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February 6, 2014

VIA E-MAIL AND OVERNIGHT MAIL

City of Petaluma
Community Development Department
Attention: Olivia Ervin
11 English Street
Petaluma, CA 94952
oervin@ci.petaluma.ca.us

Re: Comments on the Draft Environmental Impact Report for the Riverfront Mixed-Use Project (SCH #2013062004)

Dear Ms. Ervin:

4-1 We are writing on behalf of the Petaluma Residents for Responsible Development to submit comments on the Draft Environmental Impact Report ("DEIR") prepared by the City of Petaluma ("City") for the Riverfront Mixed Use Project ("Project") proposed by Basin Street Properties, LLC ("Applicant"). The Project requires a Tentative Subdivision Map for the development of a new mixed-use community on 39.4 acres of riverfront land. The Project includes 273 residential units (single-family homes, apartments, townhomes and live-work units), a 120-room hotel, 60,000 square feet of office space, 30,000 square feet of retail space, and 4 acres of parks. The Project will also include an emergency access route along Old Lakeville Street, a 3.65-acre riverfront park on state-owned property, and the dedication of land for a 10,000 square foot community boat house and boat launch.

The City prepared the Project DEIR after receiving comments from Petaluma Residents for Responsible Development and others. The City's DEIR, however, does not adequately address the impacts raised in our prior comments, and does not commit to further mitigation measures to reduce those impacts to less than significant levels. The City appears to have no interest in addressing the largest

environmental challenges associated with the Project. The DEIR ignores these "stubborn problems" and continues to sweep them "under the rug," which the law prohibits.[1] As explained more fully below, the DEIR prepared for the Project is significantly flawed and does not comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq*. Moreover, the City may not approve a Tentative Subdivision Map until an adequate DEIR is prepared and circulated for public review and comment.

We have reviewed the DEIR and its technical appendices with assistance from a technical consultant, Matt Hagemann, whose comments and qualifications are attached as Attachment A. The City must respond to Mr. Hagemann's comments separately and individually.

I. INTRODUCTION

A. Interest of Commenters

4-2

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

Individual members of Petaluma Residents and its affiliated unions live, work, recreate, and raise their families in Sonoma County, including the City of Petaluma. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite. Petaluma Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

[1] *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Ass'n.* (1986) 42 Cal.3d 929, 935.

4-3 **B. Summary of Comments**

As explained below, the Project will generate a multitude of impacts in a number of impact areas, including air quality, hazardous materials, greenhouse gas emissions, geologic hazards, flooding, and traffic. The DEIR either mis-characterizes, mis-analyzes, underestimates or fails to identify many of these impacts. Furthermore, many of the mitigation measures described in the DEIR will not in fact mitigate impacts to the extent claimed. The DEIR must be revised to resolve its inadequacies and must be recirculated for public review and comment.

CEQA requires recirculation of a DEIR for public review and comment when significant new information must be added to the DEIR following public review, but before certification.[2] The CEQA Guidelines clarify that new information is significant if "the DEIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the Project or a feasible way to mitigate or avoid such an effect."[3] The purpose of recirculation is to give the public and other agencies an opportunity to evaluate the new data and the validity of conclusions drawn from it.[4] As discussed below, the DEIR does not adequately establish the environmental setting from which to analyze the Project's impacts, the Project will result in significant environmental impacts that are not analyzed in the DEIR, and there are feasible mitigation measures available to reduce significant impacts that have not been required in the DEIR. These changes must be addressed in a revised DEIR that is circulated for public review and comment.

4-4 **II. THE CITY LACKS SUBSTANTIAL EVIDENCE TO SUPPORT ITS CONCLUSIONS IN THE DEIR REGARDING THE PROJECT'S SIGNIFICANT IMPACTS; THE DEIR FAILS TO INCORPORATE ALL FEASIBLE MITIGATION MEASURES NECESSARY TO REDUCE SUCH IMPACTS TO A LEVEL OF INSIGNIFICANCE**

CEQA has two basic purposes, neither of which the DEIR satisfies. First, CEQA is designed to inform decision makers and the public about the potentially significant environmental impacts of a Project before harm is done to the

[2] CEQA, Pub. Resources Code § 21092.1.
[3] CEQA "Guidelines," 14 Cal. Code Regs. § 15088.5.
[4] *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (1981) 122 CalApp3d 813, 822.

environment.[5] The DEIR is the "heart" of this requirement.[6] The DEIR 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."[7]

To fulfill this function, the discussion of impacts in a DEIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[8] An adequate DEIR must contain facts and analysis, not just an agency's conclusions.[9] CEQA requires a DEIR to disclose all potential direct and indirect, potentially significant environmental impacts of a project.[10]

Second, if a DEIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.[11] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.[12] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the DEIR to meet this obligation.

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.[13] 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.[14] This approach helps "insure the integrity of the process of decision by

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[5] CEQA Guidelines § 15002(a)(1); *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.
[6] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.
[7] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[8] CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[9] See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.
[10] Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).
[11] Pub. Resources Code §§ 21002.1(a), 21100(b)(3); 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.
[12] Pub. Resources Code §§ 21002-21002.1.
[13] CEQA Guidelines § 15126.4(a)(2).
[14] *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28.

precluding stubborn problems or serious criticism from being swept under the rug."[15]

In this case, the DEIR fails to satisfy the basic purposes of CEQA. The DEIR's conclusions regarding air quality, greenhouse gas emissions, hazardous materials, geologic hazards, flooding, and traffic are not supported by substantial evidence. In preparing the DEIR, the City: (1) failed to provide sufficient information to inform the public and decision-makers about potential environmental impacts; (2) failed to accurately identify and adequately analyze all potentially significant environmental impacts; and (3) failed to incorporate adequate measures to mitigate environmental impacts to a less than significant level. The City must correct these shortcomings and recirculate a revised DEIR for public review and comment.

A. The DEIR Fails to Adequately Disclose, Analyze and Mitigate Significant Air Quality Impacts

1. The air pollution model was manipulated to avoid mitigation

4-5

Due to the uneven level of fill and the soil types on the 39-acre Project site, the entire site will be "mass graded" during construction. Heavy duty diesel construction equipment including scrapers, dozers, excavators, and graders will move thousands of cubic yards of soil, spreading and leveling it across the site from north to south.[16] Heavy duty diesel equipment such as pavers and rollers will be used to pave 13 acres of new roadways.[17] Diesel loaders, backhoes, tractors, fork-lifts, and a crane will be used to lay building foundations, erect buildings, and deliver and move construction materials around the site.[18]

Heavy duty diesel construction equipment produces significant amounts of air pollution, including the two ingredients of smog: ozone precursors (such as "NOx") and particulate matter ("PM"). The Bay Area has unhealthy levels of these "criteria pollutants," and is considered to be in non-attainment status under both the federal and state Clean Air Acts.[19] The Bay Area Air Quality Management

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[15] *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Ass'n.* (1986) 42 Cal.3d 929, 935.
[16] DEIR Appendix C-1, Air Quality and Greenhouse Gas Emissions Analysis, Attachment 1, p. 11 of 44 (listing construction equipment).
[17] *Ibid.*; DEIR p. 3-6.
[18] *Ibid.*
[19] DEIR Appendix C-1, p. 8.

District ("BAAQMD") therefore requires a "significant impact" finding under CEQA for all construction projects that contribute substantial amounts of these pollutants to the air.

To determine if a significant impact finding is warranted, BAAQMD's CEQA Guidelines ask the lead agency to calculate the "average daily emissions" during construction, using the "CalEEMod" computer model. The lead agency enters data into the model, such as the lot size and the types of buildings to be constructed. The model then creates default assumptions about the project's air emissions, based on a database of similar construction projects, to determine if project emissions will exceed BAAQMD's thresholds of significance. Projects like this one, on a large site that will require a lot of heavy duty diesel equipment for mass grading, paving, and construction of numerous buildings, invariably exceed the threshold of significance, particularly for NOx.

The DEIR for this Project, however, concludes that the thresholds will not be exceeded, and that a finding of significance is not required for criteria air pollutant emissions during construction.[20] This is because the average daily emissions of NOx, for example, will allegedly be one third below the threshold of significance.[21] For several reasons this conclusion is not supported by substantial evidence. The DEIR manipulated the CalEEMod model in dozens of improper ways in order to achieve this result. Fortunately, the model requires disclosure whenever a modification is made to its default settings, and the model output attached to the DEIR reveals flaws that are not disclosed in the DEIR itself.[22]

4-6 The first modification made to the CalEEMod default settings was to assume that mitigation would already be built into the Project, specifically, that construction equipment would be equipped with newer, cleaner engines, when in fact no such mitigation is actually required. The DEIR changed the CalEEMod default settings for all 13 types of diesel construction equipment that will be used on the Project site.[23] Instead of calculating the unmitigated exhaust emissions from equipment that is typically found on a project site, the DEIR assumed that every

[20] DEIR p. 4.1-8.
[21] DEIR, Appendix C-1, p. 8, Table 2 (emissions of ROG, NOx, and PM all approximately one third below BAAQMD thresholds).
[22] DEIR, Appendix C-1, Attachment 1 (*hereinafter* "Project CalEEMod output").
[23] Project CalEEMod output, pp. 2-3 and 11 of 44 (listing 32 pieces of construction equipment and showing that all 32 pieces and all 13 types of equipment were changed from the default settings to "mitigated" and to "Tier 2" engines, and listing "construction off-road equipment mitigation – Tier 2 and BMPs" among the "non-default data" used).

diesel engine would automatically be mitigated and would have a "Tier 2" engine.
4-7 The DEIR, however, only requires the use of Tier 2 engines under a "worst-case" scenario: if the single family residences are constructed and occupied first, then the remainder of construction must use Tier 2 engines.[24] This mitigation measure is only triggered by an unlikely set of circumstances. Nothing in the DEIR requires the use of Tier 2 engines as a matter of course, and therefore the DEIR's modifications to the CalEEmod default settings were inappropriate. As noted in the CalEEMod User's Guide, "substantial evidence" must be available to support any reduction in engine emissions below the default level, and that evidence is lacking here.[25]

4-8 The second modification the DEIR made to the CalEEMod default settings was to reduce the Project acreage to only 25 acres.[26] Although it is acceptable to change the model's default settings in a way that more accurately reflects Project construction, such changes must be "supported with substantial evidence required by CEQA."[27] Project construction will disturb 39 acres and will include the construction of 7.4 acres of parks (only 6.2 acres were assumed in the DEIR's CalEEMod model) and 13 acres of roads (the DEIR's CalEEMod model did not include this at all).[28] The DEIR improperly manipulated the CalEEMod model by failing to account for emissions associated with constructing the entire Project.

4-9 The third modification that the DEIR made to the CalEEMod default settings was to extend the construction period "out 5 years," which is far beyond the model's assumption for a project of similar size.[29] The CalEEMod model is not based on the total time it may take for a project to be fully constructed, including "down time" when no construction occurs. Instead, the model calculates the actual "workdays" during six phases of construction: demolition, site preparation, grading, building construction, architectural coating (i.e. painting), and paving.[30] The DEIR did not assume a demolition phase because there are no buildings to demolish, and it

[24] DEIR pp. 4.1-14 to 4.1-16, Mitigation Measure AIR-3.
[25] CalEEMod User's Guide, p. 39, available at: http://www.caleemod.com/, under link to "User's Guide."
[26] *Ibid.*, Appendix C-1, pp. 5-6, and Project CalEEMod output, pp. 1 and 4 of 4 (listing the land uses input in the model, and showing changes made from default settings).
[27] CalEEMod User's Guide, p. 9.
[28] *Compare* DEIR p. 3-6 to Project CalEEMod output, pp. 1 and 10 of 44 ("0" acres of paving).
[29] Project CalEEMod output, p. 2 of 44.
[30] CalEEMod User's Guide, pp. 24-25.

adhered closely to the default assumptions for site preparation and paving.[31] However, it deviated *dramatically* from the default assumptions for grading, building construction, and architectural coatings. The DEIR estimated that the grading and building construction phases would take twice as long as assumed in by CalEEMod, and that architectural coatings (painting) would take ten times as long.[32] In total, the DEIR added 775 work days to the presumed construction timeline for these three phases, which is 135% more than the number of days presumed by the CalEEMod model based on a survey of similar projects.

As a result of adding so many more work days, the "average daily emissions" from project construction went dramatically down. A project that is constructed over 575 work days, as predicted by the CalEEMod model, has a much higher daily emissions rate than a project constructed over 1352 work days, as predicted by the DEIR. The City does not have substantial evidence to support such an extreme deviation from the CalEEMod model. The DEIR even states that the Applicant's Project plans "do not specify a phasing order or timeframe" for Project construction.[33] Despite the fact that the Project will be completed "in response to market conditions,"[34] and thus there may be periods of non-construction, there is no evidence to support the conclusion that the number of active construction days on the Project site could reasonably occupy every single working day over a five-year period, as assumed in the DEIR.

4-10 The DEIR includes a separate "partial" emissions analysis for the Project components other than the single-family homes.[35] Instead of doubling the estimated time for building construction, as was done in the full Project emissions analysis, the partial emissions analysis adopts the CalEEMod default time period for this phase.[36] It is inconsistent and arbitrary to use the default number of construction working days when analyzing part of the Project, but not when analyzing the entire Project. There is no justification for presuming that the active building construction phase for the entire Project will take 440 working days longer than predicted by the CalEEMod model.

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[31] Project CalEEMod output, p. 2 of 44, *also compare* p. 3 of 44 with p. 10 of 44 (default assumptions were changed from 20 to 21 days for site preparation and from 35 to 36 days for paving).
[32] *Ibid.* (default assumptions were changed from 45 to 90 days for grading, from 440 to 880 days for construction, and from 35 to 325 days for architectural coatings).
[33] DEIR p. 3-5.
[34] *Ibid.*
[35] Project CalEEMod output, "Riverfront – Partial Construction."
[36] *Ibid.*; see also DEIR p.

4-11 It is also absurd to presume that the active period for applying architectural coatings (i.e. paint) will take almost 300 working days longer than the CalEEMod default assumption. Based on the square footage of the buildings to be constructed, CalEEMod assumed it would take 35 working days to paint those buildings. The DEIR, however, assumed that it would take 325 working days. This can only be characterized as an absurd amount of time.

The partial emissions analysis for the Project similarly increased the length of the architectural coatings phase by 10 times the number of days predicted by CalEEMod. In support of this change, the DEIR simply explained that the timeline was extended "to represent activity for interior work that includes painting."[37] This statement does not make sense, because the CalEEMod already assumes that the architectural coatings phase includes interior work such as painting. As described in the CalEEMod User's Guide, the architectural coatings phase "involves the application of coatings to both the interior and exterior of buildings or structures and includes parking lot striping as well as painting of the walls of parking structures."[38] The City lacks substantial evidence for its presumption that the active architectural coatings phase for the Project will take 290 working days longer than predicted by the CalEEMod model.

4-12 The fourth flaw in the DEIR's construction-related air quality analysis is that it did not incorporate the emissions associated with water trucks, which will be required on site throughout construction to reduce fugitive dust.[39] The DEIR also
4-13 did not incorporate emissions associated with the off-haul of tens of thousands of cubic yards of fill.[40] These omissions undercut the total amount of exhaust emissions analyzed in the DEIR, resulting in an underestimation of Project impacts.

4-14 In sum, there are not sufficient reasons for the City to avoid a finding that construction-related air quality impacts from criteria pollutants will be significant. Had the DEIR not gone to such great lengths to alter the CalEEMod default assumptions, it would not have reached the conclusion that daily construction emissions would be one third below the threshold of significance. What is more, because the DEIR concludes that the Project will not exceed the criteria pollutant thresholds, it does not require stringent controls for dust during and after mass

[37] DEIR, Appendix C-1, p. 15.
[38] CalEEMod User's Guide, p. 25.
[39] Project CalEEMod output, p. 11 of 44.
[40] *Ibid.*; DEIR p. 4.4-13.

grading of the Project site, which the BAAQMD would otherwise require.[41] Thus, the Applicant gets a double windfall—avoiding full mitigating for both equipment exhaust and dust generation. The result is a cost savings for the Applicant but an undue threat to the health and air quality of the City's residents and workers.

2. BAAQMD mitigation measures are missing

4-15 As discussed above, the BAAQMD requires 13 "additional construction mitigation measures" for projects with significant emissions of criteria air pollutants during construction.[42] Three of these 13 measures have not been fully incorporated into the DEIR:

- "All exposed surfaces shall be watered at a frequency adequate to maintain minimum soil moisture of 12 percent. Moisture content can be verified by lab samples or moisture probe."

Instead of incorporating this measure, the DEIR states that all exposed surfaces "shall be watered two times per day or to a [sic] maintain a minimum soil moisture of 12%."[43] Watering two times per day comes from the BAAQMD's "basic" construction mitigation measures. If the Applicant has the option of watering two times per day (less stringent) or maintaining a verified 12% soil moisture (more stringent) it will inevitably choose the less stringent option. This makes the City's incorporation of a 12% soil moisture requirement essentially useless. Moreover, the DEIR's mitigation measure does not require verification of the soil moisture content by lab samples or moisture probes, as set forth in the BAAQMD measure, thus making the measure impossible to verify and enforce.

It is important that stringent dust control mitigation be put in place for this Project, including the maintenance of adequate soil moisture to prevent unwanted dust from blowing toward neighboring communities, roads, and highways. The entire Project site will be mass graded, and the Project will likely be built in stages, which presents a risk of excess particulate matter being blown into the air from the Project site. The City must adopt and provide for strict enforcement of the 12% moisture content requirement.

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[41] BAAQMD's 2011 CEQA Guidelines, p. 8-4, Table 8-2 ("Additional Construction Mitigation Measures for Projects with Construction Emissions Above the Threshold").
[42] *Ibid.*
[43] DEIR p. 4.1-11, Mitigation Measure AIR-1.

- "Wind breaks (e.g. trees, fences) shall be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50% air porosity."

This measure is not included in the DEIR. For reasons similar to those described above, this measure is key to preventing undue fugitive dust from escaping the Project site. The City must apply and actively enforce this measure.

- "The project shall develop a plan demonstrating that the off-road equipment (more than 50 horsepower) to be used in the construction project (i.e. owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20 percent NOx reduction and 45 percent PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available."

This measure is not included in the DEIR. Instead, a measure from the City's General Plan is used, which was adopted before the BAAQMD's CEQA Guidelines. The City's measure simply requires that off-road equipment meet the most recent ARB fleet average, and be equipped with "Best Available Control Technology."[44] This measure neither requires an approved plan for reducing emissions, or provides a particular benchmark for emissions reductions. An approved plan for emissions reductions is crucial, not least because the DEIR improperly *assumes* significant reductions when modeling the Project's air emissions.[45]

The DEIR even fails to incorporate all eight of the BAAQMD's "basic" construction mitigation measures, which apply to all projects and which the DEIR acknowledges are required to reduce potentially significant impacts from fugitive dust to a less-than-significant level.[46] The DEIR only incorporates seven of these eight measures, and omits the following measure:

[44] DEIR p. 4.1-12, Mitigation Measure AIR-2.
[45] *See* DEIR Appendix C-1, pp. 2-3 of 44 (assuming Tier 2 cleaner engines for all equipment); "Riverfront – Partial Construction" p. 2 (assuming Tier 2 for most equipment and the most stringent "Tier 4" for some equipment).
[46] DEIR p. 4.1-8l; BAAQMD's 2011 CEQA Guidelines, p. 8-3, Table 8-1.

- "All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used."

Instead, the DEIR provides an apparently non-applicable requirement that all "paving shall be completed as soon as possible after pipeline replacement work is finished."[47] This is unacceptable. Incorporation and enforcement of the BAAQMD's basic measure is imperative to ensure that wind-borne dust is not a chronic problem as the Project is built out. It is reasonable and feasible to require the Applicant to pave all roads and sidewalks immediately after grading, and to lay building pads promptly, or at least establish a vegetative cover or soil-binding mulch while Project phases are constructed. This measure was inappropriately omitted from the DEIR.

B. The DEIR Fails to Adequately Disclose, Analyze and Mitigate Significant Impacts Regarding Greenhouse Gas Emissions

4-16 The DEIR improperly concludes that the Project will not contribute significant amounts of greenhouse gas pollution ("GHG") to the atmosphere, and the DEIR proposes absolutely no mitigation requiring sustainability features that would reduce the Project's contributions to GHG pollution. Under the BAAQMD's CEQA Guidelines, GHG emissions that exceed 1,100 million tons per year ("MTY") are considered cumulatively significant. If a project exceeds that threshold it is required to incorporate mitigation measures, unless it can show that the project is extremely efficient and will produce no more than 4.6 MTY per capita, including residents and employees of a project.

The DEIR concludes that the Project's operational emissions will be 4,696 MTY, well above the 1,100 MTY threshold of significance, but that per capita emissions will be 4.13 MTY, just below the efficiency threshold of 4.6 MTY, and therefore the Project does not require any mitigation.[48] For several reasons this conclusion is not supported by substantial evidence.

1. GHG emissions are under-calculated

4-17 Similar to the DEIR's manipulation of the CalEEMod default settings for construction emissions, the DEIR also improperly changed the CalEEMod default settings for operational GHG emissions. First, the DEIR assumed that the Project

[47] DEIR p. 4.1-11, Mitigation Measure AIR-1.
[48] DEIR p. 4.1-18f.

would not be occupied until 2020, which is two years after even the lengthy construction period presumed in DEIR. The DEIR predicts that the Project may be built in phases, ending in 2018, and that the single family homes and the hotel will likely be constructed and occupied first.[49] It is unreasonable to change the default CalEEMod settings to reflect that the Project will not be operational until 2020. As the DEIR admits, the sole purpose of using 2020 as the Project occupation date is so that the Project's GHG emissions could be evaluated against "AB32 GHG emission targets" for the electric utility that will serve the Project, PG&E.[50] The DEIR attempts to manipulate the date of Project occupancy so that its emission will look more favorable and it can avoid GHG mitigation. Substantial evidence does not support this conclusion.

4-18 Another related change is that the DEIR reduces the estimated emissions associated with the Project's electricity consumption. The DEIR reduced PG&E's "CO2 intensity factor" from 641.3 pounds per megawatt of electricity to just 288.8 pounds, a 55% reduction from the CalEEMod default assumption. The DEIR states that the 641.3 pounds used in the CalEEMod model only reflects PG&E's "2008 base emission rate," and that "PG&E's 2020 emission rate, as reported by PG&E using the California Public Utilities Commission's CPUC GHG Calculator," is 288.8 pounds. While it is true that the 641.3 intensity factor is based on PG&E's 2008 reporting year, this is the most accurate, verified, and up-to-date number that has been reported to the BAAQMD by PG&E, and it is the number that is used and recommended in the most recent 2013 CalEEMod program.[51] As described in the CalEEMod User's Guide, this intensity factor is "based on Table G6 of the California Air Resources Board (ARB) Local Government Operation Protocol version 1.1 or the latest public utilities inventory reports," and "is consistent with recommendations in the California Air Pollution Control Officer Association (CAPCOA) Quantifying Greenhouse Gas Mitigation Measures document."[52]

There is no substantial evidence to support using a 55% reduction in electricity-related GHG emissions. The DEIR states that PG&E "reported" a 2020 emissions rate, but provides no supporting data to support this assertion.[53] The DEIR also mischaracterizes PG&E's CO2 intensity factor as "steadily decreasing,"

[49] DEIR pp. 3-5 and 4.1-14; Project CalEEMod output, p. 2 of 44 (construction period extended out 5 years until 2018).
[50] DEIR, Appendix C-1, p. 6-7.
[51] CalEEMod User's Guide, Appendix D, Default Data Tables, Table 1.2, *available at*: http://www.caleemod.com/
[52] *Ibid.*, Appendix A, Calculation Details, p. 2.
[53] DEIR, Appendix C-1, p. 7

and suggests that the intensity factor is only affected by PG&E's increasing renewable energy portfolio.[54] This is not at all accurate. PG&E's CO2 intensity factor rises and falls from year to year, based primarily on customer demand and the availability of clean hydro-power.[55] For example, 2011 was an extremely wet year, and PG&E reports that it was able to achieve its lowest CO2 intensity factor yet, at 393 pounds.[56] During the dry years of 2007 and 2008, however, PG&E's CO2 intensity factor rose to over 600 pounds.[57]

The DEIR's significant reduction from the default assumption for PG&E is unsupportable. The GHG Calculator is a model that can be manipulated in any number of ways by the user, to estimate potential future GHG emissions associated with statewide electricity production. The calculator does not provide hard answers, but instead allows users to "run their own scenarios" by varying the parameters associated with statewide future energy efficiency achievements and costs, electricity load, regulatory compliance, the effectiveness of the state's new cap and trade policy, and numerous other parameters.[58] In reality, PG&E's intensity factor rises and falls each year, and even PG&E acknowledges that its data should not be relied upon until "a thorough, third-party verification" is conducted.[59] California is currently facing a severe drought, and hydropower resources have become less reliable. PG&E's current CO2 intensity factor is likely close to or above the 641 pounds used in the CalEEMod model. There is *no* substantial evidence for deviating from this default intensity factor. The DEIR relies purely on speculation in an attempt to avoid mitigating its significant GHG emissions.

CEQA requires that when analyzing Project impacts, the lead agency "should normally limit its examination to changes in the existing physical conditions in the affected area *as they exist at the time the notice of preparation is published*."[60] This language has been interpreted to mean that the lead agency does not have "carte

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[54] *Ibid.* p. 6.
[55] PG&E article dated February 20, 2013, *available at:* http://www.pgecurrents.com/2013/02/20/pge%E2%80%99s-clean-energy-reduces-greenhouse-gas-emissions/
[56] *Ibid.*
[57] *Ibid.*
[58] CPUC's GHG Calculator Revised Report (2010), pp. 18-21: http://ethree.com/documents/GHG%20update/CPUC_GHG_Revised_Report_v3b_update_Oct2010.pdf
[59] *See* footnote 55, *supra.*
[60] CEQA Guidelines § 15126.2 (emphasis added); *see also id.* § 15125(a).

blanche to select the conditions on some future, post-approval date."[61] The estimated Project GHG emissions should be much higher than 4,696 MTY.

2. Energy efficiency is over-calculated

4-19 The "per capita" energy efficiency of the Project depends heavily on how many people will live and work there. The fewer people who occupy the Project, the less efficient the Project will be. The original Initial Study prepared by the City for the Project relied on generic assumptions about the number of residents and employees on the Project site, using U.S. Census data to estimate the number of residents, and basic square footage assumptions to estimate the number of employees. Presumably in response to Petaluma Residents' comments on the Initial Study, the DEIR now incorporates the estimated number of employees from the Project's Fiscal and Economic Impact Analysis (FEIA).[62] Thus, instead of using generic calculations and estimating 420 employees, as was done in the Initial Study, the DEIR estimates only 348 employees, based on the Project's FEIA.

The DEIR refuses, however, to make a similar adjustment to the estimated number of Project residents, in order to align this estimate with the Project's FEIA. The generic estimate of residents based on U.S. Census data is 718, while the FEIA relied on a specific estimate from the Applicant, based on experience with similar projects in the City, of only 565 residents.[63] It is entirely arbitrary for the DEIR to incorporate the more accurate number of employees from the FEIA, but not the more accurate number of residents. Throughout the DEIR it is evident that the City chose to alter default assumptions about Project impacts, but *only* when the result would be to avoid a finding of significance and its associated mitigation requirements. Here, the DEIR refuses to alter its default assumptions for the same reason: to avoid a proper finding of significance that would require mitigation. The City should not be so eager to assist the Applicant in avoiding sustainability measures that would benefit the health and well being of all City residents. The failure to make a finding of significance for GHG impacts is not supported by substantial evidence.

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[61] *Sunnyvale W. Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1379.
[62] DEIR, Appendix C-1, p. 7; Petaluma Resident's July 25, 2013 comments submitted on the Initial Study/Mitigated Negative Declaration for the Project, attached hereto as Attachment E.
[63] *Ibid.*

C. The DEIR Fails to Adequately Disclose, Analyze and Mitigate Significant Impacts Regarding Hazardous Materials

4-20 The DEIR's description of potentially hazardous materials on the Project site misleads the reader by depicting the site as essentially free from potentially significant contamination. The DEIR even characterizes the proposed mitigation measures as conservative and not entirely necessary. In reality, the site contains three sources of potentially significant contamination, the DEIR's investigation and disclosure of these environmental conditions is inadequate, and the proposed mitigation is not sufficient to protect worker health and the health of those who will live on or use the Project site.

The Project site has a storied history of industrial use and hazardous materials storage and disposal. First, the Pomeroy Corporation (formerly Ben C. Gerwick Company) owned the site for 50 years. Between 1973 and 1980 Pomeroy built a railroad spur that terminated on the Project site, to serve its concrete fabrication yard.[64] Pomeroy used this area around the railroad spur to store hazardous materials. Records from a site visit in 1999 include photographs of old fuel tanks, dozens of large metal drums, and chemical containers with petroleum and unidentified chemicals, some of which were tipped over, partially full, and strewn around an "open field" on the Project site.[65] These photographs look like those from a typical "superfund" site.

4-21 Second, the northern part of the Project site was used by the City in the 1960's and 1970's as settling ponds for its wastewater treatment plant. In the 1990's Pomeroy laid sheets of plastic over a portion of the former settling pond area and covered it with petroleum-contaminated soil from a leaking underground storage tank.[66] The soil and the plastic sheeting are still on the Project site.[67]

4-22 Third, after the Project site was purchased by the Applicant in 2005, soil from at least nine other projects was transported there.[68] Aerial photographs of the Project site between 2005 and 2012 show an ever-increasing portion of the Project site being covered with soil.[69] The DEIR does not disclose how much of the

[64] DEIR pp. 4.5-5; DEIR, Appendix C-5, pp. 346-347 of 639.
[65] DEIR p. 4.5-7, Appendix C-5, pp. 545-546 of 639 (copies of the photographs are attached hereto as "Attachment B").
[66] DEIR p. 4.5-7; Appendix C-5; p. 541.
[67] DEIR Appendix C-5; p. 443 (top layer of soil found in Trench 1 was "imported on visqueen" plastic).
[68] DEIR, Appendix C-5, Table 4, p. 29 of 639.
[69] *Ibid.*, pp. 361-365 of 639.

transported soil was contaminated, but it appears that the soil came from multiple contaminated sites nearby.[70]

The only specific information about the transported soils concerns another project constructed by the Applicant, the "Theater Square" project, and it is not reassuring. A letter about the Theater Square site describes how unexpected contamination was discovered when soils were disturbed by workers.[71] 6,100 cubic yards of soil from the site were hauled to a "storage area at a property on Hopper Street in Petaluma," the Project site. 1,000 cubic yards of this soil "had a petroleum hydrocarbon odor" and was classified as hazardous waste.[72] The letter states that the contaminated soils were supposed to be "be disposed shortly," but nothing in the DEIR indicates whether the soils were ever removed from the Project site.

4-23 These three potential sources of contamination on the Project site require further investigation and more stringent mitigation, to protect worker and public health. This is particularly important because the Applicant, Basin Street Properties, has a history of encountering unexpected contamination during construction on at least one of its nearby project sites, the Theater Square site.[73]

4-24 Regarding the first source of potential contamination, which is Pomeroy's former hazardous materials storage site and the area where chemical containers were found strewn about in an adjacent open field, the DEIR relies on 14-year-old data from soil samples, including boring K-2 and trench T-3. These samples, however, were not adequately tested in order to dispel the potential for contaminants that exceed human health thresholds. The shallowest soil sample tested from boring K-2 was four feet beneath the surface, and contained a lead concentration of 75 mg/kg, which is just below the residential "ESL," or Environmental Screening Level, of 80 mg/kg. This concentration dissipated rapidly to 15 mg/kg at six feet below the surface. It is reasonable to assume that lead concentrations in soils closer than four feet from the surface will be higher than 75 mg/kg and may exceed the residential ESL for lead. Soil sampled from the top five

[70] *Compare ibid.*, Appendix C-4, Table 4 (listing project sites from which soil was brought to the Project site) *to* Appendix C-5 p. 10 (listing four contaminated properties that were subject to investigation and cleanup).
[71] DEIR, Appendix C-5, p. 375 of 639 (letter from Phillip Fitzwater to John Jang and Chuck Headlee dated September 8, 2005).
[72] *Ibid.*
[73] *Ibid.*

feet in Trench 3 was not tested for lead, despite its proximity to boring site K-2, and despite the fact that the soil showed "signs of garbage" during sampling.[74]

It is critical that this site be further investigated under the regulatory oversight of an agency that regulates soil hazards and cleanups, such as the San Francisco Bay Regional Water Quality Control Board or Department of Toxic Substances Control. The area with the highest concentration of lead on the Project site is proposed by the Applicant for the construction of an active park and ball field.[75] Particularly because the public will be more actively exposed to soils in this park area, the City must ensure that potential health threats from lead and other contaminants are fully investigated and mitigated.

4-25 Regarding the second source of potential contamination, Pomeroy's fuel-contaminated soil spread on the former treatment pond area, the DEIR acknowledges that the 2001 soils report showed the highest concentrations of petroleum hydrocarbons in this area.[76] The DEIR concludes, however, that these levels of petroleum hydrocarbons "were below residential ESLs."[77] This is incorrect. The residential ESL for petroleum hydrocarbons in shallow soils where groundwater is not a potential source of drinking water is 100 mg/kg.[78] The 2001 soils tests showed petroleum hydrocarbon concentrations of 120 mg/kg in Trench 1 and 220 mg/kg in Trench 2, both in the former treatment pond area where Pomeroy is known to have disposed of petroleum-contaminated soils.[79] The DEIR improperly substitutes the petroleum hydrocarbon ESL for "industrial" land use into its table of residential ESLs, but this is in error. The applicable ESL is 100 mg/kg.[80]

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[74] DEIR, Appendix C-5, pp. 445 of 639.
[75] *Compare* DEIR Figure 1-3 (showing area of proposed Active Park) *with* 4.5-1 (showing boring K-2 and Trench T-3); *see also* map of photographs and photograph "1" from 2001 Phase I Environmental Site Assessment, attached hereto as Attachments B and C (showing photograph of discarded barrels in the approximate location of the proposed park).
[76] DEIR p. 4.5-12.
[77] *Ibid.*
[78] San Francisco Bay Regional Water Quality Control Board's ESL Summary Tables, Summary Table B, "Shallow Soils (<3 m bgs): Groundwater is not a Current or Potential Source of Drinking Water," *available at*: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/ESL/Lookup_Tables_Dec_2013_Summary.pdf
[79] DEIR, Appendix C-5, p. 371 of 639, Table D-2; *see also* p. 443 (top layer of soil in Trench 1 was "imported on visqueen" plastic); p. 541 (Pomeroy places its petroleum-contaminated soil "on plastic sheeting").
[80] Hagemann Comments, Attachment A.

Because the soil tested from both of the trenches that were excavated in the former treatment pond area exceeded the residential ESL, there is a clear risk that this entire portion of the Project site exceeds the contamination threshold for public health. The laboratory notes for these soil samples indicate that oil and diesel range compounds were "significant."[81] The DEIR's conclusion that petroleum hydrocarbons on the Project site are not likely to cause a potentially significant impact is not supported by substantial evidence and must be revised.

4-26 Regarding the third potential source of contamination, the potentially contaminated soils brought and spread on the Project site from other projects, the DEIR's proposed mitigation for this impact is entirely inadequate. The DEIR requires that "stockpiled soils be reaffirmed / tested prior to use for onsite fill, which shall be done following the Clean Imported Fill Material Information Advisory prepared by DTSC (DTSC 2011) in accordance with the recommendation set forth in the 2013 Iris Environmental Phase I Environmental Site Assessment."[82] This mitigation provides no agency oversight whatsoever, no timeframe for soil testing, no health thresholds against which samples must be compared, and no delineation of the extent and location of stockpiled soils. The DTSC Advisory *recommends*, but does not require, consultation and oversight by DTSC for testing stockpiled soils. Mitigation Measure HAZMAT-1 should be revised to require soils testing prior to the issuance of grading permits for the Project, to require that such testing be conducted under the oversight of a regulatory agency such as DTSC or the Regional Water Quality Control Board, that *all* soils stockpiled or spread on the Project site from other project sites must be subject to this mitigation, and that soil tests must be compared against the applicable residential ESLs.[83]

4-27 With respect to the second mitigation measure requiring a soil and groundwater management plan "in the event that potentially affected soil or groundwater is encountered during construction," this measure will not protect worker health because it has already been demonstrated that the site contains potentially affected soil and groundwater. A voluntary cleanup agreement with the Regional Water Quality Control Board or DTSC should be required *before* construction begins.[84]

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[81] DEIR, Appendix C-5, p. 447 of 639, references in table to fn. (b) and (g).
[82] DEIR p. 4.5-18, Mitigation Measure HAZMAT-1.
[83] Hagemann Comments, Attachment A.
[84] Hagemann Comments, Attachment A.

4-28 Finally, the testing of groundwater beneath the Project site revealed high levels of toxic metals and petroleum hydrocarbons.[85] The two recent "Phase I Environmental Site Assessments" or "ESAs" prepared for the Project take different approaches in analyzing these results. The 2012 Phase I ESA compared the groundwater contaminants with the applicable residential ESLs for groundwater that will not be used as a drinking water source.[86] It found that concentrations of metals were thousands of times higher than the applicable ESLs, and concentrations of petroleum hydrocarbons were over ten times higher.[87] As explained by the Regional Water Quality Control Board ("RWQCB"), which sets the ESLs, the groundwater ESLs are put in place for the protection of aquatic resources in situations where there may be discharges of groundwater to surface water.[88]

The 2013 Phase I ESA revokes these findings and takes a new approach. It compares the groundwater contaminant levels with "gross contamination" ESLs, which are intended to apply to groundwater that "does not meet drinking water quality requirements under natural conditions and/or [is] situated in strata that lack adequate aquifer characteristics and is not likely to otherwise directly contaminate a source of drinking water."[89] The reason for the change, as explained by the DEIR, is that "[a]quatic habitat goals were excluded from consideration since there are and will be no groundwater discharges to surface water other than under permit."[90]

The DEIR misses the mark. The Project may very well involve discharges of groundwater to the Petaluma River that exceed the applicable ESL's for the protection of aquatic resources. The purpose of CEQA is not to *assume* that activities which may cause a significant impact on the environment will be "taken care of" by a permit to be issued by a responsible agency in the future. Instead, CEQA acts to *inform* agency decisionmakers, including responsible agencies, about

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[85] 2012 Phase I ESA (Isis Environmental) Table 3, attached hereto as Attachment D.
[86] *Ibid.*
[87] *Ibid.*
[88] San Francisco Bay Regional Water Quality Control Board's ESL Summary Tables, Summary Table B, "Shallow Soils" and "Deep Soils" where groundwater is not a current or potential source of drinking water," *available at*: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/ESL/Lookup_Tables_Dec_2013_Summary.pdf ; ESL Tables User's Guide, p. 4-1 (December 2013), *available at*: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/ESL/Users_Guide_Dec_2013.pdf
[89] DEIR, Appendix C-5, p. 8, fn. 1; http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/ESL/Lookup_Tables_Dec_2013_Detail.pdf (Notes for Table F-1b).
[90] DEIR, Appendix C-5, p. 8, fn. 1.

potentially significant impacts before a project is approved. Disclosure of such information, and commitments to binding mitigation, are the hallmarks of the CEQA process. The DEIR attempts to sweep the problem of groundwater contamination under the rug, by switching the applicable ESL's in the groundwater analysis and inserting a footnote, buried in an appendix, to indicate that a permit would likely take care of this potentially significant impact. This is insufficient, particularly because the DEIR does not commit the Applicant to obtaining and complying with Waste Discharge Requirements imposed by the RWQCB.[91]

4-29 The City lacks substantial evidence to support its conclusions that all potentially significant impacts related to hazardous materials exposure will be mitigated to a less than significant level. Numerous flaws in the DEIR's analysis of hazardous materials, as well as substantial unmitigated risks to the environment, demand further investigation, disclosure, and mitigation in a revised and recirculated DEIR.

D. The DEIR Fails to Adequately Disclose, Analyze and Mitigate Significant Impacts Regarding Geotechnical Problems on the Site

4-30 Five successive geotechnical reports have been prepared for the Project, spanning from 2006 to December 2013, and the Applicant still cannot provide the City with a decent explanation for how it will avoid the problem of sinking bay muds on the Project site, liquefaction from an old sandy riverbed meander that traverses the site, and other significant geotechnical challenges.[92] The DEIR's response is simply to repeat the recommended measures in the geotechnical reports, even though it has been shown most of these measures will not work.[93]

The only other solution suggested in the DEIR is a new mitigation measure that requires "third party peer review" of the geotechnical reports in order to verify that the proposed measures will work.[94] This constitutes improper deferral of the requirement to develop feasible and proven mitigation measures, with measurable standards for compliance, *in the DEIR itself*, not after Project approval. An agency

[91] *See* DEIR p. 4.6-13 (Waste Discharge Requirements "may be required" and "could be adopted" for the Project, but may also be waived).
[92] DEIR, Appendix C-4.
[93] DEIR p. 4.4-9, Mitigation Measure GEO-1; *see* Petaluma Residents' comments on the Initial Study/Mitigated Negative Declaration, attached hereto as Attachment E.
[94] DEIR p. 4.4-12, Mitigation Measure GEO-3.

may not put off an analysis of what mitigation measures are required, or call for an unspecified mitigation plan to be devised based on future studies.[95] Moreover, an agency may not rely on mitigation measures of uncertain efficacy or feasibility.[96] The proposed mitigation in the geotechnical studies is acknowledged to be of uncertain efficacy and feasibility, and the City cannot put off a full assessment until a later review by a third party.

E. The DEIR fails to address other significant issues raised in comments on the Initial Study/Mitigated Negative Declaration

4-31 Commenters on the Initial Study/Mitigated Negative Declaration that was previously prepared for the Project raised several additional issues that have not been addressed in the DEIR. Petaluma Residents have attached their previous comment letter as Attachment E, and hereby incorporate those comments. The DEIR specifically avoids a reasoned analysis of the following three issues:

4-32 (1) The site of the City's future boathouse on the Project site is within the FEMA flood hazard zone and is unlikely be able to developed. All structures are prohibited in a FEMA flood hazard zone, as are docks and other improvements that may interfere with the elevation of water during a flood.

4-33 Moreover, the DEIR indicates that the boathouse will require a deep foundation in order to avoid potential damage from soil lurching.[97] However, the geotechnical reports prepared for the Project make very clear that deep foundations are not an option on the river-side portion of the Project site, because the bay mud is too thick there.[98] The City requires dedication of a

4-34 boathouse site as part of the Project, but it appears that more land is needed in order to avoid construction in a flood hazard zone and/or a soil hazard zone. The potential need to move the boathouse away from its currently designated site should have been addressed in the DEIR as a Project alternative, because the current proposed location of the boathouse and associated improvements does not appear to be feasible.

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[95] CEQA Guidelines § 15126.4(a)(1)(B); *City of Long Beach v. Los Angeles School Dist.* (2009) 179 Cal.App.4th 889, 915; *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 95; *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 669.
[96] *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28.
[97] DEIR p. 4.4-8.
[98] DEIR, Appendix C-4; *see also ibid.* p. 51 of 52 (distinguishing the boathouse site from other Project structures for purposes of soil engineering conclusions).

4-35 (2) The DEIR makes vague references to "traffic impact fees," but does not require the Applicant to contribute its fair share toward the cost of the Caulfield bridge extension to south Petaluma. Instead, it only requires the Applicant to pay for part of a traffic light on Hopper Street, and only *if* and when the bridge is constructed by the City.[99] Fair share payments for the bridge by developers within the City is required by the City's General Plan to alleviate significant cumulative traffic problems, particularly at the intersection of D Street and Washington Street.[100] If the City continues to refuse to require such fair share payments, the bridges is less likely to be constructed, and the DEIR's contingent traffic-fee mitigation measure becomes useless. Moreover, the traffic analysis for the Project improperly

4-36 dismisses the significant amount of traffic that will likely be generated by the City's new rail station.

III. CONCLUSION

4-37 The Project presents significant environmental issues that must be addressed prior to Project approval. The DEIR fails to include an adequate analysis of and mitigation measures for the Project's potentially significant impacts, and its conclusions lack substantial evidence as required by CEQA. The DEIR must be revised and recirculated.

Sincerely,

Ellen Trescott

Ellen L. Trescott

ELT:ljl

Attachments

* Internet links to all other references are provided herein, and a compact disc with referenced documents will be provided to the City by mail. Paper copies of these documents will be promptly provided to the City upon request.

[99] DEIR pp. 5-9 and 5-10, Mitigation Measure CUM-1.
[100] City's EIR for its General Plan, p. 3.2-22.