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November 4, 2015

VIA EMAIL AND HAND DELIVERY

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Re: Initial Comments on the November 3, 2015 “Supplemental Memo to the Planning Commission with Response to Public Comments on IS/MND” for the Cannery Park/Hanover Project (File Nos. GP15-001, PDC15-001, PD15-004, and PT15-001)

Dear Chair Yob and Honorable Members of the Planning Commission, Ms. Piozet, and Mr. Keyon:

We are writing on behalf of **San Jose Residents for Responsible Development¹** in response to the “Supplemental Memo to the Planning Commission with Response to Public Comments on IS/MND”² for the Cannery Park/Hanover Project (“Project”)

¹ A detailed description of the interests of San Jose Residents for Responsible Development can be found in our “Comments on the Initial Study/Mitigated Negative Declaration for the Cannery Park/Hanover Project (File Nos. GP15-001, PDC15-001, PD15-004, and PT15-001)” submitted to the City on October 19, 2015.

² Supplemental Memo to the Planning Commission with Response to Public Comments on IS/MND (“Supplemental Memo”), From: David Keyon, San Jose Planning, To: Planning Commission, November 3, 2015, <http://www.sanjoseca.gov/DocumentCenter/View/47547>.

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proposed by the Hanover Company. This document was posted on the City's planning website on November 3, 2015, one day before the November 4 Planning Commission hearing on the Project. We are still evaluating the City's responses to our comments; however, we provide in this letter a limited response to the Supplemental Memo with the help of hazards and air quality experts Matt Hagemann, P.G, C.Hg., and Jessie Jaeger.³ We also reserve our right to submit supplemental written comments and testimony, including additional consultant comments and testimony, prior to final City Council action on the Project.

The Planning Commission is considering approval of an Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the Project pursuant to CEQA, which includes the construction and operation of 403 apartments and up to 5,000 square foot of retail and common amenity space, along with entitlements such as a General Plan Amendment and a Planned Development Rezoning and Permit.

Under CEQA, the threshold for requiring an Environmental Impact Report ("EIR"), rather than an MND, is low. A commenter must simply demonstrate that there is substantial evidence supporting a fair argument that the Project may have one or more significant effects on the environment.⁴ We have met this burden under CEQA by demonstrating the Project will have unanalyzed and unmitigated significant impacts on the environment and public health and safety; thus, the City is required to prepare an EIR for the Project.

We previously submitted extensive comments to the City on October 19, 2015 showing that the Project may result in significant impacts related to air quality, greenhouse gas (GHG) emissions, hazardous site conditions, noise, and cumulative impacts. The City provided responses to our comments on November 3. However, these responses do not cure the defects found in the IS/MND, as explained below.

³ See Letter from Matt Hagemann and Jessie Jaeger ("SWAPE Comments"), to Laura Horton re: Comments on the Supplemental Memo to the Planning Commission with Response to Public Comments on IS/MND for the Cannery Park Hanover Project, November 4, 2015, **Attachment A**.

⁴ CEQA §§21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

I. Greenhouse Gas Emissions

The City's response regarding our revised calculation of the Project's service population to estimate GHG emissions is not supported and merely references the same flawed assumption as the IS/MND.⁵ Our calculations were derived directly from the City's Housing Element;⁶ whereas the City argues for reliance on a calculation that unreasonably assumes that 2.18 people will occupy each unit, including studio apartments.

Mr. Hagemann and Ms. Jaeger provide further detailed explanation on how they arrived at the revised calculation of a more realistic service population.⁷ Again, they demonstrate that the City's assumption of over two people per unit is unrealistic and not supported by actual evidence that "represents the number of people that typically reside in a renter-occupied unit in the City of San Jose."⁸ Their analysis again shows a significant GHG impact.

The City justifies its conclusion regarding GHG emissions by stating that the project "is intended to reduce vehicle trips and related GHG emissions by increasing residential density and ground floor retail on an infill site in the central portion of the City. . ."⁹ Regardless of whether the Project is intended to reduce the City's overall GHG emissions, the Project must comply with CEQA and incorporate GHG reduction measures if it exceeds BAAQMD thresholds.

As Mr. Hagemann and Ms. Jaeger demonstrate in their comments, when a more reasonable service population is used in calculating the Project's GHG emissions, one that comes directly from the City's Housing Element, those thresholds are exceeded and the Project must incorporate GHG reduction measures.¹⁰

⁵ Supplemental Memo, p. 8.

⁶ *City of San Jose 2014-2023 Housing Element*, City of San Jose, October 2014, p. II-19, http://www.hcd.ca.gov/housing-policy-development/housing-resource-center/plan/he/housing-element-documents/san_jose_5th_draft100314.pdf.

⁷ SWAPE Comments, p. 2 – 5.

⁸ *Id.*, at 3.

⁹ Supplemental Memo, p. 8.

¹⁰ SWAPE Comments, p. 5.

II. Hazards And Hazardous Waste

Regarding contaminated soil and water on the Project site, Mr. Hagemann and Ms. Jaeger find that the City's response to our comments "is inadequate" and that the Supplemental Memo "actually confirms" their previous comment regarding likely dewatering for the Project.¹¹ The Supplemental Memo confirms that shallow groundwater has been encountered at depths of 10 feet and although the City asserts that this groundwater is discontinuous and receives "little or no recharge,"¹² Mr. Hagemann and Ms. Jaeger find that this assertion "is unsubstantiated and is not supported by lithologic cross sections based on soil borings and ignores other findings of shallow groundwater."¹³ Indeed, Mr. Hagemann and Ms. Jaeger point to the Project's own Phase I Environmental Site Assessment to show that recharge of shallow groundwater is "highly likely" from infiltration of precipitation and from application of landscaping water on and adjacent to the Project site.¹⁴

The City's response further confirms our argument by stating that excavations for utilities will reach depths of 10 feet.¹⁵ Therefore, Mr. Hagemann and Ms. Jaeger find that there is substantial evidence supporting a fair argument that excavation will intercept shallow contaminated groundwater, thus resulting in a significant impact on the health and safety of construction workers and the general public, as well as an impact on the environment from potential discharge to surrounding areas.¹⁶

The City defers the issue to the Regional Water Quality Control Board ("RWQCB") by stating that a cleanup plan is being developed,¹⁷ but that plan has yet to be approved and as we demonstrated in our comments, simply complying with applicable laws and regulations does not automatically foreclose the possibility that significant impacts may occur.¹⁸ Furthermore, the City has not demonstrated that the cleanup plan would address dewatering and resulting impacts from

¹¹ *Id.*, at 1.

¹² Supplemental Memo, p. 14.

¹³ SWAPE Comments, p. 1.

¹⁴ *Id.*, at 2.

¹⁵ Supplemental Memo, p. 14.

¹⁶ SWAPE Comments, p. 2.

¹⁷ Supplemental Memo, p. 15.

¹⁸ *Communities for a Better Env't v. California Res. Agency* (2002) 126 Cal.Rptr.2d 441, 453; *Keep our Mountains Quiet v. County of Santa Clara* (2015) Case No. H039707, p. 21.

encountering shallow contaminated groundwater. Because the City's own evidence shows a potentially significant impact, more detailed analysis and mitigation in an EIR is necessary to address this issue.

III. Cumulative Impacts

Regarding cumulative impacts, the IS/MND acknowledges that in order to use analysis from a previous CEQA document the following points must be discussed in the later CEQA document:

- a) Earlier Analysis Used. Identify and state where they are available for review.
- b) Impacts Adequately Addressed. Identify which effects from the above checklist were within the scope of and adequately analyzed in an earlier document pursuant to applicable legal standards, and state whether such effects were addressed by mitigation measures based on the earlier analysis.
- c) Mitigation Measures. For effects that are "Less than Significant with Mitigation Measures Incorporated," describe the mitigation measures, which were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.

The Supplemental Memo indicates that the City is relying on previous analysis in the Envision San José 2040 General Plan to address cumulative impacts, but the IS/MND did not fulfill CEQA's requirements that all the above issues be addressed. Furthermore, General Plan policies require that review of individual development projects take into account "cumulative air quality impacts from proposed developments for proposed land use designation changes and new development, consistent with the region's Clean Air Plan and State law."¹⁹

The City has failed to provide evidence for its conclusion that the IS/MND did not need to include information regarding cumulative impacts from the various proposed and current projects we listed in our comments simply because "the development is consistent with development capacities analyzed in the Envision 2040 FEIR."²⁰

¹⁹ IS/MND, p. 30 (General Plan Policy MS-10.2).

²⁰ Supplemental Memo, p. 16.

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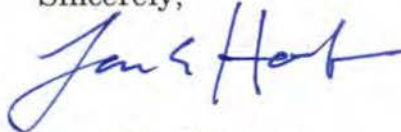
IV. Noise Impacts

Regarding noise impacts, noise expert Neil Shaw is currently evaluating the City's Supplemental Memo but thusfar has still not identified any substantial evidence submitted by the City that the Project's noise impacts would actually be mitigated.²¹ Furthermore, Mr. Shaw has found that the City's analysis is inconsistent with the City Code regarding noise standards.²² Given the short time-frame for reviewing and responding to the Supplemental Memo, further written comments from Mr. Shaw are forthcoming.

In sum, the City has not provided substantial evidence to support its conclusions and must prepare an EIR for the Project. As stated above, we reserve our right to submit supplemental written comments and testimony on impacts related to noise, cumulative impacts, air quality, GHGs, and hazards prior to final City Council action on the Project.

Thank you for your attention to these matters.

Sincerely,



Laura E. Horton

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Attachment

²¹ Personal Communication with Neil Shaw, Monday November 3, 2015.

²² *Id.*