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October 7, 2015

**VIA EMAIL AND HAND DELIVERY**

Ms. Dori Yob, Chair
Honorable Members of the Planning Commission
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**VIA EMAIL ONLY**

Ms. Lea Simvoulakis, Project Manager: lea.simvoulakis@sanjoseca.gov
Mr. Harry Freitas, Director, Planning, Building and Code Enforcement: harry.freitas@sanjoseca.gov

**Re: Item 4a: Planned Development Rezoning Proposal and EIR Addendum for PDC15-018, 696 North 6th Street, Japantown Corporation Yard**

Chair Yob and Honorable Members of the Planning Commission, Ms. Simvoulakis, Mr. Freitas:

These comments are submitted on behalf of San Jose Residents for Responsible Development ("Residents") regarding Planning Commission Agenda Item 4a, PDC15-018, the proposed Japantown Corporation Yard development project to allow up to 600 residential units, up to 25,000 square feet of commercial space, and a private community center with indoor performance use by San Jose Taiko on 5.25 gross acre site located at 696 North 6th Street, property currently owned by the City of San Jose ("City") (collectively, "Project"). Permits and approvals proposed for the Project include a Planned Development Permit ("PDP");

a change in Planned Development Zoning from the R-M Multiple Residence Zoning District to the CP(PD) Planned Development Zoning District; and adoption of the 2013 Addendum to the Japantown Corporation Yard Redevelopment Project Environmental Impact Report, originally adopted by City Council Resolution No. 74384. According to the City, the Project does not involve any changes from the prior versions of the Project originally analyzed in the 2008 Japantown Corporation Yard Redevelopment Project Final Environmental Impact Report ("2008 EIR"),[1] the 2013 Addendum to the Japantown Corporation Yard Redevelopment Project Final Environmental Impact Report ("2013 Addendum"),[2] and what appears to be a newly revised Addendum that was provided to the undersigned at 5:00p.m. on October 6, 2015, ***just 24 hours prior to this hearing, in violation of Brown Act notice requirements*** ("Revised Addendum").

We have conducted an initial review of the Revised Addendum, the 2013 Addendum, the 2008 EIR, and other related Project documents, and have identified Project changes and significantly changed circumstances under which the Project is to be undertaken which require the City to prepare a subsequent or supplemental EIR. First, the City appears to be "piggybacking" off of the 2013 Addendum to determine that a subsequent addendum is sufficient to analyze new impacts and circumstances that have arisen since the 2013 Addendum was prepared. This is prohibited under CEQA's "subsequent review" legal standard, which applies only to environmental review conducted following certification of a a prior EIR or negative declaration – not a prior addendum.[3] Additionally, a subsequent EIR is required for the current Project due to the involvement of changed circumstances under which the current Project is to be undertaken, new significant environmental effects, and substantial increases in the severity of previously identified effects from construction air emissions, noise, and traffic.

We identify these substantial changes below in order to enable the City to comply with CEQA and reduce the Project's significant impacts *before* the City approves the Project. The City would be violating CEQA and its public informational requirements if the Planning Commission votes to approve or issue a Planned Development Permit ("PDP") for the Project, recommend proposed zoning

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[1] The 2008 EIR was certified by the City under resolution number 74384 on April 21, 2008 (State Clearinghouse #2007102015), and included a Draft EIR and "First Amendment to the EIR (Response to Comments)." See Addendum, p. 1.

[2] *Id.*

[3] PRC § 21166; 14 CCR §§ 15162, 15164.

amendments to the City Council for approval, or issue any other approvals for the Project without first preparing a subsequent or supplemental EIR. The City simply lacks substantial evidence to support its decision that a subsequent or supplemental EIR is not required, and has failed to prepare an initial study for the 2015 version of the Project, in violation of CEQA.

Finally, the City's transmission of a new CEQA document as part of the "Agenda Item 4a" for the October 7, 2015 Planning Commission hearing ***just 24 hours prior to the hearing*** violates the statutory Brown Act requirement that agendas for all items to be considered at publicly noticed meetings must be provided to the public at least 72 hours in advance.[4] Residents respectfully requests that the City cure and correct its failure to provide legally adequate notice of the agenda for this evenings Project hearing by continuing this hearing to a date that is at least 72 hours after a legally adequate agenda and staff report are released for this hearing which accurately identify all items to be considered be the Planning Commission in relation to the Project.

Notwithstanding the City's failure to provide adequate notice, we have completed a preliminary review of the Revised Addendum, 2013 Addendum, and 2008 EIR, and prepared these comments with the assistance air quality expert Jessie Jaeger of Soil Water Air Protection Enterprise ("SWAPE"), and traffic engineer Daniel T. Smith Jr., P.E of Smith Engineering and Management. Their technical comments and curriculum vitae are attached hereto as Exhibit B (SWAPE) and Exhibit C (Smith) and are submitted in addition to the comments in this letter. Accordingly, the City must address and respond to the comments of Ms. Jaeger and Mr. Smith separately. Residents expressly reserves the right to supplement these comments by providing additional correspondence and expert comments to the City Council regarding the Addendum and Project, and at any other subsequent hearings and proceedings for this Project.[5]

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[4] Gov. Code § 54954.2; see Exhibit A, San Jose Planning Staff October 6, 2015 email transmission of Revised Addendum.

[5] *See Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1117.

## I. STATEMENT OF INTEREST

San Jose Residents for Responsible Development 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: City of San Jose residents Gil Austin, Jose Lopez, William Serpa, and Kevin Thur; the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, and their members and their families; and other individuals that live and/or work in the City of San Jose and Santa Clara County.

Individual members of San Jose Residents and the affiliated labor organizations live, work, recreate and raise their families in Santa Clara County, including the City of San Jose. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. San Jose 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. PROJECT BACKGROUND

### A. Site History.

The Project site was formerly used as the City's Corporation Yard and was originally improved with seven single-story buildings, totaling 85,000 square feet. In 2007, the City expanded operations at its Central Service Yard on Senter Road and the uses of the Japantown Corporation Yard were transferred to the Central Service Yard. The Notice of Preparation ("NOP") for the original 2008 Project was issued on October 3, 2007. On November 6, 2007, as part of the City's implementation of the Japantown Redevelopment Plan, the City's Redevelopment Agency Board approved a contract for surface demolition activities at the Corporation Yard (Project #PP07-224). Some hazardous materials abatement activities appear to have been conducted at the site, and the original buildings demolished in March 2008. The site is currently a paved parking lot. A portion of

the property is being used as a public parking facility, and another portion is being used for the Japantown Farmer's Market.[6]

**B. 2008 Project.**

The original 2008 version of the Project ("2008 Project") included up to 600 market-rate residential units, up to 30,000 square feet of retail space, 10,000 to 20,000 square foot community amenity space, and up to 900 underground and/or surface parking spaces on the Corporation Yard site. The 2008 Project was considered in the 2008 EIR. The 2008 EIR also included a variation on the proposed project which included an alternative configuration in which up to 15,000 square feet of retail space could be replaced with up to 24 live/work units.

The 2008 Project proposed to redevelop the existing surface parking lot as an affordable senior housing complex, including up to 85 units of affordable housing and 40 parking spaces. The 2008 Project proposed to construct an undisclosed number of buildings ranging from 6 to 14 stories for the residential/mixed-uses and 1 to 2 stories for the community amenity uses. The 2008 EIR generally evaluated 14-story buildings for the Corporation Yard site, and 6- story buildings for the surface parking lot site. The 2008 Project also included a General Plan Amendment (File # GP07-03-04) and an amendment to the Jackson-Taylor Residential Strategy[7] to change the land use designation to allow the proposed mix of uses, allow increased height and density on the project site, increase the caps on development to the extent required, and amend relevant design principles.[8]

**C. 2013 Project.**

The 2013 Project was proposed by Williams/Dame & Associates, Inc. of Portland, Oregon, and included the sale of land for redevelopment of the Japantown Corporation Yard site to develop up to 552 market-rate residential apartment units, 48 market-rate live/work units, and up to 25,000 square feet of retail space within an unspecified buildings; 60,000 square feet of community amenity space in a separate building; up to 784 parking spaces within at- and below-grade parking

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[6] Staff Report, p. 3.
[7] The Jackson-Taylor Residential Strategy is a City policy document adopted pursuant to the General Plan 2040, which is intended to provide additional detail for implementing the Jackson-Taylor Planned Residential Community. Addendum, p. 4.
[8] Addendum, p. 1.

facilities; and approximately 0.75 acres of community open space on a 5.23-acre parcel, the former City Corporation Yard site.[9] The location and height of individual buildings was undetermined at the time the 2008 EIR was prepared.[10] Instead, the Addendum "assumed" that 2013 Project buildings would range in height from 6 to 7 stories for the residential/retail component and 1 to 4 stories for the retail/community amenity space.[11]

### D. Current Project.

The current Project, proposed by developer Related California, proposes to develop up to 600 residential units, up to 25,000 square feet of commercial space, and a private community center with indoor performance use by San Jose Taiko on a 5.25 gross acre site located at 696 North 6th Street. The Staff Report does not identify the number of buildings proposed for construction.

The Project property is currently owned by the City. Permits and approvals proposed for the Project include a Planned Development Permit ("PDP"); a change in Planned Development Zoning from the R-M Multiple Residence Zoning District to the CP(PD) Planned Development Zoning District; and adoption of the 2013 Addendum to the Japantown Corporation Yard Redevelopment Project Environmental Impact Report, originally adopted by City Council Resolution No. 74384. According to the City, the Project does not involve any changes from the prior versions of the Project originally analyzed in the 2008 EIR[12] and the 2013 Addendum.[13]

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[9] In June 2010, following certification of the 2008 EIR and approval of the original General Plan Amendment, First Community Housing entitled the approximately 0.55-acre parking lot site with 75 affordable senior housing units, in a 68,559-square-foot, six-story building. That site was therefore not included as part of the 2013 Project.

[10] See Addendum, pp. 1, 13 ("The location and height of individual buildings will be based on standards established on the future Planned Development Rezoning for the site and in the subsequent Planned Development permits.").

[11] *Id.*

[12] The 2008 EIR was certified by the City under resolution number 74384 on April 21, 2008 (State Clearinghouse #2007102015), and included a Draft EIR and "First Amendment to the EIR (Response to Comments)." See Addendum, p. 1.

[13] *Id.*

## III. LEGAL BACKGROUND

CEQA has two basic purposes, neither of which is satisfied by the Staff Report, the 2013 Addendum, or the 2008 EIR. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.[14] The EIR is the "heart" of this requirement.[15] 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."[16]

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[17] An adequate EIR must contain facts and analysis, not just an agency's conclusions.[18] CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.[19]

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.[20] If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.[21] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.[22] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

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[14] 14 Cal. Code Regs. § 15002(a)(1) ("CEQA Guidelines"); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[15] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.
[16] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[17] CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[18] *See Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.
[19] Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).
[20] CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets,* 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.
[21] Pub. Resources Code §§ 21002.1(a), 21100(b)(3).
[22] *Id.*, §§ 21002-21002.1.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.[23] A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.[24] This approach helps "insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug."[25]

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering or other appropriate process can be used for analysis of the project's environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.[26] The initial study must contain the following:

(1) A description of the project, including the location of the project;

(2) An identification of the environmental setting;

(3) An identification of environmental effects...provided that the entries...are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as...an earlier EIR... A reference to another document should include, where appropriate, a citation to the page or pages where the information is found;

(4) A discussion of the ways to mitigate the significant effects, if any;

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[23] CEQA Guidelines § 15126.4(a)(2).
[24] *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).
[25] *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.
[26] CEQA Guidelines §§ 15060, 15063(c).

(5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls; and

(6) The name of the person or persons who prepared or participated in the Initial Study.[27]

CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.[28] A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project "would not have a significant effect on the environment."[29]

**A. Subsequent EIRs versus EIR Addendums.**

When an EIR has been prepared for a project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

(a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;

(b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or

(c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.[30]

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

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[27] CEQA Guidelines § 15063(d) (emphasis added).
[28] *See, e.g.*, Pub. Resources Code § 21100.
[29] *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).
[30] Pub. Resources Code § 21166.

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

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

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

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

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

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

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.[31]

Only where ***none*** of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider

[31] CEQA Guidelines § 15162(a)(1)-(3).

preparing a subsequent negative declaration, an addendum, or no further documentation.[32] In any case, however, the decision must be supported by substantial evidence.[33] And an agency may not rely on a previous addendum to support a decision not to prepare a subsequent or supplemental EIR.[34] Here, the City's decision not to prepare a subsequent or supplemental EIR for the Project is not supported by substantial evidence, and improperly seeks to rely on an Addendum prepared for a prior iteration of the Project to avoid subsequent review.

## IV. DISCUSSION

### A. The City May Not Rely on an EIR Addendum for a Previous Version of the Project To Make A Determination that No New Initial Study or EIR is Required for the Current Project.

In preparing the Revised Addendum and Staff Report, the City has misapplied the legal test for determining whether, and to what extent, CEQA review is required for the current 2015 version of the Project. Rather than prepare an initial study, as required by CEQA, the City has erroneously relied on the same "subsequent review" test that the City already relied on in preparing the 2013 Addendum. That test is inapplicable here because the last CEQA document prepared for the Project was an addendum – not an EIR or negative declaration – and it is therefore ineligible for the subsequent "piggybacking" of environmental analysis permitted under PRC § 21166.

CEQA's "subsequent review" sections provide a narrow legal standard for further CEQA review which allows, *only* where an EIR or negative declaration was last prepared for a project, preparation of a subsequent or supplemental EIR where any one or more of the following has occurred: (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report; (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.[35] Because the "subsequent review" standard places narrow

[32] CEQA Guidelines § 15162(b).
[33] *Id.* §§ 15162 (a), 15164(e), and 15168(c)(4).
[34] PRC § 21166, 14 CCR § 15162, 15164.
[35] PRC § 21166; 14 CCR §§ 15162; 15164(a).

limits on the scope of subsequent environmental review, its application is restricted to the narrow situation in which a proposal for subsequent discretionary approvals immediately follows preparation of an EIR or negative declaration.[36] However, this legal standard only applies to the next set of discretionary approvals following the original certification of the EIR or negative declaration, and does not apply to subsequent discretionary approvals that rely, as here, on a previously prepared EIR Addendum.

According to the Staff Report, the City relied on the 2013 Addendum, and not simply the previously certified 2008 EIR, to conclude that a Revised Addendum was sufficient to analyze the 2015 Project due to a lack of changes in the project, changed circumstances, or new information since the 2013 Addendum was prepared. That is not the appropriate legal test under CEQA. Rather, the City should have prepared a new initial study for the 2015 Project.

This issue was addressed in *Vedanta Soc. of Southern California v. California Quartet, Ltd* ("*Vedanta*").[37] In *Vedanta*, a county lead agency prepared an EIR addendum in 1998 to analyze a smaller, 299–unit version of a project that had originally been analyzed as a 705–unit housing development in a 1997 EIR. The county applied the "subsequent review" test of PRC § 21666 to conclude that the addendum was appropriate to analyze the new, smaller version of the project because it did not result in any significant project changes, changed circumstance, or new information about environmental impacts that was not previously analyzed in the original 1997 EIR. However, the original EIR was never certified by the county's board of supervisors. The court held that, notwithstanding the fact that the county had prepared an EIR only a year prior, the fact that the 1997 EIR was not certified rendered it deficient under the strict procedural mandate of PRC § 21166 and 14 CCR §§ 15162 and 15164, and thus prohibited the county from relying on the original EIR to evaluate the need for further environmental review when the project was changed a year later. The court concluded that the county's decision that "a mere addendum would suffice" for CEQA review of the new project was invalid because the county had not relied on a "previously certified EIR or negative declaration," the only types of CEQA documents authorized to trigger the "subsequent review" standard under PRC § 21166. The county's attempt to apply

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[36] *Id.*

[37] *Vedanta Soc. of Southern California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517.

the subsequent review standard in that situation was nothing more than an attempt to "circumvent the political scrutiny built into the CEQA process."[38]

The City is poised to make a similar error here by relying on the 2-year old 2013 Addendum to conclude that the Revised Addendum is sufficient to analyze the 2015 Project. The Staff Report explains that the environmental analysis performed in the 2013 Addendum suffices for the current Project because no changes in the current Project, changed circumstances, or new information have arisen since 2013 that would necessitate further CEQA review.[39] However, the law is clear the City cannot rely on a CEQA addendum to determine whether subsequent CEQA review is required under the circumstances enunciated in PRC § 21166 and CEQA Guidelines § 15162. The Revised Addendum fails to comply with the facial prerequisites for applying a "subsequent review" legal standard because the City is relying on a previously adopted EIR Addendum, and not simply a "previously certified EIR or negative declaration."[40] CEQA does not allow an agency to rely on a previously adopted *addendum* to support its decision not to prepare a subsequent or supplemental EIR. In such instances, each new iteration of the project must be treated as a new project for purposes of CEQA, and a new initial study must be prepared.[41] In such instances, a new EIR is required if there is a fair argument of significant impacts.[42]

The Planning Commission should remand the Project back to City Staff to prepare an initial study which thoroughly evaluates the 2015 Project's environmental impacts.

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[38] 84 Cal.App.4th at 533-34.
[39] See Staff Report, pp. 8-9.
[40] PRC § 21166; 14 CCR §§ 15162; 15164(a).
[41] CEQA Guidelines §§ 15060, 15063(c).
[42] *Save Our Neighborhood v. Lishman* (2006) 140 Cal. App. 4th 1288, 1296-97 (proposed project "modification" that did not involve minor technical changes or additions to previously approved project, but instead introduced substantial changes that would result in "new significant environmental effects or a substantial increase in the severity of previously identified significant effects" is new project requiring renewed CEQA review).

### B. The Revised Addendums Fails to Accurately Describe the Changed Circumstances in the Environmental Setting for the Project.

The Revised Addendum fails to include an updated assessment of the existing environmental setting surrounding the Project, in violation of CEQA.[43]

Under CEQA, the existing environmental setting is the starting point from which the lead agency must measure whether a proposed project may cause a significant environmental impact.[44] CEQA defines the environmental setting as the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, from both a local and regional perspective.[45] Describing the environmental setting accurately and completely for each environmental condition in the vicinity of the Project is critical to an accurate, meaningful evaluation of environmental impacts. The importance of having a stable, finite, fixed environmental setting for purposes of an environmental analysis was recognized decades ago.[46] Today, the courts are clear that, "[b]efore the impacts of a Project can be assessed and mitigation measures considered, an [environmental review document] must describe the existing environment. It is only against this baseline that any significant effects can be determined."[47]

The Revised Addendum fails to discuss the current baseline conditions at the Project site, which have changed substantially from the baseline conditions that existed when the 2008 EIR was prepared. When the October 3, 2007 NOP for the 2008 EIR was issued, the Project site was being used as the City's Corporation Yard and was improved with seven single-story buildings, totaling 85,000 square feet of commercial building use.[48] In November 2007, the City commenced surface demolition activities at the Corporation Yard and demolished the existing

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[43] In the alternative, the City failed to analyze changed circumstances regarding existing uses at the Project site that have changed substantially from the original baseline setting analyzed in the 2008 EIR.
[44] *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Cal.4th 310, 316.
[45] CEQA Guidelines § 15125(a); *Riverwatch v. County of San Diego* (1999) 76 Cal.App.4th 1428, 1453.
[46] *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.
[47] *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.
[48] 2008 EIR NOP, p. 79.

buildings.[49] Currently, the project site is undeveloped and consists merely of fenced and paved parking areas.[50] Current site uses include a public parking facility on one portion of the site, and the Japantown Farmer's Market on another portion.[51]

The Staff Report mentions the current uses at the site. However, the Revised Addendum fails entirely to mention or discuss these new uses as either the existing environmental setting for the 2015 Project, or as a changed circumstance against which Project impacts must now be measured, in violation of CEQA. This is a significant omission, because the change in existing uses at the Project site necessarily changes the baseline conditions against which Project impacts are to be measured.

Since the Project site is currently flat with no buildings, the addition of the Project's proposed 6-7 story residential and commercial buildings may have significant impacts on visual resources, noise, construction air emissions, greenhouse gas ("GHG") emissions, noise, and traffic that are substantial in comparison with existing uses. The Revised Addendum fails completely to discuss these factors. Similarly, the Revised Addendum contains no discussion of the potentially significant impacts on traffic and parking that will be caused by the Project's displacement of the existing parking facilities from the site, nor of the recreational, public service, and human impacts that will be caused by displacement of the local farmers' market. These current conditions must be identified in an updated baseline analysis, and the impacts of the Project assessed against them, in an EIR.

### C. The Revised Addendum Fails to Accurately Describe the Project.

The Revised Addendum contains an inconsistent, inaccurate, and misleading Project description because it admittedly fails to identify basic Project features, such as the "location, size, and height" of the proposed Project buildings and other site amenities.[52] This flies in face of CEQA's basic requirement that a CEQA

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[49] 2013 Addendum, p. 11.
[50] *Id.*; Staff Report, p. 3.
[51] *Id.*
[52] Revised Addendum, p. 1 ("The location, size, and height of individual buildings and other site amenities will be established during the processing of a future Planned Development Rezoning and subsequent Planned Development permits.").

document must accurately describe the project being analyzed, and renders the City's CEQA analysis inadequate.

California courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."[53] CEQA requires that a project be described with enough particularity that its impacts can be assessed.[54] Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.[55]

It is impossible for the public to make informed comments on a project of unknown or ever-changing description. "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs...."[56] As articulated by the court in *County of Inyo v. City of Los Angeles*, "a curtailed, enigmatic or unstable project description draws a red herring across the path of public input."[57] Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.[58]

Neither the Revised Addendum, nor any prior CEQA document prepared for the 2008 and 2013 versions of the Project, accurately identified the number of buildings proposed to be constructed at the Project site, or their intended size and location. The 2008 EIR explained that "the location and height of project buildings is conceptual at this time," and deferred a more precise description to a future, post-approval permitting process, in violation of CEQA.[59] The 2013 Addendum similarly failed to describe the Project's proposed design and configuration, stating that "[t]he location and height of individual buildings will be determined based on standards

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[53] *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.
[54] *Id.* at 192.
[55] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ("*Sundstrom*").
[56] *Id.* at 192-193.
[57] *Id.* at 197-198.
[58] *See, e.g., Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376.
[59] 2008 EIR, p. 33 ("the location and height of buildings would be determined based on standards to be established in the Planned Development Zoning for the Corporation yard Site and the City parking lot site. The proposed project would require City entitlement actions including subsurface demolition, construction, and development permits.").

established on the Planned Development Rezoning for the site, and in the subsequent Planned Development permits."[60] Lacking similar specificity to the 2008 EIR, the 2013 Addendum merely "assumed that project buildings would range in height from six to seven stories for the residential/retail component and from one to four stories for the retail/community amenity space."[61] The Revised Addendum commits precisely the same errors, again stating that "[t]he location, size, and height of individual buildings and other site amenities will be established during the processing of a future Planned Development Rezoning and subsequent Planned Development permits."[62]

Thus, no CEQA document has ever accurately described the Project. Given the fact that the entire Project involves the construction of residential and commercial buildings on a dense 5.23-acre urban site, the City's failure to disclose basic facts about the size and design of the buildings will be constructed by borders on the absurd, and is a flagrant violation of CEQA. It is impossible for the City or the public to analyze the Project's impacts when the basic parameters of the Project have not even been defined. As a result, there has been no accurate analysis of the Project's impacts, and the City has no basis on which to claim that the Revised Addendum accurately assesses the Project's environmental impacts, or to conclude that Project impacts will be mitigated to less than significant levels.

The City must go back and prepare a legally adequate EIR once all Project features have been accurately identified and described.

### D. Changes in the Project Necessitate Preparation of An EIR to Analyze Admittedly Significant New Noise Impacts.[63]

The Revised Addendum explains that the noise mitigation measures approved in the 2008 EIR were based on an "outdated maximum noise level ($L_{max}$) standard," and that, in order or the 2015 Project to comply with the current General Plan EC-1.1 standard, additional noise mitigation measures are required.[64] Thus,

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[60] Addendum, p. 13.
[61] *Id.*
[62] Revised Addendum, p. 1 (9/24/2015 Staff Report version).
[63] In the alternative, there is substantial evidence supporting a fair argument that the Project will have significant noise impacts that were not previously analyzed, thus triggering the requirement to prepare an EIR. *Lishman,* 140 Cal. App. 4th at 1296-97.
[64] Revised Addendum, pp. 2-3.

the Revised Addendum makes two admissions: first, that circumstances have changed with regard to the applicable plans and policies with which the Project must comply, and second, that the Project will have new and significant noise impacts that were not previously analyzed in either the 2008 EIR or the 2013 Addendum. Thus, the City has presented its own substantial evidence demonstrating that substantial changes have occurred with respect to the circumstances under which the Project is being undertaken with regard to noise which will require major revisions to the previous EIR and 2013 Addendum due to the involvement of new and more significant noise impacts than what was previously analyzed. By the City's own standard, these new noise impacts trigger the need to prepare, at a minimum, a supplemental or subsequent EIR to adequately analyze these impacts.[65]

1. The Revised Addendum Improperly Includes New Noise Mitigation Measures that Are Not Contained in a Legally Adequate Mitigation Plan, and are Therefore Unenforceable.

CEQA requires the lead agency to adopt feasible mitigation measures that will substantially lessen or avoid a project's potentially significant environmental impacts.[66] A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.[67] "Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors.[68] Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments.[69] Failure to include enforceable mitigation measures is considered a failure to proceed in the manner required by CEQA that is evaluated de novo by the courts.[70] The court of appeal recently clarified that, to meet this requirement,

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[65] Indeed, the Revised Addendum purports to rely on a new 2014 noise assessment performed by Charles M. Salter Associates, Inc. See Revised Addendum, p. 3. However, this noise assessment is not attached to the Revised Addendum, and was not included with the Staff Report. Thus, commenters have been unable to review this document.

[66] CEQA §§ 21002, 21081(a)) and describe those mitigation measures in the EIR. (CEQA § 21100(b)(3); CEQA Guidelines section 15126.4

[67] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).

[68] 14 CCR § 15364.

[69] Id. at §15126.4(a)(2).

[70] *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 672.

mitigation measures must be incorporated directly into the MMRP to be enforceable.[71]

The Revised Addendum explains that "subsequent to certification of the 2008 EIR and 2014 Initial Study / Addendum, but prior to the start of development activities, the 2008 Mitigation Measure NOI-3c was revised to be consistent with General Plan Policy EC-1.1."[72] The Revised Addendum includes a discussion of the revised MM NOI-3c, but fails to incorporate the proposed mitigation measure into a legally enforceable mitigation plan, or as a condition of approval for the Project. The proposed mitigation measure MM NOI-3c therefore fails CEQA's requirement to be enforceable through permit conditions, agreements or other legally binding instruments.[73] An EIR and updated MMRP must be prepared for the Project that incorporates MM NOI-3c, and all other feasible mitigation measures necessary ot reduce Project impacts to less than significant levels, in a legally enforceable mitigation plan.

### E. Changed Circumstances Regarding Air Quality Require Preparation of a Subsequent or Supplemental EIR.[74]

There are changed circumstances in air quality in the vicinity of the Project site that neither the 2008 EIR nor the 2013 Addendum analyzed. Under CEQA Guidelines § 15162, these circumstances require preparation of a new initial study. As the result of these new circumstances surrounding the Project, the 2015 Project will also have significant, new air quality impacts that were not known and did not exist at the time the original 2008 EIR and 2013 Addendum were prepared, and were not previously disclosed to the public or analyzed in either CEQA document. A new initial study and CEQA document must be prepared to analyze these new issues and impacts.

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[71] *Lotus v. Dept of Forestry* (2014) 223 Cal. App. 4th 645, 651-52.
[72] Revised Addendum, p. 3.
[73] 14 CCR §15126.4(a)(2).
[74] In the alternative, there is substantial evidence supporting a fair argument that the Project will have significant air quality impacts that were not previously analyzed, thus triggering the requirement to prepare an EIR. *Lishman*, 140 Cal. App. 4th at 1296-97.

1. The City Must Analyze the Project's Construction Emissions in Light of EPA's New, Stricter Federal Emissions Standards.

Both the Revised Addendum and 2013 Addendum failed to conduct an updated air quality analysis that quantifies and assesses fine particulate matter ("PM2.5") emissions that will be released during Project construction. In December 2012, EPA strengthened the annual PM 2.5 National Ambient Air Quality Standards ("NAAQS") from 15.0 to 12.0 micrograms per cubic meter (µg/m3). In December 2014, EPA issued final area designations for the 2012 primary annual PM 2.5 NAAQS. Under the new PM2.5 NAAQS, areas designated "unclassifiable/attainment" must continue to take steps to prevent their air quality from deteriorating to unhealthy levels pursuant to the new federal guidance. The effective date of this standard was April 15, 2015.[75]

The new annual PM 2.5 NAAQS is a changed circumstance because it did not exist, and was not in effect, at the time either the 2008 EIR or 2013 Addendum were prepared. As explained by SWAPE, the City's failure to analyze the Project's PM2.5 construction emissions is a serious omission which renders the City's air quality analysis flawed and unreliable:

> The Addendum fails to conduct a new air quality analysis that applies to the new PM2.5 NAAQS, even though this updated standard constitutes a change in circumstance. The previous analysis conducted in the 2008 EIR is outdated and establishes measures for the Project to meet a standard that is no longer applicable. Based on the new PM2.5 NAAQS, what is significant in the 2008 EIR is different from what is currently considered significant. A new air quality analysis must be performed for the Project that applies the new stricter PM2.5 NAAQS and establishes steps to prevent the surrounding air quality from deteriorating to unhealthy levels so that the Bay Area does not reach nonattainment.[76]

Indeed, the City appears to be relying on the 2013 Addendum's inaccurate conclusion that "since certification of the Final EIR, conditions in and around the project have not changed such that implementation of the currently-proposed project would result in new significant environmental effects or a substantial

[75] See http://www.baaqmd.gov/research-and-data/air-quality-standards-and-attainment-status#five.
[76] Exhibit B, SWAPE Comments, p. 2.

increase in the severity of environmental effects"[77] However, this statement is clearly incorrect, since the new PM2.5 NAAQS went into effect this year. The Revised Addendum does nothing to correct this error. The City must perform a new air quality analysis for the Project in an EIR which applies the new, more stringent PM 2.5 NAAQS in its analysis, and, if the new analysis disclosed significant PM2.5 emissions, incorporate all feasible mitigation measures available to reduce those emissions to less than significant levels.

2. A New Air Quality Analysis is Required to Analyze Project Air Emissions in Light of the Bay Area's New Nonattainment Status for 8-Hour Ozone.

When the original 2008 EIR was prepared, the Bay Area was in attainment for the California 8-hour ozone standard.[78] The 2013 Addendum[79] concluded that the attainment status for all applicable air quality standards had not changed since 2008, and therefore did not perform a new air quality analysis. However, the Addendum's conclusion is entirely inaccurate, as the Bay Area is currently designated as being in "nonattainment" for the 8-hour ozone standard.[80]

SWAPE explains that "[f]ederal and state ambient air quality standards have been set by the U.S. Environmental Protection Agency (USEPA) and the California Environmental Protection Agency (CalEPA) to protect public health and the climate."[81] SWAPE concludes that the Bay Area's new nonattainment status is a major changed circumstance that requires an updated air quality analysis in a new CEQA document for the 2015 Project, because the Project's construction emissions will contribute to ozone precursors such as NOx.

> Exhaust emissions from off-road diesel equipment and heavy duty trucks during construction, as well as aerosol emissions from architectural coating and paving activities are just a few examples of construction activities that produce significant air pollutant emissions, including nitrogen oxide ($NO_x$)

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[77] 2013 Addendum, p. 22.
[78] See 2008 DEIR, p. 156.
[79] The Revised Addendum appears to have adopted the 2013 Addendum's air quality analysis, since the Revised Addendum contains no new discussion of air quality.
[80] See http://www.baaqmd.gov/research-and-data/air-quality-standards-and-attainment-status.
[81] Exhibit B, p. 3.

> and reactive organic gas (ROG) emissions.[82] These pollutants act as ozone precursors and have the potential to contribute substantially to the nonattainment status of 8-Hour Ozone state ambient air quality standard. Additionally, the 2008 EIR stated that long-term project-related regional emissions would exceed the BAAQMD threshold of significance for the ozone precursor ROG and would remain significant and unavoidable even after mitigation (EIR, p. 170). This potential long-term operational impact coupled with emissions from construction activities could substantially increase the severity of environmental effects of ozone, for which the Bay Area is in nonattainment for. Due to these reasons, an updated air quality analysis should be prepared for the newly proposed Project.[83]

The City must prepare an EIR to analyze the Project's air quality impacts in light of these changes circumstances.

3. The 2013 EIR Addendum (and Revised Addendum) admittedly failed to analyze the Project in light of the 2011 BAAQMD CEQA Guidelines, which contains lower significance thresholds for several pollutants than the 1999 Guidelines.

Although the 2011 BAAQMD Guidelines were purportedly invalidated in *CBIA v. BAAQMD*, the 2013 Addendum[84] nevertheless explained that BAAQMD continues to find that "despite the court ruling, the science and reasoning contained in the 2011 BAAQMD CEQA Guidelines provide the latest state-of-the art guidance available. For that reason, substantial evidence supports continued use of the 2011 BAAQMD CEQA Guidelines."[85] The City's own General Plan also requires the City to analyze air quality impacts pursuant to BAAQMD CEQA Guidelines. GP Air Quality Policy10.1 states: "Assess projected air emissions from new development in conformance with the BAAQMD CEQA Guidelines and relative to state and federal standards. Identify and implement feasible air emission reduction measures."[86]

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[82] "Construction-Generated Criteria Air Pollutant and Precursor Emissions." CEQA Guide, Sacramento Metropolitan Air Quality Management District, *available at:* http://www.airquality.org/ceqa/cequguideupdate/Ch3Construction-GeneratedCAPsFINAL.pdf
[83] Exhibit B, p. 3.
[84] The Revised Addendum appears to have adopted the 2013 Addendum's air quality analysis, since the Revised Addendum contains no new discussion of air quality.
[85] 2013 Addendum, p. 33.
[86] 2013 Addendum, p. 34.

Accordingly, a new air quality analysis must be prepared for the 2015 Project which analyzed Project emissions according to the 2011 BAAQMD Standards.[87]

### F. Changed Circumstances and New Impacts Regarding Traffic Impacts Require Preparation of a Subsequent or Supplemental EIR.[88]

The 2013 Addendum[89] fails to analyze the impacts of chances to Project parking caused by the 2015 Project.

The 2008 FEIR assumed the Project would provide off-street parking spaces per dwelling unit. Page 139 of the Addendum states that the Project would provide 1.5 to 2.0 parking spaces per dwelling unit, but on the same page inconsistently states that the Project would provide between 534 and 644 spaces for the Project's residential component. With 600 dwelling units in the Project, 1.5 to 2.0 spaces per dwelling unit would be 900 to 1200 parking spaces. Separately, the Addendum and its Appendix C Parking Study state that the number of free curb within a quarter-mile of the Project that are unoccupied at the time of peak parking demand on weekdays is 345 and at time of peak parking demand on Saturdays is 288 and conclude that these surpluses offset the loss of the existing 61 spaces on the Project site without impact.

Mr. Smith explains that the difference between the number of parking spaces that would be provided at parking ratios of 1.5 to 2.0 per dwelling unit (900 to 1200) and what is actually proposed (534 to 644 residential spaces) is 566 to 366 spaces, which is greater than the surplus of free parking within a quarter-mile of the site.[90]

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[87] Oral argument in *California Bldg. Industry Assn. v. Bay Area Air Quality Management Dist.* (Cal. Sup. Ct Case No. No. S213478) has been set for October 7, 2015, the same date as the instant Planning Commission hearing on this Project. There is therefore a reasonable possibility that the 2011 BAAQMD Guidelines will be reinstated prior to final Project approval by the City Council. The City should analyze the Project's air quality impacts pursuant to the 2011 Guidelines now, rather than risk the need to go back and reopen the CEQA process following the Planning Commission hearing.

[88] In the alternative, there is substantial evidence supporting a fair argument that the Project will have significant traffic impacts that were not previously analyzed, thus triggering the requirement to prepare an EIR. *Lishman*, 140 Cal. App. 4th at 1296-97.

[89] The Revised Addendum appears to have adopted the 2013 Addendum's traffic and parking analysis, since the Revised Addendum contains no new discussion of traffic and parking.

[90] Exhibit C, pp. 1-2.

Mr. Smith explains that the inconsistencies in parking calculations between the 2008 EIR and 2013 parking study indicates that a) contrary to the representation of the Addendum and its Appendix C, the loss of 61 existing spaces on site could cause significant parking impact and b) the on-site residential parking provisions proposed by the Project are inadequate at a level that would cause significant parking impacts in the neighborhood.[91] These are potentially new significant impacts which must be analyzed in an updated traffic study and supplemental or subsequent EIR.

## G. The Project Will Result in New and Potentially Significant Parking and Traffic Impacts That Were Not Previously Disclosed or Analyzed in the 2008 EIR.[92]

### 1. The Addendum Traffic Analysis Excessively Discounts Project Trip Generation.

The Addendum's trip generation analysis for the Project assumes a number of trip generation discounts that are legitimately authorized under VTA or City of San Jose procedures. However, Mr. Smith concludes that the 15 percent discount applied by the Addendum for internalized use of community amenity space is improper since most residential condominium complexes have resident-use community amenity space and that internalization of trips is already reflected in the base trip generation rates for residential condominium use.[93] Based on the information in Addendum Appendix B, Table 6, the Project would generate an additional 36 trips in the am peak hour and 50 more in the pm peak hour. At a minimum, this change would affect the applicable fees the Project would have to pay under the City's "Protected Intersection Policy" and the 101/Old Oakland/Mabury TDP Policy. As explained by Mr. Smith, in the former case, the fee would increase by $100,000 over the $1,132,000 calculated in Appendix A. In the latter, the assessment would increase by $65,190 over the $651,903 calculated in Appendix A. In addition, at intersections that are close to the threshold of impact with the Project as analyzed, inclusion of the improperly discounted Project trips

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[91] *Id.*

[92] In the alternative, there is substantial evidence supporting a fair argument that the Project will have significant traffic impacts that were not previously analyzed, thus triggering the requirement to prepare an EIR. *Lishman,* 140 Cal. App. 4th at 1296-97.

[93] Exhibit C, p. 2.

might be sufficient to create a finding of significant impact.[94] Mr. Smith concludes that the Addendum's inconsistencies in the level of service calculations for the Background + Project and Cumulative + Project render the entire analysis inaccurate, and must be recalculated to determine whether or not a change in significance actually occurs.[95]

2. The Addendum's Analysis of the Unsignalized Intersection of North Sixth Street with Taylor Ignores the Realities of the Project's Access Needs.

The 2013 Addendum's analysis of Unsignalized Intersection of North Sixth Street with Taylor states that the stop-controlled northbound movement on Sixth Street at this intersection experiences long existing delays because of the heavy traffic on Taylor which is uncontrolled at this intersection, that long delays translate to long queues (without quantifying the delay or queues) and that the Project and Background traffic would increase the delay and queues. The analysis then suggests that drivers can just avoid the problem by using other streets that have signalized intersections with Taylor. However, Mr. Smith concludes that what purports to be an "analysis" in the Addendum is no more than a "simplistic dismissal of the problem [that] ignores the fact that the subject intersection is at a corner of the Project frontage and that a substantial portion of the Project will need to take access and egress from its Sixth Street frontage."[96] By contrast, Mr. Smith concludes that traffic queuing on Sixth across the Project's access and egress driveways is a significant impact that could require signalization of the subject intersection despite the signal warrant analysis findings or alternatively, downsizing the Project, as possible mitigation.[97] The Addendum is deficient in failing to account for these issues.

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[94] *Id.*
[95] *Id.*
[96] Exhibit C, p. 5.
[97] *Id.*

### H. The Revised Addendum Fails to Include An Updated Cumulative Impacts Analysis to Incorporate Changed Circumstances Caused by New, Reasonably Forseeable Projects Planned in the Vicinity of the Project.

Both the Revised Addendum and 2013 Addendum fail to include a cumulative impact analysis to assess the cumulative effects of air pollutant emissions released from newly constructed and reasonably foreseeable projects within the Bay Area Air Basin. With regard to air quality impacts, the 2013 Addendum states that a Project would have a cumulative impact if "the aggregate total of all past, present, and foreseeable future sources within a 1,000 foot radius from the fence line of a source, or from the location of a receptor, plus contribution from the project, exceeds the following:

- Non-compliance with a qualified Community Risk Reduction Plan; or
- An excess cancer risk levels of more than 100 in one million or a chronic non-cancer hazard index (from all local sources) greater than 10.0; or
- 0.8 $\mu g/m^3$ annual average PM2.5."[98]

However, neither Addendum analyzed contains any analysis whatsoever of the Project's individual, or cumulative contribution, to these impacts. This violates CEQA's basic requirement that an agency must determine whether a Project's incremental effect on a given impact is cumulatively considerable in light of other reasonably forseeable projects within the vicinity of the Project. The City failed to conduct any updated analysis in either CEQA Addendum to determine whether or not the cumulative air pollutant emissions would have a considerable effect on air quality, omitting obviously forseeable cumulative project's from the Addendum's analysis, such as the neighboring Cannery Park Project.[99]

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[98] 2013 Addendum, p. 39.

[99] https://maps.yahoo.com/directions/?lat=37.352164033463644&lon=-121.89355596899986&bb=37.35313415%2C-121.89531147%2C37.3511939%2C-121.89180046&o=357%20E%20Taylor%20St%2C%20San%20Jose%2C%20CA&d=696%20N%206th%20St%2C%20San%20Jose%2C%20CA; http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL0608507207.

The courts have held that it is vitally important that an EIR avoid minimizing the cumulative impacts. Rather, it must reflect a conscientious effort to provide public agencies and the general public with adequate and relevant detailed information about them.[100] An EIR's cumulative impacts discussion "should be guided by the standards of practicality and reasonableness," but several elements are deemed "necessary to an adequate discussion of significant cumulative impacts" including "[a] list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency."[101] An EIR must be prepared to include an updated cumulative impacts analysis for all effects relevant to Project construction and operation.

## V. CONCLUSION

Even a preliminary review of the Revised Addendum and supporting documents demonstrates that the City has failed to conduct a legally adequate analysis of the 2015 Project under CEQA. As a result, the City has failed to accurately identify, analyze, and mitigate numerous potentially significant impacts of the 2015 Project, including air quality impacts, noise impacts, and traffic impacts. The City therefore lacks any evidence, let alone substantial evidence, to support its conclusions that these impacts will be less than significant, or that they will be rendered less than significant with mitigation. And even if the City were to apply a "subsequent review" standard to its CEQA analysis, changed circumstances and new information regarding potentially significant impacts exists that trigger the need to prepare a subsequent or supplemental EIR for the Project.

Residents continues to urge the City to fulfill its responsibilities under CEQA by withdrawing the Revised Addendum and preparing a legally adequate EIR for the Project. Only in this way can the City and the public ensure that all adverse impacts of the Project are mitigated to the full extent feasible and required by law.

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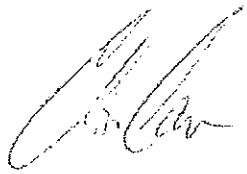
[100] PRC § 21061.; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79. *See also Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 723.

[101] 14 CCR § 15130(b); *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 928-29.

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

Sincerely,



Christina Caro

CMC: