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November 14, 2016

Hon. Sherri Lightner, President
Members of the San Diego City Council
via email

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Subject: November 14 Agenda Items 150 and 200
Balboa Park Plaza de Panama Project

Dear President Lightner and Councilmembers:

On behalf of Save Our Heritage Organisation (SOHO), I request that the Council reject the above-referenced Plaza de Panama Project approvals. SOHO has advocated for an alternate project for many years, joined by thousands of city residents and local, state, and national preservation advocates. SOHO urges the Council to avoid significant impacts to the Balboa Park National Historic Landmark District that would attend the Centennial Bridge and parking garage.

The administrative records for the two mandamus actions pursued by SOHO regarding the Plaza de Panama project are part of the files before you, including the outdated EIR certified over four years ago. Those records still reflect ongoing passionate widespread opposition to the Plaza de Panama project.

Reliance on the EIR Addendum is Unlawful. City staff proposes that the Council consider agenda items 150 and 200 based on an EIR “addendum” and mitigation and monitoring program (MMRP). This insufficiently informs the Council’s discretion and inadequately mitigates the project. CEQA makes no provision for addenda, and CEQA Guidelines section 15064 that purports to allow addenda is wholly without authority in the Public Resources Code.

The California Supreme Court in the recent *Friends of the College of San Mateo Gardens v. College Community College District* (2016) 1 Cal.5th 937, 961, thus noted the open question of whether the CEQA Guidelines “improperly authorize lead agencies to approve certain proposed project modifications through the use of addenda without public comment, rather than requiring the issuance of a subsequent or supplemental EIR” This City Council should not consider further pursuit of the Plaza de Panama project based on a cursory addendum non-process, but should prepare a subsequent EIR needed to address significant new information and changed circumstances.

New Information and Changed Circumstances. Although the project’s substantial impacts to Balboa Park’s historic landmark status remain a threat, there are key changes to the environmental setting since 2013, beginning with the fact that the impetus for the Plaza de Panama project at its inception in 2011 *is gone*: parking was removed from the Plaza de Panama to allow its current use as public and ceremonial space. Whatever improvements to parking and access to the Plaza may be appropriate, construction of the Centennial Bridge is not.



After a project is approved based on a certified EIR, new discretionary approvals proposed under changed circumstances and new information require a subsequent EIR. (Pub. Resources Code, § 21166.) *Here, in light of the project's significant impacts to a national landmark, a subsequent revised EIR must reframe project objectives, that in turn now trigger revised identification and consideration of potentially-feasible project alternatives (both new and previously-considered alternatives), mitigation measures, analysis of project impacts using current data and science, and a new MMRP.* The EIR must also address the project's inconsistencies with land use plans now adopted for environmental protection, such as the Climate Action Plan.

Facts supporting application of CEQA's mandates include:

- The Plaza de Panama is clear of parking and returned to pedestrian use.
- The 650-space Balboa Park Zoo parking structure is complete and provides almost three times the parking proposed by the Plaza de Panama project.



- The city's adopted Climate Action Plan requires increased use of public transportation over private cars, reduction of parking spaces, reduction of greenhouse gases, and increased use of public transportation options. The project's consistency with the Plan must be assessed.
- There is increased ADA parking in the lot behind the organ pavilion and

the Alcazar lot. The project significantly reduces parking spaces, lengthens ADA paths of travel, and eliminates drop-offs for the California Plaza, Old Globe, Plaza de Panama and associated museums. The revised EIR must address and mitigate access for the Park's disabled patrons.

- New information regarding bridge traffic patterns and mitigation is available following Caltrans' recent lengthy closure the Cabrillo Bridge, relevant to the consideration of alternatives for closing the bridge or restricting hours of use.
- Project costs have doubled and affect the analysis and evidence of public benefit and overriding considerations.
- Popularity of ride-share programs like UBER now significantly reduce the need for parking and affect transit patterns.
- Four new Houses of Pacific Relations will affect project impacts.
- New City Code regulation of safety and stormwater must be applied.
- The project's greenhouse gas emissions under the current environmental setting must be addressed with reference to the ruling of the California Supreme Court in *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 64 Cal.4th 204 (CBD).
- The basis for a statement of overriding considerations required in light of the project's significant environmental impacts has changed both due to the environmental setting and other factors referenced above, and based on significantly changed financial obligations imposed by the project.

In *CBD*, the Supreme Court reversed approvals of the mammoth Newhall Ranch project in Los Angeles County, pending for over 14 years and multiple EIRs, and held that, *notwithstanding* an agency's views of a project's merits or the delay that a new environmental process could require, remand for additional analysis — including greenhouse gas emission analysis — was necessary to assure that the law was obeyed. The Supreme Court held that its review of an agency's compliance with CEQA “does not turn on our independent assessment of the project's ... merits. ... CEQA's requirements for informing the public and decision makers of adverse impacts, and for imposition of valid, feasible mitigation measures, would still need to be enforced.” (*CBD* at 240.)

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Respectfully, this project is not yet ready for a political land use decision by elected officials. This Council knows that the factual and legal circumstances underlying the Plaza de Panama project have significantly changed since its actions in 2012.

This is a complex project but the legal issues are simple: under the facts, the proposed use of an addendum for decision making violates CEQA and approval of the mitigation and monitoring program is premature. The City should prepare a subsequent EIR before considering further discretionary actions to pursue the Plaza de Panama project. The proposed approvals of the addendum and MMRP and the draft findings in support of actions delineated in agenda items 150 and 200 do not comply with CEQA's mandatory procedures as a matter of law and are not supported by substantial evidence in the record.

Please deny approvals of items 150 and 200 in their entirety.

Thank you for your consideration.

Sincerely,



Susan Brandt-Hawley