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December 15, 2023

Via Email and U.S. Mail

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**Re: Request to Extend the Public Review and Comment Period for
 the Draft Environmental Impact Report – Mission Point Project
 (PLN2017-12924, PLN2018-13400, PLN21-15386, PLN21-15387,
 PLN22-00635, CEQ2018-01054; SCH No. 2018072068)**

Dear Mr. Crabtree, Mr. Haggag and Ms. Bustos:

On behalf of **Silicon Valley Residents for Responsible Development** (“Silicon Valley Residents”), we respectfully request that City of Santa Clara (“City”) extend the public review and comment period for the Draft Environmental Impact Report (“DEIR”) prepared for the Mission Point Project, PLN2017-12924, PLN2018-13400, PLN21-15386, PLN21-15387, PLN22-00635, CEQ2018-01054; SCH No. 2018072068, (“Project”) proposed by Kylli Inc. (“Applicant”). **The current public comment period ends on January 2, 2024.** An extension of the comment period is necessary under the California Environmental Quality Act (“CEQA”)¹ because the City has failed to provide access to DEIR reference documents, as required by CEQA.²

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¹ Public Resources Code (“PRC”) §21000 et seq.; California Code of Regulations (“CCR”), Title 14, Division 6, Chapter 3, Sections 15000 et seq.
² PRC § 21092(b)(1); 14 CCR § 15087(c)(5).

5936-001j

December 15, 2023

Page 2

We request that the City extend the public review and comment period on the DEIR for at least 30 days from the date on which the City releases all outstanding DEIR reference documents for public review.

CEQA requires that “all documents referenced” – and the CEQA Guidelines require that “all documents incorporated by reference” – in a draft environmental impact report shall be “readily accessible to the public during the lead agency’s normal working hours” during the entire public comment period.³ Further, an EIR may not rely on hidden studies or documents that are not provided to the public.⁴ The City is in violation of these requirements because the City has failed to provide Silicon Valley Residents with timely access to DEIR reference documents despite multiple requests for access to them.

On November 20, 2023, Silicon Valley Residents submitted a letter to the City pursuant to CEQA section 21092(b)(1) and CEQA Guidelines section 15087(c)(5), requesting “*immediate access* to any and all documents referenced or relied upon” in the DEIR.⁵ On December 4, 2023, we sent a follow-up letter, again requesting documents referenced and relied upon in the DEIR, and specifically identifying several key documents that have not been included in the DEIR’s appendices or otherwise made available for public review.⁶ To date, the City has failed to provide access to these documents, or to respond at all to Silicon Valley Residents’ requests. Because the documents are necessary for adequate review of the DEIR, the City’s failure to produce these documents in a timely manner is in violation of CEQA.

Timely access to the DEIR reference documents from the City is critical in this case because many of the DEIR’s reference documents are not readily available online and because the DEIR expressly relies on such documents as part of its impacts analyses, thereby preventing review of the full scope of the Project’s potential impacts. For example, the DEIR’s Hazards analysis explicitly hinges on the Phase I Environmental Site Assessment (“ESA”), stating: “The 2022 Phase I ESA prepared for the Project site provides information regarding known and

³ Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

⁴ *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

⁵ **Exhibit A:** Request from Adams, Broadwell, Joseph & Cardozo (“ABJC”) to City re Request for Immediate Access to All Documents Referenced in the DEIR – Mission Point Project (PLN2017-12924, PLN2018-13400, PLN21-15386, PLN21-15387, PLN22-00635, CEQ2018-01054; SCH No. 2018072068) (November 21, 2023).

⁶ **Exhibit B:** Letter from ABJC to City re FOLLOW-UP Request for Immediate Access to All Documents Referenced in the DEIR – Mission Point Project (PLN2017-12924, PLN2018-13400, PLN21-15386, PLN21-15387, PLN22-00635, CEQ2018-01054; SCH No. 2018072068) (December 4, 2023).

5936.004j

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December 15, 2023

Page 3

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potential subsurface contamination at the Project site . . . *This information is used as the basis for the analysis of potential impacts* related to the accidental release of hazardous materials due to soil and groundwater contamination.”⁷ Because the Phase I ESA provides a portion of the DEIR’s overall hazards analysis, it is incorporated by reference and is required to be made available to the public pursuant to CEQA. The biological resources site visits and database reviews,⁸ Terracon Consultants, Inc. hazardous materials reports,⁹ Keyser Marston Associates study,¹⁰ ‘3005 Democracy Way, Existing Site Boundary and Easement Plan’ by BKF Engineers,¹¹ ‘Existing Stormwater Plan and Proposed Stormwater Plan’ by BKF Engineers,¹² Roux Associates, Inc. Subsurface Environmental Investigation study,¹³ and Preliminary Geotechnical Evaluation¹⁴ and its incorporated studies¹⁵ are incorporated by reference in the DEIR for the same reason.

⁷ DEIR, pg. 3.11-15 (emphasis added).

⁸ DEIR, pg. 3.8-1 (“The information in this section is based on site visits from May 31 and July 26, 2019, and August 17, 2022, as well as a review of the California Department of Fish and Wildlife (CDFW) California Natural Diversity Database (CNDDDB)¹, U.S. Fish and Wildlife Service (USFWS)² Information for Planning and Consultation (IPaC), and California Native Plant Society (CNPS) Online Inventory of Rare and Endangered Plants (Online Inventory).” (emphasis added))

⁹ DEIR, pg. 3.11-17 (relying on the hazardous materials survey reports to conclude that “comprehensive building surveys, including destructive sampling, must be conducted prior to building demolition.”)

¹⁰ DEIR, pg. 2-24 (“...in order to provide an accurate estimate of the anticipated persons per household, the City commissioned a study from Keyser Marston Associates, which estimated that the persons-per-household average for multifamily units for this Project would be 2.15.” This estimate is used in other parts of the analysis, such as the urban decay analysis. See DEIR, pg. 4-7 (“The urban decay analysis assumes an average of 2.15 persons per unit, as estimated by Keyser Marston Associates...”))

¹¹ DEIR, pg. 3.10-10 & 3.10-24 (relying on the BKF Engineers estimates in calculating the Project’s local drainage and estimating operational groundwater impacts).

¹² DEIR, pg. 3.11-21 (relying on BKF’s elevation estimate in analyzing aviation hazard impacts from construction).

¹³ DEIR, pg. 3.11-25 (relying on the Subsurface Environmental Investigation in analyzing cumulative accidental releases of hazardous materials, stating that “[a] subsurface investigation for this property indicates that the likely source for the soil vapor detections may be the migration of contamination from neighboring properties through storm drains or sewer lines.”)

¹⁴ DEIR, pp. 3.9-1–21 (listing the Preliminary Geotechnical Evaluation as a Method for Analysis for the Geology and Soils impact analysis as well as heavily referencing and incorporating findings from the Evaluation throughout the impact analysis).

¹⁵ See DEIR, pg. 3.9-1 & pg. 3.9-6 (noting that the Preliminary Geotechnical Evaluation included a review of two geotechnical investigations that were previously performed for the Project site and that the results of the previous investigations are discussed in the analysis of site topography and subsurface conditions).

5936-004j

December 15, 2023

Page 4

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Without access to these critical DEIR reference documents, the public is unable to fully evaluate the DEIR's analysis, conclusions, and mitigation measures which rely on these studies and documents. As a result, Silicon Valley Residents and other members of the public are precluded from having the meaningful opportunity to review and comment on the DEIR, as required by CEQA.

The courts have held that the failure to provide even a few pages of a CEQA documents for a portion of the CEQA review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.¹⁶ It is also well settled that an EIR may not rely on hidden studies or documents that are not provided to the public.¹⁷ By failing to make all documents referenced in the DEIR "readily available" during the current comment period, the City is violating the clear procedural mandates of CEQA, to the detriment of Silicon Valley Residents and other members of the public who wish to meaningfully review and comment on the DEIR.

Accordingly, we request that the City provide immediate access to the outstanding DEIR reference documents, as required by CEQA, and extend the public review and comment period on the DEIR for at least 30 days from the date on which the City releases all reference documents for public review.

Given the limited time in the DEIR public comment period, we respectfully request a response to this letter by Wednesday, December 20, 2023.

Sincerely,



Ariana Abedifard

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¹⁶ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

¹⁷ *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").

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