH CEQA Checklist, p.

101 (hazardous material impacts); 110 (impede or redirect flood flows)).

1. The Project has Hazardous Material Impacts that are Peculiar to the Project.

The project site is located within the boundary of the Seal Beach Oil Field. In addition, active and abandoned oil pipelines were identified along the northeastern portion of the project site along Pacific Coast Highway and the project site contains an oil pipeline easement with at least one pipeline in the easement. While the initial analysis (Phase I) underlying the SEASP EIR found no Recognized Environmental Conditions, later Phase II analysis found highly significant soil contamination above regulatory screening levels. Total petroleum hydrocarbons (TPH) levels would preclude soil export for sites with unrestricted use. Soil vapor analytical results indicated that TPH (gasoline) and several volatile organic compounds exceeded screening levels, such as benzene and chloroform (across the project site), and isolated detections of bromodichloromethane, ethylbenzene, tetrachloroethene, and trichloroethene. Methane was detected in two locations (borings B-3 and B-4) above City action levels. (CEQA Checklist, p. 104).

Many of these chemicals of toxic and/or cancer-causing chemicals.

Benzene: The Department of Health and Human Services (DHHS) has determined that benzene causes cancer in humans. Long-term exposure to high levels of benzene in the air can cause leukemia, cancer of the blood-forming organs. (<https://emergency.cdc.gov/agent/benzene/basics/facts.asp>).

Chloroform: is a probable human carcinogen. Chronic exposure to chloroform by inhalation in humans is associated with effects on the liver, including hepatitis and jaundice, and central nervous system effects, such as depression and irritability. Inhalation exposures of animals have also resulted in effects on the kidney. (<https://www.epa.gov/sites/default/files/2016-09/documents/chloroform.pdf>)

The SEASP EIR did not analyze these chemicals, it did not propose a site clean-up plan, and it did not propose mitigation measures to protect construction workers or future residents of the Project. Even the City's own CEQA Checklist admits that this is an impact that is "peculiar" to the Project and was not analyzed in the SEASP EIR. Under the express terms of Section 15183, subsequent CEQA review is required to analyze and mitigate this impact.

Even worse, the City has eliminated mitigation measures required by the SEASP EIR. The SEASP EIR required preparation of a soil management plan (SMP), which was required to be "evaluated by a qualified environmental professional." (HAZ-2). However, the City has now, inexplicably eliminated the requirement that the SMP be evaluated by the qualified environmental professional. (CEQA Checklist, p. 106). Thus,

there is no assurance that the SMP will be adequate and will meet necessary requirements to safeguard workers and residents. Section 15183 states, that in order to take advantage of the section, the City must “undertake mitigation measures specified in the EIR.” (Section 15183(e)(1)). Since the City has eliminated this mitigation measure, it may not rely on the SEASP EIR.

2. The Project has Biological Impacts that are Peculiar to the Project.

On July 13, 2023, wildlife biologist Noriko Smallwood, MS, conducted a site visit at 6700 PCH. She positively identified five special status species: Monarch Butterfly, Allen’s Hummingbird, Western Gull, Double-Breasted Cormorant, and California Brown Pelican. (Ex. A, p. 3). Dr. Shawn Smallwood analyzed these results and concluded that at least 135 species of vertebrate wildlife make use of the site and at least 25 of them are special-status species. (Ex. A, p. 10). Dr. Smallwood concludes that the Project will adversely affect these species by placing a 6-story building in their flight-path, which will result in 558 bird-window collision fatalities per year. (Ex. A, p.23). Vehicle collisions from the Project will cause additional collision fatalities of special status species. (Id.) Dr. Smallwood proposes feasible mitigation measures such as bird-safe window treatments, compensatory mitigation, and landscaping measures. (Id. pp. 23-25).

None of these impacts were analyzed in the SEASP EIR. In fact, the SEASP EIR stated “the Pacific Coast Highway commercial corridor within the proposed Mixed Use Community Core and Mixed Use Marina land uses. These areas of change are entirely developed and do not include native habitat or other suitable habitat for sensitive species.” (SEASP EIR p. 5.4-36). Thus, the SEASP EIR concluded that there were no sensitive species on the Project site. Also, the SEASP EIR did not analyze the impacts of this 6-story building on avian flight collisions since the SEASP EIR assumed that buildings would not exceed 5-stories in height. Furthermore, the SEASP EIR did not analyze impacts of bird-window collisions, or traffic collisions at all. Dr. Smallwood’s analysis proves that the EIR’s conclusion that there are no sensitive species on the Project site was wrong. Dr. Smallwood’s analysis constitutes significant new information requiring supplemental environmental review under CEQA section 21166, and 15183.

D. The City May Not Rely on the SEASP EIR Because it Fails to Implement Feasible Mitigation Measures Required in the SEASP EIR.

Section 15183 states, that in order to take advantage of the section, the City must “undertake mitigation measures specified in the EIR.” (Section 15183(e)(1)). As discussed above the City eliminated a requirement from SEASP mitigation measure HAZ-2 for a qualified environmental professional to review the soil management plan.

BIO-1: SEASP BIO-1 requires that “Concurrent with submittal of site

development plans for development on or adjacent to undeveloped land and all land within the Coastal Habitat, Wetlands & Recreation land use, the project applicant shall submit a biological resources report conducted by a qualified biologist.” (SEASP DEIR p. 5.4-47). The City has failed to comply with this requirement. The CEQA Checklist states that compliance is not required because the Project site is already developed. (CEQA Checklist, p. 61). However, BIO-1 applies to project that are “adjacent to undeveloped land and all land within the Coastal Habitat, Wetlands & Recreation land use.” The Project site is adjacent to undeveloped land and the Los Cerritos Wetlands Complex (LCWC). Therefore, a biological analysis was required. The City violated the SEASP by failing to prepare the required biological analysis for the Project. Dr. Smallwood’s analysis shows the importance and environmental impacts resulting from the City’s failure to comply with BIO-1. (Ex. A).

TRAF-2: The City has also eliminated a key requirement from SEASP traffic mitigation measures TRAF-2. This measure required, “The traffic study for the first development project to be considered under the SEASP shall include an analysis of signal timing of 2nd Street through Naples to identify timing adjustments needed to improve signal synchronization.” The City simply has eliminated that requirement by striking it through. (CEQA Checklist, p. 157).

AQ-1: The SEASP EIR required installation of photocatalytic tiles on outdoor surfaces. Photocatalytic tiles break down air pollutants such as nitrogen oxides (NOx), which is a major smog-precursor chemical. The Project fails to implement this mitigation measure, which would reduce air quality impacts. (Checklist, p. 95).

EH-1: The SEASP EIR required the use of cool roofs, cool walls, reflective streets, cool surfaces and shade canopies. While the Project would adhere to general energy efficiency regulations and CALGreen, it does not commit to complying with the requirements for cool roofs, cool walls, reflective streets, cool surfaces and shade canopies. (Checklist, p. 95).

AQ-2: The SEASP EIR required projects to include community and private gardens. The Project fails to comply with this requirement, claiming that it is “not applicable.” (Checklist, p. 96). This makes no sense. The Project could easily have incorporated a community garden area, such as a rooftop garden, or a garden on an adjacent parcel.

DRT-4,5: The SEASP EIR requires projects to use reclaimed/ recycled /or grey water, including “residential greywater systems, rainfall capture systems, and dual plumbing for recycled water. (Checklist, p. 97). The Project fails to comply with these mitigation measures. (Id.)

BE 4, 5: The SEASP EIR requires projects to “reduce or eliminate the use of natural gas in place of electricity (i.e. replace natural gas appliances with electric

alternatives). The CEQA Checklist contends that this requirement is “not applicable.” (CEQA Checklist p. 91). In fact, the Project intends to use natural gas for water and pool heater, barbeques and firepits. (CEQA Checklist, p. 77). The City is failing to comply with this feasible mitigation measure. Electric and/or solar water heating is feasible and readily available.

BE-6: The SEASP EIR requires project to “install on-site renewable energy systems, such as rooftop solar PV.” The City contends that this requirement is “not applicable.” (CEQA Checklist p. 91). This makes no sense. The Project could easily place solar panels on the large rooftop, which would save energy and reduce greenhouse gas emissions.

Policy 5.20: SEASP Policy 5.20 requires a 100 foot buffer between new development and ESHA. (CEQA Checklist p. 127). However, the proposed Project is being located only 76 feet from the ESHA of the San Gabriel River. (Id. p. 124). As such, the Project is inconsistent with this policy.¹

Policy 5.32: SEASP Policy 5.32 requires numerous measures to protect sensitive habitat when projects are located within 100 feet of ESHA, including minimize lighting, minimize rooftop antennae, prohibit amplified music, prohibit insecticides, and other measures. Despite this, the Project proposes only measures to minimize lighting. It does not prohibit amplified music or other measures. (CEQA Checklist p. 131).

Since the Project fails to comply with numerous feasible mitigation measures from the SEASP EIR, the City may not rely on that EIR and may not rely on Section 15183.

E. Subsequent CEQA Review is Required for Energy Impacts Since it was not Analyzed in the SEASP EIR.

Section 15183(a)(2) states that subsequent CEQA review is required for impacts that “were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent.” The City’s CEQA

¹ Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in itself indicates a potentially significant impact on the environment. (*Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.) Indeed, any inconsistencies between a proposed project and applicable plans must be discussed in an EIR. (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).) A Project’s inconsistencies with local plans and policies constitute significant impacts under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4; *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App.5th 358).

Checklist admits that “The [SEASP] PEIR did not analyze a standalone energy topic since the energy thresholds were added to the Appendix G checklist after the PEIR was certified.” (CEQA Checklist, p. 74). Thus, under the plain terms of Section 15183, this impacts must be analyzed in a subsequent CEQA document.

The CEQA consultant contends that further CEQA analysis is not required because the Project will comply with energy efficiency standards such as CALGreen and the California Energy Code. (Id.) However, this type of analysis is not adequate under CEQA. Subsequent CEQA review is required to analyze whether feasible energy efficiency measures are possible. For example, a CEQA document should analyze whether solar panels or wind turbines can be added to the Project. Heat pumps could reduce energy demands of the Project. The CEQA checklist says that the Project “could be” required to install solar panels, “which would further reduce the proposed project’s electricity demand”, but the City has imposed no actual binding requirement to install these feasible energy saving, and greenhouse gas reducing devices. (Checklist, p. 91). The Project intends to use natural gas for water and pool heater, barbecues and firepits. (CEQA Checklist, p. 77). A CEQA document should analyze whether natural gas could be replaced by clean electric power for all or at least some of these applications.

The standard under CEQA is whether the Project would result in wasteful, inefficient, or unnecessary consumption of energy resources. Failing to undertake “an investigation into renewable energy options that might be available or appropriate for a project” violates CEQA. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 213.) Energy conservation under CEQA is defined as the “wise and efficient use of energy.” (CEQA Guidelines, app. F, § I.) The “wise and efficient use of energy” is achieved by “(1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and (3) increasing reliance on renewable energy resources.” (Id.)

Noting compliance with the California Building Energy Efficiency Standards (Cal.Code Regs., tit. 24, part 6 (Title 24) does not constitute an adequate analysis of energy. (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264-65.) Similarly, the court in *City of Woodland* held unlawful an energy analysis that relied on compliance with Title 24, that failed to assess transportation energy impacts, and that failed to address renewable energy impacts. (*City of Woodland, supra*, 225 Cal.App.4th at pp. 209-13.) As such, the City’s reliance on Title 24 and CALGreen compliance does not satisfy the requirements for an adequate discussion of the Project’s energy impacts.

F. Subsequent CEQA Review is Required for Impacts not Mitigated to Less Than Significant in the SEASP EIR

The SEASP EIR concluded that several of the impacts identified as a result of the General Plan Update project were significant and unavoidable. These impacts included air quality (Checklist, p. 43), cultural resources (Checklist, p. 67), greenhouse gas (Checklist, p. 86), noise impacts (Checklist, p. 133), transportation (Checklist, p. 148). In the Compliance Memo prepared for the Project (“Compliance Memo”), the City acknowledges these significant and unavoidable impacts, but argues that because the proposed Project would not result in any new or more severe impacts to the environment beyond what was previously evaluated and disclosed as part of the SEASP EIR, no additional environmental review is required for the proposed Project.

This conclusion is incorrect. Section 15183 states that it only applies to impacts that were “adequately addressed in the prior EIR.” (Section 15183(j).) In the case of *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125, the court of appeal held that when a “first tier” EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later projects to ensure that those unmitigated impacts are “mitigated or avoided.” *Id.* citing CEQA Guidelines §15152(f)). The court reasoned that the unmitigated impacts were not “adequately addressed” in the first tier EIR since they were not “mitigated or avoided.” *Id.* Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been “adequately addressed,” in a way that ensures the effects will be “mitigated or avoided.” *Id.* Such a second tier EIR is required, even if the impact still cannot be fully mitigated and a statement of overriding considerations will be required. The court explained, “The requirement of a statement of overriding considerations is central to CEQA’s role as a public accountability statute; it requires public officials, in approving environmentally detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support.” *Id.* at 124-125.

Thus, since the SEASP EIR admitted numerous significant, unmitigated impacts, a second tier EIR is now required to determine if mitigation measures can now be imposed to reduce or eliminate those impacts. If the impacts still remain significant and unavoidable, a statement of overriding considerations will be required.

G. The Project Will Have Significant Impacts That were not Analyzed in the SEASP EIR.

Section 15183 states that subsequent environmental review is required for environmental impacts that “were not analyzed as significant effects in a prior EIR,” “are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR,” or “are previously identified significant effects which, as a result of

substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.” (Section 15183(b).) The Project will have several impacts that fall under this provision and should be analyzed and mitigated in a subsequent EIR.

Aesthetic Impacts: The SEASP EIR concluded that the SEASP program would not have significant aesthetic impacts. However, the SEASP EIR assumed that no building would exceed 5-stories or 80 feet in height. The proposed Project will be 8-stories and up to 105 feet in height at its tallest point. The SEASP EIR simply did not analyze the aesthetic impacts of this Project. The Project is on the scenic Pacific Coast Highway. Its overly tall height will obviously block views from PCH toward San Pedro Bay, making it less scenic. The Project is adjacent to the San Gabriel River and will block views of the scenic river. These are significant environmental impacts that must be analyzed in a subsequent CEQA document.

Biological Impacts: The impacts to special status species identified by Dr. Smallwood and discussed above and Exhibit A were not discussed in the SEASP EIR, and require subsequent CEQA review. Dr. Smallwood positively identified five special status species: Monarch Butterfly, Allen’s Hummingbird, Western Gull, Double-Breasted Cormorant, and California Brown Pelican. (Ex. A, p. 3). Dr. Shawn Smallwood analyzed these results and concluded that at least 135 species of vertebrate wildlife make use of the site and at least 25 of them are special-status species. (Ex. A, p. 10). Dr. Smallwood concludes that the Project will adversely affect these species by placing a 6-story building in their flight-path, which will result in 558 bird-window collision fatalities per year. (Ex. A, p.23).

None of these impacts were analyzed in the SEASP EIR. In fact, the SEASP EIR stated “the Pacific Coast Highway commercial corridor within the proposed Mixed Use Community Core and Mixed Use Marina land uses. These areas of change are entirely developed and do not include native habitat or other suitable habitat for sensitive species.” (SEASP EIR p. 5.4-36). Thus, the SEASP EIR concluded that there were no sensitive species on the Project site. Dr. Smallwood’s analysis constitutes significant new information requiring supplemental environmental review under CEQA section 21166, and 15183.

H. CONCLUSION

In light of the above comments, the City must prepare an EIR for the Project and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Drury". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard Drury
richard@lozeaudrury.com