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November 16, 2020

Via Overnight Mail and Email (City Clerk only)

The Honorable Jill Techel, Mayor
and Councilmembers
City of Napa
Napa City Hall
955 School Street
Napa, CA 94559

Tiffany Carranza
City Clerk
City of Napa
955 School Street
Napa, CA 94559
Email: Clerk@CityofNapa.org

Re: Agenda Item 14.A. First and Oxbow Hotel Project
(File No. PL16-0124)

Dear Ms. Mayor Techel and City Councilmembers:

We are writing on behalf of **Napa Residents for Responsible Development** ("Napa Residents") to submit comments on Agenda Item No. 14.A. the First and Oxbow Hotel Project ("Project"), proposed by Foxbow Development LLC ("Applicant"), including the City of Napa's ("City") Addendum ("Addendum") to the Final Downtown Specific Plan Program Environmental Impact Report ("PEIR") prepared pursuant to the California Environmental Quality Act ("CEQA"). The Project is proposed by Foxbow Development LLC ("Applicant").¹

The Project consists of the construction of two four-story hotel buildings on two lots totaling over 184,000 square feet and including up to 74 hotel rooms. The Project will include up to eleven commercial tenants, space for conferences and meetings, and 121 subterranean parking spaces.

¹ City of Napa, Initial Study/Addendum First & Oxbow Gateway Project (June 2020) (hereafter "Addendum"); City of Napa, Final Downtown Napa Specific Plan Program Environmental Impact Report SCH# 2010042043, (March 2012) (hereafter "PEIR").

We reviewed the staff report and concur with staff's recommended action for the City Council to adopt a resolution denying the Use Permit and Design Review Permit for the Project and denying the Certificate of Appropriateness for relocation of the historic structures on the Project site. Specifically, we support the Planning Commission's findings under sections 17.60.70 and 17.62.80 of the Napa Municipal Code that the Project was not consistent with the Downtown Napa Specific Plan ("DNSP") due to being out of scale with the surrounding neighborhood.

Additionally, based on our review of the Addendum and the PEIR, the City cannot approve the Project without preparing a supplemental environmental impact report ("SEIR"). As a matter of law, an Addendum is an improper document to analyze the Project. Substantial changes in circumstances have occurred, and there is new information about potentially significant impacts that were not addressed in the PEIR, since the adoption of the PEIR in 2012, including changes in the rate of development under the Downtown Specific Plan, air quality, hazardous materials, and potentially significant wildfire impacts. These impacts were not analyzed in the PEIR, and are beyond its scope. These impacts must be analyzed in an SEIR that is circulated for public review. Finally, the Project has potentially significant public health impacts and GHG emissions which are detrimental to the public health, safety, and welfare, and the general welfare of the City and its residents. Accordingly, the Council cannot make the required findings under the Napa Municipal Code to approve the Project.

We reviewed the Addendum and PEIR and its technical appendices with the assistance of environmental health, air quality and GHG expert Paul E. Rosenfield, PhD. and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise ("SWAPE").²

I. STATEMENT OF INTEREST

Napa Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards and environmental impacts associated with Project development. Napa Residents includes the **International Brotherhood of Electrical**

² Letter from Matt Hagemann, P.G., C.Hg. and Paul E. Rosenfield, PhD., SWAPE to Kyle C. Jones, Adams, Broadwell, Joseph & Cardozo, Comments on First & Oxbow Gateway Project, (July 21, 2020) (hereafter "SWAPE Comments") **Exhibit A**.

Workers Local 180, Plumbers & Steamfitters Local 343, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, and their members and families, and Steve McCall, Fred Lehman and other individuals that live and/or work in the City of Napa and Napa County.

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

II. LEGAL BACKGROUND

A. CEQA

CEQA has two basic purposes, neither of which is satisfied by the Project's Addendum. 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.³ The EIR is the "heart" of this requirement.⁴ 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."⁵

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."⁶ An adequate EIR must

³ 14 CCR § 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.

⁴ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

⁵ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

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

contain facts and analysis, not just an agency's conclusions.⁷ CEQA requires an EIR to disclose all potential direct, indirect, and cumulative significant environmental impacts of a project.⁸

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.⁹ If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.¹⁰ CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.¹¹ 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.¹² 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.¹³ This approach helps “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”¹⁴

⁷ See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

⁸ PRC, § 21100(b)(1); 14 CCR, § 15126.2(a).

⁹ 14 CCR, § 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.

¹⁰ PRC, §§ 21002.1(a), 21100(b)(3).

¹¹ *Id.*, §§ 21002-21002.1.

¹² 14 CCR, § 15126.4(a)(2).

¹³ *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).

¹⁴ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

B. City of Napa Use Permit and Design Review Permit

In addition to compliance with CEQA, the Project must meet standards for a Use Permit and a Design Review Permit from the City.¹⁵ Both permits require the City to find that the Project is in accord with the general plan, applicable specific plans, the objectives of the zoning ordinance, and the purposes of a district or overlay district where the site is located; that the Project will not be detrimental to public health, safety, or welfare or injurious to properties or improvements in the vicinity, or to the general welfare of the City; the proposed use complies with each applicable provision of the zoning ordinance; and any other applicable findings.¹⁶

III. THE CITY MUST PREPARE A SUBSEQUENT OR SUPPLEMENTAL EIR FOR THIS PROJECT

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.¹⁷ CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹⁸ A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project "would not have a significant effect on the environment."¹⁹

When an EIR has previously been prepared that could apply to the Project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

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

¹⁵ Napa Municipal Code §§ 17.60.010, 17.62.010.

¹⁶ Napa Municipal Code § 7.60.070.

¹⁷ 14 CCR, §§ 15060, 15063(c).

¹⁸ See, e.g., PRC, § 21100.

¹⁹ *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).

- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.²⁰

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

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially

²⁰ PRC, § 21166.

reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.²¹

Only where **none** of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an Addendum or no further documentation.²² For Addendums specifically, CEQA allows Addendums to a previously certified EIR if minor changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.²³ The City's decision not to prepare a subsequent EIR must be supported by substantial evidence.²⁴

A. Substantial Changes with Respect to the Circumstances Under Which the Project is Undertaken and New Information of Substantial Importance that Was Not and Could Not be Known Has Come to Light Demonstrating Further Significant Impacts Due to Wildfire Risk

The City lacks substantial evidence to support its decision not to prepare a subsequent EIR because there is substantial evidence demonstrating that at least one of the triggering conditions in Section 15162 has occurred. There are substantial changes with respect to the circumstances under which the Project is undertaken and new information of substantial importance that has become available since the certification of the PEIR that shows the Project will have new and more severe impacts than shown in the previous EIR due to increases in wildfire risk.

²¹ 14 CCR, § 15162(a)(1)-(3).

²² 14 CCR, § 15162(b).

²³ 14 CCR, § 15164.

²⁴ *Id.* §§ 15162 (a), 15164(e), and 15168(c)(4).

The PEIR never analyzed the area's risks due to wildfire because it assumed that the planning area's location in an urban area would not lead to a risk of death from wildfire.²⁵ Since the adoption of the PEIR, California has experienced a number of deadly wildfires exploding into urban areas. These fires include the Tubbs Fire in Santa Rosa in 2017, which destroyed 5,643 structures and led to 22 deaths, the Camp Fire in 2018, which destroyed the town of Paradise and 18,804 structures and led to 85 deaths, the Carr fire in Redding in 2018 that destroyed 1,604 structures and led to 5 deaths, and the Glass Fire in Santa Rosa in 2020 which destroyed 1,555 structures.²⁶

Additionally, California's increasingly dry vegetation and hot weather, fueled by climate change, leave the state vulnerable to devastating lightning fires, which can occur in areas not previously thought to be at a particularly high wildfire risk.²⁷ For example, the LNU Lightning Complex Fire in 2020 burned in areas surrounding the City, destroyed 1,491 structures and killed six people.²⁸ Wildfires have had an increasingly devastating impact on Napa County in the last 8 years since the PEIR was prepared. The Addendum ignores these changes in circumstances and new information by concluding, without supporting evidence, that the Project would not result in greater wildfire impacts simply because "[t]he Project site is not located in an identified wildfire hazard zone."²⁹

This statement is misleading and discounts readily available substantial evidence demonstrating that wildfire risk, and wildfire risk zones, are coming increasingly close to Downtown Napa. Cal Fire has updated its fire mapping since the 2012 and 2014 PEIR in response to devastating fires in Santa Rosa, Paradise, Redding, and elsewhere. In 2007, fire risk was only designated up to the south east

²⁵ PEIR, p. 4.F-8.

²⁶ Jenna Lyons, Live Updates: 36 Dead in NorCal Fires, 5,700 Structures Destroyed, SF Chronicle, (Oct. 13, 2017), available at <https://www.sfgate.com/bayarea/article/Live-updates-35-dead-NorCal-fires-5700-destroyed-12277244.php>; Cal Fire, Cal Fire Investigators Determine Cause of Camp Fire, (May 15, 2019), available at https://www.fire.ca.gov/media/5121/campfire_cause.pdf; National Park Service, Carr Fire at Whiskeytown, available at <https://www.nps.gov/whis/carrfire.htm>; SF Chronicle, Fire Tracker: Glass Fire, available at <https://www.sfchronicle.com/projects/california-fire-map/2020-glass-fire>.

²⁷ Andrew Freeman and Tim Meko, Here's How California's Worst-Ever Wildfire Siege Occurred, The Washington Post, (Aug. 28, 2020), available at <https://www.washingtonpost.com/weather/2020/08/28/heres-how-californias-worst-ever-wildfire-siege-occurred/?arc404=true>.

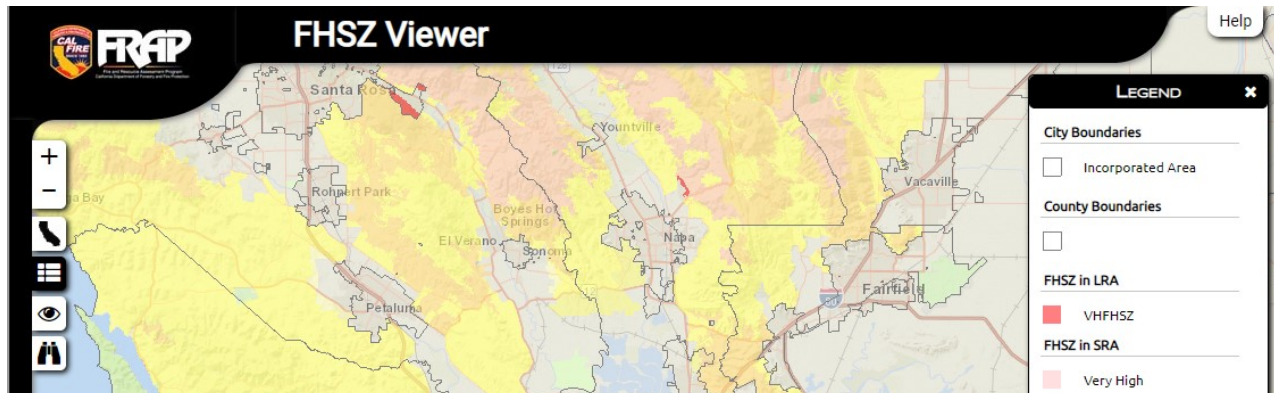
²⁸ Cal Fire, LNU Lightning Complex, available at <https://www.fire.ca.gov/incidents/2020/8/17/lnu-lightning-complex-includes-hennessey-gamble-15-10-spanish-markley-13-4-11-16-walbridge/>.

²⁹ Addendum, p. 90.

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edge of the City, whereas the 2020 update, in recognition of the increased wildfire threat, now designates most areas around and immediately adjacent to the City as moderate fire risk zones.³⁰



Further, Napa County published guidance in 2014 that assumed that urban areas were “zero risk areas” but, in 2020, Napa County updated its Hazard Mitigation Plan to recognize the increased wildfire risk by noting that flying embers from wildfires can create new spot fires in urban cores and built-out areas.³¹ The Napa Community Firewise Foundation has begun preparing a Community Wildfire Protection Plan which identifies that the riparian corridor near the Project site includes wildfire-susceptible vegetation and that dense housing that could be destroyed by a wildfire is only blocks away from the Project.³²

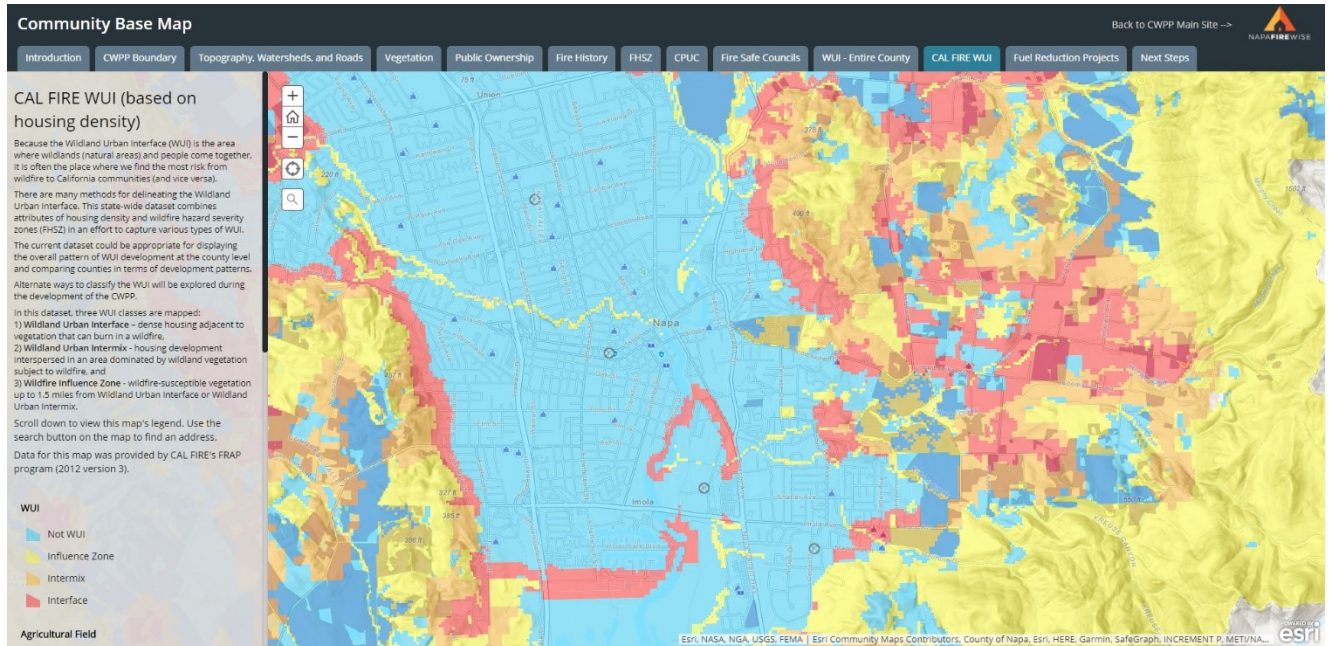
³⁰ KQED, MAP: Do You Live in a High-Risk Fire Zone, (July 16, 2019) *available at* <https://www.kqed.org/news/11759209/map-do-you-live-in-a-high-risk-fire-zone>.

³¹ County of Napa, Napa County Wildland Fire Background Report, p. 2, *available at* <https://www.countyofnapa.org/DocumentCenter/View/3288/Wildland-Fire-Background-Information-August-2014-PDF>; County of Napa, Multi-Jurisdictional Hazard Mitigation Plan, (Aug. 13, 2020), *available at* <http://mitigatehazards.com/napa-county-mjhmp/documents/>.

³² Napa FireWise, Community Base Map, *available at* <https://dms-usa.maps.arcgis.com/apps/MapSeries/index.html?appid=c86d988d7c0044c49e3e9e2dc2e79d8e>.

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This evidence demonstrates that the immediate risk to the Project site from wildfire is a real risk that has only recently been determined, is potentially significant, and is increasing annually.

These new wildfire conditions represent a change in circumstances under which this Project is being taken and which were not, and could not have been, known when the City prepared the PEIR. As a result, the PEIR never considered whether new projects within the planning area need to include defensible space, stronger building codes, and proper egress routes to ensure people can evacuate in times of disaster. Because the circumstances regarding wildfire have changed substantially since 2012, and new information about the danger of wildfire in the wildland urban interface have become clearer, an SEIR must be prepared for the Project to fully disclose and mitigate these impacts. The City must withdraw this Addendum and prepare a CEQA-compliant SEIR for this Project.

B. New Information Regarding the Project's Air Quality, Public Health, and Hazards Demonstrates Significant Impacts and Requires an SEIR

The PEIR specifically requires land use projects within the DNSP area to conduct further analysis for air quality, public health, and hazards impacts from development and operation. Because the PEIR requires these analyses to occur at a future date and never included them, these impacts represent new information that was not, and could not, have been known at the time the PEIR was certified. SWAPE has reviewed the City's analysis and found it deficient. The new information presented demonstrates that the Project will have significant impacts beyond what was discussed in the PEIR.

1. The Addendum Improperly Excludes the Emissions from the Relocation of Historic Resources

The Project includes the relocation of an existing single-family residence and commercial building at 731 First Street and 718 Water Street.³³ The effects of these actions are not discussed or quantified in the Addendum, in violation of CEQA. The relocation will require some demolition to prepare the existing structures for transport, transport of the structures using heavy duty trucks, grading and clearing of the new site for the structures, and construction work to install the structures at the new site. These actions would include emissions of criteria pollutants, TACs, and GHGs will increase the Project's overall construction emissions, but which were not included in the Project's CalEEMod files. The absence of this potentially major source of construction emissions from the City's analysis renders the Addendum's conclusions regarding air quality impacts unsupported. Because these actions are part of the Project, their impacts should have been analyzed in this Addendum. These impacts must be disclosed and analyzed in a SEIR.

2. The Project Will Result in Potentially Significant Air Quality and Public Health Impacts that Were Not Analyzed in the PEIR

The PEIR did not conduct an analysis of air quality impacts from construction or operation of new uses within the Specific Plan Area.³⁴ The

³³ Addendum, p. 66.

³⁴ See PEIR, pp. 4.B-19-4.B-28.

Addendum included some analysis of Project air quality impacts that were not included within the PEIR.³⁵ However, SWAPE identifies several errors and omissions in the City's analysis. Thus, the City lacks substantial evidence to support its significance conclusions in the Addendum, whereas SWAPE provides substantial evidence of a significant impact, triggering the need for the City to prepare an SEIR.

- a. The Addendum Omits Emissions Analysis from Operations, Excavation, and Relocation of Existing Buildings

The Addendum fails to include the operational criteria air pollutant emissions of the Project entirely.³⁶ The Addendum's reasoning for this omission is that the number of hotel rooms in the Project falls below the Bay Area Air Quality Management District's ("BAAQMD") screening level size.³⁷ SWAPE explains that the BAAQMD screening level is for NO_x only and there is no screening level for other criteria pollutants such as CO, PM 2.5, PM 10, and SO_x.³⁸ As such, the Addendum lacks substantial evidence to support its claims that criteria pollutant emissions would not result in new or greater impacts than the PEIR because it never conducted an analysis of those impacts in the first place.

The Addendum also omits emissions from excavation of materials for the proposed parking garage.³⁹ The Addendum notes that the site will be excavated up to fifteen feet deep to accommodate the parking garage and these materials will be hauled off-site.⁴⁰ SWAPE reviewed the CalEEMod analysis for the Project and found that it did not model emissions from these activities.⁴¹ Without including these emissions in its emissions modeling, the analysis in the Addendum underestimates emissions and cannot be relied on as the necessary substantial evidence required to support an addendum – that the Project's impacts are within the scope of the PEIR or insignificant.

³⁵ Addendum, pp. 49-53.

³⁶ SWAPE Comments, p. 3.

³⁷ Addendum, p. 53.

³⁸ SWAPE Comments, p. 3.

³⁹ SWAPE Comments, p. 4.

⁴⁰ Addendum, pp. 89 and 106.

⁴¹ SWAPE Comments, p. 4.

As noted above, the Addendum fails to include a discussion of the impacts associated with the relocation of existing buildings from the Project site. SWAPE reviewed the Addendum's CalEEMod emissions modeling and found that it did not include sufficient demolition and hauling activity to capture the relocation of the existing buildings, thus underestimating the Project's total air quality impacts. Emissions from the Project's proposed relocation of existing buildings was not analyzed in the PEIR and is therefore new information that requires analysis in an SEIR.

b. The Addendum's Air Quality Analysis Contains Numerous Errors that Result in an Underestimation of Impacts

SWAPE has identified several errors in the City's analysis that lead to a further underestimation of impacts. First, the City included errors in converting emissions information from tons per year to pounds per day.⁴² This hides the true impacts of the Project because it fails to consider the seasonal variation of emissions.⁴³ SWAPE states that a proper analysis should provide seasonal emissions outputs to accurately describe impacts.⁴⁴

Second, the Addendum includes several wrongly input parameters within CalEEMod.⁴⁵ The land use size was improperly underestimated by 50,328 square feet, which underestimates volatile organic compound emissions and emissions from energy use.⁴⁶ Hauling, vendor, and worker trip lengths were reduced from default values in CalEEMod to only one mile, without justification.⁴⁷ This severely underestimates the emissions sources from these categories.⁴⁸ The CalEEMod also reduces, without explanation, Saturday and Sunday trips generated by the Project.⁴⁹ SWAPE found that the CalEEMod files contradicts the text of the Addendum by removing 10 trips from Saturday and 284.21 trips from Sunday, underestimating emissions that should have been counted from those trips.⁵⁰ The CalEEMod also

⁴² SWAPE Comments, pp. 5-6.

⁴³ SWAPE Comments, pp. 5-6.

⁴⁴ SWAPE Comments, p. 6.

⁴⁵ SWAPE Comments, pp. 6-11.

⁴⁶ SWAPE Comments, p. 7.

⁴⁷ SWAPE Comments, pp. 7-8.

⁴⁸ SWAPE Comments, pp. 7-8.

⁴⁹ SWAPE Comments, pp. 8-9.

⁵⁰ SWAPE Comments, pp. 8-9.

assumes, without evidence, that the Project will rely entirely on aerobic wastewater treatment, which further underestimates potential emissions.⁵¹ Finally, the CalEEMod analysis includes several unsubstantiated mitigation measures that are not included in the Addendum when assessing impacts, reducing Project impacts without any evidence that these measures will occur.⁵² In totality, emissions for criteria pollutants, toxic air contaminants, and GHG are underestimated due to the many flaws in the CalEEMod. The conclusions in the Addendum therefore lack substantial evidence and cannot be relied upon to demonstrate that the Project will not have significant impacts beyond the scope of the PEIR.

c. The Addendum Fails to Properly Analyze and Mitigate
Significant Public Health Impacts

The PEIR contains Mitigation Measure 4.B-2, which mandates that projects within the DNSP area undertake a health risk assessment and demonstrate that their public health risks are at or below acceptable levels.⁵³ The Addendum claims that the Project will create a cancer risk of 7.8 in one million, below BAAQMD thresholds of 10 in one million.⁵⁴ SWAPE has found several errors with the Addendum's analysis which demonstrate that the Addendum lacks substantial evidence to support its assertions. SWAPE's comments provide substantial evidence demonstrating that Project impacts are greater than analyzed in the Addendum.

As noted above, there are many severe flaws in the Project's CalEEMod analysis that underestimate total emission from the Project. These flaws lead to an underestimation of toxic air contaminants that lead to cancer risk.⁵⁵ As such, the CalEEMod for the Project does not constitute substantial evidence that the Project's cancer risk is below BAAQMD thresholds.

Further, the Addendum states, without evidence, that there are no stationary sources of toxic air contaminants within 1,000 feet of the Project site.⁵⁶ SWAPE notes that the Addendum did not include a quantified health risk assessment

⁵¹ SWAPE Comments, pp. 9-10.

⁵² SWAPE Comments, pp. 10-11.

⁵³ PEIR, pp. 4.B-25-4.B-26.

⁵⁴ Addendum, p. 54.

⁵⁵ SWAPE Comments, p. 12.

⁵⁶ SWAPE Comments, p. 12.

consistent with recommendations of the Office of Health and Hazard Assessment (“OEHHA”).⁵⁷ SWAPE found that the increase in traffic trips from the Project will result in an increase in toxic air contaminants at the site for thirty years.⁵⁸ Because of that, SWAPE determined that an operational health risk assessment should have been prepared for the Project.⁵⁹

The Addendum does include a construction health risk analysis but does not include cumulative cancer risk from both construction and operation. The Addendum claims that it is following BAAQMD guidance on health risk analysis.⁶⁰ BAAQMD’s CEQA guidelines have expressly adopted the OEHHA methodology to analyze health risk.⁶¹ CEQA requires a quantified analysis of health risks of a Project, which the PEIR also specifically requires for buildout projects within the DNSP area.⁶² By failing to provide a health risk analysis using OEHHA methodology, the Addendum failed to accurately disclose the Project’s health risk to nearby receptors.⁶³

The Addendum also inappropriately summed total health risks, rather than consider risk by age, per OEHHA guidance, thus masking overall impacts.⁶⁴ As a result, the Addendum fails to fully consider health risk to nearby receptors over the Project’s construction and operation.⁶⁵ Because of all these errors with the Addendum’s health risk analysis, the City cannot rely on this analysis for substantial evidence that demonstrates a less than significant health risk for the Project, consistent with requirements of the Specific Plan PEIR.

⁵⁷ SWAPE Comments, pp. 12-13.

⁵⁸ SWAPE Comments, pp. 12-13.

⁵⁹ SWAPE Comments, pp. 12-13.

⁶⁰ Addendum, p. 54.

⁶¹ Bay Area Air Quality Management District, BAAQMD Air Toxics NSR Program Health Risk Assessment (HRA) Guidelines, (Jan. 2016), *available at* https://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/workshops/2016/reg-2-5/hra-guidelines_clean_jan_2016-pdf.pdf?la=fil-ph.

⁶² *Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 518-522; PEIR, p. 4.B-26.

⁶³ SWAPE Comments, p. 13.

⁶⁴ SWAPE Comments, p. 13.

⁶⁵ SWAPE Comments, p. 13.

d. Corrected Modeling Provides Substantial Evidence of Significant Air Quality and Public Health Impacts

SWAPE recalculated the emissions described in the Addendum's CalEEMod analysis to correct the errors in the Addendum and ran their own screening level analysis to recalculate health risk. SWAPE's analysis determined that the correct amount of volatile organic chemicals emitted from the Project are 142.65 pounds per day, well over the 54 pound per day BAAQMD threshold.⁶⁶

Model	VOC
SWAPE	142.6481
BAAQMD Regional Threshold (lbs/day)	54
<i>Threshold Exceeded?</i>	<i>Yes</i>

SWAPE's analysis provides substantial evidence demonstrating that the Project's emissions of criteria pollutants are beyond the scope of the emissions described in the PEIR and are significant if unmitigated.

SWAPE additionally conducting a screening-level health risk assessment for the Project's construction and operational impacts, consistent with OEHHA and other agency guidance and after correcting the CalEEMod errors.⁶⁷ The results of SWAPE's model found that the Project will increase cancer risk for infants, children, adults, and over a lifetime were 210 in one million, which greatly exceeds the BAAQMD threshold of 10 in one million, resulting in a significant impact that was not disclosed in the PEIR or the Addendum.⁶⁸

⁶⁶ SWAPE Comments, p. 14.

⁶⁷ SWAPE Comments, pp. 14-18.

⁶⁸ SWAPE Comments, p. 17.

The Closest Exposed Individual at an Existing Residential Receptor

Activity	Duration (years)	Concentration (ug/m3)	Breathing Rate (L/kg-day)	ASF	Cancer Risk
Construction	0.25	0.2662	361	10	3.1E-06
3rd Trimester Duration	0.25			3rd Trimester Exposure	3.1E-06
Construction	0.78	0.2662	1090	10	2.9E-05
Operation	1.22	0.3794	1090	10	6.5E-05
Infant Exposure Duration	2.00			Infant Exposure	9.4E-05
Operation	14.00	0.3794	572	3	9.9E-05
Child Exposure Duration	14.00			Child Exposure	9.9E-05
Operation	14.00	0.3794	261	1	1.5E-05
Adult Exposure Duration	14.00			Adult Exposure	1.5E-05
Lifetime Exposure Duration	30.00			Lifetime Exposure	2.1E-04

These impacts are beyond the scope of the impacts described in the PEIR, and require additional mitigation. Per PEIR Mitigation Measure 4.B-2, the Project must incorporate more mitigation measures to reduce its potentially significant impacts to public health. The Addendum fails to require any mitigation for this impact, in violation of CEQA and the PEIR's mitigation requirements. The City must accurately disclose, analyze, and mitigate these significant criteria pollutant and TAC emissions in an SEIR for the Project.

3. The Project Contains New Information Regarding Potentially Significant Hazards Impacts that are Not Within the Scope of the PEIR and Were Not Disclosed or Sufficiently Mitigated

The Addendum contains a site-specific review of the Project site to determine impacts from hazards which identified significant concentrations of PCE and TCE in the soil and groundwater.⁶⁹ The Addendum also notes that the Project will involve the excavation of soil and the extraction of groundwater.⁷⁰ These activities could lead to an increase in the rate by which the legacy PCE and TCE contamination from the area is leaching into the adjacent Napa River. These potentially significant impacts were never disclosed in the Addendum.

a. New Information Pertaining to Increased Flood Risks in California that Could Not and Was Not Known Show an Increased Risk from Flood Events

The Addendum describes the Project as partially within a 100-year flood plain.⁷¹ New information in 2016 modeling an ARKStorm scenario, which is a historic recurring event in which extreme flooding occurs in California, demonstrates that the Project is at a higher risk for flooding than disclosed in the 2012 PEIR.⁷² The the ARKStorm analysis was not, and could not have been, done in 2012. The 2016 ARKStorm analysis demonstrates the Project site is subject to potentially significant, and more severe, flood risk impacts than were disclosed in the PEIR. This is new information that triggers the need for an SEIR. Increased flooding from an ARKStorm event could cause new significant impacts through damage to the Project and those residing within and because the ARKStorm event could affect the rate by which existing contamination is leaching into the nearby river. These impacts must be disclosed and analyzed in an SEIR for the Project.

⁶⁹ Addendum, p. 88.

⁷⁰ Addendum, pp. 51 and 89.

⁷¹ Addendum, p. 94.

⁷² Geoffrey S. Plumlee, Ph.D., Charles N. Alpers, Ph.D., Suzette A. Morman, and Carma San Juan, Anticipating Environmental and Environmental-Health Implications of Extreme Storms: ARKStorm Scenario, (Nov. 2016), *available at* <https://ascelibrary.org/doi/10.1061/%28ASCE%29NH.1527-6996.0000188>

- b. Newly Discovered Information Regarding Hazards May Lead to New and More Significant Hazards Impacts Than Previously Analyzed Due to Deferred Analysis and Ineffective Mitigation Measures

The Addendum improperly defers analysis and mitigation of the Project's soil contamination impacts until a later date following Project approval. SWAPE explains that the legacy sources of PCE and TCE have not been conclusively determined.⁷³ Thus, neither the PEIR nor the Addendum ever analyzed these impacts. As a result, the record lacks necessary information about the extent to which contamination occurs in soil and groundwater at the Project site, nor is it clear how, and to what extent, Project activities could exacerbate these conditions. The Addendum proposes to defer this analysis until after Project construction by allowing the Project Applicant prepare a Soil Management Plan, Health and Safety Plan and a Human Health Risk Assessment following Project approval, in addition to having the Project participate with the City's Certified Unified Program Agency.⁷⁴ This is a violation of CEQA, because this measure improperly proposes to defer the initial identification and disclosure of soil and groundwater contamination impacts until after Project approval. The nature and extent of these impacts must be disclosed to the public before the Project can be approved. This information is also necessary to enable decision makers and the public to ensure that the mitigation measures applied to the Project will be effective at reducing potentially significant public health and environmental risks to less than significant levels.

CEQA requires that the lead agency disclose the severity of a project's soil contamination impacts and the probability of their occurrence *before* a project can be approved.⁷⁵ The Addendum fails to quantify the extent of impacts from the Project's disturbance of known soil contamination, and proposes instead to flesh out the required soil analysis and mitigation measures at a later date, without providing supporting evidence demonstrating the scope of soil management that will be necessary to avoid potential exposure to soil contaminants during

⁷³ SWAPE Comments, p. 2.

⁷⁴ Addendum, p. 88.

⁷⁵ 14 CCR §§ 15143, 15162.2(a); *Cal. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90 ("CBIA v. BAAQMD") (disturbance of toxic soil contamination at project site is potentially significant impact requiring CEQA review and mitigation); *Madera Oversight Coalition*, 199 Cal.App.4th at 82; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* ("Berkeley Jets") (2001) 91 Cal.App.4th 1344, 1370-71; CEQA Guidelines, Appendix G.

construction and operation of the Project. As such, neither the City nor the public can determine that they will be effective. The Addendum therefore fails as an informational document under CEQA. These analyses must be included in an SEIR that is circulated for public review in order to accurately inform the public about the nature and extent of the Project's contamination impacts.

Further, CEQA requires that the City propose mitigation measures to reduce the Project's impacts below a level of significance.⁷⁶ It is generally improper to defer the formulation of mitigation measures.⁷⁷ An exception to this general rule applies when the agency has committed itself to specific performance criteria for evaluating the efficacy of the measures to be implemented in the future, and the future mitigation measures are formulated and operational before the project activity that they regulate begins.⁷⁸ As the courts have explained, deferral of mitigation may be permitted only where the lead agency: (1) undertakes a complete analysis of the significance of the environmental impact; (2) proposes potential mitigation measures early in the planning process; and (3) articulates specific performance criteria that would ensure that adequate mitigation measures were eventually implemented.⁷⁹ CEQA also requires that all proposed mitigation measures be supported by substantial evidence to demonstrate that they will be effective and enforceable.⁸⁰

SWAPE reviewed the Addendum's proposed soil mitigation measures and determined that they are insufficient and ineffective at reducing potentially significant soil contamination impacts to a less than significant level.⁸¹ Specifically, SWAPE explains that the proposed mitigation measures will not address the source of the contamination, which were not analyzed and are undetermined.⁸² This means that impacts could continue throughout the lifetime of the Project, despite the proposed mitigation in the Addendum. Therefore, the Addendum lacks substantial evidence to demonstrate its effectiveness. SWAPE recommends additional reporting to the California Department of Toxic Substances Control, in order to

⁷⁶ Cal. Public Resources Code §§ 21002, 21100.

⁷⁷ 14 CCR § 15126.4(a)(1)(B); *POET v. CARB*, 218 Cal.App.4th at 735.

⁷⁸ *POET*, 218 Cal.App.4th at 738.

⁷⁹ *Comtys. for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 95; *Cal. Native Plant Socy' v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 621.

⁸⁰ *Sierra Club v. County of San Diego* (2014) 231 CA 4th 1152, 1168.

⁸¹ SWAPE Comments, p. 2.

⁸² SWAPE Comments, p. 2.

compel an investigation that could *actually* lead to an end to contamination.⁸³ Once the impacts have been quantified, the proposed mitigation plans must be either fully developed prior to Project approval, or the City must provide legally adequate performance standards, for these mitigation measures to be compliant with CEQA. Effective mitigation measures must be also included and circulated for public review in an SEIR for the Project.

Finally, the requirement that the Applicant must comply with CUPA requirements is not enforceable against the Applicant. This requirement is neither a formal mitigation measure in the Addendum nor a condition of approval that is binding on the Applicant. By failing to make the CUPA requirement binding, the City cannot conclude that impacts would actually be mitigated, thus the City fails in its duties under CEQA.

C. An SEIR is Required Because the Project is not an Amendment to the PEIR

The City cannot rely on an Addendum to the PEIR to analyze the Project under CEQA because the Project is not an amendment to the DNSP. An addendum to an EIR is only appropriate when a lead agency makes a discretionary decision to approve changes to a project that was analyzed in the previous EIR.⁸⁴ Where a subsequent project was not part of the previous EIR, and does not involve a further discretionary permit for the previously analyzed project, an addendum is not allowed.⁸⁵

The original PEIR was a planning-level document that did not approve specific land use projects. New projects that are consistent with the PEIR, may utilize tiered EIRs or other CEQA streamlining, if appropriate, but cannot use an addendum for initial project approval. All discretionary approvals associated with the 2012 PEIR were completed when the DNSP was approved.

⁸³ SWAPE Comments, p. 2.

⁸⁴ *Martis Camp Community Ass'n v. County of Placer* (2020) 53 Cal.App. 5th 569, 605-606.

⁸⁵ *Id.* at 606.

Furthermore, this Project exceeds the scope of the PEIR because the 303 hotel rooms analyzed in the PEIR have already been developed.⁸⁶ The Project proposes to add an additional 74 hotel rooms to the Downtown Area. These hotel rooms would exceed the hotel use analyzed and approved in the PEIR. An alternative in the PEIR that included an additional 200 hotel rooms was rejected during the approval process for the PEIR, demonstrating that the City did not intend the PEIR to authorize hotel development in downtown beyond 303 rooms.⁸⁷ As a result, the Project in this Addendum is beyond the scope of impacts considered in the DNSP in the PEIR and thus cannot be an amendment of the DNSP PEIR. As such, the City cannot rely on an addendum for this Project and must instead prepare an SEIR.

V. THE CITY CANNOT MAKE THE NECESSARY FINDINGS TO ISSUE A USE PERMIT OR DESIGN REVIEW PERMIT FOR THE PROJECT

A Use Permit or Design Review Permit from the City of Napa cannot be issued unless the City Council finds that a Project will not be detrimental to the public health, safety, or welfare, or materially injurious to properties or improvements in the vicinity, or to the general welfare of the City.⁸⁸ This Project's significant public health and GHG impacts preclude the City from making these findings.

A. The Project's Significant Public Health Impacts are Detrimental to Public Health, Safety, and Welfare

As described above, the Project would emit significant levels of VOCs and TACs. Specifically, the cancer risk from the Project to nearby receptors would be 210 in one million, twenty-one times what is considered significant. Without further mitigation measures for the Project to reduce the Project's emissions, the City cannot find that it is not detrimental to public health, safety, or welfare.

⁸⁶ PEIR, p. 3-17; *see* Howard Yune, Napa Asks, How Many Hotel Rooms are Enough?, Napa Register, (Oct. 14, 2018), *available at* https://napavalleyregister.com/news/local/napa-asks-how-many-hotel-rooms-are-enough/article_d71fd679-3ff1-550f-bb09-c1237c48fe59.html.

⁸⁷ *See* PEIR, p. 2-7.

⁸⁸ Napa Municipal Code §§ 17.060.070 subd. (B) and 17.062.080 subd. (B).

B. The Project's Significant GHG Emissions are Detrimental to the General Welfare of the City

The Project will emit significant amounts of GHGs, which are not addressed or mitigated by the PEIR. The PEIR previously determined that GHG emissions would be significant and unavoidable, based on exceeding thresholds of significance established to meet Assembly Bill 32's 2020 goals for California.⁸⁹ Since the PEIR was adopted, California passed Senate Bill 32, which mandates a 40 percent reduction in GHG emissions from 1990 levels by 2030.⁹⁰ The California Air Resources Board suggests that a net zero GHG emissions approach for land use projects is likely necessary to meet the state's GHG reduction goals.⁹¹

Here, the Addendum states that the Project's GHG emissions would likely be significant but fails to include mitigation measures that would actually ensure Project emissions would be reduced.⁹² The Addendum adds a condition that the Applicant prepare a GHG Reduction Plan that lacks any detailed or binding performance measures that would ensure that any reductions would be achieved.⁹³ Instead, the Addendum merely suggests, but does not require, that the Applicant consider a number of GHG reduction activities.⁹⁴ To ensure that Project GHG emissions would not harm the general welfare of the City of Napa, either this plan must be developed prior to Project approval so that the City and public can be sure emissions would not be significant or a binding performance standard, such as net-zero development, must be ascribed to the proposed GHG Reduction Plan so that there can be assurances that it would be successful.

The City of Napa is highly vulnerable to the threats of climate change. Increases in wildfire, driven by hotter, drier summers are directly threatening the City and its residents. Increased wildfires in the region are causing numerous days per year where air quality is hazardous. The frequency of flood events is increasing. These real hazards are exacerbated by the Project, which does not appropriately mitigate its GHG emissions. Therefore, the City cannot find that approval of the Project would not be detrimental to the general welfare of the City.

⁸⁹ PEIR, p. 2-5.

⁹⁰ Health and Safety Code § 38556.

⁹¹ California Air Resources Board, California's 2017 Climate Change Scoping Plan, p. 102.

⁹² See Addendum, pp. 82-83.

⁹³ See Addendum, pp. 82-83.

⁹⁴ Addendum, pp. 82-83.

VI. CONCLUSION

The City cannot analyze this Project with this Addendum. Changing circumstances and new information regarding wildfire mandates that the City prepare an SEIR for the Project. Further, the Project is not a change to the DNSP, but a separate land use project that cannot be approved by an addendum. Even if an addendum were appropriate, significant, unmitigated impacts exist that would require an SEIR. Finally, these impacts, in conjunction with the Project's significant GHG emissions make the City unable to make the required findings for issuance of a use permit. We urge the City to deny this Project and prepare a legally adequate SEIR.

Sincerely,



Kyle C. Jones

KCJ:lj
attachments