Maryanne Cronin

From: Lucille Lund <lundl.diane@yahoo.com>
Sent: Tuesday, August 01, 2023 5:21 PM
To: Maryanne Cronin
Subject: Fw: Condominium development at 6615 E. Pacific Coast Hwy. Long Beach, CA 90803 Parcel ID 7237020050

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From: Lucille Lund <lundl.diane@yahoo.com>
To: maryannecronin@longbeach.gov <maryannecronin@longbeach.gov>
Sent: Tuesday, August 1, 2023 at 05:18:47 PM PDT
Subject: Fw: Condominium development at 6615 E. Pacific Coast Hwy. Long Beach, CA 90803 Parcel ID 7237020050

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----- Forwarded Message -----
From: Lucille Lund <lundl.diane@yahoo.com>
To: District3@longbeach.gov <district3@longbeach.gov>
Sent: Tuesday, August 1, 2023 at 12:11:21 PM PDT
Subject: Condominium development at 6615 E. Pacific Coast Hwy. Long Beach, CA 90803 Parcel ID 7237020050

To: Kristina Duggan
From: Lucille Lund

I have spoken to business people, and residence in this community, around the community in regards to the forementioned address development listed above. All the people I discussed this development with were disappointed in the Long Beach City council decision above. All of them mentioned more traffic, more traffic accidents, and pollution from the building of these massive condominiums planned at the above forementioned. Not only will there be more traffic, accidents, the wetlands and its preservation will be destroyed. The elected officials of our community keep saying that they are into reversing climate change but they are planning developments that will bring on the worst change in the environment. I was driving last Sunday after 3pm from Seal beach going towards Veterans Administration on Pacific Coast Highway, it took me over 45 minutes due to accidents, and traffic at that time. I can just imagine what it will be if this development is allowed to go forward. The building of this massive condominium complex will require more sewage systems and treatment. This will result in more pollution in the ocean. This will kill our most precious resource and destroy tourism in our city. Sincerely Lucille Lund (concerned citizen)

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Via Email

August 30, 2023

Mayor and City Councilmembers
City of Long Beach
City Hall Office
411 W. Ocean Boulevard
Long Beach, CA 90802
Attention: City Clerk

Re: 6615 E. Pacific Coast Highway Project

Dear Honorable Mayor and City Council members:

This law firm represents CP IV Marketplace, LLC, the Applicant for the above-referenced Project. This letter responds to certain arguments made in appeals of the Planning Commission's approval of the Project filed by Supporters Alliance for Environmental Responsibility (SAFER) and Sierra Club Los Cerritos Wetlands Task Force. This letter also responds to certain comments submitted to the Planning Commission by Southwest Mountain States Regional Council of Carpenters (Carpenters). This letter is not intended to comprehensively respond to all comments that have been submitted, as we understand other comments will be addressed by the City or its consultants.

I. The Standard of Review Under CEQA Guidelines Sections 15183 and 15168 Is Similar and Approval of the Project Is Supported By Both Sections

SAFER contends the Compliance Checklist was prepared pursuant to CEQA Guidelines ("Guidelines") section 15183 and does not include "any analysis" to support staff's recommendation that further review is not required under Guidelines sections 15168 and 15162. (SAFER Letter, p. 4.) The Compliance Checklist properly analyzed the Project under Guidelines section 15183, which is the basis for the City's contemplated CEQA clearance for the Project. As explained below, sections 15168 and 15162 are also instructive because the standard of review under these sections requires factual determinations similar to those required under section 15183.

Public Resources Code section 21083.3 and Guidelines section 15183 establish an exemption from CEQA review for projects that are consistent with a general plan, community plan, or zoning policy for which an EIR was certified. (*Lucas v. City of Pomona* (2023) 92 Cal.App.5th 508, 534, 536, 546.) Section 15183(a) provides that such projects "shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies." Environmental review is therefore limited to environmental effects that: (1) are significant and "peculiar to" the project or project-site; (2) were not analyzed as significant effects in the prior EIR; (3) are potentially significant off-site impacts and cumulative impacts not discussed in the prior EIR; or (4) are previously identified significant effects which, based on substantial new information, are determined to have a more severe impact than discussed in the prior EIR. (Guidelines, § 15183(b).) An additional EIR is not required if an environmental impact "is not peculiar to the parcel or to the project, has been addressed as a significant effect in the prior EIR, or can be substantially mitigated by the imposition of uniformly applied development policies or standards." (*Id.*, § 15183(c).)

Because an EIR for a general or specific plan is considered to be a program EIR, Guidelines section 15168, which contemplates use of a program EIR with later activities, is also instructive. (See *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 614.) The factual determination of whether subsequent review is required under Guidelines section 15168 is essentially equivalent to that used under Guidelines section 15183. (See *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, 299, fn. 20.) To determine whether later activities are within the scope of a *program* EIR, section 15168(c)(2) provides: "If the agency finds that pursuant to Section 15162,[1] no new effects could occur or no new mitigation measures would be required, the agency can

[1] Although the City is proceeding under Guidelines section 15183, Guidelines section 15162(a) provides that a subsequent EIR is not required unless substantial evidence shows: (1) substantial changes are proposed in the project that will require major revisions to the EIR; (2) substantial changes to the circumstances surrounding the project occur, which require major revisions to the EIR; or (3) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence before the prior EIR was certified, becomes available. (Compare CEQA Guidelines, § 15162(a), with *id.*, § 15183(b).) Further, the substantial changes or new information must show that the activity would cause a new significant environmental impact or a substantial increase in the severity of a previously identified significant impact.

approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required…" Whether applying section 15183 or section 15168, the key inquiry is whether the project would cause new significant impacts or an increase in the severity of previously identified impacts. (Compare Guidelines, § 15168(c)(2) with *id.*, § 15183(c).)

Section 15168(c)(4) recommends that the lead agency "use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the program EIR." Section 15183(b) recommends "an initial study or other analysis" be used to make the requisite determinations. In all events, the documentation used by the lead agency must show that substantial evidence supports the determination that the project is within the scope of the previously certified EIR, as discussed in the following section of this letter. (Guidelines, § 15168(c)(2) ["whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record."]; *Lucas, supra,* 92 Cal.App.5th at 538 [substantial evidence standard governs agency's determination that project is exempt under Guidelines section 15183].)

II. The Substantial Evidence Standard Governs the City's Determination of Whether the Project Fits Within the Scope of the SEASP Program EIR

Citing *Save Our Access v. City of San Diego* (2023) 92 Cal.App.5th 819, the Carpenters misstate that the fair argument tests governs whether the Project fits within the scope of the SEASP Program EIR. To the contrary, *Save Our Access* reiterates the settled proposition that "[w]hen an agency has prepared an EIR or a program EIR, we review a decision not to prepare a supplemental or subsequent EIR for a later project or activity under the substantial evidence standard of review." (*Id.* at 847 [citing *Citizens for Responsible Equitable Environmental Development, supra,* 134 Cal.App.4th at 610]; see also *Save Our Access,* 92 Cal.App.5th at 844 ["[w]hether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record."] [citing CEQA Guidelines § 15162(c)(2)].)

Save Our Access further clarifies that the fair argument test does not come into play unless an agency's determination that a later activity fits within the scope of a program EIR is ***not*** supported by substantial evidence. In such a circumstance, the fair argument test governs the agency's determination whether to conduct supplemental review for a "new" project, i.e., a project that is not within the scope of the prior EIR. (*Save Our Access*, 92 Cal.App.5th at 859-860; see also *Citizens*, 134 Cal.App.4th at 610 ["the fair argument standard does not apply to judicial review of an agency's determination that a project is within the scope of a previously completed EIR."].)

Substantial evidence in the record supports the Planning Commission's determination that the Project fits within the scope of the SEASP Program EIR and no further review is required, as discussed in the following section.

III. The Project Fits Within the Scope of the SEASP Program EIR and No Supplemental Review Is Required

A. The Project Is Consistent With all Applicable Provisions in the SEASP

SAFER contends that the City may not rely on CEQA Guidelines section 15183 because the Project allegedly is inconsistent with the density and zoning assumed in the SEASP Program EIR. More specifically, SAFER grounds its argument on the fact that, pursuant to the state Density Bonus Law, Government Code section 65915, et seq., the Project has been granted density bonuses and waivers to allow building heights in excess of SEASP standards.

SAFER's argument misunderstands the state law which required the City to approve density bonuses and height limit waivers, as well as the effect of that state law on the CEQA analysis. The Project received a 20% density bonus because it will provide 17 very-low-income affordable units. (Gov. Code, § 65915(b).) Density bonuses "shall" be provided so long as the statutory criteria are met. The Density Bonus Law also mandates that concessions, incentives, and/or waivers must be granted where the statutory criteria are met. (Gov. Code § 65915(d), (e).) Concessions and incentives "shall" be granted unless the agency finds that (1) the concession or incentive does not result in actual or identifiable cost reductions to provide for affordable housing costs, (2) the concession or incentive would have a specific, adverse impact upon public health and safety as defined in Government Code section 65589.5(d)(2)[2] or on any real

[2] Government Code section 65589.5(d)(2) provides in pertinent part that ***"[a] local agency shall not disapprove a housing development project . . . for very low, low-, or moderate-income households . . . or condition approval in a manner that renders the housing development project infeasible . . .*** including through the use of design review standards, unless it makes written findings, based upon a preponderance of evidence in the record, as to one of the following: (2) [t]he housing development project . . . as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households . . . a 'specific, adverse impact' means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. ***The following shall not constitute a specific, adverse impact upon***

property that is listed in the California Register of Historical Resources, or (3) the concession or incentive would be contrary to state or federal law. (*Id.,* at § 65915(d)(1).) Further, local agencies are prohibited from applying development standards that would physically preclude construction at the densities and with the concessions and incentives authorized by the statute, unless the agency can make the second or third finding in the prior sentence. (*Id.,* at § 65915(e)(1).)

Pertinent here, the Project obtained waivers to allow a maximum building height of 91 feet, 8.5 inches, which exceeds the maximum generally-allowable height of 80 feet, as well as to allow a six story building. These waivers are necessary to accommodate the density bonus and affordable units for the Project. Because there is no basis to make any of the findings that would allow the City to deny these waivers, the City is required by state law to grant them. (See Staff Report, pp. 6-7.)

Because state law ***requires*** the City to grant density bonuses and height limit waivers that would physically preclude construction of a density-bonus-qualifying project, (Gov. Code, § 65915(b), (e)(1)), the Project is consistent with all *applicable* SEASP requirements and satisfies the requirements of CEQA Guidelines section 15183. A similar result was reached in *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329. There, the court rejected an argument that the city's waiver or reduction (pursuant to the Density Bonus Law) of zoning standards for building height, floor area ratio, and setbacks rendered the project inconsistent with applicable general plan and zoning requirements. The court made this determination in the context of ruling that the project fit within the categorical exemption for infill development projects set forth in Guidelines section 15332, which requires (among other things) that "[t]he project is consistent with the applicable general plan designation . . . as well as with applicable zoning designation and regulations." (*Wollmer, supra,* 193 Cal.App.4th at 1347-1349.)

The *Wollmer* court relied on language in the Density Bonus Law stating that "[t]he granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment . . . , zoning change, or other discretionary approval." (*Id.* at 1348 [quoting Gov. Code, § 65915(f)(5)].)[3] The court also relied on Government Code section 65915(e)(1), which "*prohibits*" a local agency from applying development

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the public health or safety: (A) Inconsistency with the zoning ordinance or general plan land use designation . . ." (emphasis added.)

[3] See also Gov. Code § 65915(j)(1) ("The granting of a concession or incentive shall not require or be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, study, or other discretionary approval.")

standards that would physically preclude construction of a density-bonus-qualifying development. (*Wollmer, supra,* at 1348, original emphasis.)

B. The Project's Ministerial Density Bonuses and Height Limit Waivers Do Not Trigger Subsequent CEQA Review

Next, SAFER argues that the City may not rely on the SEASP Program EIR under Guidelines sections 15162 or 15168(c)(2) because the increased density and height limits were not reviewed in the prior EIR. But the density bonuses and height limit waivers are "ministerial" because the City is ***required*** by state law to grant them so long as the objective criteria in the Density Bonus Law are satisfied, as explained above. (E.g., Guidelines, § 15369 ["'Ministerial' describes a governmental decision involving little or no personal judgment by the public official . . . The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements . . . "].) CEQA "does not apply" to ministerial acts. (E.g., Guidelines, § 15002(i)(1).)

The Density Bonus Law compels the City to grant the Project's density bonuses and height limit waivers because the statutory criteria have been met. Even if a subsequent or supplemental EIR was prepared and identified potentially significant impacts from these Project features, the City would lack authority to modify the project to reduce density or height to address those concerns. Hence, the Project's density bonuses and height limit waivers cannot trigger supplemental environmental review. (See, e.g., *San Diego Navy Broadway Coalition v. City of San Diego* (2010) 185 Cal.App.4th 938 ["[t]o hold that an agency must prepare a subsequent or supplemental EIR concerning an environmental issue over which its discretionary authority does not extend would be inconsistent with [CEQA case law] and with the statutory presumption against additional environmental review, as discussed in the case law interpreting section 21166."].)

Although the Project includes ministerial and discretionary components, "the discretionary component of the action must give the agency the authority to consider a project's environmental consequences to trigger CEQA." (*McCorkle Eastside Neighborhood Group v. City of St. Helena* (2018) 31 Cal.App.5th 80, 90, citations omitted.) For reasons explained in the Compliance Checklist, staff report, and this letter, no discretionary component of the Project triggers preparation of a subsequent or supplemental EIR.

In addition, the SEASP Program EIR evaluated maximum heights in the Mixed Use Community Core (MU-CC) area of seven stories, so the Project's height limits are within the envelope of the Program EIR's analysis. (Compliance Checklist, p. 39.) This provides a separate and independent basis to defeat SAFER's claims that supplemental review is

required to evaluate structures at the height of the proposed Project or otherwise assess aesthetics. (Compliance Checklist, pp. 37-39.)

IV. The Planning Commission Properly Determined, Based on the Compliance Checklist, that the Project Fits Within the Scope of the SEASP Program EIR

The City's review and approval of the Project is proceeding under Guidelines section 15183 and a checklist was prepared to evaluate whether the Project fits within the SEASP Program EIR and is thus exempt from CEQA. The City is not relying on "tiering" as a basis for CEQA compliance. Nonetheless, the Carpenters argue that "tiering" requires that any activity that follows the certification of a program EIR must be reviewed by a "later EIR or negative declaration" or "at least" an initial study such that the Compliance Checklist prepared for the Project is insufficient. The Carpenters are incorrect.

Guidelines section 15168 governs the requirements for a program EIR, including as to later activities that are part of the program. Guidelines section 15168(c)(2) specifies that "[i]f the agency finds that pursuant to Section 15162, no subsequent EIR would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required." Section 15168(c)(4) further provides that "the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the project described in the program EIR." Sections 15168(c)(2) and (c)(4) thus defeat Carpenters' claim that any later activity approved under a program EIR requires an initial study, negative declaration, or EIR. Based on substantial evidence in the Compliance Checklist, the Planning Commission properly determined that no supplemental environmental review is required.

The Carpenters' formalistic argument that the document used to evaluate whether the Project fits within the SEASP Program EIR must be labeled "Initial Study" is rejected by Guidelines section 15168(c)(4), which contemplates a "checklist or similar device." The Carpenters' argument also conflicts with Guidelines sections 15168(c)(2) and 15162, each of which provides that the critical issue is not the label assigned to a document, but whether the agency's determination is supported by "substantial evidence" in the "record." In any event, the Compliance Checklist is based on Appendix G to the CEQA Guidelines, which specifically states that "[i]t may be used to meet the requirements for an initial study." The Compliance Checklist plainly satisfies the content requirements of an initial study set forth in Guidelines section 15063(d): (1) a description of the project, (2) an identification of the environmental setting, (3) an identification of environmental effects by use of a checklist, matrix, or other method, (4) a discussion of ways to mitigate the significant effects identified, if any, (5) an

examination of whether the project is consistent with existing zoning, plans, and other applicable land use controls, and (6) the name of the persons who prepared the document.

V. A Supplemental EIR Is Not Required to Re-Assess Impacts Evaluated in the SEASP Program EIR

SAFER cites *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 122-125 for the asserted proposition that if significant and unavoidable impacts are identified in a first-tier, an EIR must be prepared for any later activities to ensure that the same impacts already found to be significant and unavoidable are "mitigated or avoided" or otherwise "adequately addressed." (SAFER Letter, pp. 14-15.) First, *Communities for a Better Environment* ("*CBE*") is inapplicable because the City is not "tiering" and instead is relying on Guidelines section 15183, which was not at issue in *CBE*. Second, the portion of *CBE* cited by SAFER merely stands for the proposition that an agency approving a later activity through tiering must adopt a statement of overriding considerations to address any significant and unavoidable *impacts of the subsequent project*—the agency may not rely on the statement of overriding considerations adopted for the earlier EIR. (*CBE*, 103 Cal.App.4th at 124.) *CBE* involved a challenge to the California Resource Agency's 1998 revision of certain Guidelines, and the court invalidated a former provision related to tiering that would have allowed an agency to approve a project with significant and unavoidable project-specific environmental impacts without adopting a statement of overriding considerations. (*Id.* at 124-125.) Here, the Project satisfies the requirements of Guidelines section 15183 and therefore is exempt from CEQA.

Third, although the Project is not relying on tiering, it is notable that the *CBE* court was clear not to undermine what it described as "the fundamental concept of tiering"—that "further analysis" of environmental effects already analyzed in a prior EIR "would be duplicative." (*Ibid.* ["Even though a prior EIR's *analysis* of environmental effects may be subject to being incorporated in a later EIR for a later, more specific project, the responsible public officials must still go on the record and explain specifically why they are approving the later project despite *its* significant unavoidable impacts."] [original emphasis]; see also Pub. Res. Code §§ 21068.5, 21093(a), and 21094(c))

VI. The Project's Lot Line Adjustment Is Consistent with the SEASP

The Sierra Club Los Cerritos Wetlands Task Force argues that the Project improperly incorporates a lot line adjustment 100 feet from wetlands. SEASP Policies 5.2 and 5.17 require a wetland delineation for new projects located on a property that is within 100 feet of any designated wetland, or within 100 feet of a potential wetland. To

satisfy the wetland delineation requirement, the applicant may provide a survey prepared by a qualified biologist based on a site visit demonstrating that no wetlands are located within 100 feet of the property boundaries. SEASP Policy 5.20 requires that new developments shall be sited to provide a minimum buffer of 100 feet from a delineated wetland or environmentally sensitive habitat areas.

The applicant satisfied SEASP Policies 5.2, 5.17 and 5.20 by submitting a Biological Technical Report prepared by Glenn Lukos Associates, Inc. The report includes biological surveys and wetland delineations. The Project site, which includes the area of the proposed lot line adjustment, does not contain any state or federally protected wetlands, including wetlands as defined by the California Coastal Commission. The proposed new development will not be sited within 100 feet of a delineated wetland. The nearest potential wetlands are located at least 194 feet from the Project site as shown on Exhibit 6 to the Biological Technical Report. (See Compliance Checklist, pp. 135, 138-140.)

VII. The Compliance Checklist Properly Relied on the Cumulative Impacts Analysis in the SEASP Program EIR

The Carpenters complain that the Project's cumulative impacts analysis improperly relies on the SEASP Program EIR. This is incorrect, as numerous CEQA provisions authorize a lead agency to rely on the projections in a specific plan or program EIR to analyze cumulative impacts. (See, e.g., Guidelines, §15183(j) ["If a significant offsite or cumulative impact was adequately discussed in a prior EIR, then this section may be used as a basis for excluding further analysis of that offsite or cumulative impact."]; *id.* at § 15130(d) ["No further cumulative impacts analysis is required when a project is consistent with a . . . specific . . . programmatic plan where the Lead Agency determines that the regional or areawide cumulative impacts of the project have been adequately addressed . . . in a certified EIR for that plan."]; *id.* at 15130(e)["If a cumulative impact was adequately addressed in a prior EIR for a community plan, zoning action, or general plan, and the project is consistent with that plan or action, then an EIR for such a project should not further analyze the cumulative impact, as provided in Section 15183(j)."]; *id.* at § 15168(d) [a program EIR may "[b]e incorporated by reference to deal with . . . cumulative impacts . . . and other factors that apply to the program as a whole."].)

The Carpenters also complain that the analysis did not consider projects separately proposed at 6500 and 6700 Pacific Coast Highway, and that "there is no information" as to how many units have been built as authorized by the SEASP. (Carpenters Letter, p. 22.) These arguments also fail. The Compliance Checklist identified the net increase in dwelling units (2,547) and commercial square footage (307,071)

approved in the SEASP and analyzed in the SEASP Program EIR.[4] The Compliance Checklist explained that "the proposed project is one of the first projects being proposed within the SEASP and would be within the buildout anticipated for the SEASP area." (Compliance Checklist, p. 24.) Tables 1 and 3 of the Compliance Checklist show that the Project—along with the projects separately proposed at 6500 and 6700 Pacific Coast Highway—would be well within the remaining buildout capacity in the SEASP area. The Planning Commission properly found that the Project is consistent with the SEASP; likewise, the projects proposed at 6500 and 6700 Pacific Coast Highway were also found to be consistent with the SEASP. Accordingly, the Planning Commission correctly concluded that the Project's cumulative impacts were adequately addressed in the SEASP Program EIR and no further review is required. (E.g., Guidelines, §§ 15183(j), 15130(d)-(e), 15168(d).)

Arguments similar to the Carpenters' have been rejected in reported caselaw. In *Las Virgenes Homeowners Federation v. County of Los Angeles*, for example, the court denied an argument that the EIR for a residential development failed to consider the cumulative impacts of other nearby residential, commercial, and industrial development, because the EIR incorporated by reference EIRs prepared for the local area plan and general plan. (177 Cal.App.3d 300, 306-307 ["The County, in adopting its General Plan and the [local area plan], necessarily addressed the cumulative impacts of buildout to the maximum possible densities allowed by those plans . . . [i]t was not necessary for the project EIR to recover this ground."]; see also *League to Save Lake Tahoe Mtn. Area Preservation Found. v. County of Placer* (2022) 75 Cal.App.5th 63, 152 [rejecting a challenge to the analysis of cumulative impacts to forest land where the EIR "determined the impact was not significant because it was within the projection of converted forest land which the County had previously determined would not constitute a significant cumulative impact" in an EIR for the general plan].)

SAFER's arguments that the cumulative impacts analysis is deficient as to biological and air quality impacts are responded to in technical memoranda prepared by the City's consultants.

VIII. The Project Is Consistent with the SEASP and General Plan

A. The SEASP Is Consistent with the General Plan as a Matter of Law

The Carpenters argue the Project is "clearly inconsistent" with the General Plan's Housing, Land Use, and Circulation Elements. (Carpenters Letter, p. 23.) This argument

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[4] The SEASP Program EIR analyzed more significant net increases of 5,439 dwelling units and 573,576 square feet of commercial development, but the adopted SEASP authorized the more limited net increases stated above. (Compliance Checklist, p. 13.)

misunderstands the nature of the SEASP and the Project. Prior to its adoption, the SEASP was reviewed in the SEASP Program EIR and found to be consistent with the General Plan. The time-period to challenge the City's approval of the SEASP and certification of the SEASP Program EIR has long expired. The Program EIR is thus "conclusively presumed" to comply with CEQA, including its determination that the SEASP is consistent with the General Plan. (Pub. Res. Code, § 21167.2.) The SEASP's consistency with the General Plan is established as a matter of law.

Accordingly, if the Project is consistent with the SEASP it is also consistent with the General Plan as a matter of law. And the Compliance Checklist demonstrates the Project's consistency with the SEASP. The mixed-use Project is located on a site designated as MU-CC, which "is envisioned as the primary activity center in the SEASP area and provides for a mix of uses including residential, regional retail, hotel, and office uses." (Compliance Checklist, p. 38.) The Project complies with the SEASP's applicable development and design standards regarding setbacks, parking, outdoor space, and building design and form, among others, while receiving ministerial density bonuses and height limit waivers as described above. (*Id.* at p. 39.) As explained in the Compliance Checklist: "The proposed project is the type of project envisioned [in the SEASP] for the MU-CC designation. Therefore, as with the PEIR, the proposed project is consistent with Long Beach General Plan, Zoning Code, Local Coastal Program, and Bicycle Master Plan and the Airport Environs Land Use Plan and South Coast Association of Governments RTP/SCS." (*Id.* at 133.) The Compliance Checklist also confirms the Project's consistency with applicable policies in the SEASP. (*Id.* at pp. 134-144.)

Notably, the Carpenters do not challenge the Project's consistency with the SEASP.

B. The Project Complies with State Law Housing Requirements

The original site inventory for the 2021-2029 Housing Element allocated 21 potential market rate units and five moderate-income units for the Project Site. The Carpenters assert the Project conflicts with the Housing Element because it will provide 17 very-low-income units instead of five moderate-income units allocated for the Site (the Carpenters do not address the fact that the Project will provide 352 more market rate units than called for in the site inventory).

Pursuant to Government Code section 65863, the City can reduce the residential density for any parcel identified to meet its current share of the Regional Housing Needs Assessment (RHNA) or any unaccommodated portion of the regional housing need from the prior planning period, if the City makes written findings supported by substantial evidence of both of the following:

> (A) The reduction is consistent with the adopted general plan, including the housing element.

> (B) The remaining sites identified in the housing element are adequate to meet the requirements of Section 65583.2 and to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584. The finding shall include a quantification of the remaining unmet need for the jurisdiction's share of the regional housing need at each income level and the remaining capacity of sites identified in the housing element to accommodate that need by income level.

The Staff Report explained that the Project provides more housing units overall (390 units instead of 26 units) and provides a greater number of units (17) at a deeper affordability level (very-low-income) than what was projected as part of the site inventory (five moderate-income units), serving to offset some of the deficit that would be created by the approval of other projects in the City. Pursuant to state law, the City has also identified that it has the additional capacity, capability, and feasibility to meet its RHNA obligation, based on the net increase in ADU production and through policies and programs to support the development of moderate-income units. (Staff Report, pp. 11-13.)

C. The Project Is Consistent with the General Plan's Mobility Element

The Carpenters further contend that the Project conflicts with the General Plan's Mobility Element, based on alleged inconsistencies with the Land Use Element. This argument fails for the same reasons as the other alleged inconsistencies with the General Plan described above. Notably, the SEASP was determined to be consistent with the General Plan Mobility Element and SB 743 in the SEASP Program EIR. The City's 2013 General Plan Mobility Element presents future plans for improving the way people, goods, and resources move within and across the City. Goals of the General Plan include improving the quality of life for residents and protecting the natural environment—also priorities of the SEASP Vision. The Mobility Element identifies many streets in SEASP as candidate corridors for "Character Change," meaning that they are roadways constructed with a focus on automobiles that may be better served by slowing vehicles and providing enhanced facilities for other travel modes. This direction is consistent with the feedback provided by the community for more and safer bicycle and pedestrian facilities in the SEASP.

IX. Supplemental Review Is Not Required to Evaluate Environmental Justice Issues

The Carpenters claim that a subsequent EIR is required to address "environmental justice" issues based on "2018 legislative changes" occurring after certification of the Program EIR. The Carpenters do not cite any provision of CEQA that would require such an analysis. Environmental justice is not, for example, included on the Appendix G list of environmental topics. Nor do the Carpenters attempt to explain how environmental justice issues could trigger supplemental review under CEQA Guidelines sections 15183

or 15162. The potential for projects to cause "environmental justice" impacts is not new information that was not known or knowable when the Program EIR was certified in 2017. As one example, Carpenters purport to support their argument with a screenshot from CalEPA discussing 2012 legislation (SB 535 Disadvantaged Communities). As another example, in a reported decision including CEQA claims published in 2013, the dissenting justice described then-recently adopted legislation "which embodies the goals of environmental justice" and which included a Legislative declaration that "the California Environmental Protection Agency has worked for a decade to develop and implement an environmental justice initiative that ensures fair and equitable environmental policies for all residents." (*Comunidad en Accion v. Los Angeles City Council* (2013) 219 Cal.App.4th 1116, 1136-1139.) The dissent also noted that the City of Los Angeles had been "at the forefront of environmental justice," and that the South Coast Air Quality Management District and United States Environmental Protection Agency had environmental justice programs or policies.

Because environmental justice is not a CEQA impact area, and because environmental justice was known and knowable well before the SEASP Program EIR was certified in 2017, environmental justice cannot trigger supplemental environmental review. (See, e.g., *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 807 [rejecting argument that a subsequent EIR was required to analyze GHG emissions because "information about the potential environmental impact of greenhouse gas emissions was known or could have been known at the time the 1997 EIR and the 2003 SEIR [] were certified."). Moreover, the Carpenters' vague contention that the PEIR did not study "air and other impacts" on "disadvantaged communities" is belied by the text of the SEASP Program EIR and the Compliance Checklist showing that all impact areas were assessed with all feasible mitigation measures adopted, as appropriate.

X. Potential Hazardous Materials Impacts Peculiar to the Project Site Will Be Mitigated to a Less Than Significant Level

SAFER and the Carpenters raise various arguments that potential site-specific hazardous materials impacts trigger further environmental review. These arguments fail for the reasons discussed below.

SAFER contends that hazardous materials impacts "peculiar to" the Project preclude reliance on Guidelines section 15183 because the SEASP Program EIR did not analyze certain chemicals detected at the site or propose mitigation measures to protect construction workers or future residents. (SAFER Letter, p. 10.) SAFER's argument ignores that the SEASP Program EIR evaluated potentially significant impacts at numerous sites and facilities within and in proximity to the SEASP area that contain hazardous substances

from historical operations, included three mitigation measures (HAZ-1, HAZ-2, and HAZ-3) to address impacts, and concluded that impacts would be less than significant.

For the Project, implementation of these mitigation measures, in addition to compliance with applicable federal, state, and local law regarding management and disposal of hazardous substances, would render potential hazardous materials impacts less than significant. (Compliance Checklist, pp. 111-118.) As explained in the Compliance Checklist, the Project's implementation of the SEASP mitigation measures (as amended) will "address effects peculiar to the project site, which would reduce impacts to a less than significant level, consistent with the PEIR." (*Id.* at 115-116.) Because potential hazardous materials impacts "can be substantially mitigated by the imposition of uniformly applied development policies or standards . . . an additional EIR need not be prepared . . ." (Guidelines, § 15183(c).)

SAFER also contends that its "analysis" arguing that further review of hazardous materials is required constitutes "significant new information" triggering supplemental review under Public Resources Code section 21166. (SAFER Letter, p. 10.) But "new information" cannot trigger supplemental review under section 21166 unless it "was not known and could not have been known at the time the environmental impact report was certified as complete." (Pub. Res. Code, § 21166(c).) Because SAFER's hazardous materials argument is based on historical contamination at the Project Site that was known and knowable long before the SEASP Program EIR was certified in 2017, this argument lacks merit. (*Citizens Against Airport Pollution, supra,* 227 Cal.App.4th at 807.)

In addition, SAFER asserts that "the City has eliminated mitigation measures required by the SEASP EIR" by allegedly removing HAZ-2 and its requirement to have a soil management plan (SMP) prepared and evaluated by a qualified environmental professional. (SAFER Letter, p. 10.) But the Compliance Checklist states multiple times that HAZ-2 applies to the Project and includes the text of HAZ-2 (as amended) in full—plainly refuting SAFER's argument that HAZ-2 has been "eliminated." SAFER appears to base its argument on the removal of language providing that the SMP is to be "evaluated by a qualified environmental professional." But the amended text of HAZ-2 is more robust than the original version, and maintains the requirement for "evaluation" of the SMP. HAZ-2 requires an SMP to be prepared and submitted to the City Department of Development Services prior to issuance of grading permits. If soil is encountered that may be impacted by hazardous materials, construction work is to be halted until "until the appropriate **evaluation** and follow-up remedial measures are implemented in accordance with the [SMP] so that the area is suitable for grading activities to resume." (Compliance Checklist, p. 117, emphasis added.) The results of the "evaluation" are to be submitted to the Department of Toxic Substances Control (DTSC), the Los Angeles Regional Water Quality Control Board (Regional Board), or any other applicable regulatory oversight

agency, with the project to implement any response/remedial measures directed by the applicable agencies until no further action status is attained. (*Id.* at 117.)

The Carpenters claim the Project will improperly "defer" mitigation in violation of CEQA. The Carpenters premise their deferral argument on HAZ-1, which, in pertinent part, requires that, prior to the issuance of grading permits, the applicant prepare an updated Phase I Environmental Site Assessment (ESA) and, if recognized environmental conditions (RECs) are shown, prepare a Phase II ESA to include soil and soil gas sampling, along with a screening human health risk assessment (HRA) to determine if soil and soil gas concentrations pose a significant health risk for project occupants and construction workers. If contamination is identified at significant levels, the applicant must remediate all contaminated soil and soil vapor with oversight by relevant state and local agencies (such as DTSC, the Regional Board, and the Long Beach Fire Department). All contamination must be properly disposed of and, to the extent necessary, long term vapor mitigation measures are required to address any elevated concentrations of VOCs or methane that cannot be sufficiently removed below regulatory screening levels. Prior to the issuance of building permits, a report documenting the completion, results and any follow up remediation is required to be submitted to the City demonstrating that any required remediation is complete or that a vapor mitigation system is required to be incorporated into the building plans, and that all contaminants identified in the HRA are below applicable risk thresholds with any necessary methane mitigation in compliance with Municipal Code standards. (Compliance Checklist, pp. 116-117.)

The Carpenters' deferral argument has been rejected by the reported caselaw. For example, in *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362, the court upheld a mitigation measure very similar to HAZ-1. The court reasoned: "the FEIR explained that the LAUSD conducted an extensive preliminary investigation of the project site to determine whether the site exhibited contamination from hazardous materials. Based on this investigation, the LAUSD concluded that additional investigation and remediation would be necessary . . . these further investigatory steps were subject to numerous environmental rules and regulations described in the EIR and would be overseen by another governmental agency—the DTSC. Finally, construction would not start until DTSC determined that no further action was necessary." (*Id.* at 409-412 [citing *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884].) The same reasoning shows the adequacy of HAZ-1. The Carpenters' argument that the mitigation will be ineffective because the additional analysis will not be subject to review fails because, as explained above, the mitigation requires multiple steps of review and approval by applicable regulatory agencies and the City.

The Carpenters also argue that the Project does not include any mitigation and "relies solely on regulatory measures," and that regulatory compliance is insufficient. First, however, the Project incorporates three mitigation measures from the SEASP

Program EIR (HAZ-1 – HAZ-3), as explained above. Second, "[a] condition requiring compliance with environmental regulations is a common and reasonable mitigating measure." (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1355, citation omitted.)

Finally, the Carpenters argue there is a "fair argument" that the Project will cause significant impacts from hazardous materials. This misstates the standard of review. The correct analysis is whether there is "substantial evidence" that the Project fits within the scope of the SEASP Program EIR and that any potentially significant impacts peculiar to the Project site can be substantially mitigated. (Guidelines, § 15183(a)-(c).) As demonstrated in the Compliance Checklist, the Project satisfies Guidelines section 15183.

For these reasons, the Applicant respectfully requests that the City deny the appeals and affirm the Planning Commission's approval of the Project.

Very truly yours,

Edward J. Casey

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