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November 7, 2018

**Via Email and Hand Delivery**

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Honorable Members of the Historic Landmarks Commission  
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**Re: Agenda Item 3.b: Historic Preservation Permit Amendment and Site Development Permit Amendment for the Park View Towers Project (Files Nos. HA14-009-02 and HPA14-002-02)**

Dear Chair Saum, Honorable Members of the Historic Landmarks Commission:

We submit these comments on behalf of **Residents for a Sustainable Downtown** ("Residents") regarding Agenda Item 3.b: Historic Preservation Permit Amendment and Site Development Permit Amendment for the Park View Towers Project (Files Nos. HA14-009-02 and HPA14-002-02) ("Revised Project"). Residents reserves the right to supplement these comments at the November 14, 2018 Planning Director hearing on the Revised Project, and at any future hearings and proceedings related to the Revised Project.<sup>1</sup>

The Revised Project is located within the Saint James Historic District, a City Landmark and National Register Historic District.<sup>2</sup> The original Park View Towers Project, approved by the City in 2008 at the same location, authorized the development of

<sup>1</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.

<sup>2</sup> See November 7, 2018 Historic Landmarks Commission ("HLC") Staff Report ("Staff Report"), p. 1. 3292-003acp

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a mixed use project that included construction of 208 dwelling units, 16,700 square feet ("sf") of retail/commercial space, and renovation of the 6,000 sf historic First Church of Christ the Scientist church building that is located within the Saint. James Historic District on the Project site.<sup>3</sup> The Project was amended in 2015 to increase the number of residential units to 220, decrease parking spaces from 315 to 260, reduce commercial square footage from 22,700 to 20,425, construct six new townhouses, reduce below-grade parking levels from three to two, and Relocate the First Church of Christ Scientist Building approximately 23 feet west of its original location and demolish the Church basement to accommodate underground parking beneath the Church.<sup>4</sup> The Revised Project proposes further amendments to the Project's Site Development Permit and Historic Preservation Permit to increase the number of units by one for a total of 221 units, increase the height of the North Tower building by 3.5 inches to a total height of 204 feet, 5 inches, increase the amount of commercial area to a total of 24,732 square feet, modify the architecture of the proposed buildings, and modify the site plan to maintain the existing location of the First Church of Christ the Scientist.<sup>5</sup> The proposed Historic Preservation Permit Amendment would authorize leaving the Church in its present location, rehabilitation of the Church building, demolition and replacement of the contributing 1915 rear organ room addition to the Church, and construction within the Saint James Historic District.<sup>6</sup>

We reviewed the Staff Report<sup>7</sup> and Addendum with the assistance of historic preservation consultant Barrett Elise Reiter, M.S.<sup>8</sup> Based on our review, while the proposal to rehabilitate the Church in its current location is laudable, it is clear that the Addendum and Staff Report still violate the California Environmental Quality Act ("CEQA"),<sup>9</sup> the *Secretary of the Interior's Standards for the Treatment of Historic Properties for Rehabilitation* ("Standards"),<sup>10</sup> the City's Historic Preservation Ordinance,

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<sup>3</sup> See October 2018 Addendum to the Final Supplemental Environmental Impact Report For The Park View Towers Project (SCH # 2006032042) ("Addendum"), p. 2.

<sup>4</sup> 2018 Addendum, p. 2.

<sup>5</sup> Report, p. 1.

<sup>6</sup> Staff Report, p. 1.

<sup>7</sup> The Staff Report includes the August 15, 2018 Page & Turnbull Project report entitled *Secretary of the Interior Standards Analysis Update* ("Page & Turnbull Report"). This document was not included with the Addendum.

<sup>8</sup> Ms. Reiter's technical comments and curriculum vitae are attached hereto as Exhibit A ("Reiter Comments").

<sup>9</sup> Public Resources Code ("PRC") section 21000 *et seq.*; 14 Cal. Code Regs. ("CCR") section 15000 *et seq.*

<sup>10</sup> See 36 C.F.R. Part 68 - The Secretary Of The Interior's Standards For The Treatment Of Historic Properties, § 68.1 Intent; § 68.2 Definitions; § 68.3 Standards. See 2017 *Secretary of Interior's Standards and Guidelines for Preservation, Rehabilitation, Restoration, and Reconstruction Projects* are attached to Exhibit A, Reiter Comments.

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and the *St. James Square Historic District Design Guidelines* (“District Guidelines”) in other ways by failing to adequately disclose and mitigate the new adverse impacts that the Revised Project is likely to have on the historic architectural value, setting, and significance of the Church and the Saint James Historic District. The Staff Report and Addendum similarly fail to disclose the increased severity of the impacts that the Revised Project’s near-total encasement of the Church within the Project’s tower and townhouse buildings will have on the spatial relationship of the Church’s historic features with other historic buildings and park features within the Historic District. Finally, the Staff Report and Addendum lack substantial evidence to support the City’s conclusion that complete demolition and reconstruction of the Church’s contributing 1915 rear addition (“Church Addition”) is necessary, and fail to demonstrate that repair of the Church Addition is not feasible, in violation of the Standards.

The HLC may not recommend approval of the Revised Project, the proposed Site Development Permit Amendment, or the proposed Historic Preservation Permit Amendment until these errors and omissions in the City’s analysis are corrected, and until the City circulates a legally adequate subsequent or supplemental environmental impact report (“SEIR”) to the public which fully discloses the Revised Project’s significant historic resource impacts, which provides a meaningful opportunity for public comment, and which implements all feasible mitigation measures to reduce the Project’s significant historic resources impacts to the greatest extent feasible.

## I. STATEMENT OF INTEREST

Residents for a Sustainable Downtown is an unincorporated association of individuals and labor organizations that may be adversely affected by the Project’s adverse impacts on the historic and aesthetic importance, architectural character, and recreational value of the City’s historic districts. Members of Residents may also be adversely affected by the potential public and worker health and safety hazards and environmental impacts caused by construction and long-term operation of the Project. The association includes: City of San Jose residents Jose Lopez, Gil Agustin 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 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 impacts on the visual character and vestige of the City’s remaining historic neighborhoods. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and

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safety hazards that exist onsite. Residents has an interest in enforcing public 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

### A. CEQA

CEQA has two basic purposes, neither of which is satisfied by the Addendum or the FSEIR on which it relies. 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.<sup>11</sup> The EIR is the “heart” of this requirement.<sup>12</sup> The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”<sup>13</sup>

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”<sup>14</sup> An adequate EIR must contain facts and analysis, not just an agency’s conclusions.<sup>15</sup> CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.<sup>16</sup>

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.<sup>17</sup> If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.<sup>18</sup> CEQA imposes an affirmative obligation on agencies to avoid or reduce

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<sup>11</sup> 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.

<sup>12</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

<sup>13</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>14</sup> CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

<sup>15</sup> See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

<sup>16</sup> Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).

<sup>17</sup> 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.

<sup>18</sup> Pub. Resources Code §§ 21002.1(a), 21100(b)(3).

environmental harm by adopting feasible project alternatives or mitigation measures.<sup>19</sup> Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR 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.<sup>20</sup> 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.<sup>21</sup> This approach helps "insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug."<sup>22</sup>

## 1. Historic Resources

CEQA requires that an EIR be prepared for projects that may cause a substantial adverse change in the significance of a historical resource.<sup>23</sup> "Historical resource" is broadly defined under CEQA. It includes all sites listed in, or determined to be eligible for listing in, the National Register of Historical Resources or California Register of Historical Resources.<sup>24</sup> Sites officially designated as historically significant in a local register of historical resources are also presumed to be historically or culturally significant under CEQA. The definition of a "historical resource" in CEQA can also include properties that are not formally included in a national, state, or local register (such as properties that have been determined to be eligible for such a listing or properties that a lead agency otherwise determines are historic in the exercise of the agency's discretion).<sup>25</sup> A lead agency also has discretion to find that a site that does not meet these criteria is a historical resource for purposes of CEQA.<sup>26</sup> Finally, under the CEQA Guidelines, historical resources are not limited to sites, buildings, or other structures; they can also

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<sup>19</sup> *Id.*, §§ 21002-21002.1.

<sup>20</sup> CEQA Guidelines § 15126.4(a)(2).

<sup>21</sup> *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).

<sup>22</sup> *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

<sup>23</sup> PRC §21084.1.

<sup>24</sup> PRC §21084.1.

<sup>25</sup> PRC §21084.1; *Valley Advocates v City of Fresno* (2008) 160 CA4th 1039, 1066; *League for Protection of Oakland's Architectural & Historic Resources v City of Oakland* (1997) 52 CA4th 896.

<sup>26</sup> PRC §21084.1.

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include any object, area, place, record, or manuscript that is historically significant or significant in the "cultural annals of California."<sup>27</sup>

A substantial adverse change in the significance of a historical resource is considered a significant impact under CEQA.<sup>28</sup> A "substantial adverse change" means demolition, destruction, relocation, or alteration of the resource or its immediate surroundings resulting in the significance of the resource being materially impaired.<sup>29</sup> In particular, the significance of a resource is materially impaired when the physical characteristics that convey its historical significance and that justify its designation as a historical resource are demolished or materially altered in an adverse manner.<sup>30</sup>

The CEQA Guidelines require lead agencies to identify feasible mitigation measures to reduce a project's significant adverse changes to the significance of a historical resource.<sup>31</sup> The Standards serve as a "benchmark" for determining whether a project will have a significant adverse impact.<sup>32</sup> Compliance with the Standards may be used to mitigate significant impacts to historical resources.<sup>33</sup>

## **2. 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 environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.<sup>34</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

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<sup>27</sup> 14 CCR §15064(a)

<sup>28</sup> 14 CCR § 15064.5(b).

<sup>29</sup> 14 CCR § 15064.5(b)(1).

<sup>30</sup> 14 CCR § 15064.5(b)(2); *Taxpayers for Accountable Sch. Bond Spending v San Diego Unified Sch. Dist.* (2013) 215 Cal. App. 4th 1013, 1043; *Eureka Citizens for Responsible Gov't v City of Eureka* (2007) 147 CA4th 357.

<sup>31</sup> 14 CCR § 15064.5(b)(4).

<sup>32</sup> *Citizens for a Sustainable Treasure Island v City & County of San Francisco* (2014) 227 CA4th 1036, 1066.

<sup>33</sup> 14 CCR §§15064.5(b)(3), 15126.4(b)(1).

<sup>34</sup> CEQA Guidelines §§ 15060, 15063(c).

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covered in the program EIR.<sup>35</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>36</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>37</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>38</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, or other means.<sup>39</sup> However, subsequent review under Section 15152 remains circumscribed by the scope of review performed in the initial programmatic document.

## **B. Municipal Historic Preservation**

Under Pub. Res Code Section 5020.1(k), designation in a local register is defined to

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<sup>35</sup> 14 CCR § 15168(c).

<sup>36</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>37</sup> PRC § 21166; 14 CCR § 15162(a); 14 CCR § 15168(c)(2).

<sup>38</sup> *Id.*

<sup>39</sup> PRC § 21094; 14 CCR § 15152(f)(1), (2).

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include a resource recognized as historically significant by local ordinance or resolution.<sup>40</sup> Sites officially designated in a local register of historic resources as defined in Pub Res Code Section 5020.1(k) are presumed to be historically significant.<sup>41</sup>

## 1. City of San Jose Historic Preservation Ordinance

The City's Historic Preservation Ordinance designates historical resources as City Landmarks if they have "special historical, architectural, cultural, aesthetic or engineering interest or value of an historical nature" and is one of the following resource types: (1) an individual structure or portion thereof; (2) an integrated group of structures on a single lot; (3) a site, or portion thereof; or (4) any combination thereof.<sup>42</sup> The Ordinance defines "Historic District" as "a geographically definable area of urban or rural character, *possessing a significant concentration or continuity of site, building, structures or objects unified by past events or aesthetically by plan or physical development.*"<sup>43</sup>

In taking action on an application for an Historic Preservation Permit, or Permit Amendment, as in this case, the Director of Planning must consider the comments of the Historic Landmarks Commission; the purposes of the Historic Preservation Ordinance, including the preservation of historic landmarks and historic districts, and compatible design of new construction; the historic architectural value and significance of the landmark or district; the texture and materials of the building in question, and the relationship of such features to similar features of other buildings within an historic district; the position of such buildings within an historic district; and the position of such buildings in relation to the public right of way and other buildings on the site.<sup>44</sup>

The Director may not issue a Historic Preservation Permit, or Permit Amendment, unless the Director makes specific findings that, subject to such conditions as they may impose, the project will not be detrimental to an historic district or to a structure or feature of significant architectural, cultural, historical, aesthetic, or engineering interest or value, and is consistent with the spirit and purposes of the Historic Preservation Ordinance.<sup>45</sup> Furthermore, in making the determination, the Director must review the

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<sup>40</sup> *Valley Advocates v City of Fresno* (2008) 160 Cal. App. 4th 1039, 1054; see *League for Protection of Oakland's Architectural & Historic Resources v City of Oakland* (1997) 52 Cal. App. 4th 896 (designation of building as historic in city's general plan found to be equivalent to recognition of building as historically significant by local ordinance or resolution).

<sup>41</sup> See PRC §21084.1; 14 CCR §15064.5(a)(2).

<sup>42</sup> Muni Code Sec. 13.48.020.C.

<sup>43</sup> Muni Code Sec. 13.48.020(B) (emphasis added).

<sup>44</sup> Muni Code Sec. 13.48.010.

<sup>45</sup> Muni Code Sec 13.48.250.



permit application shall be reviewed in accordance with the "approved standards and guidelines."<sup>46</sup>

## **2. St. James Square Historic District Design Guidelines**

The City's Zoning Ordinance requires that Downtown development that is "adjacent to or within historic landmarks or districts... shall conform to applicable guidelines adopted, and as amended by the city council."<sup>47</sup> The District Guidelines, adopted by the City Council in 1989, apply to the St. James Square Historic District "and its immediate vicinity."<sup>48</sup> The District Guidelines also state that "[n]ew development directly adjacent to an existing historic structure should be designed so as to respect the historic structure. Historic structures should not be crowded by new development,"<sup>49</sup> and, "[w]here new buildings are to be constructed adjacent to historic buildings, the mass of the new buildings should be sensitive to, and harmonious with, the scale of the older buildings."<sup>50</sup>

Both the Church and the Saint Claire Club are located within the District, and are two of nine designated buildings, along with St. James Park, that make up the District's historic structures.

### **III. AN SEIR IS REQUIRED TO ANALYZE AND MITIGATE THE REVISED PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS ON HISTORIC RESOURCES**

The City cannot rely on the Addendum or HLC Staff Report to approve the Revised Project, the proposed Historic Preservation Permit Amendment, or the proposed Site Development Permit Amendment because the Addendum, and the Revised Project as a whole, fails to comply with CEQA, with the City's Preservation Ordinance, or with the District Guidelines.

The City's decision to prepare an addendum, rather than a subsequent or supplemental EIR, for the Project is not supported by substantial evidence. The Addendum does not simply provide "some changes or additions" to the EIR. Rather, it includes substantial revisions to the Project's design and impacts on the historic Church

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<sup>46</sup> *Id.*

<sup>47</sup> San Jose Zoning Ordinance Sec. 20.70.110.

<sup>48</sup> City of San Jose Planning Department: San Jose Historic Landmarks Commission, *St. James Square Historic District Design Guidelines*, (San Jose, CA: San Jose Historic Landmarks Commission, June 1989), <https://www.sanjoseca.gov/DocumentCenter/View/55572>, 2.

<sup>49</sup> *Id.*, p. 22.

<sup>50</sup> *Id.*, p. 23.

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and District that were not analyzed in the original 2008 FSEIR or 2015 Addendum. As described below, the Addendum's site-specific analysis conducted for the Project is flawed in several ways. Moreover, the Project may have new or more severe significant impacts than previously analyzed in the 2008 FSEIR or 2015 Addendum. Therefore, the City may not rely on the Addendum for Project approval, and must provide detailed analysis of the Project's impacts in an SEIR.

**A. The Addendum and HLC Staff Report Fail to Adequately Analyze the Revised Project's Impacts on the Historical Resources of the Church and the St. James Square Historic District**

The Addendum and HLC Staff Report conclude that the Revised Project would not have any new or more severe impacts on historical resources as compared to the impacts that were analyzed in the 2008 FSEIR and 2015 Addendum. However, the Addendum fails to adequately disclose the nature and severity of the substantial adverse impacts that the Revised Project will cause on the Church and the St. James Square Historic District if its proposed new design is implemented, and fails to adequately mitigate them.

First, the Revised Project proposes to reduce the space between the Church and the Project's townhouse building from 20 feet to 13.5 feet, leaving a narrow gap of approximately 13.5 feet between the east wall of the Church and the west wall of the proposed townhouses.<sup>51</sup> Visual renderings of the Revised Project demonstrate that this new placement will substantially diminish the light and view of the Church's east side. Ms. Barrett concludes that this change in the Project will create a substantial new adverse impact on the Church's setting and spatial relationships with other historic components of the St. James Square Historic District. As Ms. Barrett explains:

Since at least the 1970s (prior to the National Register nomination in 1979), the lot directly to the east of the church has been surface parking, which, while discouraged by the district's Design Guidelines, has provided an unblocked view of the building. Inserting a voluminous building into this space that is in close proximity to the Church will have a substantial, adverse impact on the existing setting. Any such proposal must be supported by a developed analysis of the proposed massing and pedestrian visibility studies of the effects of placement of the structure in this existing open space.<sup>52</sup>

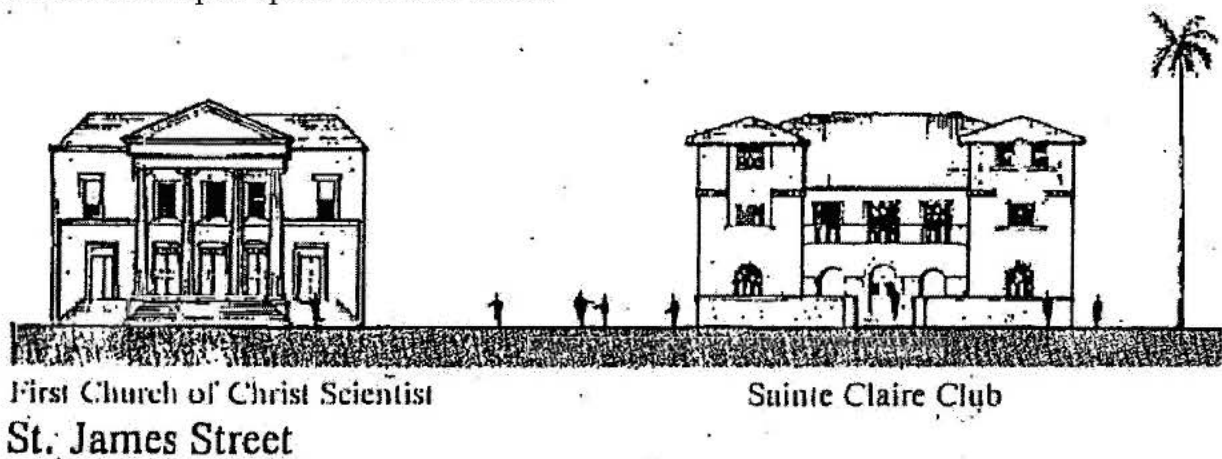
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<sup>51</sup> Addendum, p. 14.

<sup>52</sup> Exhibit A, p. 8.

The Addendum fails entirely to include this analysis. Rather, the Addendum simply states that the Revised Project will reduce the spatial gap between the Church and the townhouses to approximately 13.5 feet, and concludes that this will not result in any new or more severe impacts. The Addendum fails to include *any substantive analysis* to determine whether or not 13.5 feet would be an adequate buffer to ensure that the townhouses remain secondary to the historic property. The Addendum's conclusion that the placement of the townhouses will not create a significant impact is therefore not supported by substantial evidence, in violation of CEQA.<sup>53</sup>

Second, the Addendum concludes that the changes to the Revised Project will not cause any adverse impacts on the historical resource of the District. However, neither the Addendum, the Page & Turnbull Report, the HLC Staff Report, nor any other public records provided by the City, analyze the Revised Project's impact on the Church's setting in relation to the adjacent historic Sainte Claire Club (65 East St. James Street), a key feature of the District. The Sainte Claire Club is a City Landmark and one of nine buildings which, together with St. James Park, comprise the St. James Square Historic District.<sup>54</sup> The Saint James Club was designated as part of the District's National Register Nomination in 1979. It is located directly across the street on the Church's east side. As currently located, the two historic building can be seen from one another and share a common open space between them:



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<sup>53</sup> 14 CCR sec. 15164(e) (agency's decision to prepare an addendum in place of an EIR must be supported by substantial evidence).

<sup>54</sup> See Exhibit A, pp. 4-5; William N. Zavlaris and Patricia Dixon, National Register Nomination St. James Square Historic District, (September 26, 1979), p. 1.

<sup>55</sup> See Exhibit A, p. 7, Figure 1: Illustration from the St. James Square Historic District Design Guidelines, adopted by the City Council in 1989, showing historic resources along East St. James Street

The Revised Project will seal off the open space and view between the two buildings by placing the townhouse building directly between the Church and the Sainte Claire Club:



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The Addendum failed to analyze this impact that closing this space with a building that is sandwiched just 13.5 feet away from the Church will have on the historic characteristics of the District. Instead, the Addendum (and the HLC Staff Report) focused solely on the retention of the Church in its current location, and corresponding view from the Park, omitting a discussion of the Saint Claire Club entirely. Ms. Barret explains why this approach is inadequate:

The Addendum is improperly limited in its scope by an unsupported interpretation that the Church and its street frontage comprise the entire historic setting of the resource. Rather, there is substantial evidence in the City's historic record which demonstrates that the setting of the St. James Square Historic District is far larger than the setting analyzed in the Addendum, and includes both the park and the historic district's other contributing structures, including the Sainte Claire Club. These components of the historic setting must be considered when determining the impact that the Revised Project will have on significant spatial relationships within the St. James Historic District.

The Standards and the District Guidelines also call for this analysis. Standard 9 requires that "[n]ew additions, exterior alterations, or related new construction will not

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<sup>56</sup> Addendum, p. 10.  
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destroy historic materials, features, and spatial relationships that characterize the property.”<sup>57</sup> The District Guidelines recommend that “[n]ew development directly adjacent to an existing historic structure should be designed so as to respect the historic structure. Historic structures should not be crowded by new development,”<sup>58</sup> and, “[w]here new buildings are to be constructed adjacent to historic buildings, the mass of the new buildings should be sensitive to, and harmonious with, the scale of the older buildings.”<sup>59</sup> These historic preservation guidelines clearly demonstrate that the City was required to analyze the Revised Project’s impacts on the spatial relationships between the structures that comprise the District as a whole, and also that the City must require that new buildings within the District be designed to minimize or avoid adverse impacts to the aesthetic design and spatial relationships between the historic structures. The Addendum does not comply with either of these requirements.

Neither the Addendum, nor any of its supporting documentation, discuss or analyze the adverse impacts that the Revised Project will have on the spatial relationship between the Church and the Sainte Claire Club. The Addendum therefore lacks support for its conclusion that the Revised Project will not have any significant impacts on the historic resources of the Church and the District.

Finally, the Addendum lacks substantial evidence to support its conclusion that the complete demolition and reconstruction of the Church Addition is necessary. This fails to meet the requirements of Rehabilitation Standard 6, which explains that “[d]eteriorated historic features will be repaired rather than replaced” unless there is substantial evidence demonstrating that the “severity of deterioration requires replacement of a distinctive feature.”

The Addendum fails to include any discussion of the need for demolition. The HLC Staff Report briefly states that the Addition has suffered some water damage and wood rot, but does include any meaningful description of the location and extent of this damage. This is inadequate to support the City’s assertion that demolition and reconstruction of the Church Addition, rather than simply repairing it, is a necessary component of the Revised Project. In the absence of such supporting evidence, the Revised Project’s proposal to demolish the Church Addition must be deemed to be a significant impact on the Church.

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<sup>57</sup> 36 CFR § 68.3(b)(9).

<sup>58</sup> *Id.*, p. 22.

<sup>59</sup> *Id.*, p. 23.

**B. The Revised Project Is Likely to Result in New and Substantially More Severe Historical Resources Impacts that Require Preparation of an SEIR**

Under CEQA, an addendum is improper, and an EIR is required, whenever substantial changes are proposed in a project which are likely to result in new significant effects or a substantial increase in the severity of previously identified effects, where new information demonstrates that the a revised project will have one or more significant effects not discussed in the previous EIR or will have substantially more severe effects than previously analyzed, or where mitigation measures that were previously found to be infeasible become feasible.<sup>60</sup>

Ms. Barrett concludes that the Revised Project's new design, which leaves the Church in its current location but places the townhouses just 13.5 feet from its east side, increases the height of Tower One, and proposes to completely demolish and reconstruct the Church Addition at a new location, all constitute new or more severe impacts that were not analyzed in either the FSEIR or prior 2015 Addendum.

First, Ms. Barrett explains that the Revised Project's minimal 13.5 foot buffer between the Church and the townhouses is smaller than any buffer she has encountered for a historical resource within the City, and thus unsubstantiated by any prior examples.<sup>61</sup> She also explains that the smallest buffer ever previously considered for this Church was in a 1991 study prepared for the Preservation Action Council of San Jose ("PAC") which applied a recurring unit of 16 feet – half of the approximately 32 foot portico. The PAC study found that the uniform treatment of the site's buffers would complement the building's Neoclassical design.<sup>62</sup> Here, by contrast, the Addendum proposes a randomly selected 13.5 foot buffer on the east side of the Church, with larger buffers remaining between the Church and the Towers on the west and north sides.<sup>63</sup> Thus, the Addendum contains no reasoning for the proposed 13.5 foot buffer, other than to provide convenience for the Applicant's Project design, and creates no symmetry between the Project's other structures and the Church. Ms. Barrett concludes that asymmetrical placement of the townhouses at such a narrow distance from the Church's east side creates a new and substantially adverse impact on the historic resource of the Church.

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<sup>60</sup> 14 CCR sec. 15162(a)((1)-(3).

<sup>61</sup> See Exhibit 1, p. 8.

<sup>62</sup> Exhibit A, p. 8.

<sup>63</sup> See e.g. Addendum, p. 14.

Second, Ms. Barrett concludes that the Revised Project's placement of the townhouses adjacent to the Church will create new and more severe adverse impacts on the District due to the interruption of the Church's historic setting and the spatial relationship between the Church and the Saint Claire Club.<sup>64</sup> Ms. Barrett's conclusion is founded on an analysis which applies Standard 9's requirement to maintain key spatial relationships where they are relevant to the historic character of the resource.<sup>65</sup> Ms. Barrett opines that, because the Church is a contributing resource of a historic district, and not simply a standalone historic resource, "particular attention must be paid to how the Standards address setting."<sup>66</sup> She concludes that the scale and siting of the townhouses and Tower One, particularly at their current height, would affect the spatial relationships of both contributing resources along East St. James Street within the District (in particular, between the Church and the Sainte Claire Club), resulting in a significant, unmitigated impact on the District.<sup>67</sup>

Finally, Ms. Barrett concludes that, absent clear evidence demonstrating that the "severity of deterioration requires replacement," the Revised Project's proposal to demolish and replace the Church Addition would result in a per se substantial adverse impact to the Church which violates Standard 6.<sup>68</sup>

An SEIR must be prepared to fully analyze and mitigate these significant new impacts on the historic resources of the Church and the District.

### **C. The Revised Project Fails to Comply With the City's Municipal Historic Preservation Guidelines**

The Revised Project violates the City's Historic Preservation Ordinance and the District Guidelines because both the Addendum and the Staff Report fail to analyze the Revised Project's impacts on the historic District as a whole.

The Preservation Ordinance defines "Historic District" as "a geographically definable area of urban or rural character, *possessing a significant concentration or*

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<sup>64</sup> See Exhibit A, p. 2.

<sup>65</sup> See Exhibit A, p. 6. Standard 9 clearly provides that new additions, exterior alterations, or related new construction "will not destroy historic materials, features, and spatial relationships that characterize the property."

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at pp. 1-2, 6.

<sup>68</sup> See Exhibit A, p. 9.

*continuity of site, building, structures or objects unified by past events or aesthetically by plan or physical development.*"<sup>69</sup> By the City's own admission, this definition applies to the St. James District, yet neither the Addendum nor the Staff Report analyzed the impacts of the revised location of the townhouses on the continuity of the spatial relationship between the Church and the Saint Claire Club.<sup>70</sup> This violates the Ordinance's clear requirements that, in evaluating a proposed Historic Permit amendment like this one, the City must consider the purposes of the Historic Preservation Ordinance, including the preservation of historic landmarks and historic districts, and compatible design of new construction; the relationship of such features to similar features of other buildings within an historic district; the position of such buildings within an historic district; and the position of such buildings in relation to the public right of way and other buildings on the site.<sup>71</sup>

The St. James Square Historic District Design Guidelines, adopted by the City Council in 1989, apply to the St. James Square Historic District "and its immediate vicinity."<sup>72</sup> The District Guidelines require that "[n]ew development directly adjacent to an existing historic structure should be designed so as to respect the historic structure. Historic structures should not be crowded by new development,"<sup>73</sup> and, "[w]here new buildings are to be constructed adjacent to historic buildings, the mass of the new buildings should be sensitive to, and harmonious with, the scale of the older buildings."<sup>74</sup>

As Ms. Barrett explains, these City preservation requirements clearly demonstrate that the City was required to consider the Revised Project's impacts on the historic District as a whole, including the Saint Claire Club.<sup>75</sup> She further explains that the Revised Project's design, which encases the Church completely on three of its four sides with massive new structures, fails to comply with the District Guideline's requirement that new buildings within the District be designed to "minimize or avoid adverse impacts to

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<sup>69</sup> San Jose Muni Code Sec. 13.48.020(B).

<sup>70</sup> See Addendum, p. 11; Staff Report, p. 10.

<sup>71</sup> Muni Code Sec. 13.48.010.

<sup>72</sup> City of San Jose Planning Department: San Jose Historic Landmarks Commission, *St. James Square Historic District Design Guidelines*, (San Jose, CA: San Jose Historic Landmarks Commission, June 1989), <https://www.sanjoseca.gov/DocumentCenter/View/55572>, 2.

<sup>73</sup> *Id.*, p. 22.

<sup>74</sup> *Id.*, p. 23.

<sup>75</sup> See Exhibit A, p. 4.



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the aesthetic design and spatial relationships between the historic structures.”<sup>76</sup> Thus, the Revised Project fails to comply with the City’s clear Municipal Code requirements to analyze and mitigate impacts on the whole of a Historic District, not just on one of its four sides.

These Municipal Code violations<sup>77</sup> must be remedied in an SEIR before the HLC can consider recommending approval of the Revised Project.

#### IV. CONCLUSION

For the reasons set forth above, we urge the City to prepare an SEIR for the Revised Project before the City considers approval of the Site Development Permit Amendment or Historic Preservation Permit Amendment.

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

Sincerely,



Christina Caro

CMC:acp  
Attachments

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<sup>76</sup> *Id.*

<sup>77</sup> These Code violations also constitute separate and distinct violations of CEQA. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177 (project’s inconsistencies with local plans and policies constitute significant impacts under CEQA). *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4.

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