

## ADAMS BROADWELL JOSEPH &amp; CARDOZO

A PROFESSIONAL CORPORATION

## ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721TEL: (916) 444-6201  
FAX: (916) 444-6209

etrescott@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000  
SO. SAN FRANCISCO, CA 94080TEL: (650) 589-1660  
FAX: (650) 589-5062DANIEL L. CARDOZO  
THOMAS A. ENSLOW  
PAMELA N. EPSTEIN  
TANYA A. GULESSERIAN  
MARC D. JOSEPH  
ELIZABETH KLEBANER  
RACHAEL E. KOSS  
JAMIE L. MAULDIN  
ROBYN C. PURCHIA  
ELLEN L. TRESMOTT

July 25, 2013

VIA U.S. MAIL AND E-MAILGeoff Bradley and Heather Hines  
City of Petaluma, Planning Division  
11 English Street  
Petaluma, CA 94952  
gbradley@ci.petaluma.ca.us  
hhines@ci.petaluma.ca.us**Re: Comments on Initial Study/Mitigated Negative Declaration for  
the Riverfront Mixed Use Project (File #11-TSM-0130)**

Dear Mr. Bradley and Ms. Hines:

We are writing on behalf of the **Petaluma Residents for Responsible Development** to submit comments on the Initial Study and Mitigated Negative Declaration (“IS/MND”) prepared by the City of Petaluma (“City”) for the Riverfront Mixed Use Project (“Project”) proposed by Basin Street Properties, LLC (“Applicant”). The Project requires a Tentative Subdivision Map for the development of a new mixed-use community on 39.4 acres of riverfront land. The Project includes 273 residential units (single-family homes, apartments, townhomes and live-work units), a 120-room hotel, 60,000 square feet of office space, 30,000 square feet of retail space, and 4 acres of parks. The Project will also include a temporary emergency access route (until a new river crossing is constructed in the future), a 3.65-acre riverfront park on state-owned property, a trail under Highway 101, and the dedication of land for a 10,000 square foot community boat house and small boat launch dock.

As explained more fully below, the IS/MND prepared for the Project does not comply with the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 *et seq.* The City may not approve a Tentative Subdivision Map until these flaws are addressed through the preparation

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of an Environmental Impact Report (“EIR”) that analyzes all of the Project’s potentially significant impacts, and incorporates all feasible mitigation measures to minimize those impacts.

## I. STATEMENT OF INTEREST

Petaluma Residents for Responsible Development (“Petaluma Residents”) is an unincorporated association of individuals and labor unions that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. **The association includes Mitch Clarey, Frank Cuneo, Richard Kenney, Roger Burk, the Sonoma, Mendocino, and Lake Counties Building and Construction Trades Council, its affiliated local unions, and their members and their families who live and/or work in the City of Petaluma and Sonoma County.**

Individual members of Petaluma Residents and the affiliated unions live, work, recreate and raise their families in Sonoma County, including the City of Petaluma. They would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite. Petaluma 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 it less desirable for businesses to locate and people to live there.

## II. SUMMARY OF COMMENTS

4-39 The IS/MND fails to meet the informational and public participation requirements of CEQA because it does not adequately describe the existing environmental setting or the evidence supporting the City’s environmental conclusions. Furthermore, the City has failed to provide the public with timely access to supporting Project documents. As a result, Petaluma Residents and the general public have been precluded from meaningfully participating in the public review and comment period for the IS/MND.

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Furthermore, substantial evidence exists that the Project may result in significant impacts, even with the mitigation imposed. These impacts include, but are not limited to, hazardous materials impacts, geologic hazards impacts, flooding impacts, impacts from greenhouse gas emissions, traffic impacts, school impacts, and potential land-use impacts. Because there is substantial evidence supporting a fair argument that the Project may have one or more significant effects on the environment, the County cannot approve an IS/MND and must instead prepare an EIR. These issues are discussed more fully below.

4-40 **III. THE CITY HAS FAILED TO PROVIDE TIMELY INFORMATION ABOUT THE PROJECT**

On June 13, 2013, Residents submitted a Public Records Act request to the City (“PRA request”), seeking all public records related to the Project. Counsel for the City informed Residents in a letter dated June 24th that the City was invoking its right to extend the deadline to respond to the PRA request. A week later, the City indicated that documents would be “made available on a rolling basis” beginning July 10th. On July 10th, Residents received 29 pages of invoices from the law firm of Meyers Nave, with almost all content redacted, and an e-mail stating that the Project file was available at the City’s office. Petaluma Residents requested a copy of the Project file, and received it on July 24th, just one day before the July 25th comment deadline for the IS/MND. The City has indicated that copies of e-mails responsive to the PRA request will be made available at a later date, but the new City Attorney has recently moved offices, which caused a delay in the City’s response.

On June 26th, Residents sent a letter to the City requesting immediate access to all documents referenced in the IS/MND, per the requirements of CEQA.<sup>1</sup> Petaluma Residents specifically requested 15 documents that were referenced in the IS/MND but were not listed as “References.” The City posted most of IS/MND references on its website, but only posted one of the 15 documents specifically requested by Petaluma Residents. Also, on July 18th, Petaluma Residents sent a letter to the City Attorney requesting more information and disclosure of documents withheld on the basis of the “deliberative process privilege” and the “common interest doctrine.” The City Attorney has not yet responded. Finally, Petaluma Residents e-mailed staff requesting attachments and pages of technical reports that

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<sup>1</sup> CEQA, Pub. Resources Code § 21092(b)(1); CEQA “Guidelines,” 14 Cal. Code Regs. §§ 15072(g)(4), 15087(c)(5).  
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were not posted online. Staff was responsive to these requests, but in some cases the requested pages are not yet available.

On June 26th, Residents sent a letter to the City requesting a 30-day extension of the public comment period, until August 5, 2013. The City agreed to extend the public comment deadline by only 20 days, until July 25th. Because Petaluma Residents have not yet had a chance to review the Project file, e-mails, withheld documents, and potentially other public documents related to the Project, its ability to meaningfully review and comment on the Project's environmental impacts and the City's analysis and mitigation of those impacts has been hindered. Petaluma Residents reserves the right to supplement these comments before the Project reaches the Planning Commission and ultimately the City Council for approval.

#### **IV. PREPARATION OF AN EIR IS REQUIRED BECAUSE SUBSTANTIAL EVIDENCE EXISTS THAT THE PROJECT MAY RESULT IN SIGNIFICANT, UNMITIGATED IMPACTS**

4-41 CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.<sup>2</sup> "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."<sup>3</sup> 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 reached ecological points of no return."<sup>4</sup> CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.<sup>5</sup> CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard. Under that standard, a lead agency "shall" prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.<sup>6</sup>

<sup>2</sup> See CEQA § 21000; CEQA Guidelines § 15002.

<sup>3</sup> *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).

<sup>4</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>5</sup> See CEQA § 21100.

<sup>6</sup> 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* 2912-005j

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In contrast, a mitigated negative declaration may be prepared instead of an EIR only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

(1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur*, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may* have a significant effect on the environment.<sup>7</sup>

Courts have held that “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”<sup>8</sup> The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.<sup>9</sup> An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.<sup>10</sup>

“Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions

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(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.

<sup>7</sup> CEQA § 21064.5 (emphasis added).

<sup>8</sup> E.g. *Communities For a Better Env’t. v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320.

<sup>9</sup> *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

<sup>10</sup> *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

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might also be reached.”<sup>11</sup> Substantial evidence can be provided by technical experts or members of the public.<sup>12</sup>

With respect to this Project, the IS/MND fails to satisfy the basic purposes of CEQA. The IS/MND fails to adequately describe the existing environmental conditions, adequately investigate and analyze the Project’s potentially significant impacts, and provide substantial evidence to conclude that impacts will be mitigated to a less-than-significant level. Because the IS/MND lacks basic information regarding the Project’s potentially significant impacts, the IS/MND’s implicit conclusion that the Project will “clearly” have a less-than-significant impact on the environment is unsupported.<sup>13</sup> Because the City failed to gather the relevant data to support its finding of no significant impacts, and substantial evidence (summarized below) shows that the Project may result in potentially significant impacts, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

**A. Hazardous Materials in Soil and Groundwater**

1. Substantial evidence exists of undisclosed soil contamination at the Project site

4-42

The IS/MND incorrectly states that only low level concentrations of heavy-end petroleum hydrocarbons (motor oil and diesel) were detected in soil and groundwater on the Project site, attributable to “general historic industrial activity in the area rather than an onsite source.”<sup>14</sup> The IS/MND further incorrectly concludes that significant concentrations of hazardous materials “were not identified in environmental site assessments for the project.” Despite concluding that there was no evidence of potential soil contamination impacts, the IS/MND nonetheless includes two mitigation measures intended to address potential soil contamination impacts: (1) that the quality of the soil stockpiled on the Project site “be reaffirmed” by following the Department of Toxic Substance Control’s (“DTSC”)

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<sup>11</sup> CEQA Guidelines § 15384(a).

<sup>12</sup> E.g. *Citizens for Responsible and Open Gov’t. v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 (substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy); see also *Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1117-1118 (substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing); *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

<sup>13</sup> CEQA § 21064.5.

<sup>14</sup> IS/MND at p. 65.

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Clean Imported Fill Material Information Advisory; and (2) that a soil and groundwater management plan be drafted that includes health and safety measures for construction workers “in the event that potentially affected soil or groundwater is encountered during construction.”

Substantial evidence exists that the IS/MND’s description of the site as essentially free from potentially significant contamination is incorrect. To the contrary, the Environmental Site Assessments (“ESA”) prepared for the Project site document multiple sources of significant or potentially significant contamination. Furthermore, the proposed mitigation is not sufficient to protect worker health and the health of those who will live on or use the Project site.

Contrary to the IS/MND’s assertion that there have been no historic onsite activities that could have contaminated the property, the Phase I Environmental Site Assessment (“ESA”) prepared in 2001 for a different version of the proposed Project is not a lengthy document, but it reveals a significant history of potentially contaminated and hazardous materials being stored and spread on the Project site. Since 1914, the site has routinely been used for the disposal of significant amounts of hydraulic dredge spoils from the Petaluma River. The Pomeroy Corporation constructed a railroad spur that terminated on the western part of the site, which was presumably used to load and unload materials for the adjacent Pomeroy industrial plant. This part of the site was also used by Pomeroy as a storage yard for hazardous materials. A site visit in 1999 described and photographed this area as an open field used by Pomeroy to store old fuel tanks and dozens of 55-gallon drums and 5-gallon buckets that were half-full of petroleum and other unidentified chemicals and liquids, some of which were tipped over. The northern part of the site was used by the City in the 1960’s and 1970’s for settling ponds for its wastewater treatment plant. In the 1990’s, the Pomeroy Corporation used this area to spread petroleum-contaminated soil from underground remediation projects at its plant.

4-43 The 2012 Phase I ESA prepared for the Project discloses that the current stockpiles of soil in the northern part of the Project site came from nine different sources within the formerly industrial area that surrounds the site, including eight construction sites and various City projects. At least half of these sites were contaminated and were subject to regulatory cleanup actions. While some of the soil imported to the site was reportedly clean, and was tested for contamination before being stockpiled, the Phase I ESA indicates that most of these soil tests are

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not available. None of the Project site history, with the exception of the disposal of dredged spoils, is revealed in the IS/MND.

4-44 Moreover, the soil and groundwater samples from the Project site that were tested in 2001 reveal much more than “low levels” of motor oil and diesel hydrocarbons. To the contrary, these samples provide substantial evidence that the Project site may be contaminated at levels that may pose significant health and safety risks to workers and residents.

First, the 2012 Phase I ESA incorrectly reports that 16 mg/kg of diesel hydrocarbons and 94 mg/kg of motor oil hydrocarbons were the maximum concentrations detected in the 2001 soil samples. It concludes that these levels are below the applicable Environmental Screening Levels (“ESL’s”) for petroleum hydrocarbons, and therefore no health risk is present. This is also incorrect. The 2001 investigation included two trenches (Trench 1 and Trench 2) that were dug in the vicinity of the City’s former settling ponds and Pomeroy’s contaminated soil disposal area. Soil tests from these trenches had maximum concentrations of 88 mg/kg of diesel hydrocarbons and 220 mg/kg of motor oil hydrocarbons, well over double what was reported in the 2012 Phase I ESA.<sup>15</sup>

Both diesel and motor oil hydrocarbons are classified as “middle distillates,” and the applicable ESL for these hydrocarbons in soil that is used for residential land uses is 100 mg/kg.<sup>16</sup> Soil tested from both Trench 1 and Trench 2 exceeded this level. As noted in the 2001 Phase II ESA, there is no apparent pattern to the distribution of hydrocarbons throughout the Project site, “except for the higher average levels in the treatment pond area.” The laboratory notes for soil samples from the trenches also state that oil and diesel compounds were “significant.”<sup>17</sup> Accordingly, a fair argument exists that disturbance of this soil and the placement of residences on this soil may result in health impacts for workers, project residents, and members of the public.

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<sup>15</sup> Compare 2012 Phase I ESA (Iris Environmental) p. 7 and Table 2, with 2001 Phase I ESA (Kleinfelder) p. 14 and Table 2.

<sup>16</sup> The applicable ESL’s are established by the San Francisco Bay Regional Water Quality Control Board. A table of the May 2013 ESL’s can be viewed here: [http://www.waterboards.ca.gov/sanfranciscobay/water\\_issues/programs/ESL/Lookup\\_Tables\\_Summary\\_May\\_2013.pdf](http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/ESL/Lookup_Tables_Summary_May_2013.pdf)

<sup>17</sup> *Ibid.*, p. 59 of 151, references in table to fn. (b) and (g).  
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Second, although nearly half of the collected soil samples were not tested for lead, several of the samples that were tested came close to or exceeded the ESL for lead in residential soils. Table 2 in the 2012 Phase I ESA incorrectly lists the ESL for lead as 200 mg/kg. The applicable ESL for lead in soil used for residential land uses is 80 mg/kg.<sup>18</sup> The maximum lead concentration in the soil samples from the Project site that were tested for lead was 149 mg/kg, almost twice as high as the applicable ESL. This sample was taken from a depth of 10 feet below the surface; samples closer to the surface in this location were not analyzed.<sup>19</sup> Another soil sample, taken hundreds of feet away, contained 75 mg/kg of lead at four feet below the soil surface. This concentration dissipated to 15 mg/kg at six feet below the surface. Accordingly, the available information shows the concentration of lead in the soil increasing as one gets closer to the surface.

While no samples were tested closer than four feet from the service, a fair argument may be based on the limited facts in the record. An agency is not allowed to hide behind its own failure to gather relevant data.<sup>20</sup> An incomplete agency record thus acts to “enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.”<sup>21</sup> Because no samples were tested closer than four feet from the surface, a reasonable inference exists that soils closer to the surface will exceed the 80 mg/kg ESL for lead.<sup>22</sup>

Third, a volatile organic compound (“VOC”) called carbon disulfide was detected in the location of the City’s former wastewater settling ponds, where Pomeroy disposed contaminated soil.<sup>23</sup> According to the Material Safety Data Sheet for carbon disulfide, it is extremely hazardous in cases of exposure by skin contact, eye contact, ingestion, or inhalation.<sup>24</sup> Carbon disulfide is toxic to the kidneys, nervous system, and liver, and is flammable.<sup>25</sup>

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<sup>18</sup> See footnote 15, *supra*.

<sup>19</sup> 2001 Phase I ESA (Kleinfelder) p. 13.

<sup>20</sup> *Sundstrom v. County of Mendocino* (1988) 2020 Cal.App.3d 296, 311.

<sup>21</sup> *Gentry v. City of Murietta* (1995) 36 Cal.App.4th 1359, 1378-1379, citing *Sundstrom, supra*.

<sup>22</sup> *Id.*

<sup>23</sup> 2001 Phase I ESA (Kleinfelder) p. 13.

<sup>24</sup> <http://www.sciencelab.com/msds.php?msdsId=9927125>

<sup>25</sup> *Ibid.*

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Fourth, the maximum concentrations of cadmium, chromium, lead, nickel, zinc, and petroleum hydrocarbons measured in the groundwater beneath the Project site were astronomically higher than their maximum groundwater ESLs.<sup>26</sup> The 2012 Phase I ESA tries to explain this away, by pointing out that the reported concentrations may have been skewed by sediment in the groundwater samples, and that the correlating soil tests did not reveal high levels of metals. A close review of the testing shows, however, that in the sampling locations with the highest reported concentrations of metals in groundwater, particularly sites K-5 and K-7, the correlating soil samples were not analyzed for metals at all.<sup>27</sup>

Even if the 2001 Phase II ESA used a poor groundwater testing technique and did not perform consistent and corollary tests for metals and other contaminants throughout the Project site, this does not mean that the significant levels of reported groundwater pollution can be ignored. The 2012 Phase I ESA tries to explain that the groundwater will not be used for drinking, but the relevant ESL's are put in place to meet "Aquatic Habitat Goals," even in areas where groundwater will not be used for drinking.<sup>28</sup> This is relevant for dewatering operations associated with soil preloading and Project construction, discussed below. Overall, there is substantial evidence of significant soil and groundwater contamination on the Project site.

## 2. Mitigation is inadequate

4-45 A fair argument exists that the proposed mitigation is not sufficient to ensure that impacts from soil and water contamination will be reduced below a level of significance. Furthermore, the proposed mitigation for contamination impacts is legally inadequate because it is unenforceable, vague and relies upon undisclosed and improperly deferred details. First, compliance with DTSC's Clean Imported Fill Material Information Advisory is not intended to reduce risks associated with potentially contaminated stockpiled soil below a level of significance. To the contrary, the Advisory strongly recommends against using any fill from a site with a history of industrial use and/or contamination, and it recommends testing soil from unverified sites *before* moving it to the project site.<sup>29</sup> Furthermore, the

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<sup>26</sup> 2012 Phase I ESA (Isis Environmental) Table 3; *see also* fn. 15, *supra*.

<sup>27</sup> 2001 Phase II ESA (Kleinfelder) Table 1 (soil from K-5 and K-7 not analyzed for metals) and Table 3 (groundwater from K-5 and K-7 had highest levels of metals).

<sup>28</sup> *See* footnote 15, *supra*.

<sup>29</sup> [http://www.dtsc.ca.gov/Schools/upload/SMP\\_FS\\_Cleanfill-Schools.pdf](http://www.dtsc.ca.gov/Schools/upload/SMP_FS_Cleanfill-Schools.pdf)  
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Advisory does not provide specific performance criteria, such as human health criteria or screening thresholds, for determining if imported fill is safe for use.

Second, the mitigation measure requiring a soil and groundwater management plan “in the event that potentially affected soil or groundwater is encountered during construction” is unenforceable and meaningless because no preconstruction testing is required to determine if the soil and groundwater encountered during construction is contaminated and no performance standards are identified for determining if hazardous levels of contamination have been encountered.

In addition, the details of the soil and groundwater management plan are improperly deferred. Deferring formulation of mitigation measures to post-approval studies is generally impermissible.<sup>30</sup> Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.<sup>31</sup> If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.<sup>32</sup> The Courts have held that simply requiring a project applicant to obtain a future report and then comply with any recommendations that may be made based upon the report is insufficient to meet the standard for properly deferred mitigation.<sup>33</sup>

4-46 Because substantial evidence exists that the Project may result in unmitigated impacts from soil and groundwater contamination, an EIR must be prepared to fully evaluate these impacts. Further Phase II or Phase III ESA testing of soil and groundwater should be conducted, and an adequate site cleanup and remediation plan should be prepared as part of the EIR analysis.

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<sup>30</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; CEQA § 21061.

<sup>31</sup> *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical Gardens Foundation v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604, fn. 5.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

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**B. Substantial Evidence Exists of Severe Geologic Hazards that May Pose a Significant Hazard to Proposed Project Structures and Infrastructure**

1. Potential impacts are significant, but are only partially identified

4-47 The Project site sits on former marshland. The IS/MND relies on a preliminary geotechnical (“soils”) report prepared seven years ago for a different version of the Project, and two update letters of three to five pages in length. These documents conclude that the “soft soil” conditions will make it very difficult to safely construct the proposed Project.

First, the soils report finds that the Project site is underlain by a thick layer of “bay mud.” The mud is approximately 15 to 20 feet thick near the northern part of the site, farthest from the river, and approximately 35 to 40 feet thick near the southern part of the site near the river. Bay mud is highly compressible, and the soils report estimates that the increased weight load caused by adding fill and constructing roads and structures will cause the Project site to settle (i.e. to sink or subside) by up to two feet, mostly in the first five years but continuing for several decades. This will cause damage to buildings, streets, underground utilities, parks, and other facilities. It would also increase the Project’s flood risk.

4-48 Second, the soils report concludes that the Project site has a very high potential for strong seismic shaking caused by seismic activity at the nearby Rodgers Creek and San Andreas faults. This can lead to soil liquefaction and related settlement and lateral spreading of soils, particularly loose sandy soils. The report acknowledges that one of its soil borings identified a nine-foot deep layer of sandy soil in the center of the Project site, likely caused by an old stream meander. A reasonable inference exists that the old stream meander bisects the entire Project site with a swath of loose, sandy soil. The soil tests conducted for the preliminary soils report, shown in Figure 2 of the soils report, were a series of only five holes drilled hundreds of feet apart, in a line from north (away from the river) to south (near the river). Therefore, if the old stream meander bisects the site from east to west, as it naturally would, only one of these test holes would have—and did—detect it. Although the soils report concludes that the old stream meander is “localized” and therefore liquefaction and seismic settlement would not be widespread on the Project site, there is still a significant risk of liquefaction along

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the route of the old stream meander, the location and width of which has not yet been determined.

4-49 Third, the soils report finds that the strip of land along the bank of the Petaluma River has the potential for lurching and lateral spreading. The preliminary soils report was concerned with potential hazards to structures, and therefore concluded that this lurching and spreading would be acceptable, because it would only occur in the public park that is planned for the river bank area. The current project, however, proposes several structures along the river bank that were not taken into account in the soils report. These include a planned 10,000 square foot boat house, boat launch and public dock.<sup>34</sup> The soils report conclusion that geologic conditions along the river bank pose a potential hazard to structures creates a fair argument that the development along the river bank contemplated by the IS/MND may result in significant hazard impacts.

Because substantial evidence exists that the Project site's unstable soils may pose a significant hazard, an EIR must be prepared for the Project.

4-50 2. Proposed mitigation measures for impacts caused by soil settlement and liquefaction are infeasible and inadequate

Mitigations measures under CEQA must be feasible.<sup>35</sup> They cannot be remote and speculative.<sup>36</sup> If a mitigation measure might not be effective in minimizing a significant effect, the lead agency must acknowledge this uncertainty in an EIR, and adopt a statement of overriding considerations recognizing that the mitigation measure might not be successful.<sup>37</sup> Also, the lead agency cannot put off its analysis of feasible mitigation by ordering a later report unless the agency either sets standards for such mitigation or demonstrates how the impact can be mitigated in the manner described in the CEQA document.<sup>38</sup>

Despite the fact that an update to the 2006 preliminary soils report was prepared five years later, in 2011, the soil engineering consultants have still not identified feasible mitigation measures for addressing soil settlement. The 2011 update states that "development of settlement mitigation options will require more

<sup>34</sup> See description of planned boathouse facilities at <http://petalumasmallcraftcenter.org/>

<sup>35</sup> CEQA Guidelines § 15126.4(a)(1).

<sup>36</sup> *Federation of Hillside & Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260.

<sup>37</sup> *Citizens for Open Gov't v. City of Lodi* (2012) 205 Cal.App.4th 296, 322.

<sup>38</sup> *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 915.  
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detailed investigation, analysis and consultation.” It notes that there are four common mitigations for this impact: (1) using deep foundations made of driven piles or drilled piers; (2) “preloading” or precompression of the site to force soil settlement before construction; (3) using rammed aggregate piers (“RAP”) to reduce, but not eliminate, future settlement; and (4) using stiffened foundations to “withstand” the impact of soil settlement, but not reduce it.

The IS/MND and soils report conclude that it is not feasible to apply these measures to the entire project. They acknowledge that the first commonly used measure, pile foundations, would not be cost-effective given the depth of the bay mud, and that the only “likely” solution would therefore be a combination of the remaining three measures.

However, the IS/MND only requires compliance with the second measure, preloading the site to induce settlement, “if the development timeline of the project allows.” Although the soils report suggests that the northern part of the site could be developed first, and fill from that area plus imported fill could be used for preloading the southern part of the site, the IS/MND notes that “it is not likely that phasing of the project would allow development of the northern portion of the site prior to the southern portion of the site as suggested in the geotechnical review to mitigate the settlement hazard.” Furthermore, nowhere in the IS/MND or the soils report is there any discussion of how much fill would be needed in order to compress up to 40 feet of bay mud in the southern part of the site, how long the precompression process would take, or where the fill would be disposed of after use. In other words, there is no evidence that this measure is even feasible, and it actually appears from the IS/MND that this measure will not be feasible.

The IS/MND also acknowledges that the third common mitigation measure, using RAP to strengthen the soil and reduce settlement, “would likely not be able to reach the bottom of the mud layer at the south half of the site,” and would therefore only be appropriate at “certain locations.” This is confirmed by the 2011 soils report update, which states that the “maximum practical depths for RAP are on the order of 20 to 30 feet.”

The fourth measure, using stiffened building foundations, is not a measure that will reduce or avoid the degree of soil liquefaction and settlement on the Project site; it will simply help structures withstand these potentially significant impacts. Stiffened foundations will also do nothing for roads, utilities, parks, and other Project facilities. By itself, this is not an adequate mitigation measure to

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reduce impacts, which are caused by building a new community on soft bay mud, to a less than significant level. Most projects use deep foundations that extend beyond soft soil to more suitable soil, but this mitigation measure has been rejected as uneconomical. There is no substantial evidence that the limited mitigation recommended in the IS/MND will reduce Project impacts to a less than significant level. An IS/MND is inappropriate and an EIR must be prepared.

- 4-51 The City must also prepare an EIR for the Project to analyze the potentially significant impacts of any proposed mitigation to address these soil instability impacts, including impacts of importing additional fill to preload the Project site soils, and from potentially contaminated groundwater dewatering associated with preloading. The import and export of large amounts of fill, for example, is likely to cause its own significant environmental impacts, including but not limited to air quality and construction traffic impacts. Using “wicking drains” to reduce groundwater during preloading would threaten aquatic habitats, if the groundwater is discharged into the Petaluma River.

**C. Potential Floodway Impacts Are not Adequately Identified and Mitigated**

- 4-52 The IS/MND states that the Project site is outside of the 100-year flood plain, based on the City’s General Plan and preliminary Flood Insurance Rate Maps (“FIRM”) accepted by the Federal Emergency Management Agency (“FEMA”) in April 2012.<sup>39</sup> However, both the City’s and FEMA’s website explain that the April 2012 preliminary FIRMs were revised in June 2013, based on a recent flood study, and that FEMA is now updating its flood maps to reflect these revisions.<sup>40</sup>

The June 2013 revised FIRMs expand the length and width of the Special Flood Hazard Area that borders the Project site to the east and south. This “floodway” is an area that “must be kept free of encroachment” in order to avoid a substantial increase in flood height.<sup>41</sup> The floodway now extends north to Hopper Street, in the area of the proposed Project townhomes, and encroaches further into

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<sup>39</sup> IS/MND p. 42.

<sup>40</sup> <http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=49&choProj=372>;  
<http://www.cityofpetaluma.net/pubworks/plan-flood.html>

<sup>41</sup> The June 2013 revised preliminary FIRM for the Project site is found here, by clicking on the link labeled “06097C1001F (Revised Preliminary)” in the the “Preliminary FIRM Panel” menu under “Project Documents”:

<http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=49&choProj=372>  
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the southeast corner of the Project site, in the area of the proposed community boathouse and dock.<sup>42</sup> Contrary to the IS/MND, the base flood elevation is now 9 feet instead of 10, and the floodway strip that borders the property is much larger than 5 feet in width. The IS/MND fails to examine whether it will be feasible to construct a boathouse and dock without encroaching into the floodway, and if not, how that would affect the Project's impacts on recreation and land-use consistency.

**D. Greenhouse Gas Emissions Thresholds Will Be Exceeded and Mitigation Should be Required**

4-53

In this day and age in California, it is very rare to see a proposed large mixed-use project that does not expressly incorporate greenhouse gas reduction measures as a fundamental part of its design, construction, and operation. This is such a Project.

The City has chosen to use the numeric greenhouse gas ("GHG") emissions standards that were adopted by the Bay Area Air Quality Management District ("BAAQMD") in 2011 and are now under judicial review. Under these standards, a project's GHG emissions are considered cumulatively significant and must be mitigated unless the project falls below 1,100 million tons of GHG emissions per year ("MTY"), or, if that threshold is exceeded, falls below an efficiency metric of 4.6 MTY per capita (including residents and employees).

A GHG emissions analysis was prepared for the Project, which estimated that construction-related emissions will not exceed 876 MTY, and operational emissions will be 4,696 MTY (well above the 1,100 MTY threshold), but per capita emissions will be approximately 4.13 MTY, below the threshold for energy efficiency. The data used to calculate these estimates (Attachment 1 to the GHG analysis) was not made available until July 23rd, and will require further review. However, several of the basic assumptions described in the GHG analysis are clearly speculative or inaccurate. There is substantial evidence to support a fair argument that Project GHG emissions will be cumulatively significant and should be mitigated.

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<sup>42</sup> Changes can be viewed by visiting the FEMA's website, *ibid.*, clicking on the menu for "Map" under "Project Documents," and selecting one of the files labeled "Changes since last FIRM": 2912-005j



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1. The IS/MND underestimates Project-related GHG emissions

4-54

First, the GHG analysis calculates that 272 residential units would be constructed, but the Project description now includes 273 units.<sup>43</sup> This miscalculation leads to a reduced estimated amount of GHG emissions caused by the Project.

4-55

Second, the GHG analysis improperly reduced the Project's GHG emissions by changing several of the default assumptions built into the 2011 "CalEEMod" model. For operational emissions, the GHG analysis reduced the estimated emissions associated with electricity consumption, from 641.3 pounds per megawatt to just 288.8 pounds, a 55% reduction from the 2011 CalEEMod default assumption. The reason stated in the GHG analysis is that "in part" the Project may not be complete until 2020, and by that time PG&E will be required to have a renewable energy portfolio of 33 percent. The GHG analysis used the Public Utilities Commission's "GHG Calculator" to estimate this 55% reduction in electricity-related GHG emissions.

The significant reduction from the default assumption is unsupportable. The GHG Calculator is a model that can be manipulated in any number of ways by the user, to estimate potential future GHG emissions associated with statewide electricity production. The calculator does not provide hard answers, but instead allows users to "run their own scenarios" by varying the parameters associated with statewide future energy efficiency achievements and costs, electricity load, regulatory compliance, the effectiveness of the state's new cap and trade policy, and numerous other parameters.<sup>44</sup>

All of this is speculation. CEQA requires that when analyzing Project impacts, the lead agency "should normally limit its examination to changes in the existing physical conditions in the affected area *as they exist at the time the notice of preparation is published.*"<sup>45</sup> This language has been interpreted to mean that the lead agency does not have "carte blanche to select the conditions on some future,

<sup>43</sup> Compare 2012 GHG Analysis (Illingworth & Rodkin) pp. 5 with IS/MND p. 1.

<sup>44</sup> CPUC's GHG Calculator Revised Report (2010), pp. 18-21:

[http://ethree.com/documents/GHG%20update/CPUC\\_GHG\\_Revised\\_Report\\_v3b\\_update\\_Oct2010.pdf](http://ethree.com/documents/GHG%20update/CPUC_GHG_Revised_Report_v3b_update_Oct2010.pdf)

<sup>45</sup> CEQA Guidelines § 15126.2 (emphasis added); see also *id.* § 15125(a).  
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post-approval date.”<sup>46</sup> Even if the City could consider future GHG emissions related to energy consumption, there is no substantial evidence to support the conclusion in the GHG analysis that a 55% reduction in future energy-related GHG emissions is a reasonable expectation.

4-56 Third, the GHG analysis states that its emissions estimate for off-road construction equipment was reduced to 33% below the CalEEMod default assumptions, “to be consistent with the latest 2010 CARB estimates.”<sup>47</sup> The 2011 CalEEMod default assumption is based on 2007 equipment emissions levels. An adjustment for this Project is inappropriate, because there is no requirement that off-road construction equipment must meet CARB’s 2010 equipment standards. To the contrary, mitigation proposed to reduce construction-related air quality impacts only requires off-road construction equipment to meet CARB’s “2000 or newer certification standards.”<sup>48</sup>

Accordingly, a fair argument exists that the estimated Project emissions will be much higher than 4,696 MTY.

## 2. The IS/MND overestimates per-capita energy efficiency

4-57 The GHG analysis estimates that the Project will have approximately 718 residents and 420 workers. It uses general census data to estimate that each residential unit in the Project will house approximately 2.64 persons. It uses generic per-square-foot commercial estimates for the number of employees at offices, retail stores, and hotels. This approach greatly overestimates the number of residents and employees who will use the Project. As a result, estimated per capita energy use goes down, so that the Project appears to fall below the energy efficiency threshold of 4.6 MTY per capita. In other words, the greater the number of people who are estimated to use the Project site, the easier it is to meet the GHG efficiency metric.

The most recent estimate of Project residents and employees, contained in the Fiscal and Economic Impact Analysis (“FEIA”) for the Project, is much more accurate. As described in the FEIA, calculating the total number of Project

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<sup>46</sup> *Sunnyvale W. Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1379.

<sup>47</sup> 2012 GHG Analysis p. 4.

<sup>48</sup> IS/MND p. 30, Mitigation Measure AIR-2.  
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residents must take into account the fact that apartments typically have fewer people per unit.<sup>49</sup> Though the FEIA uses estimates similar to the GHG analysis for the number of people per unit in single-family and town homes, it estimates that the 100 apartments on the Project site will have an average of 1.2 people per unit.<sup>50</sup> The FEIA indicates that this estimate was verified by the Applicant itself, and is based on apartment occupancy rates for other apartment projects in the City with similarly sized units. Taking these factors into account, the FEIA estimates that the Project will house approximately 565 residents, which is much lower than the 718 residents predicted in the GHG analysis.<sup>51</sup>

Similarly, the FEIA estimates that the Project will employ approximately 348 people, which is much lower than the 420 estimated in the GHG analysis.<sup>52</sup> The FEIA explains that its employment estimates were confirmed by the Applicant, and were based on the Applicant's own experience operating similar developments. The FEIA estimates that there will be more hotel staff (25 rather than the 20 estimated in the GHG analysis), and also estimates that there will be 3 employees at the proposed apartments. However, the estimates of employees at the Project's commercial space ranges from 2.5 employees per 1,000 square feet of commercial retail space, 3 employees per 1,000 square feet of restaurant space, and 4 employees per 1,000 square feet of office space. This is more realistic and slightly more conservative than the GHG analysis, which estimated 3.3 employees per 1,000 square feet of retail and restaurant space, and 5 employees per 1,000 square feet of office space.<sup>53</sup>

Overall, the FEIA estimates a total of 913 residents and employees on the Project site, whereas the GHG analysis estimates 1,138. Using the FEIA estimates, per capita energy use would be at least 5.14 MTY, which is far above the 4.6 MTY threshold of significance for energy efficiency. Accordingly, substantial evidence exists that the Project will result in significant GHG emissions.

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<sup>49</sup> 2013 FEIA (Keyser Marston Associates) p. 24.

<sup>50</sup> *Ibid.* p. 23.

<sup>51</sup> *Ibid.* p. 24.

<sup>52</sup> *Ibid.*

<sup>53</sup> 2012 GHG Analysis (Illingworth & Rodkin) p. 6.

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As stated in the BAAQMD's GHG Guidelines, "[w]here operational-related emissions exceed project thresholds, lead agencies are responsible for implementing all feasible mitigation measures to reduce the project's GHG emissions."<sup>54</sup> An EIR must be prepared for the Project using more realistic estimates of GHG emissions and per-capita energy use (based on the project-specific FEIA estimates), and must adopt feasible mitigation measures to reduce potentially significant cumulative impacts from GHG emissions.

### **E. Cumulative Traffic Impacts**

#### **1. Substantial evidence exists that daily trips are higher than estimated in the IS/MND**

4-58

Substantial evidence exists that traffic impacts will be significantly higher than estimated in the IS/MND. There is a large discrepancy between the current and prior traffic trip estimates for the proposed office space. A technical memorandum for a prior version of the Project that included 40,000 square feet of office space was prepared in 2010.<sup>55</sup> It reportedly applied the same standard trip generation rate for office use as the current traffic study for the Project.<sup>56</sup> The technical memorandum concluded that 40,000 square feet of office space would generate approximately 659 daily trips, including 90 peak morning trips and 124 peak evening trips.<sup>57</sup>

The more recent traffic analysis for the Project applied the same standard rate to 60,000 square feet of office space, and came up with a result almost identical to the prior estimate for 40,000 square feet, but with much fewer peak evening trips: 661 daily trips, including 93 peak morning trips and 89 peak evening trips.<sup>58</sup> The IS/MND contains no evidence or analysis demonstrating that the prior analysis was in error. Accordingly, the prior analysis provides substantial evidence that traffic impacts will be substantially greater than assumed in the IS/MND. An EIR

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<sup>54</sup>[http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines\\_Final\\_May%202012.ashx?la=en](http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines_Final_May%202012.ashx?la=en) (BAAQMD's updated 2012 Guidelines, p. 4-6; *see also* pp. 4-11 to 4-18 for suggested on-site mitigation measures).

<sup>55</sup> Feb. 23, 2010 Technical Memorandum from Bill Cisco to Vin Smith (Dowling Associates, Inc.).

<sup>56</sup> *Compare ibid.*, p. 1 and Exhibit 1 *with* 2012 Traffic Impact Study (W-Trans) p. 21 (both studies applied ITE's 8th Edition (2008) Code 710 (Office)).

<sup>57</sup> 2010 Technical Memorandum (Dowling Associates, Inc.) Exhibit 1.

<sup>58</sup> 2012 Traffic Impact Study (W-Trans) p.25, Table 8.

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must be prepared to fully evaluate and disclose potential impacts and to answer questions regarding the discrepancies in these analyses.

2. Substantial evidence exists that the Project may result in traffic impacts to city surface streets that have not been adequately analyzed or mitigated in the IS/MND

4-59

In 2008 the Sonoma-Marin Area Rail Transit (“SMART”) District approved the SMART rail project.<sup>59</sup> The project includes construction of a new SMART rail station in downtown Petaluma, and the introduction of passenger rail service. Development of the new rail station and introduction of rail service is expected to occur in the next few years. In February 2013, the City published an IS/MND for the “Petaluma Smart Rail Station Areas: TOD Master Plan.”<sup>60</sup> The Master Plan was approved by the City in June.<sup>61</sup> The TOD Master Plan describes the potential impacts of the new rail station, and sets forth the City’s plan for managing rail commuters and encouraging surrounding development.

Construction of the rail station and introduction of rail service through downtown is an approved project that has evolved to a point where its cumulative impacts can be measured against those of other proposed projects, including this Project. As described in the TOD Master Plan, the downtown SMART rail station is expected to draw up to 102 cars daily by 2015, increasing to 166 cars by 2025, and 247 cars by 2035.<sup>62</sup> The City plans to utilize temporary surface parking lots adjacent to the new station, until permanent lots are constructed.<sup>63</sup> The “baseline” traffic conditions analyzed for this Project considered nine other projects “that have been approved, but have not yet been constructed.”<sup>64</sup> However, these conditions fail to include the SMART rail project. The analysis must be revised to include the estimated commuter traffic that will be generated by the downtown Petaluma SMART rail station.

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<sup>59</sup> See the EIR for the project: <http://www2.sonomamarintrain.org/index.php/docs/eir/#DSEIR>

<sup>60</sup> <http://cityofpetaluma.net/cmgr/pdf/Petaluma.SAMP.MND.022813.pdf> (“TOD” stands for “transit oriented development”).

<sup>61</sup> <http://cityofpetaluma.net/cmgr/sapg.html>

<sup>62</sup> TOD Master Plan, p. 5-42: <http://cityofpetaluma.net/cmgr/pdf/samp-final.pdf>.

<sup>63</sup> *Ibid.* pp. 5-47 to 5-48; see also 2012 Station Access and Circulation Plan and Design Standards Memo, pp. 17-21: <http://cityofpetaluma.net/cmgr/pdf/final.access.memo.pdf>

<sup>64</sup> 2012 Traffic Impact Study (W-Trans) pp. 14-15.  
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4-60 Moreover, the SMART rail passenger service will operate at 15- to 30-minute intervals in the morning and evening peak commuting hours during the week.<sup>65</sup> Preliminary estimates are that SMART trains will cause an average delay of approximately 35 seconds every 15 minutes during peak morning and evening hours, at the Caulfield Lane rail crossing.<sup>66</sup> There will also be approximately six to eight freight trains using the rails each day, and it is not guaranteed that these trains will avoid peak commuting hours.<sup>67</sup> Nothing in the traffic study for the Project indicates that delays caused by passing trains were factored into the calculations for the estimated levels of service at relevant intersections, or estimated traffic queue lengths. The baseline analysis must be revised to include these foreseeable conditions. Because the SMART rail service may result in delays that were not included in the traffic study, a reasonable inference exists that when these delays are taken into account, the Project may result in significant additional traffic impacts.

4-61 Finally, the proposed traffic mitigation for the Project is inadequate. Under cumulative future conditions, the Project will have significant adverse traffic impacts at three intersections: Lakeville and D Streets, Lakeville Street and Caulfield Lane, and Hopper Street and Caulfield Lane.<sup>68</sup> These intersections are predicted to degrade from currently acceptable conditions to the worst possible condition, “LOS F,” which represents “forced flow or breakdown conditions” at those intersections.<sup>69</sup> Wait times during peak travel hours will exceed 80 seconds, and cars will likely wait through more than one traffic light cycle to clear the intersection.<sup>70</sup> This is a much more significant impact than the “LOS E” conditions predicted in the City’s General Plan EIR.<sup>71</sup>

4-62 The IS/MND requires the Applicant to partially mitigate its impacts at the Lakeville and Caulfield intersection by constructing minor improvements

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<sup>65</sup> <http://cityofpetaluma.net/cmgr/pdf/samp-final.pdf>, p. 1-10; *see also* October 19, 2009 letter regarding the Project from Steven J. Lafranchi & Associates entitled “Analysis of traffic delays due to anticipated passenger and freight service at the Caulfield Lane at-grade crossing.”

<sup>66</sup> 2009 Lafranchi letter, *ibid.*

<sup>67</sup> [http://www.sctainfo.org/pdf/smart/deir\\_ch2\\_%20project\\_description.pdf](http://www.sctainfo.org/pdf/smart/deir_ch2_%20project_description.pdf), p. 2-6; *see also* IS/MND p. 55 (estimating six freight trains during the day).

<sup>68</sup> 2012 Traffic Study (W-Trans) pp. 20 and 30 (note that upon reanalysis in accordance with these comments, more intersections may be adversely affected).

<sup>69</sup> *Ibid.* p. 10.

<sup>70</sup> *Ibid.*

<sup>71</sup> <http://cityofpetaluma.net/cdd/pdf/deir-without-exhibits.pdf>, pp. 3.2-24 to 3.2-35 (concluding that cumulative future traffic conditions would only result in “LOS E” conditions).

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(extending the stripe in the road and constructing a raised median). The IS/MND also requires the Applicant to make future fair-share payments to signalize the Hopper and Caulfield intersection, if and when a signal is needed as a result of extending Caulfield Lane over the Petaluma River.

No fair-share payments, however, are proposed to offset the Project's impacts at Lakeville and D Streets. Accordingly, the Project's impact to this intersection is significant and unmitigated, requiring preparation of an EIR.

The IS/MND cannot rely on the statement in the General Plan EIR that "installing additional lanes or expanding capacity" at this particular intersection would conflict with General Plan policies, because the General Plan EIR identifies other ways to reduce impacts at this intersection.<sup>72</sup> The EIR explains that future construction of the Caulfield Lane extension to Petaluma Boulevard South is designed to "reduce traffic congestion along the D Street and Washington Street corridors."<sup>73</sup> The General Plan EIR found that the following policies would reduce the impacts of congestion at City intersections that operate at LOS D or below:

5-P-2A Ensure new developments pay a fair share of mobility improvements and that those improvements are undertaken in context with that development.

5-P-11 Require proposed development to assist . . . in the funding and construction of the following improvements: . . . Caulfield Lane extension to Petaluma Boulevard South (southern crossing).<sup>74</sup>

The Applicant should fund its fair share of traffic mitigation fees for the Caulfield Lane extension, in proportion to its contribution to cumulative "LOS F" conditions at the intersection of Lakeville and D Streets. The payment should be calculated by assessing the Project's cumulative impacts at this intersection *without* the existence of the Caulfield Lane extension in place. Payment of fair share fees for this improvement is eminently reasonable, not only to offset significant traffic impacts, but also because the Project will rely on the Caulfield extension for its required permanent second access point.

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<sup>72</sup> *Ibid.* p. 3.2-35.

<sup>73</sup> *Ibid.* p. 3.2-22.

<sup>74</sup> *Ibid.* pp. 3.2-32 to 3.2-34.

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The City has not adopted mitigation measures consistent with the requirements of the General Plan and the General Plan EIR. Significant unmitigated impacts remain, and an EIR must be prepared.

**F. Potentially Significant School Impacts**

4-63 The IS/MND's statement that elementary school enrollment in the Old Adobe Union Elementary School District has "declined by approximately 235 students since the 2004-2005 school year" is misleading and fails to disclose or evaluate substantial evidence of actual Project impacts to schools.<sup>75</sup> In 2004 to 2005, the school district had five elementary schools: La Tercera, Miwok Valley, Old Adobe, Sonoma Mountain, and Bernard Eldredge.<sup>76</sup> Due to budget problems, the City voted to close the Bernard Eldredge school in 2010.<sup>77</sup> The California Department of Education's most recent data shows that enrollment at the remaining four schools has increased by approximately 112 students since 2004-2005.<sup>78</sup> According to the school capacity limits reported in the City's General Plan EIR, the capacity of all four schools is now at 99%. Enrollment at two of the schools exceeds their capacity, including the school closest to the Project site, Miwok Valley, which is operating at 111% of capacity.<sup>79</sup>

The closure of Bernard Eldredge is significant new information that changes the assumptions in the General Plan EIR. Whereas the General Plan EIR predicted that elementary schools in the Old Adobe School District would be at 94% of capacity even in 2025, this is certainly no longer the case.<sup>80</sup> According to the data, all four schools together can only accept a total of 31 more students before the entire district will exceed capacity. The Project alone, with 273 proposed residential units in the Old Adobe School District, will likely exceed this threshold. The Project will also have a potentially significant cumulative impact with other approved residential projects, such as the Park Square and Lindberg Circle projects, which have recently added almost 200 new residential units to the district.<sup>81</sup>

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<sup>75</sup> IS/MND p. 73.

<sup>76</sup> City's General Plan EIR, p. 3.4-5: <http://cityofpetaluma.net/cdd/pdf/deir-without-exhibits.pdf>

<sup>77</sup> <http://www.petaluma360.com/article/20100402/community/100409899?p=1&tc=pg>

<sup>78</sup> Compare *ibid.* with <http://cityofpetaluma.net/cdd/pdf/riverfront/School-Info-Old-AdobeEnrollment.pdf>

<sup>79</sup> *Ibid.*

<sup>80</sup> See City's General Plan EIR p. 3.4-13.

<sup>81</sup> See 2012 Traffic Impact Study (W-Trans) p. 15.  
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The General Plan EIR acknowledges that although it is “unlikely” that elementary school capacity will be exceeded by 2025, “schools located in areas where growth is anticipated may experience capacity limitations.” The EIR concludes that the appropriate mitigation would be “redistribution of enrollment among elementary schools throughout the city.”<sup>82</sup> The IS/MND, however, fails to require any mitigation to offset its potentially significant impacts on schools. Moreover, the redistribution of students to other elementary schools does not appear to be a feasible option for this Project and other new residential projects in the school district. First, as mentioned above, there is only space for approximately 31 more elementary students, total, in the district. Thus, redistribution among the schools within the district will not mitigate the apparent overcrowding problem. Second, there appears to be only one elementary school in another school district that is anywhere near the Project site: the Live Oak Charter School. A comparison of Department of Education data and the school capacity reported in the General Plan EIR shows that this school is operating at approximately 118% of its capacity.<sup>83</sup>

Accordingly, a fair argument exists that the Project will result in significant impacts on school resources. An EIR must be prepared to evaluate and mitigate these impacts.

**G. The Zoning Code Applicable to the Project has Changed; Consistency with the New Code Should be Analyzed**

4-64 The IS/MND states that the Project plans comply with the land use policies and regulations set forth in the Central Petaluma Specific Plan, including the “SmartCode” set forth in Appendix A of that plan. However, on July 1, 2013, the City adopted an amended SmartCode, in connection with its approval of the Petaluma SMART Rail Station Areas TOD Master Plan.<sup>84</sup> It is unclear whether the proposed Project conforms to the new SmartCode. This should be analyzed in the EIR, and changes to the Project should be made as needed to conform the Project to the new code.

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<sup>82</sup> City’s General Plan EIR p. 3.4-12.

<sup>83</sup> *Ibid.* p. 3.4-5 (capacity of Live Oak Charter School listed as 220); <http://dq.cde.ca.gov/dataquest/Enrollment/GradeEnr.aspx?cType=ALL&cGender=B&cYear=2012-13&Level=School&cSelect=LIVE+OAK+CHARTER%2D%2DPETALUMA+CITY+E%2D%2D4970854%2D6119036&cChoice=SchEnrGr> (enrollment for 2012-2013 reported as 260).

<sup>84</sup> *Ibid.*  
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## V. CONCLUSION

4-65 The CEQA Guidelines require that an EIR be prepared if there is substantial evidence that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment.<sup>85</sup> As discussed in detail above, there is substantial evidence that the Project would result in significant adverse impacts that were not identified in the IS/MND and that are not adequately mitigated.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing an EIR for the Project. In this way, the City and the public can ensure that all adverse impacts of the Project are mitigated to the full extent feasible and required by law.

Thank you for your consideration of these comments. If you require further information or have any questions, please call us.

Sincerely,



Daniel L. Cardozo  
Ellen L. Trescott

ELT:ljl

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<sup>85</sup> CEQA Guidelines § 15063(b)(1).  
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