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November 9, 2022

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**Re: Agenda Item 4a – Comments on the Addendum to the Downtown  
Strategy 2040 Final EIR (H21-048; ER21-276; T21-043)**

Dear Director Burton, Deputy Director Manford, Mr. Hitchens, and Mr. Tu:

We are writing on behalf of **Silicon Valley Residents for Responsible Development** (“Silicon Valley Residents”) to provide comments on the Apollo Residential Project (File Nos. H21-048; ER21-276; T21-043) (“Project”) proposed by Urban Catalyst (“Applicant”). The Project appears as Item 4a on the agenda for the November 9, 2022 City of San José (“City”) Planning Director (“Director”) hearing. The Director will consider the Project’s Initial Study/Addendum (“Addendum”), Vesting Tentative Map, and Site Development Permit (“Approvals”).

The Project proposes to demolish existing buildings on-site (totaling approximately 15,908 square feet) and construct a 20-story residential tower with up to 471 units and 7,661 square feet of ground floor retail. The building would have a maximum height of up to 198 feet and six inches to the roof. The Project site is a 1.12-gross acre site located at 32 & 60 Stockton Avenue, San Jose 95126 (Accessor’s Parcel Numbers 259-28-001 and -002).

5687-005apm

The Project's Approvals include (1) a Site Development Permit to allow the demolition of existing structures, three non-ordinance-size trees, for the construction of a 20-story mixed-used structure, with an alternative parking arrangement (parking stackers); and (2) a Vesting Tentative Map to merge two lots into one lot.

We reviewed the Addendum and its technical appendices with the assistance of air quality and health risk expert Dr. James Clark, Ph.D.,<sup>1</sup> and noise expert Deborah Jue.<sup>2</sup> The City must separately respond to these technical comments.

Based upon our review of the Addendum and supporting documentation, we conclude that the City's environmental review fails to comply with the requirements of CEQA. As is explained more fully below, the Addendum not the appropriate form of environmental document for the Project due to the significant environmental impacts, substantial changes, and new information not analyzed in the Downtown Strategy 2040 Final Environmental Impact Report ("FEIR"). The Addendum fails to accurately analyze, disclose, and mitigate the Project's potentially significant air quality, public health, greenhouse gas ("GHG"), hazards, noise, and land use impacts. For these reasons, and others discussed herein, the City lacks substantial evidence to make the requisite findings to make the Project's Approvals. Silicon Valley Residents urges the City to withdraw the Addendum and prepare a legally adequate Subsequent EIR ("SEIR") before any further action is taken on the Project, and to require the Applicant to bring the Project into compliance with all State and local land use policies before the Project can be considered for approval.

## I. STATEMENT OF INTEREST

Silicon Valley Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. Residents includes the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals that live and/or work in the City of San José and Santa Clara County.

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<sup>1</sup> Mr. Clark's comments and curricula vitae and are attached hereto as **Exhibit A** ("Clark Comments").

<sup>2</sup> Ms. Jue's comments and curricula vitae and are attached hereto as **Exhibit B** ("Jue Comments").  
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Individual members of Silicon Valley Residents live, work, recreate, and raise their families in the City and in the surrounding communities. Accordingly, 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 on site.

In addition, Silicon Valley 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 businesses and industries to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

## **II. THE CITY MAY NOT RELY ON AN ADDENDUM FOR PROJECT APPROVAL**

CEQA has two basic purposes, neither of which is satisfied by the City'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.<sup>3</sup> The EIR is the "heart" of this requirement.<sup>4</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>5</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>6</sup> An adequate EIR must contain facts and analysis, not just an agency's conclusions.<sup>7</sup> CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.<sup>8</sup>

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<sup>3</sup> 14 Cal. Code Regs., § 1 5002(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>4</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

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

<sup>6</sup> CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721 • 722.

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

<sup>8</sup> Pub. Resources Code, § 21100(b)(1); CEQA Guidelines § 15126.2(a).

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.<sup>9</sup> The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.”<sup>10</sup> If a project has a significant effect on the environment, the agency may approve the project only upon a finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible,” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA section 21081.<sup>11</sup>

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>12</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>13</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>14</sup>

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>15</sup> CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.<sup>16</sup> A negative declaration may be prepared instead of

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<sup>9</sup> CEQA Guidelines, § 15002, subd. (a)(2)-(3); *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.*, 91 Cal.App.4th at 1354.

<sup>10</sup> CEQA Guidelines, § 15002, subd. (a)(2).

<sup>11</sup> *Id.*, subd. (b)(2)(A)-(B).

<sup>12</sup> CEQA Guidelines § 15126.4(a)(2).

<sup>13</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>14</sup> *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

<sup>15</sup> CEQA Guidelines, §§ 15060, 15063(c)

<sup>16</sup> *See, e.g.*, Pub. Resources Code, § 21100.

an EIR when, after preparing an initial study, a lead agency determines that a project “would not have a significant effect on the environment.”<sup>17</sup>

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;
- (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.<sup>18</sup>

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:

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<sup>17</sup> *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1587; Pub. Resources Code, § 21080(c).

<sup>18</sup> Pub. Resources Code, § 21166.

- (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more-significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.<sup>19</sup>

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.<sup>20</sup> For Addendums specifically, which is what the City claims is applicable to the Project, CEQA allows Addendums to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.<sup>21</sup>

Here, the City incorrectly relies on an Addendum to the Downtown Strategy 2040 FEIR. The City's Addendum does not simply provide minor changes or additions to the prior EIR, as is allowed under CEQA Guidelines Section 15162. Rather, it includes a new substantive analysis for a large development project which was not specifically analyzed in the FEIR. The Downtown Strategy 2040 FEIR analyzes the broad-level environmental impacts of “buildout of the Downtown Strategy 2040” – not any specific development project or type of development project.<sup>22</sup> In fact, the Downtown Strategy 2040 FEIR itself does not purport to provide project-level environmental clearance for all impacts:

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<sup>19</sup> CEQA Guidelines, § 15162(a)(1)-(3).

<sup>20</sup> CEQA Guidelines. § 15162(b).

<sup>21</sup> CEQA Guidelines § 15164; Addendum, pg. 3.

<sup>22</sup> See Downtown Strategy 2040 Integrated FEIR, pg. 60 (criteria pollutants), 65 (TAC emissions), 148 (GHG emissions), 211 (land use impacts), 246 (housing impacts), 347 (noise impacts) available at <https://www.sanjoseca.gov/home/showpublisheddocument/44054/637082061948370000>.

The EIR will evaluate the traffic and traffic-related air quality and noise impacts of Downtown development projects consistent with 2040 General Plan land use designations and Downtown zoning districts up to the year 2040 at a project-level. Program-level review will be provided for the remaining impacts that relate to site-specific conditions, including construction-related impacts that cannot feasibly be evaluated now in the absence of specific development project details.<sup>23</sup>

Because the Downtown Strategy 2040 FEIR lacks project-specific information to inform its significance conclusions, the project-specific analyses in the Addendum constitutes a major revision to the FEIR. These analyses take unique facts about the Project, such as its particular construction schedule, location, and end uses, and harness these facts to identify project-level impacts. As will be discussed in detail herein, the Addendum identifies some of these impacts as significant (or less-than-significant after mitigation). Per the criteria of CEQA Guidelines Section 15162 and Public Resources Code Section 21166, the involvement of new significant environmental effects prevents use of an Addendum. Instead, subsequent environmental review is required.

The cause of the City's error is that it is relying on a program EIR as a project-level EIR for a development project. The California Supreme Court in *Friends of College of San Mateo Gardens*<sup>24</sup> discussed the difference between a project EIR and a program EIR:

Unlike “[p]roject EIR[s],” which “examine[ ] the environmental impacts of a specific development project” (CEQA Guidelines, § 15161), the CEQA provisions governing tiered EIRs “permit[ ] the environmental analysis for long-term, multipart projects to be ‘tiered,’ so that the broad overall impacts analyzed in an EIR at the first-tier programmatic level need not be reassessed as each of the project's subsequent, narrower phases is approved.” (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (*Vineyard Area Citizens*) (2007) 40 Cal.4th 412, 429; see CEQA Guidelines, § 15152 [“‘Tiering’ refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and

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<sup>23</sup> Downtown Strategy 2040 FEIR, pg. 6.

<sup>24</sup> *Friends of College of San Mateo Gardens v. San Mateo County Community College District* (San Mateo I) (Cal. 2016) 1 Cal.5th 937.

concentrating the later EIR or negative declaration solely on the issues specific to the later project.”].)<sup>25</sup>

Applying this principle to an initial study and Mitigated Negative Declaration (“MND”), the Court reasoned that those documents were not tiered/program-level analyses because they “did not purport ‘to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval’”<sup>26</sup>

Here, the Downtown Strategy 2040 FEIR expressly states that it provides program-level review for most environmental impacts. Its analyses are broad and call for project-specific analysis in subsequent environment documents. Yet by preparing an Addendum, the City relies on this program EIR as project-level environmental clearance. Thus, the City incorrectly applied the criteria in CEQA Guidelines Section 15162 and Public Resources Code Section 21166.

### III. THE PROJECT DESCRIPTION IS INADEQUATE

The Addendum does not meet CEQA’s requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. California courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”<sup>27</sup> CEQA requires that a project be described with enough particularity that its impacts can be assessed.<sup>28</sup> Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project’s impacts and undermining meaningful public review.<sup>29</sup> Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.<sup>30</sup>

CEQA Guidelines section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the

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<sup>25</sup> *Id.* at 959.

<sup>26</sup> *Id.* at 960 (citing *Vineyard Area Citizens*, *supra*, 40 Cal.4th at pg. 431).

<sup>27</sup> *Stoepthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* (“*CBE v. Richmond*”) (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

<sup>28</sup> 14 CCR § 15124; *see, Laurel Heights I*, *supra*, 47 Cal.3d 376, 192-193.

<sup>29</sup> *Id.*

<sup>30</sup> *Sundstrom v. County of Mendocino* (“*Sundstrom*”) (1988) 202 Cal.App.3d 296, 311.



environment.”<sup>31</sup> “The term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval.”<sup>32</sup> Courts have explained that a complete description of a project must “address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable* consequence[s] of the initial project.”<sup>33</sup> “If a[n]...EIR...does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law.”<sup>34</sup>

#### **A. The Addendum Fails to Disclose the Construction Traffic Route**

The Addendum does not disclose the traffic route for the Project’s construction. As a result, the Addendum fails to disclose the extent of impacts related to the haul route that may ultimately be selected for the Project, and lacks effective mitigation measures to ensure that any significant impacts caused by the haul route would be mitigated to less-than-significant levels.

Here, excavation for the Project would require an estimated 30,947 cubic yards of cut soils to be removed and exported to a regional landfill.<sup>35</sup> Project construction would also require export of the demolished 11,972-sf existing building and 400 tons of demolished pavement. Thousands of trips by heavy trucks are required to import concrete, and workers will commute to the Project site in all phases of construction.<sup>36</sup> In sum, thousands of trips by heavy trucks will be required for construction of the Project.

This construction traffic will generate health risk, noise, and safety impacts. Regarding health risk, the Addendum acknowledges that medium- and heavy-duty diesel trucks, such as those that would be required during construction, emit Diesel Particulate Matter (“DPM”). The Addendum states that DPM is “the predominant [toxic air contaminant (“TAC”)] in urban air and is estimated to represent about

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<sup>31</sup> CEQA Guidelines § 15378.

<sup>32</sup> *Id.*, § 15378(c).

<sup>33</sup> *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

<sup>34</sup> *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

<sup>35</sup> Addendum, Appendix A, pg. 16, Table 3.

<sup>36</sup> *Id.*

three-quarters of the cancer risk from TACs.”<sup>37</sup> Despite acknowledging that these trips would generate health risk and noise impacts, the Addendum fails to disclose the severity of those impacts on sensitive receptors located along the haul route, because the haul route remains uncertain.

Regarding noise, the Addendum indicates that construction traffic would generate noise impacts: “[c]onstruction activities generate considerable amounts of noise, especially during earth-moving activities when heavy equipment is used... The hauling of excavated materials and construction materials would generate truck trips on local roadways.” Noise expert Deborah Jue also states that these trips would generate impacts on residences along the haul route.

Construction traffic also generates safety impacts due to the volume of heavy-duty trucks travelling along a route, and due to the potential transport of hazardous materials exported from the Project site. Here, the Addendum’s Phase I ESA identifies potential soil contamination and hazardous materials that would have to be exported along the haul route, thus increasing safety risks along the route.<sup>38</sup>

As a result of its failure to clearly describe the construction haul route, the Addendum lacks substantial evidence to support its conclusion that construction impacts associated with the haul route would be less than significant. Depending on the final location selected for the haul route, the route could result in potentially significant health risk, noise impacts, and safety impacts on receptors that have not been considered in the Addendum.

## **B. The Addendum Fails to Disclose a Potential Fire Pump System and On-Site Generator**

The Addendum’s project description does not include a fire pump system and emergency generator.<sup>39</sup> Dr. Clark observes that these features are not included in the City’s air quality and health risk analyses,<sup>40</sup> but that the site plan provided in the Addendum includes a fire pump system and generator:<sup>41</sup>

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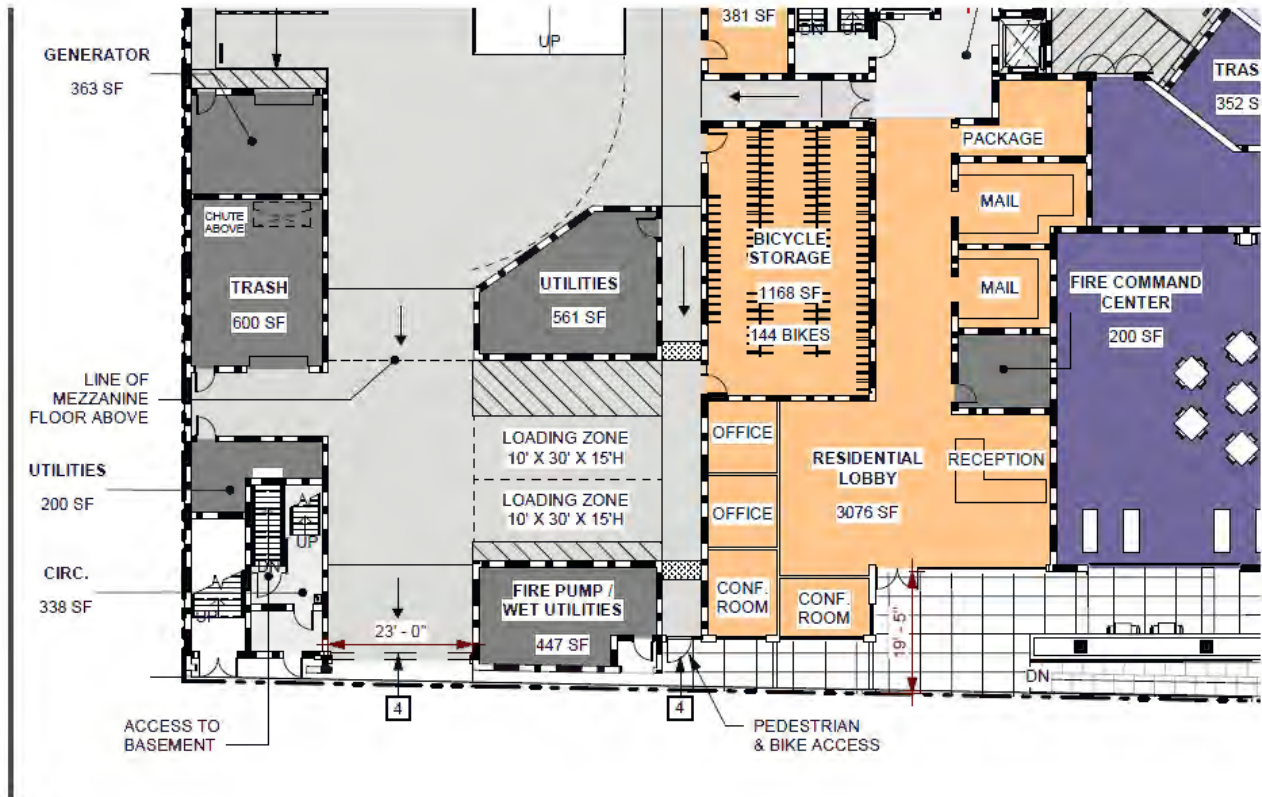
<sup>37</sup> Addendum, pg. 28.

<sup>38</sup> Addendum, pg. 97.

<sup>39</sup> Addendum, pg. 41 (stating that no generators are proposed).

<sup>40</sup> Clark Comments, pg. 3-4.

<sup>41</sup> Addendum, Figure 3.1-1.



As stated earlier, courts have explained that a complete description of a project must “address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable consequence[s]* of the initial project.”<sup>42</sup> Since a fire pump and generator are in the site plan, they are a reasonably foreseeable consequence of the Project, and must be included in the Project description.

The City might note that as a conditions of approval for the Project’s Site Development Permit, “[t]his Permit does not include the approval of any stand-by/backup electrical power generation facility... Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.”<sup>43</sup> But since a generator and fire pump are reasonably foreseeable features of the Project at this time, deferral of analysis of these features to a later assessment would constitute improper piecemealing.

<sup>42</sup> *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

<sup>43</sup> Site Development Permit File No. H21-048, pg. 29.

Inclusion of these features in the Addendum's analysis is important because generators and fire pumps emit DPM.<sup>44</sup> Omission of these sources means that the Addendum's air quality and health risk significance findings are not supported by substantial evidence.

#### **IV. THE ADDENDUM FAILS TO ADEQUATELY ANALYZE, QUANTIFY, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS**

An environmental document must fully disclose all potentially significant impacts of a project, and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.<sup>45</sup> An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>46</sup>

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by law.<sup>47</sup> Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.<sup>48</sup>

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'<sup>49</sup>

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<sup>44</sup> Clark Comments, pg. 3-4.

<sup>45</sup> 14 CCR § 15064(b).

<sup>46</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

<sup>47</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

<sup>48</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>49</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355.

## **A. The Addendum Fails to Disclose and Mitigate Significant Health Risks**

### **1. The Addendum Fails to Quantify Operational Health Risks**

The Addendum acknowledges that the Project’s operations would generate some amount of TAC emissions from mobile sources, and exposure to concentrations of TAC emissions can result in health risk impacts.<sup>50</sup>

But the City, interpreting Bay Area Air Quality Management District (“BAAQMD”) guidance, concludes that because project operations would generate less than 10,000 trips, it is not a significant source of TACs. The City’s analysis misconstrues the BAAQMD guidance, which applies to new residences being sited near *existing* roads – the 10,000 trip screening threshold was not explicitly designed to apply to new projects’ generation of mobile sources. This is because the health impact of a project’s operational mobile source emissions is not simply based on the number of vehicles – the City must also evaluate to what degree the Project’s mobile sources will generate TACs/DPM. Here, the Project’s 2,014 daily trips will likely include truck trips for its commercial uses, and thus generate DPM.<sup>51</sup> Further, the Project may include a generator and fire pump, which will also emit DPM. The City’s analysis does not consider the health risk impact of these combined sources. The analysis is not supported by substantial evidence.

The City’s qualitative analysis also fails to meet CEQA’s informational requirements. An agency must support its findings of a project’s potential environmental impacts with concrete evidence – with “sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.”<sup>52</sup> A project’s health risks “must be ‘clearly identified’ and the discussion must include ‘relevant specifics’ about the environmental changes attributable to the Project and their associated health outcomes.”<sup>53</sup> CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.<sup>54</sup> Here, the City’s qualitative analysis fails to disclose the actual magnitude and concentrations of DPM generated by project operations. And the

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<sup>50</sup> Addendum, pg. 41.

<sup>51</sup> Addendum, Appendix A, pg. 24.

<sup>52</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

<sup>53</sup> *Id.* at 518.

<sup>54</sup> *Sierra Club*, 6 Cal.5th at 518–522.

analysis fails to disclose that installation of a generator and fire pump are reasonably foreseeable sources of DPM. Thus, the Project's health risks are not "clearly identified" and the discussion lacks "relevant specifics." The City must include this missing analysis in an SEIR.

## **2. The Addendum Relies on Mitigation of Unclear Feasibility.**

The Addendum discloses that the Project's emissions of TACs during construction would result in significant health risk impacts. The Addendum mitigates this impact with MM AIR-1.1, which calls for use of Tier 4 Interim equipment, but allows Tier 3 equipment with particulate matter controls if Tier 4 equipment is not available. Dr. Clark observes that the Addendum's air study assumes that Tier 4 and electrified equipment is available for all off-road equipment used on site during the construction phase of the project.<sup>55</sup> But the Addendum fails to provide substantial evidence demonstrating that procuring Tier 4 equipment will be feasible. Dr. Clark explains that the availability of this equipment is limited.<sup>56</sup> Dr. Clark's comments further demonstrate that Tier 4 equipment achieves greater emission reductions than the Tier 3 equipment with particulate matter controls – which is permitted by MM AIR-1.1 if Tier 4 Interim equipment is unavailable. As a result, the emissions reductions assumed in the Addendum may be overestimated, and thus underestimate health risk impacts. The City must correct its analysis to include a realistic mix of equipment standards to reflect the limited supply of Tier 4 Interim equipment.

### **B. The Addendum Fails to Disclose and Mitigate Significant Noise Impacts**

#### **1. The Addendum's Mitigation Measures Do Not Reduce the Project's Significant Construction Noise Impact to a Less-Than-Significant Level**

A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts

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<sup>55</sup> Clark Comments, pg. 5-6.

<sup>56</sup> Clark Comments, pg. 6-9.

have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>57</sup>

The Addendum acknowledges that construction noise may reach as high as 80 dBA, which is as high as 19 dBA higher than the existing levels.<sup>58</sup> The Addendum claims this impact would be mitigated by an 8-foot barrier wall and muffling equipment. Ms. Jue explains that the Addendum fails to support this claim with quantitative analysis.<sup>59</sup> Ms. Jue explains that, by the Addendum's own assessment, the 8-foot barrier wall would not be sufficient mitigation – the Addendum estimates the wall would reduce noise by 5 dB.<sup>60</sup> As a result, the City's finding of less-than-significant construction noise impacts is not supported by substantial evidence. Rather, Ms. Jue's comments provide substantial evidence that the Project's significant construction noise impact remains unmitigated. Therefore, more stringent construction noise mitigation is required to approve the project. Ms. Jue's comments demonstrate the feasibility of taller, more protective barrier walls.<sup>61</sup>

Failure to require more stringent mitigation also conflicts with the City's General Plan policies. Policy EC-1.7 requires the use of "best available noise suppression devices and techniques" for construction projects near residences.<sup>62</sup> The "best available" barrier walls are taller and more protective than the 8-foot tall walls proposed in MM NOI-2.1.

The revisions to MM NOI-2.1 must be included in an SEIR.

## **2. Operational Noise Analysis and Mitigation is Inadequate**

The Addendum does not discuss noise impacts from all of the Project's noise generating equipment. The Addendum's noise discussion assumes that all of the Project's mechanical equipment would be located on the roof, over 198 feet above

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<sup>57</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>58</sup> Jue Comments, pg. 3.

<sup>59</sup> Jue Comments, pg. 3.

<sup>60</sup> Addendum, pg. 144 ("A temporary eight-foot noise barrier shall be constructed along the south property line of the project site to shield adjacent residential land uses from ground-level construction equipment and activities. The noise barrier shall be solid over the face and at the base of the barrier in order to provide a five dBA noise reduction").

<sup>61</sup> Jue Comments, pg. 3-4.

<sup>62</sup> Addendum, pg. 133.

the ground.<sup>63</sup> But Ms. Jue comments that a 20-story tower like the Project's can have a mid-level mechanical room that would vent to the outdoors via a louver – it is not always possible to place all of the noisy equipment at the roof. Ms. Jue explains that in addition to HVAC equipment, potential noise-generating sources not discussed by the Addendum include a backup generator, and refrigeration units for cold storage grocery. The Addendum's analysis thus underestimates impacts and is not backed by substantial evidence. The Addendum's analysis must be expanded to include all stationary noise sources generated by the Project.

Ms. Jue states that the operational noise analysis also lacks discussion of noise or music that might be generated from the retail and recreational portions of the project.<sup>64</sup> If any retail or restaurant tenants would have outdoor seating or activity areas, the noise from the associated music and lively voices that would potentially affect the sleep of nearby residents should be addressed, with appropriate mitigation added as needed.

The Project's mitigation for stationary sources, MM NOI-1.1, should be updated to be inclusive of all stationary noise sources generated by the project, not just mechanical noise.

### **C. The Addendum Fails to Adequately Analyze Energy Impacts**

The Addendum does not include sufficient investigation into the Project's energy impacts.

First, the Addendum fails to explain or quantify the Project's energy consumption during construction. The four-sentence discussion of construction energy consumption fails to meet CEQA's requirements.<sup>65</sup> The CEQA Guidelines, Appendix F, calls, in part, for discussion of:

1. Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project.
2. Total energy requirements of the project by fuel type and end use.<sup>66</sup>

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<sup>63</sup> Addendum, pg. 140.

<sup>64</sup> Jue Comments, pg. 5.

<sup>65</sup> Addendum, pg. 74.

<sup>66</sup> CEQA Guidelines, Appendix F, II(A).



The Addendum fails to address each of these basic disclosures. This analysis also fails to adequately discuss “measures to reduce the wasteful, inefficient, and unnecessary consumption of energy.”<sup>67</sup> “Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal... The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.”<sup>68</sup> This missing analysis must be included in an SEIR.

**D. The Addendum Fails to Analyze Construction Greenhouse Gas Emissions**

The Addendum’s analysis of construction GHG emissions is peremptory. The analysis is two sentences long, and does not quantify emissions, compare the emissions to a significance threshold, or discuss aspects of the Project that reduce GHG emissions.<sup>69</sup> The Addendum fails to meet CEQA’s informational and analytical requirements. This missing analysis must be included in an SEIR.

**E. The Project Would Conflict With A Program, Plan, Ordinance, or Policy Addressing the Circulation System**

Implementation of the proposed project would “conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle lanes, and pedestrian facilities,” namely the California High-Speed Rail Project, the Diridon Integrated Station Concept Plan (“DISC”), and the Amended Diridon Station Area Plan (“DSAP”).

The Project is located in Diridon Station Area Plan. A key purpose of the Diridon Station Area Plan is the expansion of the Diridon Integrated Station, which will service the planned California High-Speed Rail (HSR) project. The DISC sets forth a spatial layout for a future expanded Diridon Station. The DISC Transit Boundary was incorporated in the Amended DSAP, which City Council adopted on May 25, 2021. A memorandum from the City’s Department of Transportation (“DOT”) includes the below figure, showing that the project site overlaps with the DISC Transit Boundary.<sup>70</sup>

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<sup>67</sup> Pub. Resources Code, § 21100(b)(3); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 930.

<sup>68</sup> 14 Cal. Code Regs., § 15126.4(a)(1)(C) (stating “Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.”).

<sup>69</sup> Addendum, pg. 91.

<sup>70</sup> DOT Memorandum, Re: H21-048& T21-043 (October 6, 2022), Pg. 3.

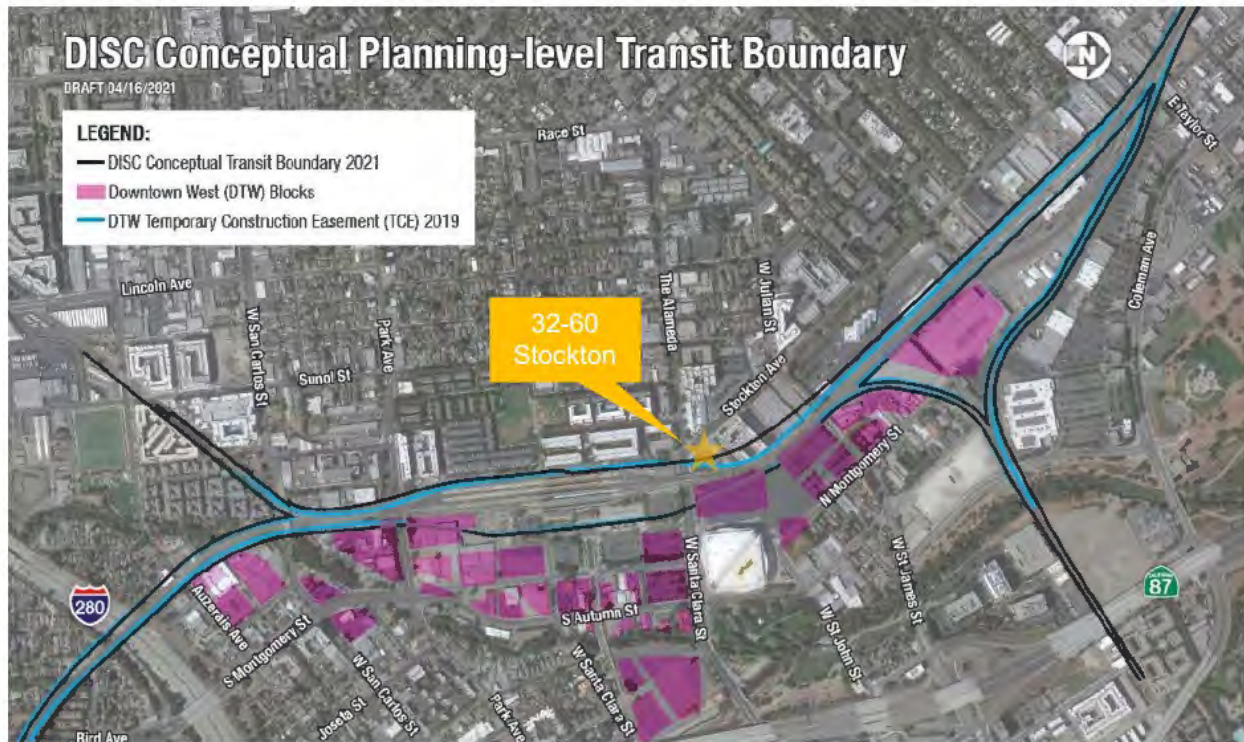


Figure 3: DISC Conceptual Transit Boundary with subject property highlighted. Adapted from Diridon Station Joint Policy Advisory Board meeting presentation, April 23, 2021.

The DOT memorandum explains that the track approaching into the future expanded Diridon Station would encroach onto the Project site.<sup>71</sup> As a result, the current development of the Project site conflicts with the DSAP – a program, plan, ordinance, or policy addressing the circulation system, including transit, roadways, bicycle lanes, and pedestrian facilities.

The Addendum argues that “the DISC is a conceptual plan that is not under consideration for approval as a project for implementation at this time, and the proposed project would not interfere with any approved or finalized plan for the DISC.” But the DISC is conceptual in nature, it was formally adopted through a general plan amendment on May 25, 2021, which is before the proposed project was

<sup>71</sup> *Id.*  
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submitted to the City for review in October 2021.<sup>72</sup> Thus, the DISC is “applicable” to this Project under CEQA Guidelines Section 15162.<sup>73</sup>

The Project’s inconsistency with the DISC is a significant impact under CEQA. The Project would interfere with the tracks running from the north side of the expanded Diridon Integrated Station.<sup>74</sup> This inconsistency must be resolved in an SEIR.

The Project’s development also interferes with the California High-Speed Rail (“HSR”). As explained in the City DOT memo, the project site is located entirely within the footprint of the California High-Speed Rail Project.<sup>75</sup> This footprint was identified as the Preferred Alternative in the EIR prepared for the San José to Merced segment of the HSR, certified April 28, 2022.<sup>76</sup>

The Project’s conflict with the HSR constitutes a conflict with the goals and policies of the DSAP. One of the key purposes of the Diridon Station Area Plan is the expansion of the Diridon Integrated Station to service the planned California High-Speed Rail (HSR) project. The Project’s development of property needed by the HSR’s Preferred Alternative conflicts with the DSAP’s goals.

The Project must be revised in an SEIR to resolve the aforementioned conflicts.

#### **F. The Project Fails to Demonstrate Consistency with Policies Promoting Affordable Housing**

The Project proposes to construct 497 multi-family residential units, but fails to provide any of the residential units at a below-market rate. The Addendum does not provide any information regarding whether any these units will be offered as affordable housing. This lack of affordable housing conflicts with applicable local goals, objectives, and policies promoting affordable housing. CEQA Guidelines section 15125(d) requires that an environmental impact report “discuss any inconsistencies between the proposed project and applicable general plans, specific

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<sup>72</sup> Addendum, pg. 176.

<sup>73</sup> See *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145, fn. 7, 58 Cal.Rptr.2d 152 (“applicable” plan within meaning of Guidelines, § 15125, subd. (d) is plan that has already been adopted and thus legally applies to project; draft plans need not be evaluated).

<sup>74</sup> DOT Memorandum, Re: H21-048& T21-043 (October 6, 2022), Pg. 3.

<sup>75</sup> *Id.* at 1.

<sup>76</sup> *Id.* at 1, 2.

plans and regional plans,” which includes regional housing plans.<sup>77</sup> Therefore, the Project’s inconsistency with affordable housing goals, objectives, and policies is also a violation of CEQA.

### **1. The Project is Inconsistent with the Housing Element Update of the General Plan**

The Regional Housing Needs Assessment (“RHNA”) is the California State-required process that seeks to ensure cities and counties plan for enough housing in their Housing Element cycle to accommodate all economic segments of the community.<sup>78</sup> Accordingly, the Housing Element of the City’s General Plan identifies the City’s housing conditions and needs, evaluates the City’s ability to meet its RHNA numbers, and establishes the goals, objectives, and policies of the City’s housing strategy. The Housing Element Annual Progress Report (“APR”), as required by Government Code Section 65400, requires jurisdictions to report on the annual progress towards meeting the RHNA during the calendar year, as well as on the status of implementation programs identified in the Housing Element.

The City’s 2021 Housing Element APR shows that “San José is ahead of schedule in delivering market-rate housing and is behind schedule in delivering all other income levels of affordable housing.”<sup>79</sup> Affordable units are those offering rents affordable to extremely low-, very low-, low- and moderate-income households.<sup>80</sup> The APR states that “[t]he City’s annual production of “extremely low-, very low-, low- and moderate-income housing remained well below the annual goals for each income level.”<sup>81</sup>

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<sup>77</sup> See also *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal. App. 5th 467, 543.

<sup>78</sup> Cal. Gov. Code Section 65580 – 65589.9; see City of San Jose, 2014-2023 San José Housing Element (January 27, 2015), pg. 1-2.

<sup>79</sup> City of San Jose, 2021 Housing Element and FY 2020-21 Housing Successor Annual Report to State of California (“2021 APR”), pg. 12, available at <https://www.sanjoseca.gov/home/showpublisheddocument/87578/637926224037070000>.

<sup>80</sup> *Id.* at 10.

<sup>81</sup> *Id.*

Income Level		RHNA Allocation by Income Level	Total Units to Date (all years)	Total Remaining RHNA by Income Level
Very Low	Deed Restricted	9,233	1,796	7,437
	Non-Deed Restricted			
Low	Deed Restricted	5,428	162	5,266
	Non-Deed Restricted			
Moderate	Deed Restricted	6,188	2,591	3,597
	Non-Deed Restricted			
Above Moderate		14,231	11,106	3,125
<b>Total RHNA</b>		<b>35,080</b>		
<b>Total Units</b>			<b>15,655</b>	<b>19,425</b>

As shown in the table<sup>82</sup> above, excerpted from the 2021 APR, the City still has not produced enough affordable housing at any level (extremely low-, very low-, low- and moderate-income). San Jose was obligated to identify capacity for 35,080 new units of housing in the 2015-2023 RHNA cycle. And while the City produced more than 15,655 new units, the City has a deficit of 19,425 units. The 2021 APR concludes that “[a]s the City remains far short of meeting its RHNA housing goals, despite diligent staff work and the dedication of considerable resources, San José will need to be aggressive in pursuing all production strategies appropriate and feasible to grow and diversify its housing stock – both with new types of housing and with more housing affordable to lower- and moderate-income residents.”<sup>83</sup>

Because the City has not produced and is not expected to produce enough affordable housing to meet its RHNA, projects that do not contribute to the City’s RHNA are inconsistent with the City’s Housing Element, a primary goal of which is to meet the RHNA. The Project does not state it will provide any affordable units, and is therefore inconsistent with the Housing Element affordable housing goals.

**2. The Project fails to demonstrate consistency with the Diridon Affordable Housing Implementation Plan’s affordable housing goals.**

The Project fails to demonstrate consistency with the Diridon Affordable Housing Implementation Plan’s affordable housing goals. The Plan sets a goal that 25 percent of all housing units in the Diridon Station Area be affordable to renters with a range of incomes from extremely low-income to moderate-income households

<sup>82</sup> *Id.*, Table B.

<sup>83</sup> *Id.* at 16.



at buildout of the land use plan (2040).<sup>84</sup> One of the Plan’s Strategies states “Partner with transit agencies and affordable housing developers to leverage Affordable Housing and Sustainable Communities grants for affordable housing developments near the Station.”<sup>85</sup> The Plan explains that Affordable housing proposals near Diridon Station are potentially most competitive for AHSC funds because of the potential to leverage GHG reductions associated with transit investments at Diridon, including Caltrain electrification and eventually the VTA Bart Silicon Valley Extension Phase II.

Here, the Addendum does not state whether the Project would provide affordable housing in support of the 25% goal. Further, the Project is located 800 ft from the Diridon Station, a location best suited for affordable housing, without demonstrating that it is providing affordable housing. Thus, this Project fails to demonstrate it is helping to meet the Plan’s affordable housing goals.

### **3. The Project Does Not Provide Information Regarding Compliance with the Inclusionary Housing Ordinance**

The City has a city-wide inclusionary housing ordinance (“IHO”) that requires a minimum of 15% of residential units built on-site to be affordable, or pay an in lieu fee.<sup>86</sup> The IHO contains exemptions and waivers for “Downtown High Rises.” According to the City’s 2022 Inclusionary Housing Guidelines,

“Downtown High Rise” shall mean a Residential Development that:

1. is located in the Downtown Core Area (as described in Resolution Number 73587 adopted January 9, 2007) or located in such other geographic area as may be specified in a Resolution adopted to implement SJMC Section 5.08.520(F);
2. has ten (10) or more floors or stories in height, not including any nonresidential uses, with the highest occupied floor at an elevation at least 150 feet above street level;
3. for which the Developer has provided the information requested by the City for compliance with Government Code (GC) Section 53053 and Resolution 77135 for disclosure of public subsidies and the public hearing has been held; and

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<sup>84</sup> Diridon Affordable Housing Implementation Plan, May 11, 2021, pg. 1.

<sup>85</sup> *Id.* at 3.

<sup>86</sup> City of San José. Inclusionary Housing Ordinance, available at:

<http://www.sanjoseca.gov/index.aspx?nid=3979>.

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4. receives its final certificates of occupancy for 80% of the dwelling units on or prior to June 30, 2025 or such deadline as may be specified in a Resolution implementing SJMC Section 5.08.520(F).

If all these criteria are met, then the Downtown High Rise may request that the applicable reduced In Lieu Fee rate be applied in the Residential Development's Affordable Housing Compliance Plan and Inclusionary Housing Agreement and a waiver letter or partial waiver letter be provided at the time the In Lieu Fee is due.<sup>87</sup>

The In Lieu fees for qualifying Downtown High Rise Developments that obtain all Certificates of Occupancy on or prior to June 30, 2025 are as follows:

Building permit by June 30, 2021 – \$0/Square Foot  
Building permit by June 30, 2022 – \$0/Square Foot  
Building permit by June 30, 2023 – \$0/Square Foot  
Building permit by June 30, 2024 – \$13/Square Foot  
Building permit by June 30, 2025 – \$23/Square Foot<sup>88</sup>

Here, the Project's documentation does not provide any information on whether it would construct affordable housing, or would seek a waiver from the IHO. A waiver could result in the Project paying \$0 in In Lieu fees. Thus, compliance with the IHO may not resolve the Project's inconsistency with the Housing Element affordable housing goals.

#### **4. The Project is Inconsistent with the Downtown Strategy 2040**

The Project's lack of affordable housing conflicts with the Downtown Strategy 2040. The policy document states that its "top priorities" are to "[d]evelop housing with an emphasis on very high densities, and at least 20 percent of which is deed-restricted affordable to extremely low, very low, low, and moderate-income households."<sup>89</sup> The Project lacks deed-restricted affordable housing, and is thus inconsistent with this goal.

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<sup>87</sup> Revised Guidelines for Implementation of the Inclusionary Housing Ordinance of the City of San José, Chapter 5.08 of the San José Municipal Code (August 24, 2022), pg. 4-5, available at <https://www.sanjoseca.gov/home/showpublisheddocument/89225/637980703088770000>.

<sup>88</sup> Revised Guidelines for Implementation of the Inclusionary Housing Ordinance of the City of San José, Chapter 5.08 of the San José Municipal Code (August 24, 2022), Attachment 3, available at <https://www.sanjoseca.gov/home/showpublisheddocument/89231/637980706325400000>.

<sup>89</sup> Downtown Strategy Update (Downtown Strategy 2040), pg. 13.

## **5. The Project is Inconsistent with the Envision San José 2040 General Plan**

The Envision San José 2040 General Plan contains goals and policies promoting development of affordable housing:

H-2.1 Facilitate the production of extremely low-, very low-, low-, and moderate-income housing by maximizing use of appropriate policies and financial resources at the federal, state, and local levels; and various other programs.

H-2.2 Integrate affordable housing in identified growth locations and where other housing opportunities may exist, consistent with the Envision General Plan.

The Project's Addendum fails to analyze consistency with these provisions. The instant Project's lack of affordable housing is inconsistent with these goals.

## **V. The Director Cannot Make the Requisite Findings to Approve the Vesting Tentative Map**

The Project seeks approval of Vesting Tentative Map. But the Director cannot make the requisite findings under the Subdivision Map Act<sup>90</sup> or San José Municipal Code (SJMC) Section 19.12.130.

The Subdivision Map Act provides that the Director shall deny approval of a tentative map, if it makes any of the following findings:

1. That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
2. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
3. That the design of the subdivision or type of improvements is likely to cause serious public health problems.<sup>91</sup>

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<sup>90</sup> Government Code section 66474.

<sup>91</sup> *Id.*



Here, the Project conflicts with applicable specific and general plans, as discussed herein. Further, substantial evidence shows the Project has potential public health impacts. These involve the disturbance of contaminated soil – which will not be analyzed until the project is already approved, and emissions of DPM. Thus, the proposed subdivision cannot be approved under the Subdivision Map Act criteria.

For the same reasons, the Director cannot make the requisite findings under the Subdivision Ordinance, San José Municipal Code (SJMC) Section 19.12.130:

In accordance with San José Municipal Code (SJMC) Section 19.12.130, the Director may approve the Tentative Map if the Director cannot make any of the findings for denial in Government Code section 66474 and the Director has reviewed and considered the information relating to compliance of the project with the California Environmental Quality Act and determines the environmental review to be adequate.<sup>92</sup>

Here, the City incorrectly proceeds via an Addendum instead of an SEIR. Thus, the Director cannot find that the environmental review is adequate. And the director cannot make the findings required by Government Code section 66474, as discussed above.

## **VI. The Director Cannot Make the Requisite Findings to Approve the Site Development Permit**

The draft Site Development Permit<sup>93</sup> includes Findings necessary for the Director to approve the Site Development Permit. Some of these Findings are not supported by substantial evidence, preventing approval of the Site Development Permit.

The Director must find: “The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.”<sup>94</sup> As discussed above, the Project’s noise analysis and mitigation is inadequate. The current mitigation is insufficient to adequately

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<sup>92</sup> Vesting Tentative Map, File No. T21-048, pg. 4.

<sup>93</sup> Available at <https://www.sanjoseca.gov/home/showdocument?id=91649>.

<sup>94</sup> Site Development Permit, File No. H21-048, pg. 8.

mitigate significant construction noise impacts. Therefore, the draft Findings are not supported by substantial evidence.

The draft Findings state that “the Initial Study/Addendum for this project is the appropriate documentation to address the changes made by the project.”<sup>95</sup> These comments show that an Addendum is not the appropriate form of environmental review.

The draft Findings acknowledge that the Project is subject to the Diridon Integrated Station Concept Plan, and the Diridon Station Area Plan, but does not address the Project’s inconsistencies with these plans.<sup>96</sup> For these reasons, and others discussed herein, the City lacks substantial evidence to make the requisite findings to approve the Site Development Permit.

## VII. CONCLUSION

For these reasons, and others discussed herein, the City lacks substantial evidence to make the requisite findings to certify the Addendum and make the Project’s Approvals. Silicon Valley Residents urges the Director to direct the City to prepare a legally adequate SEIR before any further action is taken on the Project, and to require the Applicant to bring the Project into compliance with all State and local land use policies before the Project can be considered for approval. We thank you for the opportunity to provide these comments.

Sincerely,



Aidan P. Marshall

APM:

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<sup>95</sup> Site Development Permit, File No. H21-048, pg. 11.

<sup>96</sup> Site Development Permit, File No. H21-048, pg. 4.