



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
adam@lozeaudrury.com

**VIA EMAIL ONLY**

May 3, 2023

Branda Lin, Chair  
Jeff Pierson, Vice Chair  
Stephen Huang, Chair Pro Tem  
Mary Ann Gaido, Commissioner  
Jong Limb, Commissioner  
Planning Commission  
City of Irvine  
1 Civic Center Plaza  
Irvine, CA 92606-5207  
planningcommission@cityofirvine.org

Ann Wu  
Senior Planner  
Community Development Department  
City of Irvine  
1 Civic Center Plaza  
Irvine, CA 92606-5207  
awuu@cityofirvine.org

**Re: Addendum to the Lower Peters Canyon Specific Plan Environmental Impact Report No. 557 (SCH No. 94041030)**

Dear Honorable Planning Commissioners:

This comment is submitted on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")** and its members living or working in and around the City of Irvine ("City") regarding the Irvine Market Place Residential Development Project (General Plan Amendment 00863325-PGA, Zone Change 00870374-PZC, and Master Plan 00882754-PMP) ("Project") to be heard as Agenda Item 2 at the Planning Commission's May 4, 2023 meeting.

SAFER is concerned that the City's reliance on an addendum to the 1995 Lower Peters Canyon Specific Plan Environmental Impact Report (SCH No. 94041030) ("1995 Specific Plan EIR") violates the California Environmental Quality Act ("CEQA"). Because the Project proposes 969 additional residential units that were not analyzed by the 1995 Specific Plan EIR, the Project is outside of the scope of the 1995 Specific Plan EIR and the use of an addendum is improper. Instead, CEQA requires the preparation of an EIR or negative declaration for the Project. Therefore, SAFER respectfully requests that the Planning Commission refrain from taking any action on the Project at this time and, instead, direct staff to prepare an initial study followed by a Project-specific EIR or negative declaration as required by CEQA.

**PROJECT DESCRIPTION AND BACKGROUND**

The Project proposes the development of 1,261 residential units within Planning Area 4

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(“PA4” or Lower Peters Canyon), resulting in a net increase of 969 units over previously approved uses. PA4 encompasses approximately 1,409 acres in the northern portion of the City, and is bound by 1-5 to the southwest, Jamboree Road to the northwest, Culver Drive to the southeast, and Portola Parkway to the northeast. The Project site encompasses approximately 15.5 acres and is bound by Bryan Avenue to the northeast, State Route 261 to the southeast, El Camino Real to the southwest, and commercial uses to the northwest. The Project requires a General Plan Amendment, a Zone Change, a Tentative Parcel Map, and a Master Plan.

The Project’s Master Plan proposes three five-story apartment buildings, which feature a six-story central garage wrapped with residential units. The Master Plan consists of 1,261 total residential units with 413 units in Building 1, 430 units in Building 2, and 418 units in Building 3.

In 1995, the County of Orange approved and adopted a Final Environmental Impact Report for the Lower Peters Canyon Specific Plan (SCH No. 9401030) (“1995 Specific Plan EIR”). In 2003, the City approved and adopted an Addendum to the Lower Peters Canyon Specific Plan Program Environmental Impact Report (“2003 Addendum”). The 1995 Specific Plan EIR was a program EIR which analyzed the development of 10,568 residential dwelling units, 696,000 square feet of retail commercial uses, a special use park, a community park, six neighborhood parks, a library, four elementary schools, one middle school, one high school, and associated road and drainage improvements and other infrastructure. The 2003 Addendum evaluated environmental impacts associated with a General Plan Amendment, a Zone Change, and Master Plans, which allowed for multi-family residential development in PA 4 Sector 8 instead of previously designated commercial uses.

## LEGAL STANDARD

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the fair argument standard. Under that standard, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment. (Pub. Res. Code § 21082.2; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.)

CEQA permits agencies to ‘tier’ CEQA documents, in which general matters and environmental effects are considered in a document “prepared for a policy, plan, program or ordinance followed by narrower or site-specific [environmental review] which incorporate by reference the discussion in any prior [environmental review] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [EIR].” (Pub. Res. Code (“PRC”) § 21068.5.) “[T]iering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous [environmental reviews].” (*Id.* § 21093.) CEQA regulations strongly promote tiering of environmental review.

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Where a program EIR has been prepared, such as the 1995 Specific Plan EIR, “[l]ater activities in the program must be examined in light of the program [document] to determine whether an additional environmental document must be prepared.” (14 CCR § 15168(c).) The first consideration is whether the activity proposed is covered by the program. (14 CCR § 15168(c)(2).) If a later project is outside the scope of the program, then it is treated as a separate project and the previous environmental review may not be relied upon in further review. (*See Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320–21.) The second consideration is whether the “later activity would have effects that were not examined in the program.” (14 CCR § 15168(c)(1).) A program environmental review may only serve “to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project . . . .” (*Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1171 [quoting *Citizens for Responsible Equitable Envtl. Dev. v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 615].) If the program environmental review does not evaluate the environmental impacts of the project, a tiered [CEQA document] must be completed before the project is approved. (*Id.* at 1184.)

Where a later project is outside the scope of a previous program EIR, an agency must prepare an initial study to determine “whether the later project may cause significant effects on the environment that were not examined in the prior environmental impact report.” (PRC § 21094(c); see *Sierra Club, supra*, 6 Cal.App.4th at 1321.) If there is a fair argument that the Project may result in new significant impacts, the agency must prepare a tiered EIR. Under the fair argument standard, an EIR must be prepared “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. (*Sierra Club, supra*, 6 Cal.App.4th at 1316.) “[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence.” (*Id.* at 1319.)

## DISCUSSION

### **I. Under CEQA, an EIR or negative declaration is required for the Project rather than an addendum.**

The City has improperly relied upon CEQA’s subsequent review provisions. (PRC § 21166; 14 CCR §§ 15162, 15164.) Where a previous EIR has been certified for a project, CEQA’s subsequent review provisions determine whether “[a] subsequent EIR shall be prepared for *that* project.” (14 CCR 15162 [emphasis added].) Here, the proposed Project exceeds the scope of the analysis of the 1995 Specific Plan EIR, which did not account for the Project’s additional 969 units. No EIR has ever been prepared for *this* Project and, as a result, the use of CEQA’s subsequent review provisions and the addendum are improper.

Because the 1995 Specific Plan EIR was a programmatic EIR for the entire Lower Peters Canyon Specific Plan, CEQA review of this subsequent Project is governed by CEQA

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Guidelines section 15168, which provides that a subsequent EIR is unnecessary only where a proposed activity is “within the scope of the project covered by the program EIR.” (14 CCR § 15168(c).) The Project is outside the scope of the 1995 EIR because the Project proposes a net increase of 969 residential units beyond what was analyzed in the 1995 Specific Plan EIR for PA 4. The fact that this Project requires a general plan amendment and a zoning change further underscores the fact that the Project is beyond the scope of the analysis and context of the 1995 EIR. Because the Project is outside the scope of the 1995 Specific Plan EIR, CEQA’s subsequent review provisions do not apply and the addendum is improper. (*Sierra Club, supra*, 6 Cal.App.4th at 1320-21.) Instead, the City is required to prepare an initial study to determine whether to prepare a tiered EIR or negative declaration. (*Id.* [citing PRC §§ 21094(c); see also 14 CCR § 15152(f).])

### CONCLUSION

SAFER respectfully requests that the Planning Commission refrain from taking any action on the Project at this time and, instead, direct staff to prepare an initial study followed by a Project-specific EIR or negative declaration as required by CEQA.

Sincerely,



Adam Frankel  
Lozeau Drury LLP