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October 22, 2018

***Via Email and US Mail***

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Department of Planning, Building, and Code Enforcement  
200 East Santa Clara St., 3rd Floor  
San Jose, CA 95113  
Email: [Jenny.Nusbaum@sanjoseca.gov](mailto:Jenny.Nusbaum@sanjoseca.gov);

**Re: Preliminary Comments on the Draft Environmental Impact Report for the San Jose Downtown Strategy 2040 Plan (Downtown Strategy 2040)**

Dear Ms. Nusbaum:

We submit these preliminary comments on behalf of **San Jose Residents for Responsible Development** (“Residents”) regarding the Draft Environmental Impact Report (“DEIR”) for the Downtown Strategy 2040 Plan, File No. PP15-102, (“Downtown Strategy” or “Project”).

The Project proposes 1) Text and Land Use Amendments to update the General Plan so that future development Downtown is consistent with planned regional transportation improvements and to increase the development capacity within the Downtown boundary through the transfer of 4,000 dwelling units and 10,000 jobs (approximately 3 million square feet) from later horizon General Plan growth areas to Downtown; 2) establish an Employment Priority Area Overlay to support Downtown San José’s growth; 3) change the General Plan Land Use/Transportation Diagram designations on specific parcels within the Transit Center Employment Growth Area of the Downtown Strategy 2040 bounded area to align development possibilities with the Downtown Strategy 2040’s priorities; 4) clarify that within the Downtown Strategy 2040 area if development permits expire on a site, then the previously entitled capacity on that site will revert back to the un-entitled remaining capacity under the Downtown Strategy 2040 EIR; 5) replace the existing San José Downtown Strategy adopted by the City Council in 2005 with a new Downtown Strategy 2040; 6) zoning amendments to align the boundaries of the Downtown Zoning area to be consistent with the boundaries of the Downtown

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Strategy 2040 area and the General Plan; and 7) various other amendments to the Municipal Code to respond to lifestyle changes within the City.<sup>1</sup>

We conducted an initial review of the DEIR and its appendices with the assistance of our technical consultants, air quality consultant Hadley Nolan and hazardous materials and hydrology expert Matt Hagemann, P.G., C.Hg, of Soil Water Air Protection Enterprise (“SWAPE”)<sup>2</sup>, as well as expert traffic engineer Daniel Smith, P.E.<sup>3</sup> The attached expert comments require separate responses under CEQA.

Based on our initial review, it is clear that the DEIR is significantly flawed and does not comply with the requirements of the California Environmental Quality Act (“CEQA”).<sup>4</sup> In particular, the DEIR lacks substantial evidence to support its conclusions that the Project will result in less than significant impacts in several resource categories, including hazardous materials, construction air quality impacts, and transportation impacts. The DEIR also fails to disclose existing substantial evidence demonstrating that proposed project buildouts within the Downtown Strategy Project area, including the 4<sup>th</sup> & St. John Project site, are likely to result in significant impacts that the DEIR fails to disclose and mitigate. The City may not approve the Project until the City prepares a legally adequate revised environmental impact report (“EIR”) that fully and accurately discloses the Project’s potentially significant impacts and incorporates all feasible mitigation measures to minimize those impacts to the fullest extent feasible. The City similarly may not rely on this DEIR for tiering purposes unless these substantial errors and omissions are corrected.

We are continuing to review the DEIR reference documents which were provided to us by the City just six days ago, and are awaiting a response to our October 11, 2018 Public Records Act for documents related to the Project. We reserve the right to supplement these comments at a later date following review of these documents, and at any later proceedings related to the Project.<sup>5</sup>

## 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

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<sup>1</sup> See DEIR Notice of Availability (“NOA”), pp. 2-3.

<sup>2</sup> SWAPE’s technical comments and curriculum vitae are attached hereto as Exhibit A.

<sup>3</sup> Mr. Smith’s technical comments and curriculum vitae are attached hereto as Exhibit B.

<sup>4</sup> Public Resources Code (“PRC”) section 21000 *et seq.*; 14 Cal. Code Regs. (“CCR”) section 15000 *et seq.*

<sup>5</sup> Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (“*Bakersfield*”) (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

and worker health and safety hazards and environmental impacts of the Project. The association includes: City of San Jose residents Jeff Dreyer Sr. and Paul Oller; 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. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances).<sup>6</sup> The EIR is the very heart of CEQA.<sup>7</sup> "The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."<sup>8</sup>

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.<sup>9</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>10</sup> The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible

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<sup>6</sup> See, e.g., PRC § 21100.

<sup>7</sup> *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

<sup>8</sup> *Comtys. for a Better Env' v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 ("*CBE v. CRA*").

<sup>9</sup> 14 CCR § 15002(a)(1).

<sup>10</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

officials to environmental changes before they have reached ecological points of no return.”<sup>11</sup>

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.<sup>12</sup> The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”<sup>13</sup> If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>14</sup>

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*”<sup>15</sup> As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.”<sup>16</sup>

### **A. Programmatic EIRs and Subsequent Environmental Review.**

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

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<sup>11</sup> *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.

<sup>12</sup> 14 CCR§ 15002(a)(2) and (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

<sup>13</sup> 14 CCR §15002(a)(2).

<sup>14</sup> PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

<sup>15</sup> *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), *quoting, Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

<sup>16</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.<sup>17</sup>

Under CEQA Guidelines Section 15168, program EIRs may be used for a series of related actions that can be characterized as one large project. If a program EIR is sufficiently comprehensive, Section 15168 allows the lead agency to dispense with further environmental review for later activities within the program if they were adequately covered in the program EIR.<sup>18</sup> Section 15152 also allows agencies to “tier” a project-specific analysis to a prior program EIR, including one prepared for a general plan amendment, to streamline regulatory procedures and eliminate repetitive discussions of the same issues in successive EIR’s.<sup>19</sup>

CEQA provides narrow opportunities for subsequent environmental review following adoption of a programmatic document. When a program EIR has been prepared pursuant to Section 15168, CEQA provides that “no subsequent or supplemental environmental impact report shall be required” unless at least one or more of the following occurs: (1) “[s]ubstantial changes are proposed in the project which will require major revisions of the environmental impact report,” (2) there are “[s]ubstantial changes” to the project’s circumstances that will require major revisions to the EIR, or (3) “new information becomes available, 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” which demonstrates that the project will have impacts not previously analyzed, or that previously identified impacts can be mitigated with measures not previously required.<sup>20</sup> The same “subsequent review” standards apply to subsequent CEQA review of changes to a project when a project-level CEQA document was originally prepared.<sup>21</sup>

Section 15152 provides more exacting standards for subsequent review of later projects, prohibiting preparation of subsequent EIRs or negative declarations unless the later project may result in impacts which (1) were not examined as significant effects on the environment in the prior EIR; or (2) are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions,

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<sup>17</sup> CEQA Guidelines §§ 15060, 15063(c).

<sup>18</sup> 14 CCR § 15168(c).

<sup>19</sup> PRC §§ 21093, 21094; 14 CCR § 15152; *Ctr. for Sierra Nevada Conserv. v. El Dorado* (2012) 202 Cal.App.4th 1156, 1171; *Las Virgenes Homeowners Fed’n, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 307.

<sup>20</sup> PRC § 21166; 14 CCR § 15162(a); 14 CCR § 15168(c)(2).

<sup>21</sup> *Id.*

or other means.<sup>22</sup> However, subsequent review under Section 15152 remains circumscribed by the scope of review performed in the initial programmatic document.

### III. THE DEIR FAILS TO ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS OF THE DOWNTOWN STRATEGY PROJECT

#### A. The DEIR Fails to Comply With CEQA's Requirements for Program-Level Environmental Review

CEQA requires analysis of the environmental effects of a project at the earliest possible stage in the planning process.<sup>23</sup> In particular, an agency must analyze the impacts of all future development contemplated by the adoption or amendment of a general planning document prior to the adoption or amendment.<sup>24</sup> Failure to do so constitutes a prejudicial abuse of discretion by the lead agency, and a failure to proceed in the manner required by law.<sup>25</sup> The DEIR fails to perform this basic analysis for many of the Project's impacts by authorizing increased levels of development which are only partially analyzed in the DEIR.

The existing development capacity authorized by the Downtown Strategy 2000 EIR, and amended by the 2040 General Plan EIR and Addendum, includes:

- 11.2 million square feet of office development (2.8 million square feet per phase)
- 10,360 residential units (2,125 units per phase)
- 1.4 million square feet of retail development (350,000 square feet per phase)
- 3,600 hotel rooms (900 rooms per phase).<sup>26</sup>

The Project proposes to increase the number of residential units in Downtown to 14,360 units, an increase of 4,000 units compared to what is currently planned in the 2040 General Plan, and to increase office square footage to 14.2 million sf, a 3 million sf increase over currently authorized 2040 General Plan levels.<sup>27</sup> These increases also require moving residential units from other Growth Areas or Urban Villages outside of Downtown such that overall residential units anticipated within the City would not

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<sup>22</sup> PRC § 21094; 14 CCR § 15152(f)(1), (2).

<sup>23</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* ("Laurel Heights I") (1988) 47 Cal. 3d 376, 396; *City of Redlands v. San Bernardino County* (2002) 96 Cal.App.4th 398, 410.

<sup>24</sup> PRC § 21080(a) 14 CCR § 15378(a)(1); 14 § CCR 15146; *City of Redlands v. County of San Bernardino*, 96 Cal.App.4th at 409; *Christward Ministry v. Superior Ct.* (1986) 184 Cal.App.3d 180, 194.

<sup>25</sup> *Madera Oversight* 199 Cal.App.4th at 76-77; *Christward Ministry*, 184 Cal.App.3d at 182.

<sup>26</sup> DEIR, p. 9.

<sup>27</sup> DEIR, p. 9, Table 2.4-1.

change, and moving 3,000,000 sf of planned office development (approximately 10,000 jobs) from Coyote Valley to Downtown.<sup>28</sup> The Project therefore proposes a significant increase in both the quantity and location of allowable development within the Downtown Strategy areas of the City.

The DEIR includes a detailed “project-level” analysis for just three impact areas – traffic, air quality, and noise impacts.<sup>29</sup> The DEIR then asserts that the remainder of the Project’s impacts are analyzed at a “programmatic” level, and “may” be subject to subsequent project-level review at the time specific buildout developments are proposed, including hazardous materials impacts, construction emissions, and historic resources, to name a few.<sup>30</sup> However, these sections are both misleading and inaccurate because, in the same sections, the DEIR nevertheless concludes that the Project’s unquantified impacts on these resource areas will be mitigated to less than significant levels with future mitigation.

The DEIR clearly should have evaluated whether the development authorized by the Project should be allowed at the proposed site, which is a separate question from whether a future developer should be granted a permit in an area already authorized for such use. The City is obligated by law to analyze the potentially significant impacts from future development authorized by the Project, and is not permitted to defer its analysis to future permitting proceedings for impacts on resources that can be determined at the time of initial CEQA review.

Moreover, the City has stated in *numerous* other cases that it can approve subsequent projects as within the scope of the program covered by a prior plan-level EIR and not require further environmental review if the information regarding potentially significant impacts is known at the time the prior environmental review document was prepared.<sup>31</sup> The legal standard to challenge that finding would require the public to provide substantial evidence that the subsequent project is larger than what was allowed by the prior document, that there are substantial changes in the circumstances under which the project is undertaken or that *new information which was not known and could not be known at the time the EIR was prepared* shows that there are new or more severe impacts or new mitigation measures to reduce those impacts.<sup>32</sup> Here, since the City has

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<sup>28</sup> DEIR, p. 7.

<sup>29</sup> DEIR, p. 4.

<sup>30</sup> DEIR, Sections 3.3, 3.5, 3.9.

<sup>31</sup> See Sampling of City of San Jose Addendums finding subsequent projects covered within scope of prior environmental review.

<sup>32</sup> Public Resources Code §21166.

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information now that future development allowed by the Project may result in significant impacts, the City is required to analyze these impacts at this time.

The DEIR's lack of analysis results in a failure to inform the public of the scope of potentially significant environmental impacts that may result from Project development, and a failure to require any mitigation to reduce these impacts to less than significant levels, in violation of CEQA.

**B. The DEIR Fails to Disclose the Extent of Known Soil and Groundwater Contamination Within the Project Area and Fails to Include Adequate Mitigation For Potentially Significant Known Contamination**

The DEIR discloses that there are approximately 103 properties within the Downtown Area that are listed as closed Leaking Underground Storage Tank (LUST) cases, five properties listed as open LUST cases, eight DTSC cleanup sites, one military cleanup site, 14 open cleanup program site cases, and 12 closed cleanup program site cases.<sup>33</sup> The DEIR acknowledges that “new development under the proposed Downtown Strategy 2040 could occur in areas with soil contamination” which “may contain a variety of chemical compounds associated with fuels, oils, solvents, metals, or other hazardous substances originating from historical and/or current land uses.”<sup>34</sup> The DEIR further acknowledges that some of this contamination may have migrated via shallow groundwater to properties in the Downtown area, and that, “[i]f not appropriately managed, contamination from past releases could present health risks to construction workers and/or the public during the site preparation, dewatering, construction, and maintenance activities.”<sup>35</sup> However, the DEIR fails to disclose current levels of contamination and admittedly defers all analysis and mitigation of soil and groundwater contamination impacts to “subsequent analysis” that the City anticipates will be performed in post-approval studies.<sup>36</sup> The DEIR concludes that the Project's hazardous materials impacts related to soil and groundwater contamination will be less than significant.<sup>37</sup> This conclusion is not supported by any evidence in the DEIR, and is contradicted by publicly available evidence related to projects within the Plan area.

Residents' experts previously commented that a 2017 Phase I Environmental Site Assessment (“ESA”) that was performed for the 4<sup>th</sup> & St. John Project site documented residual soil and groundwater contamination at the site which exceeds San Francisco Bay

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<sup>33</sup> DEIR, p. 151-152.

<sup>34</sup> *Id.*

<sup>35</sup> DEIR, p. 159.

<sup>36</sup> DEIR, p. 159.

<sup>37</sup> DEIR, p. 161.



Regional Water Quality Board (“SFBRWQCB”) Environmental Screening Levels (“ESLs”).<sup>38</sup> The contamination included benzene detections at 31 parts per billion (“ppb”), which SWAPE explained exceeded the ESL of 1 ppb in shallow groundwater and creates a vapor intrusion risk in a residential scenario.<sup>39</sup> SWAPE’s 2017 consultant reports further explained that this contamination, which will be disturbed by Project construction, is likely to pose a health risk to the public. SWAPE’s reports were submitted to the City in 2017, prior to the release of this DEIR, and are part of the Administrative Record in Residents’ pending litigation over the 4<sup>th</sup> & St. John Project.<sup>40</sup> Nevertheless, the DEIR fails entirely to discuss these impacts. The DEIR fails to disclose the existing contamination at 4<sup>th</sup> & St. Jon as a potentially significant impact, fails to include the 4<sup>th</sup> & St. John Phase I ESA, and fails to disclose the potentially significant health risk from exacerbating the site’s existing contamination impacts during Project construction. The DEIR must be revised to disclose these impacts, as well as the existing levels of known contamination at the other project sites within the Plan area.

Residents’ experts also commented in 2017 that the City’s proposed development of a site management plan for the 4<sup>th</sup> & St. John Project site was inadequate mitigation because it contained no regulatory standards and would only be implemented upon future Project development, this improperly deferring mitigation to address known contamination.<sup>41</sup> The DEIR for the Plan contains similarly inadequate mitigation which proposes to create post-approval Soil Management Plans and Remedial Action Workplans that contain no regulatory standards.<sup>42</sup> The DEIR must be revised to disclose the levels of existing contamination within the Plan area, and to include clear and binding mitigation that meets regulatory standards.

### **C. The DEIR Fails to Disclose Construction Emissions from Future Developments Within the Downtown Strategy Project Area, and Fails to Ensure that Construction Impacts Will Be Adequately Disclosed and Mitigated During Future Buildout**

The DEIR states that it is not possible to analyze construction emissions at the Plan stage because the City cannot predict exactly what construction activity will occur “in any one year or where within the boundaries of Downtown.”<sup>43</sup> The DEIR then claims that

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<sup>38</sup> See Exhibit A, p. 7.

<sup>39</sup> See SWAPE 11/17/17 comments on 4<sup>th</sup> & St, John, p. 2.

<sup>40</sup> Exhibit C contains the Administrative Record in *San Jose Residents for Responsible Development et al. v. City of San Jose et al.*, Santa Clara Superior Court Case No. 18-CV-321709 (filed January 11, 2018).

<sup>41</sup> *Exhibit A, p. 7.*

<sup>42</sup> DEIR, pp. 159-161.

<sup>43</sup> DEIR, p. 62.

“future project-level environmental review will be required of individual development projects to account for their construction impacts.”<sup>44</sup> The DEIR then concludes, without analysis, that construction criteria pollutant emissions for future projects built under the Plan will be less than significant.<sup>45</sup> The DEIR’s conclusion is based on two unsupported assumptions.

First, the DEIR states “it is assumed that all future projects under the Downtown Strategy 2040 would not exceed the average daily or annual emissions during construction.”<sup>46</sup> This assumption is based on the DEIR’s unsupported conclusion that all individual development projects within the Plan area will be smaller than the BAAQMD Construction Emission Screening Levels of 240 dwelling units, 554 hotel rooms, or 277,000 square feet of office or other commercial/retail uses.<sup>47</sup> However, the DEIR provides no evidence to support its reliance on this assumption, and it is indeed contradicted by existing permits and approvals within the Plan area. For example, the City’s 2017 approval of the General Plan Amendment for 4<sup>th</sup> & St. John authorized a minimum of 337 dwelling units, and up to 728 dwelling units and up to approximately 1,189,000 square feet of commercial/office uses on a 0.91-acre portion of the Project area. The 4<sup>th</sup> & St. John Project alone, which represents just 1/1920<sup>th</sup> of the Plan Project’s approximately 3-square mile<sup>48</sup> size, is therefore more than double the BAAQMD screening criteria for analyzing construction emissions, yet the DEIR fails to mention it and fails to include any analysis of the 4<sup>th</sup> & St John Project’s construction emissions.

Second, the DEIR assumes that, in the event a future project *does* exceed BAAQMD Screening Levels, the construction emissions from those projects will be reduced to less than significant levels by supplemental environmental review which “may be required” prior to project approval or implementation.<sup>49</sup> The DEIR contains no evidence to support this assumption. Nor could it, because the City cannot predict, without a quantitative assessment, that unidentified mitigation measures that are intended to be applied to undefined projects to reduce undetermined construction emission impacts will be 100% effective at reducing construction air quality impacts to less than significant levels.

The DEIR must be revised to remove these unsupported significance conclusions and add binding requirements that all subsequent buildout projects within the Plan area that meet or exceed BAAQMD Screening Thresholds shall be required to prepare a

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<sup>44</sup> DEIR, p. 62.

<sup>45</sup> DEIR, p. 65.

<sup>46</sup> DEIR, p. 65.

<sup>47</sup> *Id.*; DEIR, p. 63.

<sup>48</sup> DEIR Notice of Availability, p. 1.

<sup>49</sup> DEIR, p. 65.

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supplemental EIR which includes a quantitative air quality analysis to determine the significance of the project's construction emissions and implement all feasible mitigation measures.

#### **D. The DEIR Fails to Accurately Measure the Project's Traffic Impacts**

The DEIR analyzes Project transportation impacts under the Vehicle Miles Traveled ("VMT") per Capita metric provision of SB 743. However, as traffic consultant Mr. Smith explains, VMT per capita generated in the Project area is an incomplete metric for measuring traffic impacts.

The DEIR relies on 2015 baseline conditions to begin its traffic analysis, at which time the Downtown Strategy Plan population was 12,548 and that the employment total in the area was 33,608 jobs and that this population and employment total generated a net VMT of 433,728 (sum of 103,562 and 340,166).<sup>50</sup> Mr. Smith calculates that, under the existing General Plan, by 2040, the population would be 34,104, the employment would be 82,162 and these components would generate a net VMT of 997,831.<sup>51</sup> As a result, Mr. Smith explains that the increases in total VMT under the existing General Plan and the Downtown Strategy and its alternatives would result in a 230 percent increase over baseline under the existing General Plan, 254 percent increase over baseline for the Downtown Strategy, and respectively 258 percent and 262 percent over baseline for Downtown Strategy Alternatives 1 and 2.<sup>52</sup>

The DEIR overlooked this evidence, instead using VMT per Capita as the sole traffic metric. As Mr. Smith explains, VMT per Capita values remain the same despite population increases, and therefore fail to provide an adequate analysis of the increase in severity of traffic conditions posed by the increased population authorized by the Project. Mr. Smith explains that total VMT generated by the Project must be considered in conjunction with total VMT experienced within the Project area in order to accurately assess the severity of the Project's traffic impacts. The DEIR must be revised to include a meaningful analysis of the Project's traffic impacts at full buildout.

#### **IV. CONCLUSION**

The DEIR fails to meet the informational and public participation requirements of CEQA because it fails to disclose and mitigate the Project's potentially significant

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<sup>50</sup> DEIR, Appendix D Table ES-1.

<sup>51</sup> Exhibit B, p. 2.

<sup>52</sup> Exhibit B, p. 2.

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environmental impacts, and purports to conclude that several Project impacts are less than significant with little or no supporting evidence. Reliance on the DEIR for future project buildouts is likely to result in serious environmental impacts escaping necessary environmental review. The DEIR must be revised and recirculated to correct these serious errors and omissions.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Christina Caro", is written over a light blue rectangular background.

Christina Caro

CMC:acp  
Attachments

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