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May 29, 2024

Via Webform, Email, and Overnight Mail

Chair Kelly Modén
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Planning Commission Public Comment Webform:

<https://www.sandiego.gov/planning-commission/agenda-comment-form>

Re: Agenda Item 3 – University Community Plan Update (PC-24-023)

Dear Chair Modén, Planning Commissioners, Planning Director Vonblum:

We are writing on behalf of San Diego Residents for Responsible Development (“Residents”) regarding Agenda Item No. 3, the University Community Plan Update (PC-24-023) (“Plan Update”)¹ prepared by the City of San Diego (“City”). The Plan Update will be considered at the Planning Commission hearing on May 30, 2024 for recommendation to the City Council.² The University Community (also referred to as “University City”) encompasses the area east of La Jolla and north of Clairemont Mesa, with the 805 Freeway and the 5 Freeway

¹ City of San Diego, University Community Plan and Local Coastal Draft Plan (May 2024). Available at https://bf5c854d-f91f-4d3a-bacd-48151e76d7f5.usrfiles.com/ugd/bf5c85_3865c25361004831aa670bd9776df2e9.pdf (hereinafter “Community Plan”).

² City of San Diego, Report to the Planning Commission, University Community Plan Update Report No. PC-24-023 (May 30, 2024). Available at: https://www.sandiego.gov/sites/default/files/2024-05/pc-24-023-university_cpu_sr_pc_hearing.pdf (hereinafter “Staff Report”).
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bisecting the Community Plan Area and the 52 Freeway serving as the southern border of the Plan Area. The University Community Plan Area encompasses University of California San Diego.

Staff recommends that the Planning Commission recommend to the City Council to: 1) approve the resolution adopting the comprehensive update to the University Community Plan, rescinding the Nexus Technology Specific Plan, and amending the community's Local Coastal Program and the General Plan; 2) approve an ordinance amending the San Diego Municipal Code Chapter 13, Article 2, Division 14 and amending the City's certified Local Coastal Program; 3) approve an ordinance amending the Historical Resources Guidelines of the City's Land Development Manual to exempt specified areas within the University Community Planning Area from potential historic resource review under SDMC 143.0212; 4) approve an ordinance dedicating public open space within the University Community Planning Area; 5) approve an ordinance rezoning land within the University Community Planning Area consistent with the University Community Plan.³

The draft Plan Update was released for public review between March 14, 2024, and April 29, 2024.⁴ The City prepared a Draft Program Environmental Impact Report ("DPEIR") for the Plan Update. The public review period to comment on the DPEIR ended on April 29, 2024.⁵ The City is preparing but has not yet released, a Final PEIR with responses to comments.⁶ The City has therefore not completed its environmental review of the Plan Update pursuant to the California Environmental Quality Act ("CEQA").⁷

On March 27, 2024, BIOCOCOM California ("BIOCOCOM") submitted a letter requesting that the City "adopt Urban Flex and Prime Flex land use designations and the EMX-1 zone in an area of the North Torrey Pines mesa."⁸ This land use designation and zone change is not proposed in the Plan Update and was not analyzed in the DPEIR or Planning Commission Staff Report. Rather, the Staff Report explains that the Plan Update proposes two Employment Mixed Use Zones ("EMX"), EMX-2 and EMX-3, in addition to the proposed Residential Mixed Use

³ Staff Report, p. 1.

⁴ Staff Report, p. 17.

⁵ Staff Report, p. 2.

⁶ Staff Report, p. 2.

⁷ Pub. Res. Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq.

⁸ Letter from Biocom California to City of San Diego Planning Department, University Community Plan Update (CPU) (March 27, 2024). Available at: https://bf5c854d-f91f-4d3a-bacd-48151e76d7f5.usrfiles.com/ugd/bf5c85_0354b3b604ac4dfebeb54edadab74565.pdf p, 366 of 840. 7267-001

(“RMX”) zones. The proposed EMX-2 and EMX-3 zones are being used to implement the Urban Employment Village land use designation, and would allow non-residential development as a primary use and a secondary use that is either non-residential or residential.⁹ Both zones limit the size and floor area ratio (“FAR”) of proposed developments. BIOCOCOM’s proposal to adopt EMX-1 zoning would result in an increased development footprint in these areas which was not analyzed in the DPEIR. It would be premature for the Planning Commission to make a determination on BIOCOCOM’s proposed land use and zoning change before adequate environmental analysis is conducted in a revised and recirculated Draft Program EIR.

Residents respectfully requests that the Planning Commission remand the Plan Update Project to Staff revise the Community Plan and recirculate the Draft Program Environmental Impact Report SCH No. 2021070359 prepared for the Blueprint SD Initiative, Hillcrest Focused Plan Amendment to the Uptown Community Plan and University Community Plan and Local Coastal Program Update (“DPEIR”) ¹⁰ to address the Community Plan’s potentially significant environmental before recommending the Community Plan be approved by the City Council. These comments demonstrate that the Community Plan and DPEIR fail to adequately analyze the alternative proposed by BIOCOCOM to revise the Community Plan to adopt Urban Flex and Prime Flex land use in the EMX-1 zone in the North Torrey Pines area.¹¹ We reserve the right to supplement these comments at a later date and at any future proceedings related to this Project.¹²

I. STATEMENT OF INTEREST

Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental impacts of the Project. The association includes the International Brotherhood of Electrical Workers Local 569

⁹ Staff Report, p. 12.

¹⁰ City of San Diego, Draft Program EIR Blueprint SD Initiative, Hillcrest Focused Plan Amendment to the Uptown Community Plan and University Community Plan and Local Coastal Program Update (“DPEIR”) (March 14, 2024). Available at: https://www.sandiego.gov/sites/default/files/2024-03/draft_peir_blueprint-sd-initiative-hillcrest-fpa-university-cpu_0.pdf

¹¹ Letter from Biocom California to City of San Diego Planning Department, University Community Plan Update (CPU) (March 27, 2024). Available at: https://bf5c854d-f91f-4d3a-bacd-48151e76d7f5.usrfiles.com/ugd/bf5c85_0354b3b604ac4dfebeb54edadab74565.pdf p, 366 of 840.

¹² Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield (“Bakersfield”)* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

(“IBEW 569”), its members and their families who live, work, and recreate in San Diego.

Residents and its members may be adversely affected by the potential environmental, land use, public health and public service impacts associated with the Plan Update. Accordingly, they would be directly affected by the its environmental, land use, and health and safety impacts. Individual members may also work on the Plan Update buildout. They would be first in line to be exposed to any health and safety hazards that exist onsite.

Residents seeks to ensure a sustainable construction industry over the long-term by supporting projects that have positive impacts for the community, and which minimize adverse environmental and public health impacts. Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. LEGAL BACKGROUND

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.¹³ “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”¹⁴ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have

¹³ Public Resources Code § 21061; 14 C.C.R. §§ 15002(a)(1); 15003(b)–(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 (“[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”).

¹⁴ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, quoting *Laurel Heights*, 47 Cal.3d at 392.

reached ecological points of no return.”¹⁵ As the CEQA Guidelines explain, “[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.”¹⁶

While courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*”¹⁷ As the courts have explained, a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”¹⁸ “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”¹⁹

Recirculation of an EIR prior to certification is addressed in CEQA § 21092.1, and CEQA Guidelines §15088.5. “When significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 ... but prior to certification, the public agency shall give notice again pursuant to section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report.”²⁰ “Significant new information” may include a new significant environmental impact, a substantial increase in the severity of an environmental impact, a project alternative or mitigation measure that is considerably different from others previously analyzed, or a situation where

¹⁵ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; see also *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”) (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).

¹⁶ 14 C.C.R. § 15003(b).

¹⁷ *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added), *quoting Laurel Heights*, 47 Cal.3d at 391, 409, fn. 12.

¹⁸ *Berkeley Jets*, 91 Cal.App.4th at 1355; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

¹⁹ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, *quoting Laurel Heights*, 47 Cal.3d at 405.

²⁰ PRC § 21092.1.
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the draft EIR was so fundamentally inadequate and conclusory in nature that meaningful public review and comment were precluded.²¹

III. THE BIOCOM LAND USE ALTERNATIVE IS OUTSIDE THE SCOPE OF THE PROPOSED PLAN UPDATE AND REQUIRES RECIRCULATION OF THE DPEIR

BIOCOM's proposed land use designation and zone change is a new Plan alternative was not analyzed in the DPEIR and should not be considered by the Planning Commission at this time. It would be premature for the Planning Commission to make a determination on this land use and zoning change until adequate environmental analysis is conducted in a revised Program EIR.

BIOCOM claims, absent substantial evidence, that “making the change to Urban Flex with an EMX-1 implementing zone in the small requested area does not have a significant impact on the environmental analysis for the CPU.”²² BIOCOM provides no environmental analysis to support this assertion. The Community Plan, and the DPEIR and its appendices fail to support BIOCOM's assertion because neither the draft Plan nor the DPEIR mention, let alone analyze, BIOCOM's proposed “EMX-1”, “Urban Flex” or “Prime Flex” uses.

BIOCOM offers making the change to Urban Flex with an EMX-1 implementing zone as an alternative to the Proposed Project of the DPEIR.²³ Alternatives must be thoroughly analyzed in an EIR before they can be considered for recommendation and approval. CEQA requires that an EIR must evaluate the comparative merits of alternatives in an EIR.²⁴ The agency is required to make an objective, good faith effort to compare the project with the alternative.²⁵ An EIR must contain sufficient information about each alternative to permit an evaluation of the relative merits of the alternatives and the project.²⁶ The analysis must contain concrete information about each alternative sufficient to allow a fact-based comparison of the alternatives with the Project.²⁷ An EIR's analysis of alternatives should “explain in meaningful detail” a range of alternatives to the proposed

²¹ CCR § 15088.5.

²² *Id.*

²³ Letter from Biocom California to City of San Diego Planning Department, University Community Plan Update (CPU) (March 27, 2024). Available at: https://bf5c854d-f91f-4d3a-bacd-48151e76d7f5.usrfiles.com/ugd/bf5c85_0354b3b604ac4dfebeb54edadab74565.pdf p, 366 of 840.

²⁴ 14 CCR § 15126.6(a).

²⁵ *Residents Ad Hoc Stadium Comm. v Board of Trustees* (1979) 89 CA3d 274, 286.

²⁶ 14 CCR § 15126.6(a).

²⁷ *Id.* at § 15126.6(d).

project.²⁸ Information sufficient to allow an informed comparison of the impacts of the project with those of the alternatives should be provided.²⁹

Here, the Planning Commission has not reviewed any evidence regarding the zone change as an alternative in the DPEIR. Any recommendation to include such a zone change, absent adequate environmental review, would constitute a prejudicial abuse of discretion, and would violate CEQA. If the Planning Commission seeks to integrate this zone change, which would potentially result in significant environmental impacts, such impacts must be analyzed in a revised Program EIR circulated for public review and scrutiny.

The adoption of Urban Flex and Prime Flex land use designation and the EMX-1 zone in the area of North Torrey Pines mesa would potentially result in significant environmental impacts that require review in an EIR. Significant environmental impacts may result from the change and must be analyzed in an EIR. The purpose of the EMX zones is to provide a mix of uses with a focus on nonresidential uses with opportunities for residential development.³⁰ The EMX zones allow for a broad mix of uses, including office, research and development, industrial, and retail.³¹ Non-residential development shall be the primary use.³² The secondary use can be non-residential or residential.³³ If the secondary use is non-residential, it must be a different non-residential use than the primary use.³⁴

Deprioritizing the development of housing in the North Torrey Pine mesa would contravene the purposes detailed in the University Community Plan. The University Community Plan includes numerous policies to encourage the development of housing within the Plan Area, and allowing non-residential use to be the primary use under the EMX zone would contravene numerous policies including:

- A) Increase the homes available to meet the diverse needs of the University Community.
- B) Focus higher density housing opportunities near public transit, job centers, and within Sustainable Development Areas.

²⁸ *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (1988) 47 C3d 376, 406.

²⁹ *Kings County Farm Bureau v. City of Hanford* (1990) 221 CA3d692, 733.

³⁰ San Diego Municipal Code 6 131.0704.

³¹ San Diego Municipal Code 6 131.0704.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

- C) Facilitate the development of homes that are affordable to a range of household income levels, sizes, and tenure patterns, including families, employees, and students.
- D) Encourage affordable housing to be built on-site and make units available to meet the diverse needs of the community, including families, employees, and students.
- E) Promote housing options that can be comfortably occupied by seniors, including stacked flats, units without internal staircases, and with limited stairs on external paths.
- F) Encourage a diverse mix of unit sizes and types, such as three-bedroom, shopkeeper, home occupations, residential-work units, and micro-units to accommodate many lifestyles, family sizes, employees, and students.
- G) Support the development of a variety of building formats to provide functional and visual diversity of housing options throughout the community while maintaining stylistic compatibility.
- H) Support the development of housing that is affordable to and meets the needs of the employees in the University Community to attract employees, support reduced commute times, increase active transportation, and minimize transportation costs.
- I) Provide additional affordable housing through new development within the University Community above the citywide requirement.
- J) Strive to affirmatively further fair housing by providing access to services, resources, jobs, and housing opportunities within walking distance to transit.³⁵

Moreover, the EMX zone allows maximum structure height of 240 feet, which far and away exceeds the coastal zone height limit of 30 feet.³⁶ BIOCOTM may seek to avoid the coastal zone height limit and request that the California Coastal Commission certifies an amendment as a Local Coastal Program Amendment. This would contravene the purpose of the coastal zone height limit and violate CEQA. The analysis of the impacts of the zone change should be included in an EIR circulated for public review and scrutiny.

The Planning Commission cannot consider BIOCOTM's proposed zoning designation and land use changes unless and until the BIOCOTM alternative is fully analyzed in a revised PEIR. The Planning Commission lacks adequate information or substantial evidence to support a conclusion that such a change would not result in significant environmental impacts. The Planning Commission cannot rely on the

³⁵ Community Plan, p. 166.

³⁶ San Diego Land Development Code § 132.0505.
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conclusory statements of BIOCOM in implementing BIOCOM's recommended alternative. Given the zone changes were not contemplated in the DPEIR, a recommendation by the Planning Commission to support the zone change would require recirculation of the DPEIR to adequately analyze and mitigate the impacts associated with such a zone change.

IV. CONCLUSION

For the reasons discussed above, the Planning Commission cannot consider the alternatives offered by BIOCOM because they have not been analyzed in the Draft Community Plan, the DPEIR, or in any of the appendices, and require thorough analysis before the Planning Commission can make any recommendation to City Council which might encompass the BIOCOM proposal. This will necessarily require that the DPEIR be recirculated for public review. Until the DPEIR has been revised and recirculated, as described herein, the City may not lawfully approve the Project.

Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Kelilah D. Federman

:kdf

cc. via email only
Mayor Todd Gloria (Mayortoddgloria@sandiego.gov)
Council President Sean Elo-Rivera (Seanelorivera@sandiego.gov)
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Councilmember Kent Lee ()
Deputy Planning Director Tait Galloway (tgalloway@sandiego.gov)



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5/30/24 Statement on Plan Hillcrest by Mat Wahlstrom, resident of Hillcrest and current Chair of the Uptown Planners' Plan Hillcrest Ad Hoc Committee

After three years of engaging in good faith with the City, it is clear that it was never possible to significantly alter Plan Hillcrest in response to community input. [Here is a [link to our official position](#).] The terms of the SB 2 Planning Grant used to fund it require no less than 14,000 units be facilitated by right. It was never a question of what density is optimal.

As a consequence, this 'density at all costs' has been achieved by a lack of duty of care to provide for adequate infrastructure, safety services, parks and recreation, and transportation.

Astonishing as each of the two community plan updates being considered today are on their own, a comparison between the University and Hillcrest ones are shocking. The University plan calls for a 50% increase in population of 65,400 over 8,500 acres. The Hillcrest plan calls for a 60% increase in population of 40,000 for an area of 2,700 acres — but all of it in only 400 acres.

Per the 2016 Uptown Community Plan, any plan amendment was supposed to be limited to the nine-square block area around the Hillcrest sign. Despite representations to the contrary, the 2016 Plan allowed for a 60% increase in population and a 50% increase in dwelling units over all of Uptown. It did call for growth and density — just not enough to satisfy the demand for real estate speculation. So the percentage increases proposed in Plan Hillcrest are actually much higher than what is stated.

We're being asked to stuff ten pounds into a five-pound bag.

Adding insult to injury, this is allegedly being done in the name of "affirmatively furthering fair housing."

As land values are tied to 'highest and best use,' how can over-densifying Hillcrest — already identified by the City as "one of the most intensely developed neighborhoods in San Diego" — promote fair housing? Radical upzoning will automatically price out the possibility of building new affordable housing while requiring the demolition of existing affordable housing. And even if we could wait decades to see if maybe, eventually any of it might become affordable, at that point land values would spur the same cycle of destruction.

As just one of the six neighborhoods in Uptown — and the most 'opportunity rich' real estate market south of West Hollywood — Hillcrest is getting a big rainbow target painted on its back.

Hillcrest has always welcomed new neighbors. But this plan will make us strangers to ourselves.



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