

Responses to Appeals - Alexan Project MND Addendum ENV-2006-6302-MND-REC1

1 message

Jennifer Kelley <jennifer@parkerenvironmental.com>

Wed, Feb 22, 2017 at 2:08 PM

To: zina.cheng@lacity.org

Cc: Jenna Monterrosa <jenna.monterrosa@lacity.org>, Shane Parker <shane@parkerenvironmental.com>

To Zina Cheng:

Please see the attached letter from Parker Environmental Consultants, which provides responses to the Appeals on file for the Alexan Project Mitigated Negative Declaration Addendum [ENV-2006-6302-MND-REC1] with respect to the California Environmental Quality Act. Parker Environmental Consultants is submitting our response letter for the Councilmembers' consideration in advance of the Planning and Land Use Management Committee meeting scheduled on February 28, 2017.

If you have any questions, please do not hesitate to contact me at your convenience.

Thank you,

Jennifer Kelley

Environmental Analyst

Parker Environmental Consultants

23822 Valencia Boulevard, Suite 301

Valencia, CA 91355

tel: (661) 257-2282



The Alexan_ENV-2006-6302-MND-REC1_Responses to Appeals_02_22_2017.pdf

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February 22, 2017

Planning and Land Use Management Committee

Councilmember Jose Huizar, Chair
Councilmember Marqueece Harris-Dawson
Councilmember Gilbert A. Cedillo
Councilmember Mitchell Englander
Councilmember Curren D. Price, Jr.

City of Los Angeles

200 N. Spring Street, Room 340
Los Angeles, California 90012
Attn: Zina Cheng- Legislative Assistant

**Re: RESPONSES TO APPEALS ON THE ALEXAN PROJECT MITIGATED
NEGATIVE DECLARATION (ENV-2006-6302-MND-REC1)**

Dear Councilmembers,

Parker Environmental Consultants is the environmental consultant on record for the Alexan Project Mitigated Negative Declaration (MND) Addendum (ENV-2006-6302-MND-REC1). The MND Addendum was prepared under the direction and oversight of the Department of City Planning staff and involved a team of expert consultants in the fields of architectural and historic resources, traffic, geotechnical engineering, civil engineering, construction noise and vibration, air quality, and land use planning. As such, the Addendum to the previously adopted MND incorporates opinions and analyses from professionals with expertise in each respective discipline, and reflects the independent judgment and approval of the Department of City Planning. On behalf of the Applicant (Maple Multi-Family Land CA, LP), Parker Environmental Consultants has reviewed the two appeals filed by Luna & Glushon (dated November 18, 2016), representing the Eastern Columbia Homeowners' Association, and the Silverstein Law Firm (dated November 29, 2016), representing the Society for the Preservation of Downtown Los Angeles (SP-DTLA), and provides the following responses to address the Appellants' issues of concern as it pertains to the CEQA process and or environmental impacts.

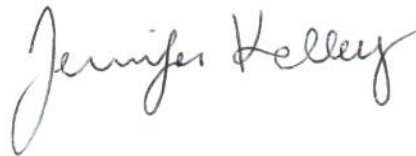
As demonstrated in the responses below, the two appeals do not present any new information that would warrant any changes to the environmental analysis as presented in the Addendum to the previously adopted MND.

Should you have any questions regarding any of the responses or issues addressed above, please contact me at (661) 257-2282 or by email at shane@parkerenvironmental.com.

Sincerely,



Shane E. Parker, President



Jennifer Kelley, Environmental Analyst

Attachments:

Appeals (bracketed)

cc: Jenna Monterrosa
Terry Kaufman-Macias, Esq.
Garth Erdossy
John Readey
Alex Irvine
Ryan Leaderman, Esq.



23822 Valencia Boulevard, Suite 301
Valencia, CA 91355
(661) 257-2282 (tel)
www.parkerenvironmental.com

APPEAL No. 1

Sheila Swanson
Eastern Colombia [sic] Homeowners' Association
849 S. Broadway
Los Angeles, CA 90014

Representation by Luna & Glushon
Robert L. Glushon and Kristina Kropp
16255 Ventura Boulevard, Suite 950
Encino, CA 91436

November 18, 2016

COMMENT 1.1

Appellants: Eastern Colombia [sic] Homeowners' Association, the homeowners' association for the Eastern Colombia building located at 849 S. Broadway, immediately adjacent to 850 S. Hill Street, the site of the proposed Project, and therefore immediately impacted thereby.

Proposed Project: A 27-story, mixed-use residential project with 305 dwelling units and 6,171 square feet of ground floor commercial space.

RESPONSE TO COMMENT 1.1

The Appellant, listed as the Eastern Columbia Homeowners' Association (HOA), has submitted an appeal on the project as referenced above. Responses to the Appellant's reasons for the appeal are provided below.

COMMENT 1.2

ENV-2006-6302-MND-REC1 FAILS TO COMPLY WITH CEQA

1. This is not a "Modified" Project

Pursuant to the California Environmental Quality Act ("CEQA") Guidelines §15162, an Addendum to a previously adopted MND is not appropriate where:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant

environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Here, the Project is not in any way related to the original 2007 mixed-use project which contained 167 residential condominium units and 7,107 square feet of lobby/retail space. It is 6 stories and 74 feet taller than the 2007 Project; includes over 67,000 sq. feet more floor area; almost doubles the amount of residential units; proposes apartments rather than condominiums; maintains completely new architecture and a completely new design; and requires completely different findings.

Most importantly, it has environmental effects which are completely different than those of the 2007 Project, especially as it relates to historical resources, effects which have not have been adequately analyzed and cannot be mitigated to a level of insignificance. First, as a result of the City's Downtown Design Guidelines being adopted in 2009, the 2007 project did not even (or

have to) address such Guidelines, while the new Project does, although failing to adequately analyze the Guidelines with which it is inconsistent. Additionally, the 2007 Project was specifically designed to allow for unobstructed views to and from the Eastern Columbia [sic] Building to ensure its continued visual prominence. In contrast, the current Project places a 27-story tower directly in front of the Eastern Columbia thereby partially blocking this *visual* landmark, with a proposed size and scale that will dwarf the height and prominence of the Eastern Columbia Building, some of its major, defining, historically significant features.

Additionally, Traffic impacts today and almost 10 years ago are also completely different. In fact, the Addendum to the MND admits as much by conducting a new traffic study.

Such changes to the Project and analysis are substantial and introduce previously unstudied and potentially significant environmental effects which require the preparation of an EIR.

RESPONSE TO COMMENT 1.2

A summary of the changes between the “Approved Project” (VTT 66505 and ZA-2006-6350-YV-ZAA-SPR), “Original Project” (ENV-2006-6302-MND) and “Modified Project” (ENV-2006-6302-MND-REC 1) is disclosed in Table II-1 of the Project Description of the Addendum. As shown in Table II-1, the Modified Project, as compared to the Original Project analyzed in the MND (the original environmental document), results in a net increase of 138 dwelling units, a net increase of 1,291 square feet of retail floor area, and 77 additional parking spaces. The Modified Project would include an increase of 66,667 square feet of floor area and an increase of six stories in building height (approximately 74 feet).

In addition to analyzing the environmental impacts that would result from the modifications to the Approved Project, the Addendum addresses changes that have occurred with respect to the circumstances surrounding the Modified Project. The Addendum discloses that due to the nine-years that have passed since the City adopted the 2007 IS/MND (“MND”), the environmental baseline conditions have changed. The baseline environmental conditions were evaluated to address whether there are substantial changes with respect to the circumstances under which the Modified Project would take place, or whether there is new information of substantial importance that could not have been known at the time of the City’s approval of the adopted MND such that the Modified Project would create significant impacts not studied or mitigated in the MND. To this end, the Traffic Study was revised with current baseline traffic count data and an updated related project list; ambient noise levels were monitored to address any changes to the ambient noise conditions in the Project vicinity; new site photographs were taken to document any changes that may have occurred to the Project Site and surrounding properties over the past few years, and the cumulative related project list was updated to reflect the current status of related

projects that have been recently approved, are proposed, or that are currently under construction. The analysis was also updated to reflect current environmental laws, regulations and planning documents and policies that have been adopted or amended since the City’s approval of the MND was adopted. While the Downtown Design Guide may not have been in existence when the MND was adopted the Appellant has provided no argument that there are any new significant impacts as a result. If anything, the Land Use section of the Addendum demonstrates no conflicts with the Downtown Design Guide, as well as other land use plans such as the Historic Downtown Los Angeles Design Guidelines (“HDTLADG”) which was in place at the time the MND was adopted.

Although the Appellant notes that the Modified Project has changed from that which was analyzed in the MND, the Appellant has not provided any substantial evidence, pursuant to 15164 of the State CEQA Guidelines, to demonstrate how the changes to the project or circumstances surrounding the Project would cause new or substantially more severe significant environmental impacts. “Changes in size, ownership, nature, character, etc., of a project are of no consequence in and of themselves in determining whether the environmental impacts of a modified project were adequately analyzed within the scope of a prior approved project. Such factors are meaningful only to the extent that they affect the environmental impacts of a project.” *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.*, No. S214061 at 1416 (Cal. Sept. 19, 2016) (“*Friends of the College*”). This interpretation is supported by the court’s ruling in *Mani Bros. Real Estate Group vs. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1400, a case that was decided by the Second District Court of Appeal, and cited with approval by the California Supreme Court in *Friends of the College* at 1416. The lead agency determined that the MND is relevant for the Modified Project. The environmental analysis presented in the Addendum evaluates the environmental impacts associated with the changes proposed under the Modified Project and provides substantial evidence to demonstrate that these changes would not cause new unstudied environmental impacts that might be potentially significant or an increase in the severity of impacts that were identified in the Adopted MND. As such, the Addendum was the appropriate environmental document to address the changes proposed under the Modified Project.

Further, Section 15162 of the State CEQA Guidelines does not set requirements with respect to the amount of time that occurs between the adoption of a negative declaration and preparation of a subsequent Addendum. Additionally, a change in ownership does not constitute new information that would result in a significant environmental impact. Rather, the determination of whether a subsequent negative declaration, or EIR, is warranted is subject to conditions one through three of Section 15162 of the State CEQA Guidelines. Substantial evidence supports the City’s determination to proceed under CEQA’s subsequent review provisions, its determination

that the MND remains wholly relevant, and to analyze the effects of the changes proposed by the Modified Project in the Addendum.

COMMENT 1.3

2. THE ADDENDUM TO THE MND IMPROPERLY DEFERS MITIGATION MEASURES

Under CEQA requiring adoption of mitigation measures from a *future* study is impermissible. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296,306-07.

Here, the Addendum to MND requires a *future* assessment and report by a preservation architect, in violation of CEQA.

RESPONSE TO COMMENT 1.3

With respect to the Appellant's claim regarding deferral of mitigation, the Modified Project complies with Cultural Resources Mitigation Measures 15 and 16 of the Addendum, which are mitigation measures that were originally adopted in connection with the adopted MND and Approved Project and that will be imposed, as well, on the Modified Project. Because these mitigation measures were adopted for the MND, they are now beyond the statutory time period for challenge. (See Pub. Res. Code Sec. 21167.) Moreover, neither the MND nor the Addendum postpones required analyses of the Approved Project's or proposed Modified Project's compatibility with surrounding historic resources to these mitigation measures; rather, these measures are intended to confirm that the final design of the development has remained compatible up to the time building permits are issued. See *Laurel Heights Improvements Assn. v. Regents of the University of California* (1988) 47 Cal.3d 388, 419. In *Laurel Heights*, the California Supreme Court specifically approved noise mitigation measures that included future evaluation and review for compliance with noise performance standards. The mitigation measures the Appellant claims are being deferred have already been satisfied by completion of the 2016 Historic Resources Assessment prepared by Historic Resources Group, which was included within the MND Addendum. The Historic Resources Group Assessment confirms that the proposed new construction balances differentiation of building design with compatibility of design, materials, massing, and proportion in relation to the historic district, adjacent historic buildings, and nearby historic resources. The new construction would conform to Rehabilitation Standards 9 and 10 and would not result in adverse effects to historic resources located immediately adjacent to or in the near vicinity of the Project Site.

Further, although not relevant here for the reasons just discussed, deferral of mitigation is permitted if the agency commits to mitigation and spells out and adopts the specific performance criteria. See *Sacramento Old City Ass'n v. City Council* (1991) 229 Cal.App.3d 1011, 1027. Here, mitigation measures 15 and 16 require the design of the new building to be in conformance with the Secretary of Interior's standards. If the preservation architect recommends modifications, they are required to be incorporated in the design prior to issuance of a building permit. Under *Endangered Habitats League Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794-796, mitigation measures that require future studies and plans subject to specified criteria and the approval of appropriate local agencies do not constitute unlawful deferred mitigation.

COMMENT 1.4

3. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY HAVE A SIGNIFICANT EFFECT ON HISTORICAL RESOURCES

The Eastern Colombia [sic] Building, Historic Monument No. 294, is noted by the Los Angeles Historic Resources Inventory as a *visual landmark* representative of the vitality of Los Angeles' retail and commercial core. Indeed the height and prominence of the Eastern Colombia Building are some of its major, defining, historically significant features.

Here, the Project will partially block this *visual* landmark and the size and scale of the Project will dwarf the Eastern Colombia. Therefore, it will materially impair the historical significance of the Eastern Colombia Building. As such, substantial evidence supports a fair argument that the Project may have a significant impact on Historic/Cultural Resources and an EIR is required.

RESPONSE TO COMMENT 1.4

The conclusions in the Addendum as to the Project's impacts on Historic/Cultural Resources are supported by substantial evidence. The Appellant has not provided any substantial evidence to support even a fair argument that a partial blockage of a portion of the Eastern Colombia building would materially impair the historical significance of the Eastern Colombia building.

The Original Project and the Approved Project resulted in a partial blockage of views of the Eastern Colombia clock from the northwest. The Modified Project would affect views from the west. Moreover, because the Eastern Colombia Building is located in the heart of downtown Los Angeles, in an area targeted for new development, existing development (both new and old) without either the Approved Project or the Modified Project already "blocks" certain views of the Eastern Colombia Building. Existing views of the Eastern Colombia building's clock tower, and

views from the same vantage points with the Modified Project included, are analyzed in the Addendum in Section III-I Aesthetics, checklist question (a). As shown in Figures III-1 through III-4 in the Addendum, views along 9th Street (between Olive Street and Hill Street, to the west of the Project Site) were analyzed at street-level to examine impacts of the Modified Project on existing views of the Eastern Columbia building's west facing façade of the clock tower. Views along Hill Street (between 8th Street, to the north of the Project Site, and Olympic Boulevard, to the south of the Project Site) were analyzed at street-level to examine impacts of the Modified Project on existing views of the west and south facing façade of the Eastern Columbia's Building clock tower. Figures III-1 through III-4 depict both the existing view and the proposed view with respect to the Modified Project's proposed height and massing.

As shown in Figures III-1 (Views 1 and 2) and Figure III-2 (Views 3 and 4), views of the Eastern Columbia building's west facing clock tower, looking east and northeast along 9th Street (between Olive Street and Hill Street), are mostly obstructed by existing buildings and thus views of the west facing clock tower would not be significantly impacted by the addition of the Modified Project. As depicted in Figure III-3 (View 5), the existing view of the Eastern Columbia building's south facing clock tower, looking northeast from S. Hill Street would remain completely intact and unobstructed with the addition of the Modified Project. Figure III-3 (View 6) indicates that the south facing clock tower is largely obstructed by the May Company garage and that the Modified Project would not adversely affect this view. Additionally, as shown in Figure III-4 (View 7), views of the Eastern Columbia building's west facing clock tower, looking southeast along S. Hill Street are not visible from street level and thus the addition of the Modified Project would not impact existing views along this corridor.

The Appellant has provided no substantial evidence of a fair argument of a previously unstudied significant impact. Moreover, as indicated above, the Eastern Columbia building is already blocked from numerous public views due to existing development. The Eastern Columbia building retains its visual landmark status with existing blockages. The Appellants here provide no substantial evidence to support a fair argument that partial blockage, such as that which currently exists, would have occurred with the Original Project, and that would also occur with the Modified Project, would create a material impairment of a historic resource. Finally, the California Supreme Court has made it clear that the lead agency's determinations here are governed by the substantial evidence test, not the fair argument standard that Appellant argues. *Friends of the College of San Mateo Gardens*, Id. at pp.13-16; see also *Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192. Substantial evidence demonstrates that the Modified Project would not have a significant impact on an historic resource, as substantiated in Section III.V of the Addendum, as well as Appendix H (Historic Assessment) to the Addendum. Moreover, there is no evidence in the record that the partial blockage of a portion of the clock

tower created by the Modified Project will materially impair the historical significance of the Eastern Columbia Building.

COMMENT 1.5

4. The Thresholds for Historic Resources are Incomplete and Inaccurate

The Addendum to the MND incorrectly concludes that the new project would not impact the significance of an historic building or district because it would not cause a “material” impact on existing historic resources. However, the impacts to adjacent historic resources are not adequately analyzed.

Moreover, the thresholds are misapplied as they only apply to individual historic *buildings*, not new infill development within historic *districts*. The thresholds for infill development in a historic district require analysis that the proposed project does not cut a district in half resulting in a loss of continuity as a district; overshadowing a district with new construction so its principal formal structure is compromised; or creating such an offence or distraction that the continuity and features of a district are obscured. Such thresholds and the Projects’ impacts on the district resources must be analyzed.

RESPONSE TO COMMENT 1.5

Contrary to Appellant’s claim, the Modified Project’s impact to historic resources was thoroughly analyzed in the Addendum. Further, the Appellant has not provided any substantial evidence to support even a fair argument regarding the alleged inadequacy of the historic resources analysis. Similar to the Original Project analyzed in the MND, the 2016 Historic Assessment prepared for the Modified Project¹ examined the design compatibility of the Modified Project in relation to the surrounding historic resources and ultimately concludes that even with its increased height, the Modified Project incorporates design features, including increased setbacks, which would result in a less than significant impact, similar to the less than significant impact in the Original Project. The 2016 Historic Assessment concluded that the Modified Project would not demolish, relocate, convert, rehabilitate or alter any historic resource located on the site or in the vicinity, and does not involve new construction that reduces the integrity or significance of historic resources on the site or in the vicinity. The Modified Project’s new construction balances differentiation of building design with compatibility of design, materials, massing, and proportion in relation to the

¹ *Historic Resources Group, Historic Assessment 850 South Hill Street, dated January 29, 2016. See Appendix H of the Addendum.*

historic district, adjacent historic buildings, and nearby historic resources. The new construction would conform to Rehabilitation Standards 9 and 10 and would not result in adverse effects to historic resources located immediately adjacent to or in the near vicinity of the Project Site.

With respect to historic districts in the project vicinity, the Addendum discloses that the Project Site is just outside the boundary of the Broadway Theater and Commercial District, which was listed in the National Register of Historic Places in 1979. The historic district is also listed in the California Register and would be considered a historical resource under CEQA. The district boundary was increased to include additional properties in 2002. The current district boundary includes the parcels extending just north of 3rd Street and south of 9th Street. The east and west boundary corresponded to the rear property lines of the buildings which face Broadway. Since the Project Site is not located within the boundaries of this district, the Project's direct impacts on the district need not be analyzed. Nevertheless, the Addendum concludes, similar to the MND that "with mitigation, the Modified Project would not result in a substantial change in the significance of the adjacent Broadway Trade Center, Eastern Columbia building, or the Broadway Theater and Commercial District." See the Addendum, p. III-78.

The Appellant provides no substantial evidence, nor a fair argument, that the Modified Project as compared to the Approved Project creates new or substantially worse significant environmental impacts with respect to historic resources or historic districts.

COMMENT 1.6

5. Impacts on Land Use/Planning are Inadequately Evaluated

The Addendum to the MND fails to identify and discuss *any inconsistencies* between the proposed Project and applicable general plans and regional plans including "relevant environmental policies in other applicable plans." See *CEQA Guidelines Section 15125(d)*.

In fact, the Project is inconsistent with the following land use policies, objectives and goals:

1. To *preserve key landmarks* which highlight the history and unique character of the City, blending old and new in an aesthetic realization of change or growth with distinction, and facilitating the adaptive reuse of structures of architectural, historic or cultural merit [City's Redevelopment Plan];
2. To create a modern, efficient and *balanced* urban environment for people, including a full range of around-the-clock activities and uses, such as recreation, sports, entertainment and housing [City's Redevelopment Plan];

3. To *preserve* and *enhance* the positive characteristics of existing uses which provide the foundation for community identity, such as scale, height, bulk, setbacks and appearance [City Center Community Plan, II-2];

4. New construction should *respect* historically significant districts and buildings, including massing and scale, and neighborhood context [City’s Downtown Design Guidelines, p. 7].

5. Construct new buildings, of *compatible design* with the surrounding neighborhood, on existing surface parking lots [Historic Downtown Los Angeles Design Guidelines, pgs. 11, 131];

6. Carefully maintain and restore terra cotta, the most prevalent decorative building material in Historic Downtown [Historic Downtown Los Angeles Design Guidelines, p. 101];

7. Design new buildings to respond to existing building context within a block, provide continuity to the overall streetscape. Frequently, a new building will be inserted on a site between two existing buildings of disparate scale and design [Historic Downtown Los Angeles Design Guidelines, p. 131]; and

8. *Use compatible types of masonry such as terra cotta* when constructing new structures in the Historic Downtown [Historic Downtown Los Angeles Design Guidelines, p. 132].

As such, substantial evidence supports a fair argument that the Project may have a significant impact on Land Use/Planning and an Environmental Impact Report is required.

RESPONSE TO COMMENT 1.6

Section III-X Land Use of the Addendum, provides thorough consistency analyses with respect to design guidelines and adopted planning documents, which are applicable to the Modified Project at the regional and local level, including the Redevelopment Plan for the City Center Redevelopment Project (See Table III-11, pg. 146 of the Addendum), the Downtown Design Guidelines (See discussion on pg. III-149 of the Addendum), the Historic Downtown Los Angeles, Design Guidelines (See Table III-12 on pg. III-151), and the Los Angeles Municipal Code (See discussion on pg. III-150 of the Addendum). This analysis is supported by substantial evidence, and demonstrates that, like the Original and Approved Projects analyzed in the MND, the Modified Project is consistent with all of these documents. While the Appellant lists several goals and objectives from the Redevelopment Plan for the City Center Redevelopment Project,

the Downtown Design Guidelines and the Historic Downtown Los Angeles, Design Guidelines, the Appellant provides no substantial evidence, nor a fair argument in support of its claims.

Comment 1.7

6. ADDITIONAL REASONS:

CEQA requires strict compliance with the procedures and mandates of the statute. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118. For the following reasons, the within Addendum to the MND further fails to abide to the CEQA procedures and mandates:

1. The historic resource identification is incomplete;

RESPONSE TO COMMENT 1.7

As discussed above in Response to Comment 1.5, above, the Modified Project's impact to historic resources was thoroughly analyzed in the Addendum. With respect to identification of historic resources, the 2007 IS/MND Historic Assessment identified five historical resources listed in or eligible for listing in the National and California registers located adjacent to the Project Site, which include the National Register-listed Broadway Theater and Commercial District (historic district), Eastern Columbia, May Company (Broadway Trade Center), Coast Federal Savings, and former May Company garage buildings. Twelve additional historical resources were identified in the immediate project area. For a complete list of the nearby identified and potential historical resources identified in the 2006 Historic Assessment, please refer to Appendix B of the 2007 adopted IS/MND. The 2016 Historic Assessment prepared for the Modified Project provides a thorough analysis of the historic resources adjacent to and in the near vicinity of the Project Site, which is consistent with the findings of prior Historic Assessment. Please refer to Appendix H of the Addendum.

COMMENT 1.8

2. The Project location is misstated and incomplete;

RESPONSE TO COMMENT 1.8

The Appellant does not provide any context as to what specifically about the project location is misstated or incomplete. The Project location is properly identified by address, by its Assessor Parcel Number, and by visual exhibits and aerial photographs which are presented in Section II.

Project Description, beginning on page II-1 of the Addendum. (See page II-1, Figure II-1, Project Location Map, and Figure II-3, Aerial Photograph of the Project Site).

COMMENT 1.9

3. Compatibility is not accurately and correctly analyzed.

RESPONSE TO COMMENT 1.9

The Modified Project's consistency and compatibility with respect to materials, features, special relationships, size, scale and massing, is thoroughly addressed in Section III-I, Aesthetics of the Addendum. With respect to compatibility and impacts on historic resources, see Section III-V, Cultural Resources of the Addendum. The 2016 Historic Assessment confirms that the proposed new construction balances differentiation of building design with compatibility of design, materials, massing, and proportion in relation to the historic district, adjacent historic buildings, and nearby historic resources. The new construction would conform to Rehabilitation Standards 9 and 10 and would not result in adverse effects to historic resources located immediately adjacent to or in the near vicinity of the Project Site.

Additionally, Section III-X Land Use of the Addendum, provides thorough consistency analyses with respect to design guidelines and adopted planning documents which are applicable to the Modified Project at the regional and local level, including the Regional Comprehension Plan (land use and housing goals), SCAQMD Air Quality Management Plan, the Congestion Management Plan, the General Plan (Housing, Mobility, and Conservation Elements), the Central City Community Plan, the Redevelopment Plan for the City Center Redevelopment Project, the Downtown Design Guide, the Historic Downtown Los Angeles Design Guidelines, and the Los Angeles Municipal Code.

As noted in Public Resources Code Section 21080(e) (2), substantial evidence does not consist of argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment. The Appellant's assertions are not substantiated.

APPEAL No. 2

Society for the Preservation of Downtown Los Angeles
215 N. Marengo Avenue, 3rd Floor
Pasadena, CA 91101

Representation by The Silverstein Law Firm
Daniel Wright
215 North Marengo Avenue, 3rd Floor
Pasadena, CA 91101-1504

November 29, 2016

COMMENT 2.1

Honorable Councilmembers:

I. INTRODUCTION.

This firm and the undersigned represent the Society for the Preservation of Downtown Los Angeles (hereinafter “Appellant” or “SP-DTLA”). Please keep this office on the list of interested persons to receive timely notice of all hearings and determinations related to the proposed approval of a mixed-use building at 850 S. Hill Street, commonly known as the Alexan Project (“Project”).

Appellant represents the views of its members as well as those of the more than 1,000 individuals who have expressed opposition to the Project, including on the ground that it is incompatible with and destructive to the City’s historic and cultural resources. In addition, a number of members of Appellant own property and/or live in the Eastern Colombia Building, and are personally, materially, substantially, and significantly adversely affected by the proposed Project and the Director’s approval thereof.

Appellant adopts and incorporates by reference all Project objections raised by themselves and all others during the environmental review and land use entitlement processes.

The Los Angeles City Council should deny the Project application and requested approvals, including because the environmental review of the Project violates the requirements of the California Environmental Quality Act (“CEQA”). For this reason alone, the City may not lawfully approve the Project or adopt the proposed environmental documents.



RESPONSE TO COMMENT 2.1

The Appellant, listed as the Society for the Preservation of Downtown Los Angeles (“SP-DTLA”) has submitted an Appeal on the Project as referenced above. Responses to the Appellant’s reasons for the Appeal with respect to CEQA are provided below.

COMMENT 2.2

II. THE CITY HAS FAILED TO PROCEED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Attached to and incorporated herein are the following exhibits:

Exhibit A:

The September 6, 2016 letter of The Silverstein Law Firm (without exhibits) containing detailed objections to the land use entitlement actions of the City as well as the City’s failure to comply with CEQA in approving the Project. In particular, Section VI of that letter provides detailed objections related to failures to comply with the mandates of CEQA.

Exhibit B:

The October 18, 2016 letter of The Silverstein Law Firm (without exhibits) containing detailed analysis and attached evidence that the original MND nor the addendum disclosed the existence of the density and FAR limitations imposed by the City Center General Plan Consistency Program for the articulated purpose of mitigation potential significant environmental impacts. After imposing the specific D limitation on the Project site pursuant to this mitigation measure of the City Center General Plan Consistency EIR, the City has failed to disclose the binding nature of these limits on future development. By refusing to disclose the existence of the General Plan Consistency Program and trying to show the Project is consistent with those limits – which it is not – the City has failed to disclose or analyze significant land use impacts.

Exhibit C:

The October 25, 2016 letter of The Silverstein Law Firm (without exhibits) containing detailed analysis and attached evidence that shows that the City’s own law, specifically LAMC Section 16.05 mandates that an application for Site Plan Review for a Project

within an adopted redevelopment plan area be referred to the CRA/LA to act as lead agency for the environmental review of the Project.

Exhibits A, B and C document violations of law, including CEQA. Additionally, to the extent that the City relies upon land use entitlement processes it has neither disclosed nor discussed in the original 2007 MND for a different project, or the 2016 addendum, the City has failed to proceed in accordance with law to disclose and analyze significant new land use impacts, density and FAR limits imposed to avoid significant environment impacts from over-sized development.

RESPONSE TO COMMENT 2.2

The Appellant's letter dated September 6, 2016, referred to by the Appellant as "Exhibit A", was previously responded to by Parker Environmental Consultants in a letter dated October 18, 2016, which was submitted to the Department of City Planning and is contained within the administrative record. The Appellant's letter dated October 18, 2016, referred to by the Appellant as "Exhibit B" was also previously responded to by Parker Environmental Consultants in a letter dated October 21, 2016, which was submitted to the Department of City Planning and is contained within the administrative record. With respect to the October 25, 2016 letter, the lobbying issues raised therein were responded to at the Area Planning Commission hearing. A transcript was submitted to the Department of City Planning and is contained within the administrative record.

COMMENT 2.3

III. SECTIONS II THROUGH V OF EXHIBIT A DEMONSTRATE THE PROPOSED PROJECT WILL HAVE SIGNIFICANT, UNMITIGABLE LAND USE IMPACTS NEITHER DISCLOSED NOR ANALYZED BY THE CITY IN ITS ADDENDUM TO THE 2007 MND.

The City's 2007 MND for a different project on the site contained no project description or land use discussion of the use of a Transfer of Density or Floor Area Deviation because the original developer did not request authorization to exceed the 6:1 Floor Area Ratio ("FAR") authorized in the City Center Redevelopment Plan and the City Center Community Plan. There is no evidence showing the 2007 Project at the site ever considered trying to exceed the authorized 6:1 FAR.

However, in 2016, the new Project proposed by the developer not only reaches 6:1 FAR, but extends the FAR to as high as 7.45:1. In order to seek an FAR exceeding that allowed by right, the new developer has applied for a Floor Area Deviation from the City Planning Department. LAMC Section 14.5.7 purports to authorize the Planning Director to grant such an entitlement,

and the City has purported to do so. But, as set forth in detail in **Exhibit A**, the City Planning Director has no authority to grant increases in density for projects within the City Center Redevelopment Plan – only the CRA/LA may do so. Thus, on this ground alone, the Planning Director’s Determination is inconsistent with the land use laws and programs of this City – a fact not disclosed or explained in the City’s addendum.

Furthermore, also as detailed in **Exhibit A**, LAMC Section 14.5.7 purports to allow the City Planning Director to authorize a variance in floor area from the City’s zoning laws without complying with the legal requirements of City Charter Section 562 concerning variances. The People, in adopting the Charter, mandated that any variance from the strict application of the City’s zoning codes be heard on application to the zoning administrator and demonstrate compliance with five mandatory findings. The City Council in enacting LAMC Section 14.5.7 failed to incorporate these City Charter findings requirements into Section 14.5.7. The addendum fails to disclose or analyze this glaring inconsistency between the proposed floor area variation and the City’s organic law. The failure to explain how the Project violates the City Charter is an independent ground for a reviewing court to find the City as failed to proceed in accordance with law.

RESPONSE TO COMMENT 2.3

As discussed in Parker Environmental Consultant’s response letter (dated October 18, 2016) to Silverstein’s letter referred to above as Exhibit A, the differences between the Approved Project and the Modified Project were properly disclosed and thoroughly analyzed within the Addendum to the previously adopted MND. A detailed summary of the changes between the “Approved Project” (VTT 66505 and ZA-2006-6350-YV-ZAA-SPR), “Original Project” (ENV-2006-6302-MND) and “Modified Project” (ENV-2006-6302-MND-REC 1) is provided in Table II-1 of the Project Description of the Addendum. As shown in Table II-1, the Modified Project, as compared to the Original Project analyzed in the Adopted MND (the original environmental document), results in a net increase of 138 dwelling units, a net increase of 1,291 square feet of retail floor area, and 77 additional parking spaces. The Modified Project would also include an increase of 66,667 square feet of floor area and an increase of six stories in building height (approximately 74 feet).

The Modified Project is located in a Transfer of Floor Area Rights (TFAR) Area, as detailed in the LAMC Article 4.5, Transfer of Floor Area Rights – Central City Community Plan and City Center Redevelopment Projects Areas. As discussed in Section II, Project Description of the Addendum, the Applicant seeks an approval for an increase in floor area from the allowable, by-right buildable floor area ratio (FAR) of 6:1 (207,570 square feet for the Project Site) to 7.45:1

(the addition of 49,999 square feet for a total of 257,569 square feet), which is substantially less than the 13:1, or approximately 645,723 square feet, permitted through a greater TFAR. With approval of this request, the Project would be in conformance with the LAMC and the Central City Community Transfer of Floor Area Rights.

Although the Appellant notes that the Modified Project has changed from that which was analyzed in the MND, the Appellant does not offer substantial evidence, pursuant to the State CEQA Guidelines, to demonstrate how these changes would cause new unstudied or substantially worse significant environmental impacts. “Changes in size, ownership, nature, character, etc., of a project are of no consequence in and of themselves. Such factors are meaningful only to the extent that they affect the environmental impacts of a project.” *Friends of the College*. This interpretation is supported by the court’s ruling in *Mani Bros. Real Estate Group vs. City of Los Angeles* (2007) 153 Cal.App.4th 1385, 1400, a case that was decided by the Second District Court of Appeal, and cited with approval by the California Supreme Court in *Friends of the College*. The environmental analysis presented in the Addendum evaluates the environmental impacts associated with the changes proposed under the Modified Project and provides substantial evidence to demonstrate that these changes would not cause new unstudied environmental impacts that might be potentially significant or result an increase in the severity impacts that were identified, and mitigated to a less than significant level, in the Adopted MND. As such, the Addendum was the appropriate environmental document to address the changes proposed under the Modified Project.

COMMENT 2.4

The land use sections of the 2007 MND and 2016 Addendum list a series of cherry-picked goals, policies, or programs of various regional and City plans. Charts show how the proposed Project is allegedly consistent with these aspirational goals that almost any project can meet. But the City environmental documents avoid any disclosure or explanation of how the Project fails to comply with other substantive mandatory elements of the City Charter or City Center Redevelopment Plan.

No applicant and no City may demonstrate “consistency” with City laws, plans and programs by simply refusing to disclose and analyze them. Burying the inconsistencies is a failure to proceed in accordance with law.

RESPONSE TO COMMENT 2.4

Section III-X Land Use of the Addendum, provides thorough consistency analyses with respect to design guidelines and adopted planning documents which are applicable to the Modified Project

at the regional and local level, including the Regional Comprehension Plan (land use and housing goals), SCAQMD Air Quality Management Plan, the Congestion Management Plan, the General Plan (Housing, Mobility, and Conservation Elements), the Central City Community Plan, the Redevelopment Plan for the City Center Redevelopment Project, the Downtown Design Guide, the Historic Downtown Los Angeles Design Guidelines, and the Los Angeles Municipal Code. This analysis is supported by substantial evidence and demonstrates that, like the Original and Approved Projects analyzed in the MND, the Modified Project is consistent with these documents.

As noted in Public Resources Code Section 21080(e) (2), substantial evidence does not consist of argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment. The Appellant's assertions are not supported at all, much less by substantial evidence.

COMMENT 2.5

IV. EXHIBIT B AND ITS EXHIBITS IN THE FULL RECORD ESTABLISH THAT THE CITY CENTER GENERAL PLAN CONSISTENCY PROGRAM IMPOSED THE "D" LIMITATION ON FAR AND RESIDENTIAL DENSITY LIMITS ON R5 ZONES TO AVOID SIGNIFICANT ENVIRONMENTAL IMPACTS FROM OVERLY DENSE DEVELOPMENT.

Exhibit B and its exhibits regarding the history of the adoption of FAR limits and residential density limits in the City Center Community Plan area as part of the General Plan Consistency Program establish that any project proposal that exceeds the 6:1 FAR limit or the normal residential density limit of 1 unit per 200 square feet of lot area would result in significant new land use impacts because these limits were imposed by the City for the specific purpose of avoiding environmental harm from over development.

This is substantial evidence in the record that the City or CRA/LA as the lead agency was required to prepare an EIR or at least circulate a supplemental MND analyzing these new potential significant land use impacts.

RESPONSE TO COMMENT 2.5

As discussed above in Response to Comment 2.3, the Modified Project is located in a Transfer of Floor Area Rights (TFAR) Area, as detailed in the LAMC Article 4.5, Transfer of Floor Area Rights – Central City Community Plan and City Center Redevelopment Projects Areas. As

discussed in Section II, Project Description of the Addendum, the Applicant seeks an approval for an increase in floor area from the allowable, by-right buildable floor area ratio (FAR) of 6:1 (207,570 square feet for the Project Site) to 7.45:1 (the addition of 49,999 square feet for a total of 257,569 square feet), which is substantially less than the 13:1, or approximately 645,723 square feet, permitted through a greater TFAR. With approval of this request, the Project would be in conformance with the LAMC and the Central City Community Transfer of Floor Area Rights. As shown in Table III-1 of the Addendum, Massing of Surrounding Buildings, the Modified Project would be within the range of the massing of the existing surrounding buildings, several of which were constructed after 2006. Elevations depicting the scale and massing of the proposed structure are shown in Figure II-16 through Figure II-19 of the Addendum. Additionally, the Modified Project would have a much lower FAR of 7.45:1 as compared to the Eastern Columbia's 11.82:1 FAR. Although the Project's aesthetic impacts shall not be considered significant impacts on the environment pursuant to Public Resources Code Section 21099, similar to the Original Project, the aesthetic impacts created by the scale and massing of the Modified Project would be less than significant. The Appellant makes the unsupported claim that the residential density limit was imposed for the specific purpose of avoiding environmental harm from "over development." The Appellant has provided no factual or legal support to demonstrate that the 6:1 FAR limit or a density limit has anything to do with "avoiding environmental harm" from alleged over development.

COMMENT 2.6

V. EXHIBIT C ESTABLISHES THE CRA/LA, AND NOT THE CITY, WAS REQUIRED TO ACT AS THE LEAD AGENCY UNDER THE CEQA STATUTE.

Exhibit C attached hereto is substantial evidence in the record that the City violated its own municipal code in assuming the lead agency authority under the CEQA statute when Section 16.05 mandates that project lying within an adopted redevelopment plan area must be referred to the CRA/LA to conduct the environmental review as the lead agency. Having failed to do so, the City has violated its own law, which designated the appropriate lead agency under the CEQA statute.

RESPONSE TO COMMENT 2.6

Consistent with Section 21067 of the Public Resources Code, the Department of City Planning served as the designated lead agency for purposes of complying with CEQA. As defined by Section 21067, the "Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment. As the CRA/LA has been disbanded, only a successor agency with a legal mandate to wind down

its affairs exists. As such, the successor agency no longer has the capacity to fulfill the lead agency role for development projects within the Redevelopment Project Areas.

On December 29, 2011, the California Supreme Court ruled to uphold Assembly Bill x1-26 (ABx1-26), which abolished all Redevelopment Agencies within the State of California. This ruling does not abolish the City's existing Redevelopment Plans, which will continue to be administered by a Designated Local Authority (DLA) that oversees projects of the former CRA/LA. As discussed in Case No. CPC-2013-3169-CA, the City of Los Angeles elected not to become the Successor Agency for the CRA/LA, an option included in the dissolution legislation. In the absence of a successor agency, the Governor appointed a three-member governing board as the Designated Local Authority (DLA) to wind down the operations of the former CRA/LA. Additional legislation was passed by the State in 2012 (AB 1484) that allowed a city to assume all land use related plans and functions of a former redevelopment agency upon request. These plans continue to exist as legal expressions of public policy, adopted by the City Council, and the land use regulations and authorities granted in the Plans remain effective until the expiration date for each plan. A proposed ordinance requests that the land use authority in redevelopment project areas be transferred from the CRA to the City of Los Angeles. The resolution would allow the Department of City Planning (DCP) to assume only the land use authority vested in redevelopment plans, or provided for it in the City Charter and the Los Angeles Municipal Code. In addition, the proposed ordinance adds or amends Sections 11.13, 12.03, 12.04, 12.21, 12.22, 12.24, 13.11, 16.05, and 16.11 of the Los Angeles Municipal Code in order for DCP to immediately begin implementation of active redevelopment plans.² Therefore, pursuant to State CEQA Guidelines Section 15367, the City of Los Angeles is the appropriate entity to act as the lead agency for environmental review.

COMMENT 2.7

VI. SP-DTLA INVESTIGATION OF OTHER VIOLATIONS OF CEQA CONTINUES.

Ongoing investigation of the City's faulty CEQA process continues. SP-DTLA further objects to use of an addendum on the grounds that:

² *City of Los Angeles, Department of City Planning Recommendation Report, Case No. CPC-2013-3169-CA, ENV-2013-3170-CE, dated May 8, 2014.*

- the City failed to provide a sufficient project description after changes to the Project that exceeded previously imposed land use density and FAR limits imposed on the Project site;

RESPONSE TO COMMENT 2.7

The differences between the Approved Project and the Modified Project were properly disclosed and thoroughly analyzed within the Addendum to the previously adopted MND. A detailed summary of the changes between the “Approved Project” (VTT 66505 and ZA-2006-6350-YV-ZAA-SPR), “Original Project” (ENV-2006-6302-MND) and “Modified Project” (ENV-2006-6302-MND-REC 1) is provided in Table II-1 of the Project Description of the Addendum. As shown in Table II-1, the Modified Project, as compared to the Original Project analyzed in the Adopted MND (the original environmental document), results in a net increase of 138 dwelling units, a net increase of 1,291 square feet of retail floor area, and 77 additional parking spaces. The Modified Project would also include an increase of 66,667 square feet of floor area and an increase of six stories in building height (approximately 74 feet).

COMMENT 2.8

- the City failed to adequately or appropriately analyze aesthetics, air quality, geology, greenhouse gases, hazardous materials, historic resources, public utilities and services, or transportation;

RESPONSE TO COMMENT 2.8

The Appellant does not specify in which context the aforementioned sections are not adequately analyzed. Aesthetics, Air Quality, Geology, Greenhouse Gases, Hazardous Materials, Historic Resources, Public Utilities and Services, and Transportation are thoroughly analyzed in Sections I, III, VI, VII, VIII, V, XVII, and XVI, respectively, in the Addendum. Pursuant to Section 15064 of the State CEQA Guidelines, “[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion support by facts.” Thus, in the absence of any further detail or explanation as to how the Addendum failed to analyze these impacts, this assertion is unsubstantiated and does not provide substantial evidence to support even a fair argument that the changes proposed by the Modified Project would result in impacts not already studied.

COMMENT 2.9

- the City's use of an addendum improperly evaded reasonable alternatives analysis that would have further mitigated potential undisclosed significant impacts.

RESPONSE TO COMMENT 2.9

When the MND is relevant, and the lead agency makes this decision based on substantial evidence, it is proper to use an Addendum since there are no new previously unstudied potentially significant environmental impacts. The 87 mitigation measures included in the Addendum are identical, with the exception of minor technical edits, to those in the MND. Any changes in the Addendum to the mitigation measures adopted in connection with the MND are noted by either a double underline (indicating where text has been included) or a strikeout (indicating text has been deleted). As substantial evidence in the Addendum and MND shows and as concluded in the Addendum, all of the Modified Project's potentially adverse impacts have been mitigated to a level below significance by legally proper mitigation measures previously adopted for the Approved Project.

COMMENT 2.10

VII. CONCLUSION

SP-DTLA will provide further information in support of its CEQA and related objections.

For all of the foregoing reasons, the Project as currently proposed must be denied. Thank you for your courtesy and attention to these important issues.

RESPONSE TO COMMENT 2.10

The Appellant's issues of concern, as they pertain to the CEQA process and or environmental impacts, have been included in the record. As demonstrated in the responses above, this Appeal does not present any new information that would warrant any changes to the environmental analysis as presented in the Addendum to the previously adopted MND.

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APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

- Area Planning Commission, City Planning Commission, City Council, Director of Planning

Regarding Case Number: ENV-2006-6302-MND-REC1

Project Address: 850 S. Hill Street

Final Date to Appeal:

- Type of Appeal: Appeal by Applicant/Owner, Appeal by a person, other than the Applicant/Owner, Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Eastern Colombia Homeowners' Association, Sheila Swanson

Company: Eastern Colombia Homeowners' Association

Mailing Address: 849 S. Broadway

City: Los Angeles State: CA Zip: 90014

Telephone: E-mail:

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

Self, Other: Eastern Colombia Homeowners' Association

- Is the appeal being filed to support the original applicant's position? Yes, No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Robert L. Glushon, Kristina Kropp

Company: Luna & Glushon

Mailing Address: 16255 Ventura Boulevard, Suite 950

City: Encino State: CA Zip: 91436

Telephone: (818) 907-8755 E-mail: rglushon@lunaglushon.com; kkropp@lunaglushon.com

ATTACHMENT TO APPEAL

ENV-2006-6302-MND-REC1

Appellants: Eastern Colombia Homeowners' Association, the homeowners' association for the Eastern Colombia building located at 849 S. Broadway, immediately adjacent to 850 S. Hill Street, the site of the proposed Project, and therefore immediately impacted thereby.

Proposed Project: A 27-story, mixed-use residential project with 305 dwelling units and 6,171 square feet of ground floor commercial space.

1.1

ENV-2006-6302-MND-REC1 Fails to Comply with CEQA

1. This is not a "Modified" Project

Pursuant to the California Environmental Quality Act ("CEQA") Guidelines §15162, an Addendum to a previously adopted MND is not appropriate where:

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

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:

1.2

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

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(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

Here, the Project is not in any way related to the original 2007 mixed-use project which contained 167 residential condominium units and 7,107 square feet of lobby/retail space. It is 6 stories and 74 feet taller than the 2007 Project; includes over 67,000 sq. feet more floor area; almost doubles the amount of residential units; proposes apartments rather than condominiums; maintains completely new architecture and a completely new design; and requires completely different findings.

Most importantly, it has environmental effects which are completely different than those of the 2007 Project, especially as it relates to historical resources, effects which have not have been adequately analyzed and cannot be mitigated to a level of insignificance. First, as a result of the City's Downtown Design Guidelines being adopted in 2009, the 2007 project did not even (or have to) address such Guidelines, while the new Project does, although failing to adequately analyze the Guidelines with which it is inconsistent. Additionally, the 2007 Project was specifically designed to allow for unobstructed views to and from the Eastern Columbia Building to ensure its continued visual prominence. In contrast, the current Project places a 27-story tower directly in front of the Eastern Columbia thereby partially blocking this *visual* landmark, with a proposed size and scale that will dwarf the height and prominence of the Eastern Columbia Building, some of its major, defining, historically significant features.

Additionally, Traffic impacts today and almost 10 years ago are also completely different. In fact, the Addendum to the MND admits as much by conducting a new traffic study.

Such changes to the Project and analysis are substantial and introduce previously unstudied and potentially significant environmental effects which require the preparation of an EIR.

2. The Addendum to the MND Improperly Defers Mitigation Measures

Under CEQA requiring adoption of mitigation measures from a *future* study is impermissible. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-07.

Here, the Addendum to MND requires a *future* assessment and report by a preservation architect, in violation of CEQA.

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3. Substantial Evidence Supports a Fair Argument that the Project May have a Significant Effect on Historical Resources

The Eastern Colombia Building, Historic Monument No. 294, is noted by the Los Angeles Historic Resources Inventory as a *visual landmark* representative of the vitality of Los Angeles' retail and commercial core. Indeed the height and prominence of the Eastern Colombia Building are some of its major, defining, historically significant features.

1.4

Here, the Project will partially block this *visual* landmark and the size and scale of the Project will dwarf the Eastern Colombia. Therefore, it will materially impair the historical significance of the Eastern Colombia Building. As such, substantial evidence supports a fair argument that the Project may have a significant impact on Historic/Cultural Resources and an EIR is required.

4. The Thresholds for Historic Resources are Incomplete and Inaccurate

The Addendum to the MND incorrectly concludes that the new project would not impact the significance of an historic building or district because it would not cause a "material" impact on existing historic resources. However, the impacts to adjacent historic resources are not adequately analyzed.

1.5

Moreover, the thresholds are misapplied as they only apply to individual historic *buildings*, not new infill development within historic *districts*. The thresholds for infill development in a historic district require analysis that the proposed project does not cut a district in half resulting in a loss of continuity as a district; overshadowing a district with new construction so its principal formal structure is compromised; or creating such an offence or distraction that the continuity and features of a district are obscured. Such thresholds and the Projects' impacts on the district resources must be analyzed.

5. Impacts on Land Use/Planning are Inadequately Evaluated

The Addendum to the MND fails to identify and discuss *any inconsistencies* between the proposed Project and applicable general plans and regional plans including "relevant environmental policies in other applicable plans." See *CEQA Guidelines Section 15125(d)*.

In fact, the Project is inconsistent with the following land use policies, objectives and goals:

1.6

1. To *preserve key landmarks* which highlight the history and unique character of the City, blending old and new in an aesthetic realization of change or growth with distinction, and facilitating the adaptive reuse of structures of architectural, historic or cultural merit [City's Redevelopment Plan];

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2. To create a modern, efficient and *balanced* urban environment for people, including a full range of around-the-clock activities and uses, such as recreation, sports, entertainment and housing [City's Redevelopment Plan];

3. To *preserve* and *enhance* the positive characteristics of existing uses which provide the foundation for community identity, such as scale, height, bulk, setbacks and appearance [City Center Community Plan, II-2];

4. New construction should *respect* historically significant districts and buildings, including massing and scale, and neighborhood context [City's Downtown Design Guidelines, p. 7].

5. Construct new buildings, of *compatible design* with the surrounding neighborhood, on existing surface parking lots [Historic Downtown Los Angeles Design Guidelines, pgs. 11, 131];

6. Carefully maintain and restore terra cotta, the most prevalent decorative building material in Historic Downtown [Historic Downtown Los Angeles Design Guidelines, p. 101];

7. Design new buildings to respond to existing building context within a block, provide continuity to the overall streetscape. Frequently, a new building will be inserted on a site between two existing buildings of disparate scale and design [Historic Downtown Los Angeles Design Guidelines, p. 131]; and

8. Use *compatible types of masonry such as terra cotta* when constructing new structures in the Historic Downtown [Historic Downtown Los Angeles Design Guidelines, p. 132].

As such, substantial evidence supports a fair argument that the Project may have a significant impact on Land Use/Planning and an Environmental Impact Report is required.

6. Additional Reasons:

CEQA requires strict compliance with the procedures and mandates of the statute. *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118. For the following reasons, the within Addendum to the MND further fails to abide to the CEQA procedures and mandates:

1. The historic resource identification is incomplete;
2. The Project location is misstated and incomplete;
3. Compatibility is not accurately and correctly analyzed.

1.6

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1.9

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APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

- Area Planning Commission
- City Planning Commission
- City Council
- Director of Planning

Regarding Case Number: ENV-2006-6302-MND-REC1

Project Address: 850 S. Hill Street (and all related addresses)

Final Date to Appeal: None (City has never enacted an implementing ordinance).

Type of Appeal:

- Appeal by Applicant/Owner
- Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
- Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Society for the Preservation of Downtown Los Angeles ("SP-DTLA")

Company: _____

Mailing Address: 215 N. Marengo Avenue, 3rd Floor

City: Pasadena

State: CA

Zip: 91101

Telephone: (626) 449-4200

E-mail: dan@robertsilversteinlaw.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

- Self
- Other: Society for the Preservation of Downtown Los Angeles ("SP-DTLA")

- Is the appeal being filed to support the original applicant's position?

- Yes
- No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Daniel Wright

Company: The Silverstein Law Firm, APC

Mailing Address: 215 N. Marengo Avenue, 3rd Floor

City: Pasadena

State: CA

Zip: 91101

Telephone: (626) 449-4200

E-mail: dan@robertsilversteinlaw.com

THE SILVERSTEIN LAW FIRM

A Professional Corporation

215 NORTH MARENGO AVENUE, 3RD FLOOR
PASADENA, CALIFORNIA 91101-1504

PHONE: (626) 449-4200 FAX: (626) 449-4205

DAN@ROBERTSILVERSTEINLAW.COM
WWW.ROBERTSILVERSTEINLAW.COM

November 29, 2016

VIA PERSONAL DELIVERY

Los Angeles City Council
City of Los Angeles
200 N. Spring Street, Room 395
Los Angeles, CA 90012

Re: California Environmental Quality Act Appeal for the Alexan Project
located at 850 S. Hill Street, Los Angeles; ENV-2006-6302-MND

Honorable Councilmembers:

I. INTRODUCTION.

This firm and the undersigned represent the Society for the Preservation of Downtown Los Angeles (hereinafter "Appellant" or "SP-DTLA"). Please keep this office on the list of interested persons to receive timely notice of all hearings and determinations related to the proposed approval of a mixed-use building at 850 S. Hill Street, commonly known as the Alexan Project ("Project").

Appellant represents the views of its members as well as those of the more than 1,000 individuals who have expressed opposition to the Project, including on the ground that it is incompatible with and destructive to the City's historic and cultural resources. In addition, a number of members of Appellant own property and/or live in the Eastern Columbia Building, and are personally, materially, substantially, and significantly adversely affected by the proposed Project and the Director's approval thereof.

Appellant adopts and incorporates by reference all Project objections raised by themselves and all others during the environmental review and land use entitlement processes.

The Los Angeles City Council should deny the Project application and requested approvals, including because the environmental review of the Project violates the requirements of the California Environmental Quality Act ("CEQA"). For this reason alone, the City may not lawfully approve the Project or adopt the proposed environmental documents.

II. THE CITY HAS FAILED TO PROCEED IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Attached to and incorporated herein are the following exhibits:

Exhibit A:

The September 6, 2016 letter of The Silverstein Law Firm (without exhibits) containing detailed objections to the land use entitlement actions of the City as well as the City's failure to comply with CEQA in approving the Project. In particular, Section VI of that letter provides detailed objections related to failures to comply with the mandates of CEQA.

Exhibit B:

The October 18, 2016 letter of The Silverstein Law Firm (without exhibits) containing detailed analysis and attached evidence that the original MND nor the addendum disclosed the existence of the density and FAR limitations imposed by the City Center General Plan Consistency Program for the articulated purpose of mitigating potential significant environmental impacts. After imposing the specific D limitation on the Project site pursuant to this mitigation measure of the City Center General Plan Consistency EIR, the City has failed to disclose the binding nature of these limits on future development. By refusing to disclose the existence of the General Plan Consistency Program and trying to show the Project is consistent with those limits – which it is not – the City has failed to disclose or analyze significant land use impacts.

Exhibit C:

The October 25, 2016 letter of The Silverstein Law Firm (without exhibits) containing detailed analysis and attached evidence that shows that the City's own law, specifically LAMC Section 16.05 mandates that an application for Site Plan Review for a Project within an adopted redevelopment plan area be referred to the CRA/LA to act as lead agency for the environmental review of the Project.

Exhibits A, B and C document violations of law, including CEQA. Additionally, to the extent that the City relies upon land use entitlement processes, it has neither disclosed nor discussed in the original 2007 MND for a different project, or the 2016 addendum, the City has failed to proceed in accordance with law to disclose and analyze significant new land use impacts, density and FAR limits imposed to avoid significant environment impacts from over-sized development.

2.2

III. SECTIONS II THROUGH V OF EXHIBIT A DEMONSTRATE THE PROPOSED PROJECT WILL HAVE SIGNIFICANT, UNMITIGABLE LAND USE IMPACTS NEITHER DISCLOSED NOR ANALYZED BY THE CITY IN ITS ADDENDUM TO THE 2007 MND.

The City's 2007 MND for a different project on the site contained no project description or land use discussion of the use of a Transfer of Density or Floor Area Deviation because the original developer did not request authorization to exceed the 6:1 Floor Area Ratio ("FAR") authorized in the City Center Redevelopment Plan and the City Center Community Plan. There is no evidence showing the 2007 Project at the site ever considered trying to exceed the authorized 6:1 FAR.

However, in 2016, the new Project proposed by the developer not only reaches 6:1 FAR, but extends the FAR to as high as 7.45:1. In order to seek an FAR exceeding that allowed by right, the new developer has applied for a Floor Area Deviation from the City Planning Department. LAMC Section 14.5.7 purports to authorize the Planning Director to grant such an entitlement, and the City has purported to do so. But, as set forth in detail in Exhibit A, the City Planning Director has no authority to grant increases in density for projects within the City Center Redevelopment Plan – only the CRA/LA may do so. Thus, on this ground alone, the Planning Director's Determination is inconsistent with the land use laws and programs of the City – a fact not disclosed or explained in the City's addendum.

2.3

Furthermore, also as detailed in Exhibit A, LAMC Section 14.5.7 purports to allow the City Planning Director to authorize a variance in floor area from the City's zoning laws without complying with the legal requirements of City Charter Section 562 concerning variances. The People, in adopting the Charter, mandated that any variance from the strict application of the City's zoning codes be heard on application to the zoning administrator and demonstrate compliance with five mandatory findings. The City Council in enacting LAMC Section 14.5.7 failed to incorporate these City Charter findings requirements into Section 14.5.7. The addendum fails to disclose or analyze this glaring inconsistency between the proposed floor area variation and the City's organic

law. The failure to explain how the Project violates the City Charter is an independent ground for a reviewing court to find the City has failed to proceed in accordance with law.

2.3

The land use sections of the 2007 MND and the 2016 addendum list a series of cherry-picked goals, policies, or programs of various regional and City plans. Charts show how the proposed Project is allegedly consistent with these aspirational goals that almost any project can meet. But the City environmental documents avoid any disclosure or explanation of how the Project fails to comply with other substantive mandatory elements of the City Charter or City Center Redevelopment Plan.

2.4

No applicant and no City may demonstrate "consistency" with City laws, plans and programs by simply refusing to disclose and analyze them. Burying the inconsistencies is a failure to proceed in accordance with law.

IV. EXHIBIT B AND ITS EXHIBITS IN THE FULL RECORD ESTABLISH THAT THE CITY CENTER GENERAL PLAN CONSISTENCY PROGRAM IMPOSED THE "D" LIMITATION ON FAR AND RESIDENTIAL DENSITY LIMITS ON R5 ZONES TO AVOID SIGNIFICANT ENVIRONMENTAL IMPACTS FROM OVERLY DENSE DEVELOPMENT.

Exhibit B and its exhibits regarding the history of the adoption of FAR limits and residential density limits in the City Center Community Plan area as part of the General Plan Consistency Program establish that any project proposal that exceeds the 6:1 FAR limit or the normal residential density limit of 1 unit per 200 square feet of lot area would result in significant new land use impacts because these limits were imposed by the City for the specific purpose of avoiding environmental harm from over development.

2.5

This is substantial evidence in the record that the City or CRA/LA as the lead agency was required to prepare an EIR or at least circulate a supplemental MND analyzing these new potential significant land use impacts.

V. EXHIBIT C ESTABLISHES THE CRA/LA, AND NOT THE CITY, WAS REQUIRED TO ACT AS THE LEAD AGENCY UNDER THE CEQA STATUTE.

2.6

Exhibit C attached hereto is substantial evidence in the record that the City violated its own municipal code in assuming the lead agency authority under the CEQA

statute when Section 16.05 mandates that project lying with an adopted redevelopment plan area must be referred to the CRA/LA to conduct the environmental review as the lead agency. Having failed to do so, the City has violated its own law which designated the appropriate lead agency under the CEQA statute.

2.6

VI. SP-DTLA INVESTIGATION OF OTHER VIOLATIONS OF CEQA CONTINUES.

Ongoing investigation of the City's faulty CEQA process continues. SP-DTLA further objects to use of an addendum on the grounds that:

2.7

- the City failed to provide a sufficient project description after changes to the Project that exceeded previously imposed land use density and FAR limits imposed on the Project site;
- the City failed to adequately or appropriately analyze aesthetics, air quality, geology, greenhouse gases, hazardous materials, historic resources, public utilities and services, or transportation;
- the City's use of an addendum improperly evaded reasonable alternatives analysis that would have further mitigated potential undisclosed significant impacts.

2.8

2.9

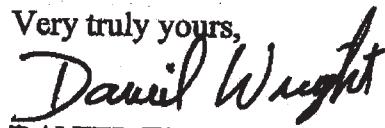
VII. CONCLUSION.

SP-DTLA will provide further information in support of its CEQA and related objections.

2.10

For all of the foregoing reasons, the Project as currently proposed must be denied. Thank you for your courtesy and attention to these important issues.

Very truly yours,



DANIEL WRIGHT

FOR

THE SILVERSTEIN LAW FIRM, APC