

APPENDIX G

FIRST AMENDMENT TO THE DRAFT EIR

First Amendment to the Draft EIR

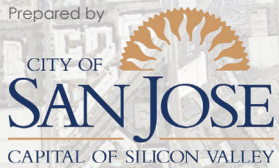
Downtown Strategy 2040

File Number PP15-102

State Clearinghouse Number 2003042127



Prepared by



In Consultation with



November 2018

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SECTION 1.0 INTRODUCTION

This document, together with the Draft Environmental Impact Report (Draft EIR), constitutes the Final Environmental Impact Report (Final EIR) for the Downtown Strategy 2040 project.

1.1 PURPOSE OF THE FINAL EIR

In conformance with the California Environmental Quality Act (CEQA) and CEQA Guidelines, this Final EIR provides objective information regarding the environmental consequences of the proposed project. The Final EIR also examines mitigation and avoidance measures and alternatives to the project intended to reduce or eliminate significant environmental impacts. The Final EIR is intended to be used by the City and any Responsible Agencies in making decisions regarding the project. The CEQA Guidelines advise that, while the information in the Final EIR does not control the agency's ultimate discretion on the project, the agency must respond to each significant effect identified in the Draft EIR by making written findings for each of those significant effects.

According to the State Public Resources Code Section 21081, no public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
 - (1) Changes or alterations have been required in, or incorporated into, the project which will mitigate or avoid the significant effect on the environment.
 - (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
 - (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities of highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

1.2 CONTENTS OF THE FINAL EIR

CEQA Guidelines Section 15132 specify that the Final EIR shall consist of:

- a) The Draft EIR or a revision of the Draft;
- b) Comments and recommendations received on the Draft EIR either verbatim or in summary;
- c) A list of persons, organizations, and public agencies commenting on the Draft EIR;
- d) The Lead Agency's responses to significant environmental points raised in the review and consultation process; and
- e) Any other information added by the Lead Agency.

1.3 PUBLIC REVIEW

In accordance with CEQA and the CEQA Guidelines, the City shall provide a written response to a public agency on comments made by that public agency at least 10 days prior to certifying the EIR. The Final EIR and all documents referenced in the Final EIR are available for public review at the Department of Planning, Building and Code Enforcement, 200 East Santa Clara St., 3rd Floor, San José, CA 95113 on weekdays during normal business hours. The Final EIR is also available for review on the City's website: www.sanjoseca.gov/activeeirs

SECTION 2.0 SUMMARY OF DRAFT EIR PUBLIC REVIEW PROCESS

The Draft EIR for the Downtown Strategy 2040 project, dated September 2018, was circulated to affected public agencies and interested parties for a 45-day review period from September 7, 2018 through October 22, 2018.

The City undertook the following actions to inform the public of the availability of the Draft EIR:

- A Notice of Availability of Draft EIR was published on the City of San José's website at www.sanjoseca.gov/activeeirs and in the San José Mercury News and in the Post-Record;
- Notification of the availability of the Draft EIR was mailed and/or emailed to project-area residents and other members of the public who had indicated interest in the project;
- The Draft EIR was delivered to the State Clearinghouse on September 7, 2018, as well as a web-link to an electronic version of the Draft EIR sent by mail and/or email to various governmental agencies, organizations, businesses, and individuals (see *Section 3.0* for a list of agencies, organizations, businesses, and individuals that received the Draft EIR); and
- Copies of the Draft EIR were made available at the Department of Planning, Building and Code Enforcement (200 East Santa Clara St., 3rd Floor, San José, CA 95113), the Dr. MLK Jr. Main Library (150 E. San Fernando St., San José, CA 95112), the Biblioteca Latinoamericana, Branch Library (921 South 1st St., San José, CA 95110), and on the City of San José's website at www.sanjoseca.gov/activeeirs.

SECTION 3.0 AGENCIES, ORGANIZATIONS, BUSINESSES, AND INDIVIDUALS THAT RECEIVED THE DRAFT EIR

CEQA Guidelines Section 15086 requires that a local Lead Agency consult with and request comments on the Draft EIR prepared for a project of this type from Responsible Agencies (government agencies that must approve or permit some aspect of the project), trustee agencies for resources affected by the project, adjacent cities and counties, and transportation planning agencies. The following agencies received a copy of the Draft EIR or Notice of Availability (NOA) for the Draft EIR from the City of San José or via the State Clearinghouse:

- From the State Clearinghouse: State Resources Agency; State Department of Fish and Wildlife, Region 3; State Water Resources Control Board, Division of Drinking Water; State Water Resources Control Board Division of Drinking Water, District 11; Regional Water Quality Control Board, Region 2; Native American Heritage Commission; State Department of Parks and Recreation; State Department of Water Resources; California Highway Patrol; Caltrans, District 4; Department of Housing and Community Development; and Office of Emergency Services, California.
- From the City of San José: Santa Clara County Roads and Airports Transportation Planning; Caltrans, District 4; Bay Area Metro Center; Bay Area Air Quality Management District; City of Campbell, Planning Division; City of Cupertino Community Development Department; City of Fremont Community Development Department; City of Milpitas; City of Morgan Hill, Planning Division; City of Santa Clara Department of Planning and Inspection; City of Saratoga Community Development Department; City of Sunnyvale, Planning Division; Town of Los Gatos, Community Development Department; Santa Clara County Planning Department; PG&E Land Rights Services; Santa Clara Valley Transportation Authority; San José Unified School District; Santa Clara Valley Water District, Community Projects Review Unit; and Santa Clara County Roads & Airports Department.

Copies of the Draft EIR or NOA for the Draft EIR were sent to the following organizations, businesses, and individuals by the City of San José:

- Richard Drury and Theresa Rettinghouse, Lozeau Drury LLP;
- Michael Ferreira, Sierra Club-Loma Prieta Chapter;
- Andrew Galvan, The Ohlone Indian Tribe, Inc.;
- Brian Grayson, Preservation Action Council of San Jose;
- Greenbelt Alliance;
- Larry Johmann, Guadalupe-Coyote Resource Conservation District;
- Kevin Johnston;
- Shani Kleinhaus, Santa Clara Valley Audubon Society;
- Scott Knies, San Jose Downtown Association;
- Arvind Kumar, California Native Plant Society, SCV Chapter;
- Janet Laurain, Adams Broadwell Joseph & Cardozo;
- Adina Levin, Friends of Caltrain;
- SPUR; and
- Bill Tuttle, P.E., San Jose Water Company.

SECTION 4.0 RESPONSES TO DRAFT EIR COMMENTS

In accordance with CEQA Guidelines Section 15088, this document includes written responses to comments received by the City of San José on the Draft EIR.

Comments are organized under headings containing the source of the letter and its date. The specific comments from each of the letters and/or emails are presented with each response to that specific comment directly following. Comments received on the Draft EIR are listed below. Copies of the actual letters and emails received by the City of San José are included in their entirety in Appendix A of this document.

<u>Comment Letter and Commenter</u>	<u>Page of Response</u>
<u>Regional and Local Agencies</u>	
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Comment letters were received from three public agencies. CEQA Guidelines Section 15086(c) require that:

A Responsible Agency or other public agency shall only make substantive comments regarding those activities involved in the project that are within an area of expertise of the agency or which are required to be carried out or approved by the Responsible Agency. Those comments shall be supported by specific documentation.

Regarding mitigation measures identified by commenting public agencies, the CEQA Guidelines Section 15086(d) state that:

Prior to the close of the public review period, a Responsible Agency or trustee agency which has identified what the agency considers to be significant environmental effects shall advise the Lead Agency of those effects. As to those effects relevant to its decisions, if any, on the project, the responsible or trustee agency shall either submit to the Lead

Agency complete and detailed performance objectives for mitigation measures addressing those effects or refer the Lead Agency to appropriate, readily available guidelines or reference documents concerning mitigation measures. If the responsible or trustee agency is not aware of mitigation measures that address identified effects, the responsible or trustee agency shall so state.

A. Responses to Comment Letter A from Santa Clara County Roads and Airports Department (dated October 16, 2018)

Comment A.1: The County of Santa Clara Roads and Airports Department appreciates the opportunity to review the Notice of Availability of a Draft Environmental Impact Report and is submitting the following comments:

1. The timings used in AM LOS analysis for County intersections are not correct, please contact County for correct timing settings.

Response A.1: The comment is referencing signal timing used to complete the peak hour intersection level of service analysis. The County was contacted in response to this comment and signal timing was obtained from the County. The County did not have signal timing available for the specific time period of the traffic counts used in the analysis. However, the County did provide current (2017-2018) signal timing (cycle times and maximum green times for all signal phases). The re-evaluation of peak hour level of service (LOS) analysis using the County-provided max green times indicates that the intersections of Bascom/Moorpark and Bascom/Fruitdale are projected to operate at LOS F conditions during the AM peak hour, rather than the LOS E conditions shown in the Transportation Analysis completed for the EIR (refer to Appendix D to the EIR). Both intersections are still projected to operate at LOS F conditions during the PM peak hour, as shown in the Transportation Analysis. Future development as part of the proposed Downtown Strategy 2040 would occur over at least a 20-year period. Based on the projected future traffic volumes and sensitivity analysis, more than 15 years of traffic growth would occur prior to realizing the identified LOS F conditions during the AM peak hour at each of the intersections, which is well after July 1, 2020, when all jurisdictions will have to adopt vehicle miles traveled (VMT) as their metric for determining transportation impacts. Under the VMT metric, intersection LOS is not considered a significant impact under CEQA. As stated in the EIR, the impacts of the project on the transportation environment are evaluated in the EIR using VMT. Therefore, the use of alternate signal timing for various intersections, to the extent it results in modified LOS, would not have a bearing on the EIR's conclusions for transportation impacts.

Comment A.2: 2. The Bascom Avenue Complete Street is a Study and not a project which is not funded. Therefore intersection level improvements should be considered to minimize impacts.

Response A.2: Please see response to A.1. As described in Section 3.15.2.6 of the EIR, Council Policy 5-1 replaces the former Council Policy 5-3 which utilized intersection level of service, or vehicle delay or congestion, as the primary measure of development traffic impacts. Thus, the evaluation of a project's impact on LOS at intersections under the jurisdiction of the City of San José is no longer required under CEQA. However, apart from CEQA, the City is still required to conform to the requirements of the VTA, which establishes a uniform program for evaluating the effects of land use decisions on the designated CMP Roadway System under the California Government Code. The VTA's CMP has yet to adopt and implement guidelines and standards for the evaluation of the CMP roadway system using VMT under SB 743. Therefore, the EIR includes an analysis of the

effects of the Downtown Strategy 2040 and its growth on CMP-designated intersections and freeway segments in the vicinity of the project area following the current peak-hour LOS standards and methodologies as outlined in the *VTA Transportation Impact Analysis Guidelines* for informational purposes only. This analysis is included for the purposes of determining consistency of the project with the CMP, and not for the purposes of identifying project traffic impacts on the transportation system under CEQA, which are based on VMT metrics as discussed above, and not congestion or vehicle delay. As a result, no mitigation is required related to intersections operations.

As described on page 304 of the EIR, improvements were investigated for each of the CMP intersections projected to operate at LOS F conditions under Downtown Strategy 2040 conditions, including improvements at both the Bascom/Moorpark and Bascom/Fruitdale intersections (refer to pages 49-53 of Appendix D Transportation Analysis of the EIR for a detailed analysis of potential improvements). In addition, the Transportation Analysis states that the *VTA's Bascom Avenue Complete Street Study* and the *West San Jose Multimodal Transportation Improvement Plan (MTIP)* are currently being completed and may identify improvement to multi-modal facilities that could result in an increase in alternative modes of travel (transit, bikes, and walking) and a reduction in auto-based travel mode-share in the area.

Comment A.3: 3. The DEIR should look into an 8-phase signal operation at Bascom and Fruitdale as an impact mitigation.

Response A.3: Please refer to Response A.2. No mitigation is required related to intersection operations because, in conformance with SB 743 and City Council Policy 5-1, intersection LOS is not considered a CEQA impact in this EIR. The change to an eight-phase signal operation as recommended would not result in an improvement in intersection operations due to the large projected left-turn volumes. To improve intersection operations, the addition of automobile capacity to the intersection would be required.

B. Responses to Comment Letter B from the Santa Clara Valley Transportation Authority (dated October 22, 2018)

Comment B.1: VTA staff has reviewed the Draft EIR for the Downtown Strategy 2040 Plan (File Number PP15-102; State Clearinghouse Number 2003042127). VTA appreciates the City's engagement with VTA throughout the Downtown Strategy 2040 planning process. We have the following comments.

Local Transportation Analysis

The DEIR/TIA notes that “most of the potential development parcels included within The Downtown Strategy 2040 plan area will meet the City’s VMT analysis screening criteria” per Policy 5-1 and would not trigger a VMT analysis (TIA p. 25). VTA supports such screening criteria, which address key factors for transit-supportiveness, such as the project location in relation to high-quality transit, project density, and parking considerations. However, such VMT analysis does not address an individual project’s site design, specifically access to transit, and transit operational impacts. VTA recommends that projects included in the Downtown Strategy 2040 prepare a Local Transportation Analysis per Policy 5-1, and that the City provide such LTAs, or other early project materials to VTA for review and comment. If the LTA identifies impacts or negative effects on transit operations, transit priority measures should be identified in consultation with VTA. Such measures could include contributions to any applicable projects that improve transit speed and reliability.

Response B.1: As described on page 268 of the EIR, Council Policy 5-1 requires preparation of local transportation analyses (LTAs) for individual projects to analyze non-CEQA transportation issues, which may include local transportation operations, intersection level of service, site access and circulation, and neighborhood transportation issues such as pedestrian and bicycle access, and to recommend needed transportation improvements. VTA’s request that the City provide LTAs to the VTA for review and comment is acknowledged.

Comment B.2: VTA recommends early coordination (at the preliminary project stage) of Downtown Strategy 2040 projects in order to address critical site planning considerations with the goal to maximize transit- integration opportunities, prevent potential conflicts, and facilitate successful transit-oriented/multimodal-supportive projects.

Response B.2: VTA’s recommendation for early coordination is acknowledged. This comment does not raise a specific environmental issue under CEQA; therefore, no further response is required.

Comment B.3: Congestion Management Program

As stated in the DEIR/TIA, the City is still required to conform to the requirements of the VTA Congestion Management Program (CMP), which is governed by state CMP legislation. While VTA is supportive of the City’s use of Vehicle Miles Traveled as its CEQA methodology for transportation impacts in conformance with SB 743, the CMP guidelines currently refer to an LOS standard for CMP purposes. Per the DEIR/TIA, the Downtown Strategy 2040 identifies impacts to CMP facilities, such as CMP intersections and freeway segments. The DEIR/TIA does not identify

feasible mitigation measures for the identified CMP impacts. VTA requests a meeting between VTA and the City to identify potential mitigation measures that may satisfy VTA CMP requirements and meet the City's goals for multimodal transportation.

Thank you for the opportunity to review this project. We look forward to further coordination on the abovementioned items. Please don't hesitate to contact me with questions or comments.

Response B.3: As described in Section 3.15.2.6 of the EIR, Council Policy 5-1 replaces the former Council Policy 5-3 which utilized intersection level of service, or vehicle delay or congestion, as the primary measure of development traffic impacts. Thus, the evaluation of a project's impact on level of service (LOS) at intersections under the jurisdiction of the City of San José is no longer required under CEQA. However, apart from CEQA, the City is still required to conform to the requirements of the VTA, which establishes a uniform program for evaluating the effects of land use decisions on the designated CMP Roadway System under the California Government Code. The VTA's CMP has yet to adopt and implement guidelines and standards for the evaluation of the CMP roadway system using VMT under SB 743. Therefore, the EIR includes an analysis of the effects of the Downtown Strategy 2040 and its growth on CMP-designated intersections and freeway segments in the vicinity of the project area following the current peak-hour LOS standards and methodologies as outlined in the *VTA Transportation Impact Analysis Guidelines* for informational purposes only. This analysis is included for the purposes of determining consistency of the project with the CMP, and not for the purposes of identifying project traffic impacts on the transportation system under CEQA, which are based on VMT metrics as discussed above, and not congestion or vehicle delay.

As described on page 304 of the EIR, improvements were investigated for each of the CMP intersections projected to operate at LOS F conditions under Downtown Strategy 2040 conditions (refer to pages 49-53 of Appendix D Transportation Analysis of the EIR for a detailed analysis of potential improvements). Two of the intersections identified, Bascom Avenue and Moorpark Avenue, and Bascom Avenue and Fruitdale Avenue, are part of the VTA Bascom Complete Streets study corridor. Improvements that increase intersection capacity and reduce congestion are counter to that plan. Two intersections, The Alameda and Naglee Avenue, and The Alameda and Hedding Street, have no feasible improvements due to right-of-way constraints. The right-of-way constraints were already recognized by the City of San José when these intersections were designated as Protected Intersections under the former transportation analysis policy (Council Policy 5-3). The final intersection, First Street and Alma Avenue, was found to have feasible improvements, but those improvements, such as adding turning lanes to increase vehicular volumes through the intersections, would be detrimental to the City's goals of reducing VMT and increasing the use of alternative modes of transportation and contrary to the most current State law addressing traffic impacts (SB 743).

As described on page 306 of the EIR, the Downtown Strategy 2040 would not fully meet the CMP's LOS requirements for some signalized intersections. However, Downtown Strategy 2040 will be in substantial conformance with CMP requirements through a combination of trip reduction from the Downtown area and implementation of VTA specified deficiency plan listed items, found in Appendix C of the VTA Deficiency Plan Requirements. Instead of

increasing the capacity at the affected intersections, the City will identify a set of multimodal infrastructure improvements and operational efforts (such as Transportation Demand Management (TDM) measures) that will improve system-wide transportation conditions in Downtown. A Downtown Transportation Plan will be developed to support the Downtown Strategy 2040 and include strategies to improve public transit and active transportation infrastructure as well as encourage adoption of alternative modes of transportation and support efficient use of valuable parking resources using TDM measures. The Downtown Transportation Plan will be used to formulate, or may itself be, a Multimodal Improvement Plan (MIP) in conformance to the CMP requirements.

VTA is also moving towards a change in CMP policy that will better align the CMP requirements with assessment of VMT. SB 743 and Council Policy 5-1 established VMT as the metric by which transportation impacts are measured in the City under CEQA, and the project would have a less than significant VMT impact under CEQA. The project's inconsistency with CMP requirements, therefore, would not be considered a significant environmental impact, as the CMP is focused on managing congestion, and a project's contribution to increased congestion is no longer considered an impact on the environment according to the Office of Planning and Research's proposed updates to the CEQA Guidelines implementing SB 743 and the City's local transportation policy 5-1.

The City staff is supportive of the VTA's request for a meeting between VTA and the City to identify potential improvements that may satisfy VTA CMP requirements and meet the City's goals for multimodal transportation.

C. Responses to Comment Letter C from the Santa Clara Valley Water District (dated October 22, 2018)

Comment C.1: The Santa Clara Valley Water District (District) has reviewed the Draft EIR (DEIR) for the San José Downtown Strategy 2040, City File No. PP15-102, received by the District on September 7, 2018.

Based on our review of the DEIR submitted we have the following comments:

1. District has fee title property and easement over Los Gatos Creek and Guadalupe River located within the project area. Additionally, the District's Central Pipeline runs through the area. In accordance with the District Water Resources Protection Ordinance, any work within the District right of way (fee and easement) or crossing any District facility requires the issuance of a District permit and the District to be considered a responsible agency under CEQA.

Response C.1: The City acknowledges the District's requirement for issuance of a District permit under the District Water Resources Protection Ordinance and consideration of the District as a responsible agency under CEQA for any work within the District right of way (fee and easement) or crossing any District facility. The DEIR lists the District as a responsible agency under Section 2.6.2.2. "Other Agency Review," on page 28. This comment is a clarification that does not raise new environmental issues under CEQA, therefore no further response is required.

Comment C.2: 2. The DEIR should consider the potential for regulatory requirements to change from 100- year to 200-year flood protection and climate change in the future. The 200-year requirement has been imposed in other parts of the country and State so the possibility of such a change exists.

Response C.2: The City has code provisions for flood protection related to the 100-year flood in the San José Municipal Code, including but not limited to Chapter 17.08 "Special Flood Hazard Regulations," as may be amended from time to time, which is based on the policy framework in the Envision San Jose 2040 General Plan which focuses on the 100-year flood. The FEMA floodplain mapping remains focused on 100-year flood hazard areas, and the CEQA Appendix G Checklist, as updated for 2019, continues to focus on the 100-year flood. The District's policy preference for consideration of the 200-year flood in land use planning is noted and will be considered by the decision-makers.

Comment C.3: 3. The DEIR notes in multiple places that impacts to the riparian corridor will be minimized by enforcement of the City's Riparian Corridor Policy. To minimize impacts to riparian corridors the project should be consistent with the Guidelines and Standards for Land Use Near Streams and the City's Riparian Corridor Policy. Typical minimum setbacks are 100-foot from the existing creek top of bank/riparian corridor to buildings and developed areas. While the City's Riparian Corridor Policy allows for reduced riparian setbacks in the downtown area, the District strongly advocates for maximizing the setbacks and providing measures to enhance and restore the riparian corridor whenever possible.

Response C.3: The District’s advocacy is noted as a policy position. In compliance with CEQA, the EIR acknowledges the existing regulatory setting of the City of San José (City). The City has adopted the Santa Clara Valley Habitat Conservation Plan (HCP) as regulation in the San José Municipal Code to address riparian corridor protection, enhancement, and restoration in the City through a regionally consistent approach. The City implements the HCP provisions in development and land uses that the City approves. Additionally, consistent with Envision San José 2040 General Plan (General Plan) Policies, and City Council Policies, the City of San José may impose riparian corridor conditions on proposed development or land-use projects. Such conditions may be more stringent than what is required under the HCP. Downtown development often occurs on smaller parcels on which the provision of a 100-foot setback would significantly constrain the development, potentially resulting in a regulatory taking. For this reason, the City’s Riparian Corridor Policy has appropriately provided flexibility within the Downtown to balance development with riparian corridor protection.

Comment C.4: 4. To protect the genetic integrity of the existing native riparian vegetation, including mitigation plantings, along Los Gatos Creek and the Guadalupe River, all projects should follow Design Guides 1-4 of the *Guidelines and Standards for Land Use Near Streams*. In particular, landscape based stormwater quality improvements and landscaping should utilize locally grown propagules for any local native riparian species proposed or utilize non-local natives or non-invasive ornamentals. Use of box size trees should be limited to non-local native riparian species and non-invasive ornamentals.

Response C.4: The District’s recommendations are noted as guidance. In compliance with CEQA, the DEIR acknowledges the existing regulatory setting of the City of San José (City). As stated in Response G3, the City has adopted the Santa Clara Valley Habitat Conservation Plan (HCP) as regulation in the San José Municipal Code to address riparian corridor protection, enhancement, and restoration in the City through a regionally consistent approach. The City implements the HCP provisions in development and land uses that the City approves. Additionally, consistent with General Plan Policies, and City Council Policies, the City of San José may impose riparian vegetation protection conditions on proposed development or land-use projects. Such conditions may be more stringent than what is required under the HCP.

Comment C.5: 5. The DEIR should clearly note if any new vehicular and/or pedestrian crossings Los Gatos Creek or the Guadalupe River, including improvements to existing crossings are proposed. Such work will require District permits and we highly recommend to minimize the number of creek crossings and combine vehicular and pedestrian crossings where possible to minimize impacts to the riparian habitat.

Response C.5: The comment does not raise any CEQA issues. The City acknowledges that any work of the nature described in the comment may require a District permit. There are no new crossings or improvements to existing crossings that are proposed at this time as part of the Downtown Strategy 2040. As discussed in the DEIR, there are existing approved projects and plans within the region that include new crossings or improvements that are considered as part of the future buildout. The High Speed Rail (HSR) plan, for example, is considered as part of the cumulative analysis of the Downtown Strategy 2040. The Downtown Strategy

2040 DEIR primarily analyzes program-level policy, regulatory, and land use changes that are proposed by the City. The City acknowledges that new crossings or improvements to existing crossings would be subject to District permits, and that the District recommends minimizing such crossings where possible to minimize impacts to the riparian corridor.

Comment C.6: 6. The DEIR notes on page 79 in the Biological Resources Section, that no modifications of Los Gatos Creek or the Guadalupe River are proposed, except for the possible replacement of sanitary sewer siphons or new or replaced storm drain outfalls. However, the discussion in the Hydrology and Water Quality section and page 333 Stormwater Impacts do not indicate the potential for upgrading the storm drains, including outfalls to Los Gatos Creek and the Guadalupe River. The discussions related to improvements to the storm drain system and outfalls should be consistent throughout the document.

Response C.6: The analysis on page 333 “Stormwater Impacts” states that, “As described in Section 3.10 Hydrology and Water Quality, development allowed under the Downtown Strategy 2040 could contribute runoff that adversely affects operations of the existing stormwater drainage system. The existing storm drain lines within the Downtown area convey storm runoff adequately, although minor flooding can occur. Development within the Downtown area would occur in predominately developed and paved areas.”

The above excerpted text is also relevant to the existing baseline conditions for potential development in the subject area. As under existing conditions, if or when specific development projects are proposed, implementation of the Envision San José 2040 General Plan (General Plan) policies (see Section 3.10.2) would ensure that sufficient storm drainage facilities are incorporated into development plans and new development or redevelopment projects would not conflict with the use, operation, or maintenance of any existing storm drain lines. These conclusions are consistent with the analysis in the General Plan EIR and Downtown Strategy 2000 EIR regarding the construction of new storm water drainage facilities or expansion of existing facilities. Such sufficient storm drainage facilities could potentially include upgrading storm drains including possible new or replaced storm drain outfalls to Los Gatos Creek or the Guadalupe River; however, this possibility is speculative at this time given the programmatic-level of the proposed Downtown Strategy 2040.

Comment C.7: 7. Page 173 incorrectly notes that the Anderson Dam retrofit project is on schedule for completion in 2018. The project is still in the planning/design, with an anticipated completion date of 2028.

Response C.7: This text identified on page 173 has been revised to state an anticipated completion date of 2028 (refer to Section 5.0 Draft EIR Text Revisions). This is not a material change to the analysis and is only a correction of the estimated date of completion. This comment does not raise any new specific environmental issue under CEQA, and therefore no further response is required.

Comment C.8: 8. Page 182 notes to reduce impacts related to flood hazards, development will be required to have the lowest floor elevation of new structures above the FEMA mapped base flood elevation. While elevating structures will reduce impacts to the structures, it does not reduce potential impacts of development impeding or redirecting flood flows. The discussion should provide measures for ensuring impacts to flood flows are evaluated as part of each development proposed within special flood hazard areas. Any increase in the runoff (both peak flow and volume) due to development must be mitigated to pre- development runoff (both peak flow and volume) for not only 100-year storm events, but also for more frequent events such as the 2-year, 5-year, 10-year, and 25 year events.

Response C.8: As stated in Response C.2, the City has code provisions/measures for minimizing or preventing flood hazards in the San José Municipal Code, including but not limited to Chapter 17.08 “Special Flood Hazard Regulations,” as may be amended from time to time. Additionally, the City has policies implementing the Municipal Regional Permit, including but not limited to City Council Policy 8-14 “Post-Construction Hydromodification Management,” and City Council Policy 6-29 “Post-Construction Urban Runoff Management”, as revised, to mitigate any increase in runoff from new development from more frequent events. These regulations and policies are implemented at the development-project level as specific development applications are reviewed by the City prior to the City’s decision on whether or not it will issue development permits for such projects. Future project-level environmental review for specific development applications would include an analysis of the potential for redirecting or impeding flood flows.

D. Responses to Comment Letter D from PG&E (dated September 10, 2018)

Comment D.1: Thank you for submitting PP15-102 plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: https://www.pge.com/en_US/business/services/building-and-renovation/overview/overview.page.
2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.
3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851 filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

Response D.1: This comment does not raise a specific environmental issue under CEQA; therefore, no further response is required. The information provided by PG&E is acknowledged and noted in the public record for consideration by the decision makers. Please note that future development under the proposed Downtown Strategy 2040 would be coordinated with PG&E as appropriate on a case-by-case basis.

E. Responses to Comment Letter E from Axis Homeowners Association (dated October 18, 2018)

Comment E.1: On behalf of 329 homes and over 550 residents of the Axis Residential Tower (“Axis”) located at 38 N. Almaden Boulevard in Downtown San José, I am submitting this comment letter related to the Downtown Strategy 2040 Draft Program Environmental Impact Report (“DSPEIR”). We respectfully ask that our comments receive substantive responses.

Our residents understand that new development in the Downtown is integral to creating a vibrant, balanced, transit-oriented downtown area. In fact, many of us purchased units at Axis eagerly anticipating the continued revitalization of Downtown and the associated benefits: proximity to restaurants, entertainment and retail establishments, jobs, and state-of-the-art transit opportunities.

Background of Axis

The 22-story Axis tower was constructed in 2008 with 329 units, the vast majority of which are owner-occupied. The original environmental document for the Axis project was the 47 Notre Dame Supplemental EIR (“Axis SEIR”), which tiered off the original Downtown Strategy 2000 Program EIR. Page 1 of the Axis SEIR described the project as the construction of “a 22-story (approximately 228 feet above grade), L-shaped 350-unit residential condominium on the northwest corner of the property (referred to as Phase I).”

The project description continues on page 4 of the Axis SEIR and includes the following: “The southwest corner of the site, adjacent to the Hotel De Anza, will be developed with a six-story residential/retail building (referred to as Phase II) with two levels of below grade parking that are open to and accessed through the Phase I underground parking area. The Phase II building will be comprised of approximately 35 condominium units and 8,000 square feet of retail.”

As stated on page 18 of the Axis SEIR, “To minimize the overall visual impact of the residential tower on the Hotel De Anza, the tower is proposed to be located with the greatest possible setback from the hotel on the project site at the northwest corner of the block.” In fact, the Axis building itself is also stepped back from the hotel as shown in the attached photo. The construction of the 6-story Phase II building was not evaluated in great detail as it would not have been taller than the Hotel De Anza and would not block views of the hotel’s iconic rooftop neon sign. In other words, it would not have contributed significantly to the impact of the Axis structure, as described in the Axis SEIR.

Current Proposal for Hotel Project

The Phase II building was never constructed, although the developer gave Axis residents his personal assurances during sales of the condominium units that the future structure would not be taller than six stories. This same developer is now in the process of seeking entitlements for a 19-story, 272-room hotel (the Hotel Project – Project Number H18-038) on the small 8,000 square foot lot at the southwest corner of the block.

The Hotel Project would not include any parking, although the previous Phase II project included two levels of below grade parking. It may be that this parking is not part of the proposed Hotel

Project because the developer would need to obtain an easement to access this parking from the existing Axis underground parking area, as originally planned. Or perhaps this parking is not included because of the engineering and design difficulty of fitting an underground parking structure onto a postage-stamp parcel, and the resulting costs. Whatever the reason, however, a hotel of this size with no parking would create an operational nightmare for both Axis residents and other nearby residential and office developments. For example, the Hotel Project's valet operations would overflow into the public right of way and would almost surely trespass onto Axis' driveway. In addition, all other modes of traffic (including bicyclists, pedestrians, and bus transit) in the project area would be adversely affected.

Our other issues with the proposed Hotel Project include the elimination of all views from and the loss of privacy for the residential units that face to the south. These views are why many of the residents purchased these units especially in light of the assurances provided by the developer that these views would never be restricted. As you can imagine, having the windows of a hotel facing the Axis building with very little setback would be unnerving to many of our residents, and again, the proposed building was never expected to be taller than six stories.

We are also very concerned about how the Hotel De Anza, its distinctive Art Deco roofline parapet, its rooftop neon sign, and the diving lady painting will be affected by the construction of a 19-story hotel immediately adjacent to the hotel. As stated on page 18 of the Axis SEIR pertaining to the diving lady painting on the western façade of the Hotel De Anza building, "At the time that the De Anza was listed as a historic building, the painting was not included as a defining feature because of its relatively new age in comparison to the rest of the building. However, the painting has become a local icon and is widely recognized by San José residents. In order to avoid blocking the painting from view as people travel east on West Santa Clara Street, the Phase II building will provide a sufficient setback and a stepped design on the east side of the building to ensure an unobstructed view of the painting. In addition, the construction materials and design of the Phase II building are proposed to be compatible with the Hotel De Anza and create the look of a contiguous pedestrian corridor along West Santa Clara Street. Furthermore, the project would conform to the City of San José Design Guidelines."

The Hotel De Anza is one of the finest examples of Zigzag Moderne Art Deco style in the city of San José, and by far the best known. Its most widely recognized features are the stepped, zigzag parapet that extends across the entire ninth and tenth floor roofline of its front façade and the neon sign that tops the central parapet. Both the San José Design Guidelines and National Register guidelines stipulate that new construction should not dwarf an adjacent historic building.

The plans we have seen thus far for the 19-story Hotel Project do not respect the architecture or historic considerations of the Hotel De Anza. They appear to overcrowd and dwarf the structure and to completely block any views of the diving lady, and more importantly, the stepped parapet and the De Anza's iconic rooftop neon sign. In fact, the plans show a building that actually spreads out as it gets taller. This is in direct conflict with the previous environmental review completed for the 47 Notre Dame Axis SEIR.

Further, page 30 of the Axis SEIR states the following: "It should also be noted that it was the conscious decision of the project proponent [of the Axis project] to site the proposed residential tower on the northwest corner of the block to ensure the greatest setback from the Hotel De Anza,

thus minimizing the tower's effect on the Hotel De Anza. The above notwithstanding, the Hotel De Anza was intended to be a visible landmark and has historically been the tallest building on the block since it was constructed. Its primary view corridor at present is from the south on Almaden Boulevard. According to the historic consultant, the addition of a tower taller than the roof of the De Anza, or its roof sign, significantly impacts the historic character of the property by reducing its position of prominence. This impact is site-specific and is specific to the Hotel De Anza since its stature played a role in its importance.”

Again, it is inconceivable to us that a 19-story structure could now be considered at 8 N Almaden Boulevard when the previous environmental review was for a 6-story residential/retail structure at the southwest corner of the site.

As stated in the Axis SEIR, the construction of the Axis project would obscure views of the Hotel De Anza from Highway 87 in the southbound direction, and it is true that Axis partially obscures this view; however, the Hotel De Anza and its iconic sign can still be seen from the northbound direction and from the Guadalupe River Park on the west side of the highway (see attached daytime and nighttime photos). The loss of the view of the hotel and its sign from the park was not considered under the Axis EIR in the determination of a significant unavoidable impact on the integrity of the setting of the Hotel De Anza. Further, the impact identified in the Axis SEIR was determined for a project that was the construction of a 6-story structure that could not have obscured the view from either the highway or the park. We request that a new Environmental Impact Report (EIR) be prepared to evaluate this new impact not previously identified in the Axis SEIR.

Response E.1: This comment does not raise a specific environmental issue under CEQA related to the proposed Downtown Strategy 2040 project; therefore, no further response is required. This comment provides background information regarding previous environmental review and development on a specific site within the Downtown area, and also expresses the commenter's concerns regarding a pending development application submitted to the City on an adjacent site (File No. H18-038). The hotel development application was submitted to the City in 2018, well after the Notice of Preparation for the Downtown Strategy 2040 EIR was circulated in March 2017. The Downtown Strategy 2040 EIR is a program-level document. Neither site discussed in the comment is specifically the subject of the EIR. The City will conduct appropriate project-level, site-specific CEQA review for the proposed hotel that is the subject of this comment, and that environmental review will address the issues raised in the comment letter and be available to the public as part of the planning process for the hotel. The information discussed in this comment is acknowledged and noted in the public record for consideration by the decision makers.

Comment E.2: Downtown Strategy 2040 Draft Program EIR

Again, we support the overall continued redevelopment of the Downtown area as envisioned in the Downtown Strategy 2040. We also understand that it is the intent of the City for the environmental review provided in this new DSPEIR to cover the impacts of the proposed hotel project. We would like to point out that the DSPEIR is a program-level EIR and does not provide project specific environmental review for a 19-story hotel structure with no parking adjacent to a historic structure and a residential tower. For this reason, we respectfully request that a project specific environmental impact report be prepared for the proposed project.

This request is supported by the following statement included in the DSPEIR on page 40: “To reiterate, the Downtown Strategy 2040 is a planning document to guide development; it does not propose specific development projects at this time. Therefore, the following discussions provide program-level review of the potential aesthetic impacts that may result from implementation of the Downtown Strategy 2040. Future projects under the Downtown Strategy 2040 will be subject to subsequent environmental review and assessment of project-specific aesthetic impacts.”

Because the proposed Hotel Project is a project-specific development, and because site-specific aesthetic and historic impacts would be significant and unavoidable, specific mitigation measures should be presented in a new EIR for the Hotel Project. Program-level and General- Plan level impacts and mitigation measures are not specific enough to evaluate the construction of the 19-story Hotel Project immediately adjacent to a historic structure. This is especially true since the previous environmental review assumed a 6-story structure on the project site.

Response E.2: See Response E.1. The pending hotel development proposal that was submitted to the City was not submitted to the City until 2018, well after the Notice of Preparation for the Downtown Strategy 2040 EIR was circulated in March 2017. The Downtown Strategy 2040 EIR is a program-level document. It is not the intent of the City for the environmental review provided in this EIR to cover the site-specific, project-level impacts of the proposed hotel project. Project-level review was completed only for vehicle miles traveled (VMT), traffic noise, and operational emissions of criteria pollutants resulting from future development in the Downtown area. Specific development projects within the Downtown area, including the hotel project described in the comment, will be required to complete project-level environmental review, which will address impacts and measures to reduce the impacts associated with the specific development project. The environmental review for the particular hotel will address the issues raised in the comment letter and be available to the public as part of the planning process for the hotel.

Comment E.3: Aesthetic Impacts

As stated on page 40 of the DSPEIR, the discussion supports the use of General Plan policies and Design Guidelines to provide program-level mitigation for impacts to scenic views. “For example, in accordance with 2040 General Plan Policies CD-10.2 and CD-10.3, new development adjacent to Gateways, Grand Boulevards, and freeways shall be designed to preserve and enhance attractive natural and man-made vistas.” The proposed Hotel Project is along such a “Grand Boulevard” – Santa Clara Street, yet the design is far from one that preserves and enhances attractive natural and man-made vistas. In fact, the design would completely destroy the views from the street and surrounding land uses.

In determining impacts to visual character, the implementation of Design Guidelines and General Plan policies are expected to ensure that buildings in Downtown support high quality development. When considering Table 3.1-2: Design Guidelines by Category on page 41 of the DSPEIR, the proposed Hotel Project plans do not exhibit many of the guidelines in the table. For example, under “Building Form”, the Hotel Project does not “minimize bulk” or have a “distinctive design for interesting views to and from the building”. Under “Building Context”, the proposed hotel building does not reflect “the architectural context” of the existing Hotel De Anza nor is it “compatible with existing buildings” along the Grand Boulevard. Again, we request a determination of specific

impacts of the proposed Hotel Project in light of the Design Guidelines and the identification of site-specific mitigation measures in a new EIR.

This section of the DSPEIR also evaluates compatibility with surrounding development. As stated on page 43 of the DSPEIR, “For the purposes of this EIR, it is assumed that all future projects will reduce aesthetic impacts to a less than significant level through project design. In the event a future project proposes features that could substantially degrade the existing visual character, additional environmental review and detailed evaluation of resources and mitigation measures will be required prior to approval or implementation.” As we have demonstrated, the proposed hotel structure is inappropriately massive, intrusive, and incompatible with surrounding development, including the Hotel De Anza.

In fact, the preliminary review already conducted by the City’s planning department states that the new building should not dwarf the historic structure. It also states that the proposed hotel façade closest to the historic hotel has a window/glass geometry and height of a much larger scale than the Hotel De Anza. The Hotel De Anza’s tiered and “stepped back” façade and vertical Art Deco elements should have “some reference in the design of the new hotel”. The review states that these issues must be addressed. The current Hotel Project plans show no such considerations and project-specific impacts and mitigation measures must be identified in a new EIR.

Response E.3: Please refer to Response E.2. Specific development projects within the Downtown area, including the hotel project described in the comment, will be required to complete project-level environmental review. The project-level review would address impacts of the specific development project, including aesthetics impacts, and that environmental review will be available to the public as part of the planning process for the hotel.

Comment E.4: Construction-Related Impacts

Axis residents are also very concerned about noise, air quality, and traffic operations during construction of the proposed Hotel Project. Page 65 of the Downtown Strategy DSPEIR states the following: “In the event a future project would exceed the average daily or annual emission threshold or otherwise result in a significant impact based on current BAAQMD Guidelines and City requirements, supplemental environmental review may be required prior to project approval or implementation to identify the additional feasible measures necessary to reduce emissions to less than significant levels.”

No such evaluation has been completed for the 19-story structure and it is unknown how long existing residents would be subject to such emissions. In addition, a construction Toxic Air Contaminant (TAC) evaluation has not been prepared to determine potential cancer risks to the sensitive residential land uses at Axis during construction. These project-specific impacts and mitigation measures must be evaluated in a new EIR.

Construction noise and vibration must also be addressed. Again, the mitigation measures included in the DSPEIR are general measures based on the Municipal Code and are not site-specific. Given the recent cracks and structural damage experienced in high-rise development in San Francisco, site-specific construction-related impacts associated with pile driving and geotechnical considerations

must be evaluated. This is to ensure that the surrounding high-rise development will not be affected by this new construction that will undoubtedly require pile driving and other vibration-generating construction techniques. Impacts to the Hotel De Anza must also be addressed. These impacts must be disclosed in a new EIR.

In addition, the small 8,000 square-foot lot is severely constricted with busy roadways located along the only two accessible sides of the property. It is not apparent where construction staging of materials and equipment will occur, and specifically where the crane would be located for the duration of what will likely be years-long construction. We are concerned about crane operations trespassing over the Axis driveway. We are also not in favor of City streets being used for the development of private projects, particularly where potentially hazardous crane operations might need to occur over a busy public street. To allow any construction staging on Santa Clara Street with its heavy traffic load and bus rapid transit lines or N. Almaden Boulevard, which is one-way, would result in significant short-term traffic impacts and safety impacts not specifically discussed in the DSPEIR. This will be especially true if N. Almaden Boulevard is converted to a two-way street.

Response E.4: Please refer to Response E.2. Specific development projects within the Downtown area, including the hotel project described in the comment, will be required to complete project-level environmental review. The project-level review would address impacts of the specific development project, including construction-related impacts, and that environmental review will be available to the public as part of the planning process for the hotel.

Comment E.5: Parking and Traffic

Unbelievably, the proposed Hotel Project does not include any on-site parking and it is not known where these cars will be staged or ultimately parked. According to the preliminary review conducted by the planning department, 0.35 parking spaces are required per room. Therefore, a 272-room hotel would require 95 spaces, yet the project does not include any parking. In addition, it is unclear where valet parking could even be employed or where cars trying to access the hotel could be stacked.

With the proposal to convert N. Almaden Boulevard to a two-way street, the lanes of traffic would be much narrower. There is no indication that traffic operations would not be chaotic and result in safety impacts to pedestrians, bicyclists, bus transit, and vehicles accessing the project area. This is the current situation at the 100-room Hotel De Anza where valet parking on Notre Dame Avenue regularly backs up northbound traffic on the street, especially during commute hours which can correspond to hotel check-in and check-out. In addition, these conditions would also block existing driveways, including those utilized by Axis residents.

The DSPEIR states that operational transportation analyses will be required for projects as they come forward. However, we contend that impacts associated with not providing ANY parking have the potential to result in significant safety impacts not specifically identified in the DSPEIR. A new EIR that addresses operational impacts specific to the proposed project is required. In addition, it is not apparent how freight and service vehicles, including waste disposal trucks, would access the site without blocking the surrounding streets and our access driveways.

Response E.5: Please refer to Response E.2. Specific development projects within the Downtown area, including the hotel project described in the comment, will be required to complete project-level environmental review. The project-level review would address impacts of the specific development project, including operational traffic impacts, and that environmental review will be available to the public as part of the planning process for the hotel.

Comment E.6: Conclusion

The Axis Homeowners Association strongly supports Downtown San José's continued revitalization. Our residents are community leaders and active participants in planning activities in the Downtown area. We live, play, and work in Downtown now and are committed to ensuring that future Downtown development respects the existing surrounding land uses and viewsheds as well as the historical context. However, new construction incompatible with adjacent structures and landmarks is directly at odds with the vision set forth in Downtown Strategy 2040 and ultimately does not promote continued beautification or enhancement of the Downtown area.

For the reasons identified above, including the fact that all previous environmental documents prepared assumed a 6-story structure on the site, a new project-specific EIR must be prepared for the 8 N. Almaden Boulevard hotel project (H18-038).

Response E.6: This comment is acknowledged and noted in the public record for consideration by the decision makers. As described in Response E.2, specific development projects within the Downtown area, including the hotel project described in the comment, will be required to complete project-level environmental review, which will address impacts and measures to reduce the impacts associated with the specific development project, and that environmental review for the particular hotel at issue in the comment will be available to the public as part of the planning process for the hotel. This comment does not raise a specific environmental issue under CEQA related to the proposed Downtown Strategy 2040 project; therefore, no further response is required.

F. Responses to Comment Letter F from Adams Broadwell Joseph & Cardozo (dated October 22, 2018)

Comment F.1: We submit these preliminary comments on behalf of San José Residents for Responsible Development (“Residents”) regarding the Draft Environmental Impact Report (“DEIR”) for the Downtown Strategy 2040 Plan, File No. PP15-102, (“Downtown Strategy” or “Project”).

The Project proposes 1) Text and Land Use Amendments to update the General Plan so that future development Downtown is consistent with planned regional transportation improvements and to increase the development capacity within the Downtown boundary through the transfer of 4,000 dwelling units and 10,000 jobs (approximately 3 million square feet) from later horizon General Plan growth areas to Downtown; 2) establish an Employment Priority Area Overlay to support Downtown San José’s growth; 3) change the General Plan Land Use/Transportation Diagram designations on specific parcels within the Transit Center Employment Growth Area of the Downtown Strategy 2040 bounded area to align development possibilities with the Downtown Strategy 2040’s priorities; 4) clarify that within the Downtown Strategy 2040 area if development permits expire on a site, then the previously entitled capacity on that site will revert back to the un-entitled remaining capacity under the Downtown Strategy 2040 EIR; 5) replace the existing San José Downtown Strategy adopted by the City Council in 2005 with a new Downtown Strategy 2040; 6) zoning amendments to align the boundaries of the Downtown Zoning area to be consistent with the boundaries of the Downtown Strategy 2040 area and the General Plan; and 7) various other amendments to the Municipal Code to respond to lifestyle changes within the City.

We conducted an initial review of the DEIR and its appendices with the assistance of our technical consultants, air quality consultant Hadley Nolan and hazardous materials and hydrology expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise (“SWAPE”), as well as expert traffic engineer Daniel Smith, P.E. The attached expert comments require separate responses under CEQA.

Response F.1: The comment above does not raise any specific environmental issues under CEQA. Therefore, no specific response under CEQA. The attachments to the comment letter from Smith Engineering & Management and SWAPE are treated as individual comment letters in this First Amendment to the Draft EIR, as requested by the commenter (refer to comment letters I and J, respectively).

Comment F.2: Based on our initial review, it is clear that the DEIR is significantly flawed and does not comply with the requirements of the California Environmental Quality Act (“CEQA”). In particular, the DEIR lacks substantial evidence to support its conclusions that the Project will result in less than significant impacts in several resource categories, including hazardous materials, construction air quality impacts, and transportation impacts. The DEIR also fails to disclose existing substantial evidence demonstrating that proposed project buildouts within the Downtown Strategy Project area, including the 4th & St. John Project site, are likely to result in significant impacts that the DEIR fails to disclose and mitigate. The City may not approve the Project until the City prepares a legally adequate revised environmental impact report (“EIR”) that fully and accurately discloses the Project’s potentially significant impacts and incorporates all feasible mitigation measures to minimize those impacts to the fullest extent feasible. The City similarly may not rely on this DEIR for tiering purposes unless these substantial errors and omissions are corrected.

We are continuing to review the DEIR reference documents which were provided to us by the City just six days ago, and are awaiting a response to our October 11, 2018 Public Records Act for documents related to the Project. We reserve the right to supplement these comments at a later date following review of these documents, and at any later proceedings related to the Project.

Response F.2: As described in detailed responses to the specific comments contained in this comment letter (refer to Responses F.3 through F.11, below) and its attachments (refer to responses to comment letters I and J for responses to the attachments), the EIR provides substantial evidence supporting the conclusions regarding the various impacts of the project, including those discussed in the comment above.

Regarding the documents requested by the commenter, on September 7, 2018, the Notice of Availability for the DEIR was emailed to the commenter with a link to the electronic copy of the DEIR with appendices on the City's website. More than a month later, on October 10, 2018, the commenter requested by email correspondence that documents referenced in the DEIR be made available immediately. Within two days of receiving the request, on October 12, 2018, the City responded by email to the commenter that the requested documents were available at the Planning Division of the Department of Planning, Building and Code Enforcement at City Hall for the commenter's review the same day. The commenter responded that City staff should have a CD containing the documents packaged for Fed Ex pick-up on October 15, 2018 for overnight delivery to the commenter's address. The CD was delivered to the commenter's address on October 16, 2018.

Comment F.3: I. STATEMENT OF INTEREST

San José Residents for Responsible Development 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 environmental impacts of the Project. The association includes: City of San José residents Jeff Dreyer Sr. and Paul Oller; the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, and their members and their families; and other individuals that live and/or work in the City of San José and Santa Clara County.

Individual members of San José Residents and the affiliated labor organizations live, work, recreate and raise their families in Santa Clara County, including the City of San José. 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. San José Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). The EIR is the

very heart of CEQA. “The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” 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.”

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” If the project will have a significant effect on the environment, the agency may approve the project only if it finds 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.”

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘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.’” As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.”

A. Programmatic EIRs and Subsequent Environmental Review.

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering, or other appropriate process can be used for analysis of the project’s environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.

Under CEQA Guidelines Section 15168, program EIRs may be used for a series of related actions that can be characterized as one large project. If a program EIR is sufficiently comprehensive, Section 15168 allows the lead agency to dispense with further environmental review for later activities within the program if they were adequately covered in the program EIR. Section 15152 also allows agencies to “tier” a project- specific analysis to a prior program EIR, including one prepared for a general plan amendment, to streamline regulatory procedures and eliminate repetitive discussions of the same issues in successive EIR’s.

CEQA provides narrow opportunities for subsequent environmental review following adoption of a programmatic document. When a program EIR has been prepared pursuant to Section 15168, CEQA provides that “no subsequent or supplemental environmental impact report shall be required” unless

at least one or more of the following occurs: (1) “[s]ubstantial changes are proposed in the project which will require major revisions of the environmental impact report,” (2) there are “[s]ubstantial changes” to the project’s circumstances that will require major revisions to the EIR, or (3) “new information becomes available, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted” which demonstrates that the project will have impacts not previously analyzed, or that previously identified impacts can be mitigated with measures not previously required. The same “subsequent review” standards apply to subsequent CEQA review of changes to a project when a project-level CEQA document was originally prepared.

Section 15152 provides more exacting standards for subsequent review of later projects, prohibiting preparation of subsequent EIRs or negative declarations unless the later project may result in impacts which (1) were not examined as significant effects on the environment in the prior EIR; or (2) are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means. However, subsequent review under Section 15152 remains circumscribed by the scope of review performed in the initial programmatic document.

Response F.3: This comment details the commenter’s interpretation of numerous CEQA requirements and does not raise a specific environmental issue under CEQA related to the proposed Downtown Strategy 2040 project; therefore, no further response is required.

Comment F.4: III. THE DEIR FAILS TO ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS OF THE DOWNTOWN STRATEGY PROJECT

A. The DEIR Fails to Comply With CEQA’s Requirements for Program- Level Environmental Review

CEQA requires analysis of the environmental effects of a project at the earliest possible stage in the planning process. In particular, an agency must analyze the impacts of all future development contemplated by the adoption or amendment of a general planning document prior to the adoption or amendment. Failure to do so constitutes a prejudicial abuse of discretion by the lead agency, and a failure to proceed in the manner required by law. The DEIR fails to perform this basic analysis for many of the Project’s impacts by authorizing increased levels of development which are only partially analyzed in the DEIR.

The existing development capacity authorized by the Downtown Strategy 2000 EIR, and amended by the 2040 General Plan EIR and Addendum, includes:

- 11.2 million square feet of office development (2.8 million square feet per phase) 10,360 residential units (2,125 units per phase)
- 1.4 million square feet of retail development (350,000 square feet per phase) 3,600 hotel rooms (900 rooms per phase).
- The Project proposes to increase the number of residential units in Downtown to 14,360 units, an increase of 4,000 units compared to what is currently planned in the 2040 General Plan, and to increase office square footage to 14.2 million sf, a 3 million sf increase over currently authorized 2040 General Plan levels. These increases also require moving residential units from other Growth Areas or Urban Villages outside of Downtown such that

overall residential units anticipated within the City would not change, and moving 3,000,000 sf of planned office development (approximately 10,000 jobs) from Coyote Valley to Downtown. The Project therefore proposes a significant increase in both the quantity and location of allowable development within the Downtown Strategy areas of the City.

The DEIR includes a detailed “project-level” analysis for just three impact areas – traffic, air quality, and noise impacts. The DEIR then asserts that the remainder of the Project’s impacts are analyzed at a “programmatic” level, and “may” be subject to subsequent project-level review at the time specific buildout developments are proposed, including hazardous materials impacts, construction emissions, and historic resources, to name a few. However, these sections are both misleading and inaccurate because, in the same sections, the DEIR nevertheless concludes that the Project’s unquantified impacts on these resource areas will be mitigated to less than significant levels with future mitigation.

The DEIR clearly should have evaluated whether the development authorized by the Project should be allowed at the proposed site, which is a separate question from whether a future developer should be granted a permit in an area already authorized for such use. The City is obligated by law to analyze the potentially significant impacts from future development authorized by the Project, and is not permitted to defer its analysis to future permitting proceedings for impacts on resources that can be determined at the time of initial CEQA review.

Moreover, the City has stated in numerous other cases that it can approve subsequent projects as within the scope of the program covered by a prior plan-level EIR and not require further environmental review if the information regarding potentially significant impacts is known at the time the prior environmental review document was prepared. The legal standard to challenge that finding would require the public to provide substantial evidence that the subsequent project is larger than what was allowed by the prior document, that there are substantial changes in the circumstances under which the project is undertaken or that new information which was not known and could not be known at the time the EIR was prepared shows that there are new or more severe impacts or new mitigation measures to reduce those impacts. Here, since the City has information now that future development allowed by the Project may result in significant impacts, the City is required to analyze these impacts at this time.

The DEIR’s lack of analysis results in a failure to inform the public of the scope of potentially significant environmental impacts that may result from Project development, and a failure to require any mitigation to reduce these impacts to less than significant levels, in violation of CEQA.

Response F.4: The comment makes reference to development authorized by the Project “at the proposed site.” However, the Downtown Strategy 2040 EIR is a program-level document that considers implementation of the Strategy across the entire Downtown and does not attempt to evaluate possible future specific development projects at any specific sites. Project-level review was completed only for vehicle miles travelled (VMT), traffic noise, and operational emissions of criteria pollutants resulting from future development in the Downtown area. Contrary to the comment, the EIR has not deferred its analysis of impacts on resources that can be determined now, since the resources present on specific sites will be documented at the time development applications are filed with the City and the impacts that would result from future individual development projects on specific sites would be

evaluated in the context of the project-level, site-specific environmental review that would tier from this Program EIR (refer to CEQA Guidelines §15152). The remaining impact areas in the EIR were analyzed at a program level, and significance determinations for those impacts were made at a program level, as is appropriate in a program-level EIR (CEQA Guidelines §15168). Measures were identified, in the form of policies, ordinances, guidelines, and programs that would be applied to reduce impacts associated with future projects to less than significant levels. Specific development projects within the Downtown area will be required to complete project-level environmental review, which will address impacts and measures to reduce the impacts associated with the specific development project.

In the event a future project, even after implementation of the program measures identified in this EIR, results in a new or substantially more severe impact than disclosed in this EIR, supplemental environmental review would be required as appropriate in accordance with CEQA.

Comment F.5: B. The DEIR Fails to Disclose the Extent of Known Soil and Groundwater Contamination Within the Project Area and Fails to Include Adequate Mitigation For Potentially Significant Known Contamination

The DEIR discloses that there are approximately 103 properties within the Downtown Area that are listed as closed Leaking Underground Storage Tank (LUST) cases, five properties listed as open LUST cases, eight DTSC cleanup sites, one military cleanup site, 14 open cleanup program site cases, and 12 closed cleanup program site cases. The DEIR acknowledges that “new development under the proposed Downtown Strategy 2040 could occur in areas with soil contamination” which “may contain a variety of chemical compounds associated with fuels, oils, solvents, metals, or other hazardous substances originating from historical and/or current land uses.” The DEIR further acknowledges that some of this contamination may have migrated via shallow groundwater to properties in the Downtown area, and that, “[i]f not appropriately managed, contamination from past releases could present health risks to construction workers and/or the public during the site preparation, dewatering, construction, and maintenance activities.” However, the DEIR fails to disclose current levels of contamination and admittedly defers all analysis and mitigation of soil and groundwater contamination impacts to “subsequent analysis” that the City anticipates will be performed in post-approval studies. The DEIR concludes that the Project’s hazardous materials impacts related to soil and groundwater contamination will be less than significant. This conclusion is not supported by any evidence in the DEIR, and is contradicted by publicly available evidence related to projects within the Plan area.

Response F.5: Please refer to Response F.4. The Downtown Strategy 2040 EIR is a program-level document. It is not intended, nor is it required, to provide a detailed analysis of contamination levels on specific properties in the Downtown area. The EIR acknowledges that properties in the Downtown area may have soil contamination in excess of relevant thresholds and provides programmatic measures to reduce potential impacts to less than significant levels (refer to “Measures Included in the Project to Reduce and Avoid Impacts Related to Contamination” on pages 159-161 of the EIR). Specific development projects within the Downtown area will be required to complete project-level environmental review, which will address impacts and measures to reduce the impacts associated with the specific development project, including impacts associated with soil contamination. Project-specific

requirements will be determined during the supplemental project-level review phase prior to Planning entitlements for a given development, in accordance with current regulations. The comment that post-approval studies will be completed is incorrect. The appropriate site studies will be prepared in connection with the project-level environmental review that accompanies each future discretionary Planning entitlement, tiered from this Program EIR as appropriate. Based on the project-level analysis, any required remedial actions will be incorporated as conditions of approval for any grading, demolition, or building permit, subject to oversight by the appropriate regulatory agency (e.g., County Environmental Health or Regional Water Quality Control Board).

Comment F.6: Residents' experts previously commented that a 2017 Phase I Environmental Site Assessment ("ESA") that was performed for the 4th & St. John Project site documented residual soil and groundwater contamination at the site which exceeds San Francisco Bay

Regional Water Quality Board ("SFBRWQCB") Environmental Screening Levels ("ESLs"). The contamination included benzene detections at 31 parts per billion ("ppb"), which SWAPE explained exceeded the ESL of 1 ppb in shallow groundwater and creates a vapor intrusion risk in a residential scenario. SWAPE's 2017 consultant reports further explained that this contamination, which will be disturbed by Project construction, is likely to pose a health risk to the public. SWAPE's reports were submitted to the City in 2017, prior to the release of this DEIR, and are part of the Administrative Record in Residents' pending litigation over the 4th & St. John Project. Nevertheless, the DEIR fails entirely to discuss these impacts. The DEIR fails to disclose the existing contamination at 4th & St. John as a potentially significant impact, fails to include the 4th & St. John Phase I ESA, and fails to disclose the potentially significant health risk from exacerbating the site's existing contamination impacts during Project construction. The DEIR must be revised to disclose these impacts, as well as the existing levels of known contamination at the other project sites within the Plan area.

Residents' experts also commented in 2017 that the City's proposed development of a site management plan for the 4th & St. John Project site was inadequate mitigation because it contained no regulatory standards and would only be implemented upon future Project development, this improperly deferring mitigation to address known contamination. The DEIR for the Plan contains similarly inadequate mitigation which proposes to create post-approval Soil Management Plans and Remedial Action Workplans that contain no regulatory standards. The DEIR must be revised to disclose the levels of existing contamination within the Plan area, and to include clear and binding mitigation that meets regulatory standards.

Response F.6: This comment discusses a withdrawn rezoning and withdrawn development permit application on a specific property within the Downtown area (please refer to Response J.1 for additional information on the specific applications). The specific development project discussed in the comment is not the subject of this EIR, and this EIR is not attempting to provide project-level environmental review for conditions on that site, or any specific site. As discussed in Response F.5, the EIR is a program-level document, and a discussion of contamination levels on specific properties within the Downtown area is not required. The EIR acknowledges that properties in the Downtown area may have soil contamination in excess of relevant thresholds and provides programmatic measures to reduce potential impacts to less than significant levels (refer to "Measures Included in the Project to Reduce and Avoid Impacts Related to Contamination" on pages 159-161 of the EIR). Furthermore,

conditions on properties affecting soil and groundwater can, and do, change over time, and for a long-range plan with a 20-year planning horizon, conditions on sites, even if they could be documented now comprehensively throughout the Downtown, would potentially be subject to change. For this reason, documenting conditions on specific sites is most appropriate at the time a specific project is proposed so that then-current conditions can be established, and any remedial work identified to prevent a release of hazardous materials into the environment.

Specific development projects within the Downtown area will be required to complete project-level environmental review, which will address impacts and measures to reduce the impacts associated with the specific development project, including impacts associated with soil/groundwater contamination. Project-specific requirements will be determined during the supplemental project-level review phase prior to Planning entitlements in accordance with current regulations. Based on the project-level environmental review, any required remedial actions will be incorporated as conditions of approval for any grading, demolition, or building permit.

Comment F.7: C. The DEIR Fails to Disclose Construction Emissions from Future Developments Within the Downtown Strategy Project Area, and Fails to Ensure that Construction Impacts Will Be Adequately Disclosed and Mitigated During Future Buildout

The DEIR states that it is not possible to analyze construction emissions at the Plan stage because the City cannot predict exactly what construction activity will occur “in any one year or where within the boundaries of Downtown.” The DEIR then claims that “future project-level environmental review will be required of individual development projects to account for their construction impacts.” The DEIR then concludes, without analysis, that construction criteria pollutant emissions for future projects built under the Plan will be less than significant. The DEIR’s conclusion is based on two unsupported assumptions.

First, the DEIR states “it is assumed that all future projects under the Downtown Strategy 2040 would not exceed the average daily or annual emissions during construction.”

Response F.7: This comment inaccurately characterizes the text of the EIR by omitting a portion of the sentence it is quoting. The actual text on page 65 of the EIR referenced in the comment is “For the purposes of this EIR, it is assumed that all future projects under the Downtown Strategy 2040 would not exceed the average daily or annual emissions during construction, with incorporation of appropriate measures.” In the event a specific development project would exceed the average daily or annual emissions, that project would either be required to modify its construction activity schedule and equipment usage to comply or undergo supplemental CEQA review to disclose the ‘new information’ that its construction emissions were not in keeping with the Program EIR’s conclusions. If a future development project fails to incorporate measures adequate to reduce its emissions to be consistent with the EIR’s conclusions, it would not be covered by the EIR, and require supplemental CEQA review.

Comment F.8: This assumption is based on the DEIR’s unsupported conclusion that all individual development projects within the Plan area will be smaller than the BAAQMD Construction Emission

Screening Levels of 240 dwelling units, 554 hotel rooms, or 277,000 square feet of office or other commercial/retail uses. However, the DEIR provides no evidence to support its reliance on this assumption, and it is indeed contradicted by existing permits and approvals within the Plan area. For example, the City's 2017 approval of the General Plan Amendment for 4th & St. John authorized a minimum of 337 dwelling units, and up to 728 dwelling units and up to approximately 1,189,000 square feet of commercial/office uses on a 0.91-acre portion of the Project area. The 4th & St. John Project alone, which represents just 1/1920th of the Plan Project's approximately 3-square mile size, is therefore more than double the BAAQMD screening criteria for analyzing construction emissions, yet the DEIR fails to mention it and fails to include any analysis of the 4th & St John Project's construction emissions.

Response F.8: The EIR does not state or conclude that all individual development projects will be below BAAQMD Construction Emission Screening Levels. This assertion is refuted by the commenter's next comment below (Comment F.9), which discusses text in the EIR addressing future projects in the Downtown area that would exceed the screening levels. See also Response F.7 above.

Comment F.9: Second, the DEIR assumes that, in the event a future project does exceed BAAQMD Screening Levels, the construction emissions from those projects will be reduced to less than significant levels by supplemental environmental review which "may be required" prior to project approval or implementation. The DEIR contains no evidence to support this assumption. Nor could it, because the City cannot predict, without a quantitative assessment, that unidentified mitigation measures that are intended to be applied to undefined projects to reduce undetermined construction emission impacts will be 100% effective at reducing construction air quality impacts to less than significant levels.

The DEIR must be revised to remove these unsupported significance conclusions and add binding requirements that all subsequent buildout projects within the Plan area that meet or exceed BAAQMD Screening Thresholds shall be required to prepare a supplemental EIR which includes a quantitative air quality analysis to determine the significance of the project's construction emissions and implement all feasible mitigation measures.

Response F.9: As stated on page 62 of the EIR, "...given the Downtown development program can be built over the next 20 or more years, it is not possible to predict exactly what construction activity will occur in any one year or where within the boundaries of Downtown. Therefore, future project-level environmental review will be required of individual development projects to account for their construction impacts." The EIR identifies programmatic measures required for all future projects to reduce construction emissions, as well as additional measures for projects exceeding the BAAQMD screening levels (refer to "Measures Included in the Project to Reduce Construction Emissions" on pages 63-65 of the EIR). The EIR assumes that all future projects under the Downtown Strategy 2040 would not exceed construction emissions thresholds with incorporation of appropriate measures, but also states that "In the event a future project would exceed the average daily or annual emission threshold or otherwise result in a significant impact based on current BAAQMD Guidelines and City requirements, supplemental environmental review may be required prior to project approval or implementation to identify the additional feasible measures necessary to reduce emissions to less than significant levels." Therefore,

the scenario the comment is concerned about is addressed in the EIR, and future development projects that would result in construction emissions in excess of BAAQMD standards would undergo supplemental review to either identify feasible mitigation to stay below the standards or disclose significant impacts in a supplemental EIR.

Comment F.10: D. The DEIR Fails to Accurately Measure the Project’s Traffic Impacts

The DEIR analyzes Project transportation impacts under the Vehicle Miles Traveled (“VMT”) per Capita metric provision of SB 743. However, as traffic consultant Mr. Smith explains, VMT per capita generated in the Project area is an incomplete metric for measuring traffic impacts.

The DEIR relies on 2015 baseline conditions to begin its traffic analysis, at which time the Downtown Strategy Plan population was 12,548 and that the employment total in the area was 33,608 jobs and that this population and employment total generated a net VMT of 433,728 (sum of 103,562 and 340,166). Mr. Smith calculates that, under the existing General Plan, by 2040, the population would be 34,104, the employment would be 82,162 and these components would generate a net VMT of 997,831. As a result, Mr. Smith explains that the increases in total VMT under the existing General Plan and the Downtown Strategy and its alternatives would result in a 230 percent increase over baseline under the existing General Plan, 254 percent increase over baseline for the Downtown Strategy, and respectively 258 percent and 262 percent over baseline for Downtown Strategy Alternatives 1 and 2. The DEIR overlooked this evidence, instead using VMT per Capita as the sole traffic metric. As Mr. Smith explains, VMT per Capita values remain the same despite population increases, and therefore fail to provide an adequate analysis of the increase in severity of traffic conditions posed by the increased population authorized by the Project. Mr. Smith explains that total VMT generated by the Project must be considered in conjunction with total VMT experienced within the Project area in order to accurately assess the severity of the Project’s traffic impacts. The DEIR must be revised to include a meaningful analysis of the Project’s traffic impacts at full buildout.

Response F.10: The comment asserts that analyzing traffic impacts based on VMT per capita is inappropriate because it does not analyze an increase in the severity of traffic conditions resulting from the proposed project. As acknowledged in the comment, the VMT per capita and per employee metrics are recommended by the Office of Planning and Research for implementing State legislation (SB 743)¹. As described by the California Department of Transportation (Caltrans), SB 743 was signed in 2013 with the intent to “more appropriately balance the needs of congestion management with statewide goals related to infill development, promotion of public health through active transportation, and reduction of greenhouse gas emissions.” When implemented, “traffic congestion shall not be considered a significant impact on the environment” within CEQA transportation analysis.² To adhere to SB 743, the City of San José adopted a new Transportation Analysis Policy, Council Policy 5-1, on February 27, 2018, which established specific VMT per capita and VMT per employee thresholds for development projects. Council Policy 5-1 is consistent with the requirements of SB 743. The EIR analyzed the project’s VMT impacts in accordance with

¹ Office of Planning and Research. Technical Advisory on Evaluating Transportation Impacts in CEQA.

<http://opr.ca.gov/ceqa/updates/sb-743/>

² California Department of Transportation. SB 743 Implementation - About Senate Bill (SB) 743.

<http://www.dot.ca.gov/hq/tpp/sb743.html>.

Council Policy 5-1 and, therefore, provides an adequate analysis under CEQA. The comment's suggestion to focus the analysis on changes to traffic conditions from an overall increase in VMT, as opposed to changes in VMT per capita and employee as required by Council Policy 5-1, would not be consistent with the intent or requirements of SB 743. The environmental effects of the total or gross VMT associated with the buildout of the Downtown Strategy 2040 have been accounted for where relevant elsewhere in the EIR, including air quality, greenhouse gas emissions, and roadway noise. However, for purposes of evaluating the project's transportation effects, expressing VMT per capita and per employee best expresses the transportation effects of the City's proposed decision to locate additional development in Downtown, bring people closer to the places they need to go, and increase people's ability to walk, bike, or ride transit. Use of net change in total VMT does not convey the efficiency or benefit of placing additional housing and jobs in the Downtown area.

In addition, the comment incorrectly calculated the project's potential increase in overall VMT. The comment added together residential VMT and employment VMT to determine net increases in VMT. This results in double counting VMT generated by residents that live and work in Downtown area and, therefore, results in an overestimation of overall VMT.

Comment F.11: IV. CONCLUSION

The DEIR fails to meet the informational and public participation requirements of CEQA because it fails to disclose and mitigate the Project's potentially significant environmental impacts, and purports to conclude that several Project impacts are less than significant with little or no supporting evidence. Reliance on the DEIR for future project buildouts is likely to result in serious environmental impacts escaping necessary environmental review. The DEIR must be revised and recirculated to correct these serious errors and omissions.

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

Response F.11: As described above in detailed responses to the specific comments contained in this comment letter and in additional responses to its attachments (refer to comment letters I and J for responses to the attachments), the EIR provides substantial evidence supporting the conclusions regarding the various impacts of the project.

G. Responses to Comment Letter G from the San José Downtown Association (dated October 22, 2018)

Comment G.1: The San José Downtown Association (SJDA) provides the following comments regarding the upcoming Downtown Strategy 2040 EIR Update. We applaud the City of San José Planning Department for taking on the Downtown Strategy EIR Update as we plan for downtown's future development and growth.

This growth potential is well represented in Table 2.4-1, where residential capacities are being expanded by 4,000 units and office capacities are increased by three million square feet. As we note later in our comments, however, we are concerned these targets foreshadow obsolescence and undershoot potential capacities, requiring us to start the EIR process again almost immediately upon the conclusion of these updates. This may be particularly pronounced as it relates to the future growth of the west side of downtown.

This point is further reinforced in Section 2.4.2, most notably in the following language: "Downtown Strategy 2040 is not a General Plan, Specific Plan, or Redevelopment Plan." This raises multiple points that we would like to detail here, in a general sense, and are also covered in section-by-section comments provided below.

- SJDA believes that a comprehensive downtown strategy is required at the present time, and that an EIR update, particularly one not entirely inclusive of the westside of downtown, is insufficient for our area's present and future needs. This EIR update calls itself a "Downtown Strategy," but unlike the "Downtown Strategy 2000" it seeks to replace and "continue," this document is not based on a public strategic planning process but looks to refresh strategy developed in the late 1990's dot-com and redevelopment era. While we appreciate the "substantive recommendations with important policy implications" (page 14) contained within, we feel that a lack of previous adherence to these recommendations could put the future smart growth of downtown at risk unless a firmer plan and strategy is developed.
- SJDA feels strongly that the westside of downtown should be integrated into the downtown EIR and strategic planning, and downtown should be treated as one downtown and not two separate and distinct districts. We are concerned that, throughout this EIR, it appears that these two areas are being treated separately. This is not consistent with our Downtown Vision and why it alarms us this EIR update proclaims itself a "Downtown Strategy."
- Given the need to integrate downtown core and westside development capacities, especially for future higher densities that could be accommodated with relaxation of current building height limitations, we expect a new downtown EIR update to begin almost immediately concluding this one.

Response G.1: This comment does not raise a specific environmental issue under CEQA; therefore, no further response is required. The comment is acknowledged and noted in the public record for consideration by the decision makers.

Comment G.2: That said, we do appreciate the overall work city staff has put into this effort, and would like to provide the following specific comments to the proposed EIR update:

Expanding the Downtown Boundary (Section 2.4.3)

We agree with and applaud the inclusion of North Fourth Street between East St. John and East Julian into the existing boundaries of downtown, as detailed in Figure 2.4.1. Due to the growth of downtown, we are facing pressure in all directions for boundary expansion of the downtown, and while we welcome the proposed addition, we believe that further discussion should be had on a broader expansion of downtown boundaries in the next update.

Downtown Transportation Plan (Section 2.5)

With the amount of ongoing transportation projects in the downtown, an overall Downtown Transportation Plan is long overdue. We very much welcome its inclusion in this EIR update and look forward to working with the City to see its successful adoption.

SJDA is supportive of the broader policy goals contained in the 2040 General Plan around improved pedestrian experiences, increased bicycle access and lanes, more convenient transit travel, and reducing the overall reliance on automobile transportation and parking.

However, downtown possesses very few east-west and north-south through streets, and data consistently shows us that automobile transportation is still a dominant means by which patrons visit our downtown businesses. Any movement towards a future dominated less by the automobile should be deliberately managed and data-driven, and a downtown transportation plan will help us meet this goal.

Employment Priority Area (Section 2.4.6)

We do not think a highly prescriptive Employment Priority Area Overlay is good policy for downtown at this time. In recent months, overly prescriptive downtown zoning has been an impediment to the filling of vacant storefronts and inactive downtown spaces, and the proposed employment priority overlay (Figure 2.4.2) encapsulates an area within the Historic District where this problem is most acute. We do not feel that adding an additional overlay is appropriate at this time in our development.

Future Potential Projects in the Diridon Station Area (Section 2.6.3)

SJDA is excited about the commercial growth opportunity on the westside of downtown, particularly as it relates to the possible Google project. We also understand that this project, or any specific project for that matter, is not a subject of a broader EIR update, and more detailed environmental review will accompany project development plans. However, we would like to raise two points to this section.

First, we object to the phraseology "Google Village Project." This project, which has not yet been proposed, should not be viewed by the city as a separate "urban village;" but rather an integrated portion of downtown San José. This is crucial for overall integration of the area west 87 into the broader downtown.

Second, since this section states five million square feet of office use is planned for the Diridon Station Area Plan (DSAP), we figure the overall Downtown-wide office capacity can be utilized for the westside, and vice-versa, until this capacity can be adjusted in the aforementioned EIR update that will follow this one.

Historic Resources (Section 3.5.1.5)

SJDA would like to see the completion of the downtown historic inventory in the near future.

Land Use and Planning- Existing Conditions (Section 3.11.1.1)

As demonstrated in Figure 3.11-1, we agree with the three area classifications specified in the EIR. However, we believe strongly that the classification of one of these areas as the "Diridon Station Area Urban Village" should be changed to reflect an integrated downtown strategy.

In addition to the points already raised about this m is classification, it is also important to note that "urban village" has a connotation for planning that is separate from the one enjoyed downtown. Classified as "Commercial Development (C/D)," downtown enjoys the opportunity for fast-paced growth and specific uses, which differs greatly from an urban village classification (Table 3.11-1). Since we do not believe it is the city's intention to see the westside of downtown zoned as an urban village, and we continue to desire an (integrated downtown, we would recommend the removal of this designation from this area now and into the future.

Airport-related Plans and Regulations (Section 3.11.3)

SJDA is an advocate for Federal Aviation Administration (FAA) guidelines on building heights on the westside of downtown. It is curious to us that the document does not mention the City's standing practice of requiring building heights more strictly than does the FAA; perhaps we should find that encouraging in this document. We support the application of the Code of Federal Aviation Regulations as the governing document for building heights in this corridor.

Response G.2: The comments above primarily express policy preferences and do not raise specific environmental issues under CEQA; therefore, no further response is required. The comments are acknowledged and noted in the public record for consideration by the decision makers.

Comment G.3: Shade and Shadow (Section 3.11.2.4)

We do not believe that shade and shadow impacts should be measured on such a limited basis (natural sunlight on public open spaces). For example, shade and shadow should also be taken into consideration when the natural sunlight is blocked on long-standing private spaces as well, as this challenge will become ever more present as downtown continues to grow.

Response G.3: Under CEQA, Lead Agencies have discretion to formulate thresholds of significance for impact determinations. The City of San Jose, as the Lead Agency, has determined that a future project developed under the Downtown Strategy 2040 would have a significant shade and shadow impact if it would result in a 10 percent or greater increase in

the shadow cast onto any one of the six major open space areas in the Downtown San José area (St. James Park, Plaza of Palms, Plaza de Cesar Chavez, Paseo de San Antonio, Guadalupe River Park, and McEnery Park). This standard has been employed in the Downtown for more than 20 years to evaluate development. The City does not consider shade and shadow on private property to be an environmental impact under CEQA. The comment that the City should consider shade and shadow impacts on private property is acknowledged and noted in the public record for consideration by the decision makers.

Comment G.4: Construction Mitigation (Section 3.12.2.3)

There is no doubt that noise is an "unavoidable impact associated with traffic generated by the Downtown Strategy 2040." It is important to note that noise and traffic are two of many construction mitigation concerns in the downtown. We need construction mitigation guidelines for all of downtown, and we look forward to working with City staff to craft them in 2019.

Further, this section is perhaps the most curious for us by way of placement in the document. The paragraph detailing the development of the westside goes into greater detail with regards to the 14.2 million square feet of office space, claiming that "further development would exceed the planned Downtown Strategy 2040 development capacities for the area west of SR 87." We would recommend re-ordering this section to another spot in the document, as opposed to being buried in a section about construction mitigation and noise pollution. Additionally, we would reiterate our objection to the term "Google Village" project.

Finally, this section further highlights our concern about this document undershooting the growth potential of downtown at this critical time. If the area "west of SR 87" (which is different- and larger-than DSAP) is projected to exceed the overall office development goals of Downtown Strategy 2040, we have the opportunity to aim higher on the next update, and tie it into an actual strategy plan.

Response G.4: The second paragraph of this comment misquotes the text of the EIR. The EIR text states "Future development of the Google Village Project would exceed the planned Downtown Strategy 2040 development capacities for the area west of SR 87 in which the potential future Google Village is anticipated to occur." This text appears in a discussion of cumulative noise impacts. As described on page 32 of the EIR, the purpose of the cumulative analysis is to allow decision-makers to better understand the potential impacts which might result from approval of past, present, and reasonably foreseeable future projects, in conjunction with the proposed project addressed in this EIR. As described on page 28 of the EIR, the possible Google Village Project is not the subject of this EIR. No development applications associated with this potential future development have been submitted to the City. The decisions being made by the City regarding the Downtown Strategy 2040 are separate from the future decisions the City may be asked to make regarding possible Google Village development proposals or other projects that have not submitted a development application covering a portion of the Downtown area. This EIR analyzes the overall amounts, types, and distribution of development planned for Downtown through the 2040 horizon and does not include development plans for any specific entity.

Comment G.5: We look forward to working with the various city departments and neighborhood stakeholders as part of this process. Throughout, we will be a consistent voice for an integrated

downtown plan, a comprehensive strategy, and for large-scale, big idea thinking for the future of our downtown. We welcome the work the city and community partners are undertaking to plan appropriately for the collective future of downtown San José.

Response G.5: This comment does not raise specific environmental issues under CEQA; therefore, no further response is required. The comment is acknowledged and noted in the public record for consideration by the decision makers.

H. Responses to Comment Letter H from Santa Clara University (dated October 22, 2018)

Comment H.1: Santa Clara University, Bellarmine College Preparatory, Notre Dame High School and other Catholic entities are property owners of 95 South Market Street (APN 259-40-084) which is identified as being within the proposed Employment Priority Area (EPA) overlay in the Downtown SJ 2040 plan. The current zoning of this property parcel is DC (Downtown Commercial).

We are writing to express our concerns with the proposed EPA overlay that would impose limitations on our future development plans for this property, which are as follows:

1. The proposed EPA overlay zone area is too broad since the location of the Downtown BART station has not yet been determined or finalized. The EPA overlay area would only be applicable to properties within a one block radius of the BART station. Therefore, the EPA zone designation should be based on the actual BART station location after it has been approved.
2. The 95 S. Market street property is located more than one block from the currently proposed Downtown BART station. Therefore the property would not and should not be included in the one block radius designation.
3. The EPA designation would immediately create unwelcomed limitations on the development of properties downtown where more creative solutions could otherwise be developed in order to better balance the needs of retail, employment and housing. Other large cities have not created such blanket exclusions for projects with a combination of ground level retail, commercial office and residential in a single project. Property owners would prefer to have the option to propose multi-use development projects that can benefit the City, businesses, employees and residents. The 95 S. Market property has a unique corner location facing the Cathedral, Museum of Art and Cesar Chavez Plaza where a multi-use project for retail, commercial and residential could be considered.
4. The limitations imposed by the EPA overlay penalize existing property owners who have not redeveloped their properties. There are several examples of properties within the EPA overlay that either have already been developed as housing or where residential housing is currently approved or under construction. (for example; Marshall Square, 7 stories, 190 residential units with 9,400 sq ft retail. 27West, 22 stories, 350 residential units, with 17,500sq ft of retail.)

In summary, we believe the property at 95 S. Market Street should not be included in the EPA overlay area and are opposed to the limitations the EPA designation creates on the types of development projects that could be proposed for the property site in the future.

Response H.1: The comments above primarily express policy preferences and do not raise specific environmental issues under CEQA; therefore, no further response is required. The comments are acknowledged and noted in the public record for consideration by the decision makers.

I. Responses to Comment Letter I from Smith Engineering & Management (Exhibit B to Comment Letter F) (dated October 22, 2018)

Comment I.1: Per your request, I reviewed the San José Downtown Strategy 2040 Plan Project (the “Project”). My review is with respect to transportation and circulation considerations.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and 50 years professional consulting practice in these fields. I have both prepared and reviewed the Transportation and Traffic sections of environmental documents pursuant to the California Environmental Quality Act ("CEQA"). My professional resume is attached hereto. Technical comments on the FEIR follow:

VMT Per Capita Generated in the Project Area Is an Incomplete Metric for Measuring Traffic Impacts in the Subject Plan Area

The DEIR attempts to evaluate Project transportation impacts solely under the Vehicle Miles Traveled (VMT) per Capita metric provision of SB 743, eschewing the conventional delay/Level of Service (LOS) analysis. The VMT (vehicle miles traveled) per Capita (referring hereinafter to both VMT per unit population and VMT per employee as a single phrase while still recognizing that each has a separate rate) metric is a useful indicator when planning for a broad area or region, such as where generally identifying areas where development should be encouraged or discouraged, particularly when concentrating on considerations such as Air Quality pollutant and Greenhouse Gas emissions since these have a rather direct correlation to VMT. However, when planning for a discrete area, VMT per Capita as the sole traffic metric gives absolutely no indication when a plan has packed so much development into an area as to make transportation and quality of life conditions unacceptable - the VMT per Capita values will just stay the same or perhaps even improve (become lower) somewhat. To draw any some inference about how much development is sustainable based on VMT, Total VMT generated by the plan and total VMT experienced within the subject area must be considered.

Appendix D Table ES-1 indicates that in the baseline (2015) condition, the Downtown Strategy Plan population was 12,548 and that the employment total in the area was 33,608 jobs and that this population and employment total generated a net VMT of 433,728 (sum of 103,562 and 340,166) in 2015. By 2040 under the existing General Plan the population would be 34,104, the employment would be 82,162 and these components would generate a net VMT of 997,831. Under the AGP/DTS, the population and employment totals would be 42,704 persons and 92,108 jobs producing a net VMT of 1,104,092. Under the AGP/DTS Alternative 1 and Alternative 2, the population and employment totals would be the same as under the basic AGP/DTS but the net VMT generated would rise to 1,119,230 and 1,135,235. Obviously, the increases in total VMT under the existing General Plan and the DTS and its alternatives, 230 percent over baseline under the existing General Plan, 254 percent over baseline for the DTS, and respectively 258 percent and 262 percent over baseline for DTS Alternatives 1 and 2 are highly significant and detrimental. However, the DEIR and its Appendix D choose to ignore the significance of this evidence.

These data are summarized in tabular fashion below.

Scenario	Population	Jobs	Net VMT	% Over Baseline
2015 Baseline	12,548	33,608	433,728	-
Year 2040 General Plan	34,104	82,162	997,831	230%
DTS 2040	42,704	92,108	1,104,092	254%
DTS 2040 Alt 1	42,704	92,108	1,119,230	258%
DTS 2040 Alt 2	42,704	92,108	1,135,235	262%

Response I.1: Please refer to Response F.10. The comment asserts that analyzing traffic impacts based on VMT per capita is inappropriate. As acknowledged in the comment, the VMT per capita and per employee metrics are recommended by the Office of Planning and Research for implementing State legislation (SB 743)³. As described by the California Department of Transportation (Caltrans), SB 743 was signed in 2013 with the intent to “more appropriately balance the needs of congestion management with statewide goals related to infill development, promotion of public health through active transportation, and reduction of greenhouse gas emissions.” When implemented, “traffic congestion shall not be considered a significant impact on the environment” within CEQA transportation analysis.⁴ To adhere to SB 743, the City of San José adopted a new Transportation Analysis Policy, Council Policy 5-1, on February 27, 2018, which established specific VMT per capita and VMT per employee thresholds for development projects. Council Policy 5-1 is consistent with the requirements of SB 743. The EIR analyzed the project’s VMT impacts in accordance with Council Policy 5-1 and, therefore, provides an adequate analysis under CEQA. The comment’s suggestion to focus the analysis on changes to traffic conditions (presumably vehicle delay) resulting from an overall increase in VMT, as opposed to changes in VMT per capita and employee as required by Council Policy 5-1, would not be consistent with the intent or requirements of SB 743. The environmental effects of the total or gross VMT associated with the buildout of the Downtown Strategy 2040 have been accounted for where relevant elsewhere in the EIR, including air quality, greenhouse gas emissions, and roadway noise. However, for purposes of evaluating the project’s transportation effects, expressing VMT per capita and per employee best expresses the transportation effects of the City’s proposed decision to locate additional development in Downtown, bring people closer to the places they need to go, and increase people’s ability to walk, bike, or ride transit. Use of net change in total VMT does not convey the efficiency or benefit of placing additional housing and jobs in the Downtown.

This comment also incorrectly calculated the project’s potential increase in overall VMT. The commenter added residential VMT with employment VMT to determine net increases in VMT. This results in double counting VMT generated by residents that live and work in the Downtown area and, therefore, results in an overestimation of overall VMT.

Comment I.2: The Analysis Fails to Consider the Project’s Impacts on Public Transit

Although the Appendix D transportation analysis projects hefty increases in transit ridership, it fails to analyze whether transit services will be increased sufficiently to meet this increased burden. This is inadequate.

³ Office of Planning and Research. Technical Advisory on Evaluating Transportation Impacts in CEQA.

<http://opr.ca.gov/ceqa/updates/sb-743/>

⁴ California Department of Transportation. SB 743 Implementation - About Senate Bill (SB) 743.

<http://www.dot.ca.gov/hq/tpp/sb743.html>.

Response I.2: As described on page 302 of the EIR, the City of San José and VTA have adopted several plans and programs intended to increase the safety and performance of transit, bicycle, and pedestrian facilities. The Circulation Element of the 2040 General Plan includes a set of balanced, long-range, multimodal transportation goals and policies that provide for a transportation network that is safe, efficient, and sustainable. Planned transit improvements through the year 2040 primarily consist of enhancement of regional bus lines and commuter trains, including BART extension, that serve the Downtown area. A list of planned transit network improvements is shown in Table 3.15-3 in the EIR.

The analysis of whether a project would have a significant impact on public transit is not merely a question of whether transit services would be increased sufficiently to meet increased demand. As described on page 287 of the EIR, a project would have a significant impact on public transit if it would conflict with adopted policies, plans, or programs regarding public transit or otherwise decrease the performance or safety of such facilities. The EIR includes an analysis of the project's impacts to public transit as measured against this threshold of significance (refer to Impacts to Pedestrian, Bicycle, and Transit Facilities on page 302 and Cumulative Impacts to Pedestrian, Bicycle, and Transit Facilities on page 315). The EIR determined that the proposed project supports goals, policies, and programs adopted by the City and VTA for encouraging alternative transportation modes and increasing the safety and performance of transit, bicycle, and pedestrian facilities, and that implementation of the Downtown Strategy 2040 would not conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety of such facilities. The transfer of additional development capacity to Downtown is intended to maximize the benefits from the use of such facilities.

As described on page 291 of the EIR, a General Plan Amendment (GPA) analysis was conducted to evaluate the long-range impacts of the proposed land use adjustments on travel speeds (including transit and non-transit vehicles) on the transit priority corridors. The EIR determined that the Downtown Strategy 2040 would result in a less than significant impact on the travel speeds on the transit priority corridors.

For these reasons, the analysis of impacts to public transit in the EIR meets the requirements of CEQA and the City, and no additional analysis is needed.

Comment I.3: Conclusion

Given all of the foregoing, the DEIR's evaluation of impacts on transportation is inadequate and must be completely revised and recirculated in draft status.

Response I.3: As described above in Responses I.1 and I.2, the EIR provides substantial evidence supporting the conclusions regarding the various transportation-related impacts of the project. No revision or recirculation of the EIR is required.

**J. Responses to Comment Letter J from SWAPE (Exhibit A to Comment Letter F)
(dated October 22, 2018)**

Comment J.1: We have reviewed the September 2018 Draft Environmental Impact Report (DEIR) for the San José Downtown Strategy 2040 Plan (“Project”) located in the City of San José (“City”). The Plan’s project site is currently subject to the Downtown Strategy 2000 and the Envision San José 2040 General Plan (General Plan). In order to be consistent with the General Plan, the City proposes to update the 2000 Downtown Strategy to 2040. The 2040 Downtown Strategy proposes a General Plan Amendment (GPA) in order to expand the boundary of the Downtown area to include the east side of North 4th Street between St. John and Julian Streets. This GPA was previously evaluated in a separate October 2017 Initial Study/Mitigated Negative Declaration (IS/MND) for the Fourth and St. John General Plan Amendment & Rezoning Project (“4th and St. John Project”), which we evaluated in a November 13, 2017 comment letter.

Response J.1: This last sentence of this comment is inaccurate. The Fourth and St. John General Plan Amendment project (File No. GP16-013) proposed a General Plan Amendment (GPA) to change the land use designations from Residential Neighborhood and Transit Residential to Downtown and to expand the Downtown Growth boundary on a specific site consisting of approximately 0.91 acres located at the northeast corner of Fourth Street and St. John Street (100 North 4th Street). File No. GP16-013 was approved in December 2017. All subsequent applications (Rezoning, Tentative Map, and Site Development Permit were withdrawn prior to the City Council hearing) on the GPA. No rezoning or development permit application was approved or is pending on 100 North Fourth Street. The Fourth and St. John General Plan Amendment project and the Downtown Strategy 2040 project are two separate projects. Although the Fourth and St. John site is located within the expanded Downtown Growth Area boundary proposed by the Downtown Strategy 2040 project, the GPA proposed by the Downtown Strategy 2040 to expand the Downtown boundary to the larger area beyond the 0.91-acre site at 100 North Fourth Street was not analyzed in the IS/MND completed for the Fourth and St. John General Plan Amendment project. Likewise, the Downtown Strategy 2040 EIR did not analyze any site-specific development on the Fourth and St. John site. Any future site-specific development application on the Fourth and St. John site would be subject to project-level environmental review.

Comment J.2: In addition to the 4th and St. John GPA, the DEIR is proposing another GPA that would increase the development capacity of the downtown area by 4,000 dwelling units and approximately 3 million square feet of office space than what is proposed in the General Plan. In total, the Project proposes to have a total of 14,360 residential units, 14.2 million square feet of office space, million square feet of retail space, and 3,600 hotel guest rooms in operation by 2040.

Response J.2: Please refer to Response J.1. The first sentence of this comment is inaccurate. The Fourth and St. John General Plan Amendment and Rezoning project is not proposed as part of the Downtown Strategy 2040 project. The Fourth and St. John General Plan Amendment project was a site-specific GPA application processed in 2017. The Rezoning application for Fourth and St. John project was withdrawn in 2017. The Downtown Strategy 2040 EIR did not analyze any site-specific development on the Fourth and St. John site. Any future site-specific development application on the Fourth and St. John site would be subject to project-level environmental review.

Comment J.3: Our review concludes that DEIR fails to adequately evaluate the Project’s Air Quality and Greenhouse Gas (GHG) impacts. As a result, the emissions that will be generated during operation are not properly mitigated. An updated Environmental Impact Report (EIR) should be prepared to adequately mitigate the air quality and GHG impacts that the Project will have on the surrounding environment.

Response J.3: As described in responses J.4 through J.11 below, the EIR provides substantial evidence supporting the conclusions regarding the various impacts of the project, including those discussed in the comment.

Comment J.4: Air Quality and Greenhouse Gas

Failure to Implement All Feasible Mitigation Measures

According to the DEIR, the Project relies on air and GHG emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod"). Based on the emissions estimates in the Project’s CalEEMod output files, the DEIR determines that the Project would generate significant operational criteria air pollutants emissions and GHG emissions when compared to the Bay Area Air Quality Management District’s (BAAQMD) significance thresholds (p. 60, p. 147).

As a result, the Project proposes several mitigation measures that future projects will be required to implement (p. ix-x). Furthermore, as previously mentioned, the Plan is subject to requirements set forth in the General Plan, which has also proposed both policy and action measures in order to identify and reduce emissions that the Plan and future projects located within the Downtown area are required to follow (Table 3.3-2, p. 55-57 and Table 3.8-1, p. 143-144). However, even after implementation of these mitigation measures, the DEIR concludes that the criteria air pollutants and GHG emissions would result in significant and unavoidable impacts (p. 61 and p. 148). While it is true that the Project would result in significant impacts, the DEIR’s conclusion that these impacts are “significant and unavoidable” is entirely unsupported.

Pursuant to the California Environmental Quality Act (CEQA), Lead Agencies are required to mitigate or avoid significant environmental impacts associated with discretionary projects. Environmental documents for projects that have any significant environmental impacts must identify all feasible mitigation measures or alternatives to reduce the impacts below a level of significance. Implementation of mitigation measures means that they must be made conditions of project approval and included in a Mitigation Monitoring and Reporting Plan (MMRP). If, after implementation of all feasible mitigation measures, a project is still deemed to have significant environmental impacts, the Lead Agency can approve a project, but must adopt a Statement of Overriding Consideration to explain why further mitigation measures are not feasible and why approval of a project with significant unavoidable impacts is warranted.

The BAAQMD 2017 CEQA Guidelines specify that the significance threshold for long-range development plans like the Project is “no net increase in emissions.”

Response J.4: The last sentence of this comment is inaccurate. Section 2.7.5 of the BAAQMD 2017 CEQA Guidelines states that “The Thresholds of Significance for regional plans is to achieve a no net increase in emissions of criteria pollutants and precursors, GHG,

and toxic air contaminants. This threshold applies only to regional transportation and air quality plans.” The proposed project is not a regional transportation or air quality plan and, therefore, this is not the correct threshold to use in the EIR.

As described on page 26 and elsewhere in the EIR, operational emissions of criteria pollutants resulting from the project were analyzed at a project level. As a result, BAAQMD’s project-level operational thresholds for criteria pollutants were used as the threshold of significance in the EIR for operational emissions (refer to Table 3.3-3 BAAQMD Air Quality Significance Thresholds on page 58 the EIR). Project emissions other than operational criteria pollutants were analyzed at a program-level based on relevant BAAQMD thresholds.

Comment J.5: The Guidelines explain that, in order to conclude that a development plan’s air quality impacts are significant and unavoidable, the Lead Agency must “evaluate individual as well as cumulative impacts of general plans, and all feasible mitigation measures must be incorporated within the proposed plan to reduce significant air quality impacts.” Accordingly, an air quality impact can only be labeled as significant and unavoidable after all available, feasible mitigation is considered and incorporated as enforceable mitigation measures in the Project’s conditions of approval.

Review of the Plan’s proposed mitigation measures demonstrates that the DEIR fails to implement all feasible mitigation to reduce the Project’s significant air quality impacts to the greatest extent feasible prior to declaring them significant and unavoidable. Therefore, the DEIR’s conclusion that the Project’s operational air quality and GHG emissions are significant and unavoidable is unsubstantiated. Additional mitigation measures should be identified and incorporated in order to reduce the Project’s air quality impacts to the maximum extent possible. Until all feasible mitigation is reviewed and incorporated as binding mitigation in the EIR, impacts cannot be considered significant and unavoidable.

Response J.5: The comment asserts that the EIR did not implement all feasible mitigation prior to determining that emissions of operational criteria pollutants would result in a significant unavoidable impact. Measures were identified in the EIR to reduce operational emissions to the extent feasible (refer to Measures Included in the Project to Reduce and Avoid Impacts Related to Regional Air Quality on pages 60-61 of the EIR). The comment letter suggests additional mitigation in subsequent text, below. As discussed in Responses J.6 through J.11 below, substantial evidence exists that the EIR disclosed all feasible mitigation to reduce the identified significant unavoidable impacts related to operational criteria pollutants and GHG emissions.

Comment J.6: Additional Feasible Mitigation Measures Available to Reduce Operational Emissions

We have reviewed the DEIR and have identified several mitigation measures that the Downtown Strategy Plan either failed to incorporate or could make stricter, which would further reduce the Project’s operational air quality and GHG emissions. Additional mitigation measures that could be implemented to reduce emissions are discussed below.

There are several feasible mitigation measures available to reduce VOC emissions (also referred to as ROG), including the following, which are routinely identified in other CEQA matters as feasible mitigation measures:

- Use of Zero-VOC Emissions Paint for Projects Within the Downtown Strategy Project Area:
 - The use of zero-VOC emission paint has been required for numerous projects that have undergone CEQA review. Zero-VOC emission VOC paints are commercially available.
 - The DEIR states that future projects that exceed the BAAQMD's Screening tables will be required to "Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings)" (p. 64). We recommend that this measure be expanded to all future developments within the Downtown area. Thus, all future projects, regardless of the size, will be required to use low VOC coatings during both construction and operation.

Response J.6: The comment suggests requiring the use of zero- or low-VOC paint and architectural coatings in future development projects as a mitigation measure to reduce operational impacts. VOC emissions from paint and architectural coatings occur during and shortly after application as the paint or coating sets and dries. As such, measures to reduce VOC emissions from paint and architectural coatings are presented in the context of construction emissions. BAAQMD and the City consider construction and operational criteria pollutant emissions separately, since construction emissions are temporary and operational emissions are ongoing. The EIR includes a separate analysis of construction criteria pollutants on pages 62-65. Measures are identified to reduce construction-related VOC emissions based on BAAQMD requirements and methodology. Included in these measures is the use of low-VOC coatings, per the recommendations of BAAQMD. The EIR determined that, with implementation of appropriate measures, the project would have a less than significant impact related to construction criteria pollutant emissions.

Operational VOC emissions are primarily associated with the use of consumer products in occupied developments, including the application or reapplication of paints and architectural coatings in developed structures. Requiring individual consumers to use low-VOC products in developed and occupied structures would not be a feasible mitigation measure for operational emissions of VOCs as it would be unenforceable.

Comment J.7: The DEIR proposes to implement a transportation demand program (TDM) and proposes several Transportation Control Measures (TCMs) that the TDM will implement (p. 60). Additionally, the General Plan Policy LU-3.5 aims to "Balance the need for parking to support a thriving Downtown with the need to minimize impacts of parking on a vibrant pedestrian and transit-oriented urban environment" (p. 202). In order to further mitigate the criteria air pollutant emissions resulting from the Plan and to further implement the General Plan policy, we have identified additional measures that can be added to the TDM from CAPCOA's Quantifying Greenhouse Gas Mitigation Measures. Mitigation for criteria pollutant emissions should include consideration of the following mobile mitigation measures to be added to the TDM in an effort to reduce operational emissions to below thresholds:

Parking Measures

The DEIR's TDM Plan includes several parking measures, that include: provide preferential parking for carpools and vanpools, implementing parking fees for single occupancy vehicle commuters, and implementing a cash-out program for employees (p. 61). We propose that the following measures be added to the TDM's parking measures in an effort to further reduce the mobile source emissions that will be generated in the Downtown area:

Limit the Parking Supply That Can Be Allotted to Future Developments Within the Downtown Strategy Project Area

We recommend that the Downtown Strategy change parking requirements and types of supply within the Plan site to encourage "smart growth" development and alternative transportation choices by Downtown residents and employees, resulting in less VMTs. This will be accomplished in a multi-faceted strategy:

- Elimination (or reduction) of minimum parking requirements
- Creation of maximum parking requirements

Require Future Developments Within the Downtown Strategy Project Area to Price Workplace Parking

We further recommend that the Downtown Strategy require future businesses to price workplace parking at employment centers as a means of encouraging the use of public transportation or carpooling, and discouraging single-driver vehicle commutes. This may include: explicitly charging for parking for its employees, implementing above market rate pricing, validating parking only for invited guests, not providing employee parking and transportation allowances, and educating employees about available alternatives.

Response J.7: As described in the EIR, future development would be required to implement a TDM program (refer to Measures Included in the Project to Reduce and Avoid Impacts Related to Regional Air Quality on pages 60-61). The EIR includes a list of TCMs that could be included in the required TDM program, and specifically states that future TDM programs would not be limited to the TCMs listed in the EIR. The EIR also states that, during project-level supplemental review of future individual development projects, the measures will be evaluated for consistency with the Downtown Strategy 2040 and General Plan policies, and that all feasible and applicable measures will be required as part of project design or as conditions of approval. This approach allows flexibility for future projects to tailor the individual TDM programs to most effectively reduce emissions associated with the specific projects. Since the nature of future development projects under Downtown Strategy 2040 will vary greatly over the planning horizon on a project-by-project basis, it would not be appropriate to require a uniform list of measures to be included in the TDM programs for all projects. The measures suggested in the comment may be incorporated into TDM programs developed for future projects if they are determined to be appropriate, feasible, and applicable to the specific project.

Comment J.8: Require Future Developments Within the Downtown Strategy Project Area to Provide Electric Vehicle Chargers

According to The International Council of Clean Transportation, California’s electric vehicle market grew 29% from 2016 to 2017, with San José being one of the leading markets. However, the City of San José only has 53 electric vehicle (EV) chargers currently in operation, primarily located in downtown public garage areas. Therefore, in order to encourage the use of electric vehicles and limit tailpipe emissions, we recommend that the Plan require that future projects within the Downtown Strategy Project Area:

- Provide additional electric parking in public parking structures;
- Require a specified percentage of parking located at residential, retail, and office projects within the Plan area to be equipped with conductive/inductive electric vehicle charging stations and signage prohibiting parking of non-electric vehicles.

Furthermore, we recommend other measures that could be incorporated into the Downtown Strategy, which would further reduce the Plan’s GHG emissions. Additional mitigation measures that could be implemented to reduce GHG emissions include, but are not limited to, the following:

- Develop and follow a “green streets guide” for the Downtown area that requires:
 - Use of minimal amounts of concrete and asphalt;
 - Installation of permeable pavement to allow for storm water infiltration; and
 - Use of groundcovers rather than pavement to reduce heat reflection.

When combined together, these measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Plan, which subsequently, reduces criteria air pollutants and GHG emissions released during Project operation. An updated EIR must be prepared to include additional mitigation measures and expand the mitigation already proposed. The Project Applicant also needs to demonstrate commitment to the implementation of these measures prior to Project approval, to ensure that the Project’s operational emissions are reduced to the maximum extent possible.

Response J.8: The Downtown Strategy 2040 would not change the citywide development levels contained in the adopted 2040 General Plan. The project would allow more of the citywide planned development to occur in the Downtown area by transferring to Downtown residential units and commercial development currently planned for other areas of the City, where those uses would likely result in increased GHG emissions from vehicle miles traveled. GHG emissions resulting from the project would be a portion of emissions resulting from the existing 2040 General Plan. The 2040 General Plan EIR (and the Supplemental Program EIR prepared for the 2040 General Plan in 2015 specifically to address GHG impacts) determined that buildout of the 2040 General Plan would result in a significant unavoidable GHG impact for emissions beyond the year 2020. The 2040 General Plan EIR and Supplemental Program EIR identified numerous General Plan policies to mitigate the significant unavoidable GHG impact to the extent feasible, including policies addressing the measures suggested in the comment. For example, Policy TR-1.16 requires the City to develop a strategy to construct a network of public and private alternative fuel vehicle charging /fueling stations city wide and revise parking standards to require the installation of electric charging infrastructure at new large employment sites and large, multiple family residential developments. Policy MS-2.6 requires the City to promote roofing design and surface treatments that reduce the heat island effect of new and existing development and support reduced energy use, reduced air pollution, and a healthy urban

forest. Policy MS-21.1 requires the City to manage the Community Forest to achieve San José's environmental goals for water and energy conservation, wildlife habitat preservation, stormwater retention, heat reduction in urban areas, energy conservation, and the removal of carbon dioxide from the atmosphere. In other words, the City has already disclosed the GHG impacts of buildout of the 2040 General Plan, to which the Downtown Strategy 2040 would contribute but would not exceed, and adopted program-level mitigation measures to the extent feasible, including measures along the lines of those suggested in the comment. Additionally, as described on page 346 of the EIR in the evaluation of project alternatives, the No Project (General Plan Buildout) Alternative, in which growth would occur as currently planned in the 2040 General Plan without implementation of the Downtown Strategy 2040, would result in a greater GHG impact than the proposed project. For these reasons, an updated EIR, as suggested in the comment, is not required given the City has incorporated all feasible measures, and there are not sufficient measures available to reduce operational criteria pollutant and GHG emissions to less than significant levels due to the scale of the project.

Comment J.9: The DEIR Fails to Disclose Construction Emissions from Future Developments Within the Downtown Strategy Project Area, and Fails to Ensure that Construction Impacts Will Be Adequately Disclosed and Mitigated During Future Buildout

The DEIR states that it is not possible to analyze construction emissions at the Plan stage because the City cannot predict exactly what construction activity will occur “in any one year or where within the boundaries of Downtown.” The DEIR then claims that “future project-level environmental review will be required of individual development projects to account for their construction impacts.” The DEIR then concludes, without analysis, that construction criteria pollutant emissions for future projects built under the Plan will be less than significant. The DEIR's conclusion is based on two unsupported assumptions.

First, the DEIR states “it is assumed that all future projects under the Downtown Strategy 2040 would not exceed the average daily or annual emissions during construction.”

Response J.9: This comment inaccurately characterizes the text of the EIR by omitting a portion of the sentence it is quoting. The actual text on page 65 of the EIR referenced in the comment is “For the purposes of this EIR, it is assumed that all future projects under the Downtown Strategy 2040 would not exceed the average daily or annual emissions during construction, with incorporation of appropriate measures.” In the event a specific development project would exceed the average daily or annual emissions, that project would either be required to modify its construction activity schedule and equipment usage to comply or undergo supplemental CEQA review to disclose the ‘new information’ that its construction emissions were not in keeping with the Program EIR's conclusions. If a future development project fails to incorporate measures adequate to reduce its emissions to be consistent with the EIR's conclusions, it would not be covered by the EIR, and require supplemental CEQA review.

Comment J.10: This assumption is based on the DEIR's unsupported conclusion that all individual development projects within the Plan area will be smaller than the BAAQMD Construction Emission Screening Levels of 240 dwelling units, 554 hotel rooms, or 277,000 square feet of office or other

commercial/retail uses. However, the DEIR provides no evidence to support its reliance on this assumption, and it is indeed contradicted by existing permits and approvals within the Plan area. For example, the City's 2017 approval of the General Plan Amendment for 4th & St. John authorized a minimum of 337 dwelling units, and up to 728 dwelling units and up to approximately 1,189,000 square feet of commercial/office uses on a 0.91-acre portion of the Project area. The 4th & St. John Project alone, which represents just 1/1920th of the Plan Project's approximately 3-square mile size, is therefore more than double the BAAQMD screening criteria for analyzing construction emissions, yet the DEIR fails to mention it and fails to include any analysis of the 4th & St John Project's construction emissions.

Response J.10: The EIR does not state or conclude that all individual development projects will be below BAAQMD Construction Emission Screening Levels. This assertion is refuted by the commenter's next comment below (Comment J.11), which discusses text in the EIR addressing future projects in the Downtown area that would exceed the screening levels. See also Response J.9, above.

Comment J.11: Second, the DEIR assumes that, in the event a future project does exceed BAAQMD Screening Levels, the construction emissions from those projects will be reduced to less than significant levels by supplemental environmental review which "may be required" prior to project approval or implementation. The DEIR contains no evidence to support this assumption. Nor could it, because the City cannot predict, without a quantitative assessment, that unidentified mitigation measures that are intended to be applied to undefined projects to reduce undetermined construction emission impacts will be 100% effective at reducing construction air quality impacts to less than significant levels.

The DEIR must be revised to remove these unsupported significance conclusions and add binding requirements that all subsequent buildout projects within the Plan area that meet or exceed BAAQMD Screening Thresholds shall be required to prepare a supplemental EIR which includes a quantitative air quality analysis to determine the significance of the project's construction emissions and implement all feasible mitigation measures.

Response J.11: As stated on page 62 of the EIR, "...given the Downtown development program can be built over the next 20 or more years, it is not possible to predict exactly what construction activity will occur in any one year or where within the boundaries of Downtown. Therefore, future project-level environmental review will be required of individual development projects to account for their construction impacts." The EIR identifies programmatic measures required for all future projects to reduce construction emissions, as well as additional measures for projects exceeding the BAAQMD screening levels (refer to "Measures Included in the Project to Reduce Construction Emissions" on pages 63-65 of the EIR). The EIR assumes that all future projects under the Downtown Strategy 2040 would not exceed construction emissions thresholds with incorporation of appropriate measures, but also states that "In the event a future project would exceed the average daily or annual emission threshold or otherwise result in a significant impact based on current BAAQMD Guidelines and City requirements, supplemental environmental review may be required prior to project approval or implementation to identify the additional feasible measures necessary to reduce emissions to less than significant levels." Therefore, the scenario the comment is concerned about is addressed in the EIR, and future development

projects that would result in construction emissions in excess of BAAQMD standards would undergo supplemental review to either identify feasible mitigation to stay below the standards or disclose significant impacts in a supplemental EIR.

Comment J.12: The DEIR Fails to Disclose the Extent of Known Soil and Groundwater Contamination Within the Project Area and Fails to Include Adequate Mitigation For Potentially Significant Known Contamination

The DEIR discloses that there are approximately 103 properties within the Downtown Area that are listed as closed Leaking Underground Storage Tank (LUST) cases, five properties listed as open LUST cases, eight DTSC cleanup sites, one military cleanup site, 14 open cleanup program site cases, and 12 closed cleanup program site cases. The DEIR acknowledges that “new development under the proposed Downtown Strategy 2040 could occur in areas with soil contamination” which “may contain a variety of chemical compounds associated with fuels, oils, solvents, metals, or other hazardous substances originating from historical and/or current land uses.” The DEIR further acknowledges that some of this contamination may have migrated via shallow groundwater to properties in the Downtown area, and that, “[i]f not appropriately managed, contamination from past releases could present health risks to construction workers and/or the public during the site preparation, dewatering, construction, and maintenance activities.” However, the DEIR fails to disclose current levels of contamination and admittedly defers all analysis and mitigation of soil and groundwater contamination impacts to “subsequent analysis” that the City anticipates will be performed in post-approval studies. The DEIR then concludes that the Project’s hazardous materials impacts related to soil and groundwater contamination will be less than significant. This conclusion is not supported by any evidence in the DEIR, and is contradicted by publicly available evidence related to projects within the Plan area.

Response J.12: As described in Response F.5, above, the Downtown Strategy 2040 EIR is a program-level document. It is not intended, nor is it required, to provide a detailed analysis of contamination levels on specific properties in the Downtown area. The EIR acknowledges that properties in the Downtown area may have soil contamination in excess of relevant thresholds and provides programmatic measures to reduce potential impacts to less than significant levels (refer to “Measures Included in the Project to Reduce and Avoid Impacts Related to Contamination” on pages 159-161 of the EIR). Specific development projects within the Downtown area will be required to complete project-level environmental review, which will address impacts and measures to reduce the impacts associated with the specific development project, including impacts associated with soil contamination. Project-specific requirements will be determined during the supplemental project-level review phase in accordance with current regulations. Any required investigations and/or clean-up actions will be incorporated as conditions of approval for any grading, demolition, or building permit, subject to oversight by the appropriate regulatory agency (e.g., County Environmental Health or Regional Water Quality Control Board).

Comment J.13: We previously commented that a 2017 Phase I Environmental Site Assessment (ESA) that was performed for the 4th & St. John Project site documented residual soil and groundwater contamination at the site which exceeds San Francisco Bay Regional Water Quality Board (SFBRWQCB) Environmental Screening Levels (ESLs). The contamination included benzene detections at 31 parts per billion (ppb), which exceeded the ESL of 1 ppb in shallow groundwater and

creates a vapor intrusion risk in a residential scenario. We previously explained that this contamination, which will be disturbed by Project construction, is likely to pose a health risk to the public. The DEIR fails to disclose this contamination as a potentially significant impact, fails to include the 4th & St. John Phase I ESA, and fails to disclose the potentially significant health risk from exacerbating the site's existing contamination impacts during Project construction. The DEIR must be revised to disclose these impacts, as well as the existing levels of known contamination at the other project sites within the Plan area.

We also commented that the City's proposed development of a site management plan for the 4th & St. John Project site was inadequate mitigation because it contained no regulatory standards and would only be implemented upon future Project development, this improperly deferring mitigation to address known contamination. The DEIR for the Plan contains similarly inadequate mitigation which proposes to create post-approval Soil Management Plans and Remedial Action Workplans that contain no regulatory standards. The DEIR must be revised to disclose the levels of existing contamination within the Plan area, and to include clear and binding mitigation that meets regulatory standards.

Response J.13: Please refer to Responses J.1 and J.2. This comment discusses a proposed development permit application on a specific property within the Downtown area which was withdrawn in 2017. The specific development project discussed in the comment is not the subject of this EIR. As discussed in Response J.12, the EIR is a program-level document, and a discussion of contamination levels on specific properties within the Downtown area is not required. The EIR acknowledges that properties in the Downtown area may have soil contamination in excess of relevant thresholds and provides programmatic measures to reduce potential impacts to less than significant levels (refer to "Measures Included in the Project to Reduce and Avoid Impacts Related to Contamination" on pages 159-161 of the EIR). Specific development projects within the Downtown area will be required to complete project-level environmental review, which will address impacts and measures to reduce the impacts associated with the specific development project, including impacts associated with soil contamination. Project-specific requirements will be determined during the supplemental project-level review phase in accordance with current regulations. Any required investigations and/or clean-up actions will be incorporated as conditions of approval for any grading, demolition, or building permit, subject to oversight by the appropriate regulatory agency (e.g., County Environmental Health or Regional Water Quality Control Board).

K. Responses to Comment Letter K from Working Partnerships USA (dated October 22, 2018)

Comment K.1: The following comments on the Draft EIR for Downtown Strategy 2040 (“the Strategy”) are submitted on behalf of Working Partnerships USA, a community organization bringing together the power of grassroots organizing and public policy innovation to drive the movement for a just economy in Silicon Valley by tackling the root causes of inequality and poverty.

Tech companies like Google, Adobe and others planning to expand in downtown San José and other such firms the City hopes to attract to new commercial office space depend on the work of many thousands of cafeteria workers, janitors, security guards, shuttle drivers, groundskeepers, laundry attendants, massage therapists, and other service workers. According to a study by the Bay Area Council Economic Institute, the tech industry generates approximately 4.3 jobs in local goods and services for each additional direct tech job, and has the largest jobs multiplier of any industry. This means that for every new direct tech job in Downtown San José, four service jobs are created such as food service employees, janitors, ride-share drivers, and nurses. We want to ensure that the perspectives of the thousands of tech service workers likely to be working in Downtown San José are accounted for in this development process, as proposed project’s like Google’s 8 million square foot Google Village, referred to numerous time in this document, move forward. Tech service workers working in the millions of additional square feet of commercial office space proposed to be added under this plan also stand to be impacted by this plan as local employees, commuters, and residents. We believe that the Downtown Strategy 2040 can be improved to achieve superior environmental impact mitigation through increased trip internalization, creating neighborhoods which are more inclusive and diverse, better mitigating the impacts of traffic and air quality hazards.

While we appreciate the plan’s efforts to address the City’s fiscal issues, we remain concerned that adding either 3 or 4.2 square feet of additional office space downtown adding X workers in the strategy or listed alternatives while only adding 4,000 units of additional housing Downtown for new workers, without assurances of how much of that housing will be affordable to growing numbers of low wage service workers, will only lead to additional growth-induced impacts. It is troubling that the EIR did not examine any alternatives that included additional affordable housing construction. By not allowing additional housing, the Strategy will produce results in longer commutes, increases traffic congestion, degradation of air quality, increased greenhouse gases and causes other transportation-related environmental impacts. As leading advocates for tech service workers, we are concerned that the Downtown Strategy 2040 will not create enough housing that is affordable to the thousands of additional low-wage service workers in jobs working on-site or indirectly with new commercial office operation in Downtown San José, thereby undermining the plan’s goal of limiting vehicle miles traveled. Low-wage workers like tech service workers are more likely to travel longer distances because of the housing affordability crisis spreading across Silicon Valley. Within the potential Google Village alone, our partners in Silicon Valley Rising estimate the potential for an additional 8,000-10,000 service contract workers as food service workers, janitors, security officers and shuttle bus drivers alone if the development’s operation mimic those in Google’s Mountain View operations. Low wage service workers are also increasingly being displaced to other cities in Northern California further away from San José and accessible regional transit options, likely leading those who continue working in the region to need to spend extra time in cars on the road. Our partners in Silicon Valley Rising surveyed tech service

workers and found a majority of those surveyed have families with children. A study by UC Santa Cruz's Everett Program researchers on contracted workers in Silicon Valley found that 22% of Silicon Valley's contract industry workers live in households with multiple unrelated families because of the lack of affordable housing. We estimated in a 2016 report that the majority of tech's blue collar workers were Black or Latino, whereas tech's engineers and leadership are majority white and overwhelmingly male. Google's tech employees are 1% Black and 3% Hispanic.

Also, despite commitments by the City of San José to address the Google Village within its own Environmental Review, it is troubling that this project not only references the Google Village 14 times, but that this proposal would add between 1.2 and 2.4 million square feet of commercial office space in the area where Google has continued to buy land (where currently 5 million square feet is envisioned). It is also troubling that the document addresses some of the development impacts of a potential Google project before the company has even submitted a development application and without providing mitigations for those impacts. This seems entirely inappropriate, and the City should consider leaving additions to Diridon Station Area office growth, and references to specific project-specific impacts of that office growth, to future project-level environmental reviews submitted through the project development process.

The best way to address the growth induced impacts is to create affordable housing that is carefully targeted toward the diverse mix of new workers in Downtown San José. Because of the insufficient efforts to add housing at the appropriate levels of income, and of the lack of attention to low-wage workers' potential impacts on transportation and traffic, the EIR fails to comply with CEQA's mandate to provide complete and accurate information, especially project-specific information, about foreseeable environmental impacts of the project.

Response K.1: This comment summarizes issues discussed in more detailed comments contained in the remainder of the comment letter. As such, responses to the specific environmental issues raised in this comment, primarily VMT and associated impacts, are provided in Responses K.2 through K.11 below. As described in those detailed responses, the EIR provides substantial evidence supporting the conclusions regarding the various impacts of the project.

Comment K.2:

Our comments are as follows:

1. The EIR's discussion of Transportation/Traffic and its Transportation Impact Analysis (TIA)'s are incomplete without more clarity on the type and level of affordable housing.

The minimum affordable housing required of developers is 15% affordable units or in-lieu fees, following the City's standard affordable housing requirements. The city's BMR ordinance targets affordability levels at or below 120% of AMI for ownership units and at or below 80% AMI for rental units. For a number of years, Downtown Housing construction has been exempt from providing affordable units or fees to support construction of such units and it is unclear if such exemptions will continue. The Downtown High Rise exemption for Affordable Housing Impact Fees is not noted in the EIR. The plan does not stipulate which types of housing will receive affordable designation (rental or owned, micro- units or two bedrooms, on-site or off-site). The

types of housing that receive affordable designation will impact tech service workers. Micro-units will not serve working families. Rentals are more likely to be obtainable than ownership units for low-wage workers, absent down-payment assistance.

The housing strategy is not likely to meet the housing needs of Downtown San José's thousands of low-wage service workers. The EIR does not provide a breakdown of the types of employment or income levels of workers projected in Downtown San José with the addition of 3 or 4.2 million square feet of office space in the Strategy or listed alternatives. Based on estimates from our Silicon Valley Rising partners, we estimate that Google Village along may require between 8,000 and 10,000 subcontracted cafeteria workers, janitors, security guards, shuttle drivers, and other facilities workers based in Downtown San José. This estimate does not include other service workers providing the numerous other amenities or services, many made available by Google and other employers, such as massage therapists, hair stylists, laundry attendants, Uber/Lyft drivers, fitness instructors, gym attendants, etc., and other induced goods and service jobs created by tech's jobs multiplier. Without additional requirements to shape the types of housing created (i.e. 2-3 bedroom units rather than micro units or co-living spaces) we predict that the housing will likely the family housing needs of low-income workers in Downtown San José.

Response K.2: This comment discusses the City's Inclusionary Housing Ordinance and speculates about the nature of future development that may occur in Downtown. The comment also requests a breakdown of the income levels of workers projected in the Downtown. As this addresses social or economic factors of the project, it is outside the normal scope of CEQA, which is focused on environmental matters. This comment does not raise a specific environmental issue under CEQA; therefore, no further response is required.

Comment K.3: *We recommend creating an alternative within the EIR adding additional units of housing and providing for appropriate levels of affordability in new housing.* None of the alternatives address the growth impacts of the project like the demand for additional housing created by adding office space. Today even many directly-employed tech workers are having trouble affording market-rate housing, therefore the plan could benefit from an alternative that adds additional housing and sets forth policy to set aside affordable units for low and moderate-income workers as well. Family size and situation of low-income tech workers will vary, including both single-earner and dual-earner households, and both large-family, and single-individual households. The mix of affordable unit allocations should reflect that diversity. An alternative housing strategy should include a provision to ensure that a percentage of each type of unit is set aside for low-income households, ideally with a better mix of family housing. We also strongly recommend adding a provision which gives first priority to households who work in San José or in communities at greatest risk of displacement when evaluating potential tenants for the area's affordable housing, in order to ensure increased trip internalization. These preferences are allowable under HUD rules if they do not have a discriminatory effect.

Response K.3: This comment is predicated on the assertion that the project adds office space that would induce growth. The Downtown Strategy 2040 would not change the citywide development levels contained in the adopted 2040 General Plan. The project would allow more of the citywide planned development to occur in the Downtown area by transferring to Downtown residential units and commercial development currently planned for other areas of

the City. Any growth induced by the project would be a portion of growth induced by the existing 2040 General Plan. The 2040 General Plan EIR determined that buildout of the 2040 General Plan would result in a significant unavoidable growth-inducing impact. The Downtown Strategy 2040 EIR determined that the Downtown Strategy 2040 would make a cumulatively considerable contribution to significant unavoidable growth-inducing impact identified in the 2040 General Plan EIR and, therefore, would result in a significant unavoidable cumulative impact. The comment suggests an alternative the project that would include more housing in order to address growth-inducing impacts. It is not clear if the suggested alternative would transfer more of the City's planned housing development to Downtown from other areas of the City, or if the alternative would add more housing to the City's overall planned development by amending the 2040 General Plan to include more residential units. If it is the former, the alternative would not change the growth-inducing impacts of the project of the 2040 General Plan, as overall development levels in the City would not change. If it is the latter, this alternative has already been explored in the 2040 General Plan EIR from which the Downtown Strategy 2040 EIR tiers. The 2040 General Plan EIR included an analysis of alternatives with increased levels of residential development (refer to the Scenario 2: More Housing/Fewer Jobs and Scenario 3: Slightly More Housing/Fewer Jobs Alternatives in the 2040 General Plan EIR). The EIR provides a reasonable range of alternatives for consideration by decision makers, as required by CEQA.

Comment K.4: *The EIR does not address induced employment growth caused by the tech's service sector multiplier.* As previously mentioned, the tech industry creates approximately 4.3 goods and services jobs for each direct tech job. According to economist and multiplier expert Enrico Moretti: "With only a fraction of the jobs, the innovation sector generates a disproportionate number of additional local jobs and therefore profoundly shapes the local economy". Moretti uses Apple in Cupertino as an example, "Incredibly, this means that the main effect of Apple on the region's employment is on jobs outside of high tech." Studies of jobs multipliers distinguish between "tradable" and "non-tradable" sectors. Tech is in the "tradable" sector because it sells goods in regions other than where they are produced. According to the Bay Area Council Economic Institute Report, one new tech job creates approximately 4.3 jobs in local "non-tradable" sectors, meaning sectors whose goods or services are consumed in the same region as where they are produced. These 4.3 "non-tradable" jobs include localized services like restaurants, hotels, healthcare and personal service etc. Moretti estimates that for every five jobs that are created, two will be for professional jobs such as doctors, nurses and lawyers, while three will be for unskilled occupations like restaurant and hotel workers or retail clerks etc. The DSEIR predicts that employment in the

Downtown areas allowable growth will increase from 11.2 million square feet currently to 14.2 million square feet in 2040 under proposed project conditions, an increase of 3 million square feet or roughly 10,000 jobs, with an alternative allowing even 1.2 million more square feet. If 70% of these employees are direct tech employees, then in the long term, tech's multiplier effect will create 43,000 induced jobs in the nontradable sector. Of those 43,000 jobs, 25,800 will be non-professional, presumably low-wage jobs. Without access to local affordable housing, many of these 25,800 low-wage workers will have to drive long distances to serve tech workers in Downtown San José. We urge the City to consider the environmental impacts of these tens of thousands of potentially-induced low-wage jobs in terms of added vehicle miles traveled, air quality, noise, traffic and parking needs.

Response K.4: This comment speculates regarding the nature of future commercial development in Downtown, the wage levels of future employees of that commercial development, and the affordability of housing available for those future employees. The comment asserts that one type of commercial development (“tech”) will induce another type of commercial development (“non-professional”), resulting in certain employees having to drive long distances due to the lack of affordable housing. The project does not specify or require any specific type of commercial development in Downtown, but instead assumes an overall amount of general commercial development and analyzes the impacts of that level of development (14.2 million sf of office, 1.4 million sf of retail, and 3,600 hotel rooms). It would be speculative for the EIR to assume specific wage-levels of employees of certain commercial development that would occur in the future, and to assume where employees of the commercial development would live based on the assumed wage levels. The EIR is not required under CEQA to analyze impacts based on such a speculative scenario.

As described in response K.3, the Downtown Strategy 2040 would not change the citywide development levels contained in the adopted 2040 General Plan. The project would allow more of the citywide planned development to occur in the Downtown area by transferring to Downtown residential units and commercial development currently planned for other areas of the City. Any growth induced by the project would be a portion of growth induced by the existing 2040 General Plan. The 2040 General Plan EIR determined that buildout of the 2040 General Plan would result in a significant unavoidable growth-inducing impact, encompassing secondary impacts resulting from the induced growth such as impacts related to employees of commercial development in the City commuting from other jurisdictions due to the City’s projected jobs/housing imbalance. The Downtown Strategy 2040 EIR determined that the Downtown Strategy 2040 would make a cumulatively considerable contribution to significant unavoidable growth-inducing impact identified in the 2040 General Plan EIR and, therefore, would result in a significant unavoidable cumulative impact. No additional analysis is needed in the EIR.

Comment K.5: *Draft EIR does not provide "project-specific" analysis CEQA, given that there are several decisions still to be made later about major project components, which could dramatically change the long-term and short-term environmental impacts to nearby land uses. Several decisions, including decisions about the size and scope of the Google Village, changes in height policies connected to the One Engine Inoperative policy, the design of the Diridon Station, the layout of transit lines, the use of Constructing Staging Areas for future transit projects, the management of construction related traffic, and other intended development proposals in the pipeline will shape many of the impacts identified in this report. For these reasons, this EIR should not be considered project-specific.*

Response K.5: The Downtown Strategy 2040 EIR is a program-level document. Project-level review was completed only for vehicle miles travelled (VMT), traffic noise, and operational emissions of criteria pollutants resulting from future development in the Downtown area. Specific development projects within the Downtown area will be required to complete project-level environmental review, which will address impacts and measures to reduce the impacts associated with the specific development project based on conditions at the time the development is proposed.

Comment K.6: *The transportation, parking and vehicle miles traveled estimates will be impacted by inadequacy of affordable housing.* Traffic impacts could increase significantly if indirect and induced low wage workers added to the traffic and transit analysis. Any low-wage service workers shut out of Downtown San José housing, or who are able to continue to afford housing near other transit routes are likely to drive and to drive long distances. Low wage workers who do not live in San José are likely to have longer commutes than their median- to high-wage counterparts who are more likely to be able to afford market rate options in San José or closer to work. The bulk of the Strategy’s transportation strategy are likely to be moot for low-wage service workers without affordable housing on site. Many tech service workers live too far away to benefit from any potential transit improvements. The EIR does not state whether a Downtown San José employer’s TDM programs are required to address transportation impacts of subcontractors.

Alternatively, more affordable housing can increase transit use. The more that the housing produced is affordable and accessible to all Downtown San José workers, the more likely that they will choose to live in the project area, and to walk, bike or take transit to work (increasing internal trips). Increased housing affordability will increase motivation for Downtown San José workers of both low and moderate income levels to live where they work and to become riders of Downtown and Diridon Station transit services. Increasing trip internalization for Downtown’s low-wage workers will be better for the physical environment than the trip internalization of their tech employee counterparts because low-wage workers.

Response K.6: Please refer to Responses K.3 and K.4 regarding future uses of developments in the Downtown area. It would be speculative for the EIR to assume specific wage-levels of employees of certain commercial development that would occur in the future, and to assume where employees of the commercial development would live based on the assumed wage levels. The EIR is not required under CEQA to analyze impacts based on such a speculative scenario. The project would not change the citywide development levels contained in the adopted 2040 General Plan. The growth-inducing impacts of the 2040 General Plan and Downtown Strategy 2040 were analyzed in their respective EIRs.

Comment K.7: 2. The Strategy does not take the necessary steps to address air and construction impacts.

The plan does not support the primary goals of the current Regional Air Quality Plan based on greenhouse gas emissions reduction 2040 targets: The Downtown Strategy 2040’s contribution to greenhouse gas emissions (GHG) and climate change for the 2040 timeframe is determined by the Bay Area Air Quality Management District to be “significant and unavoidable.” The increase in Greenhouse Gas emissions are not likely to be mitigated by the proposed strategies in the city’s plans for GHG reduction. The dramatic increased in VMT based on the increased development capacity downtown will lead to 167, 117 metric tons of CO2 emissions.

The plan will lead to unmitigable air quality impacts that will have significant impacts on the nearby community and to new residents of the area: The report cites that the full build-out of the Downtown Strategy 2040 would result in a significant increase in criteria pollutants in the Bay Area, contributing to existing violations of ozone standards. The criteria pollutants include increases in nitrogen oxides, carbon monoxide, fugitive dust, and particle materials 10 and 2.5. These

pollutants are shown to cause excess cancer risk and increasing the hazard index for other health risks.

Response K.7: The Downtown Strategy 2040 supports the primary goals of the latest Clean Air Plan in that it locates substantial new development near transit, in a mixed-use, walkable environment that facilitates alternative modes of travel, and low per capita and per worker VMT. Nonetheless, due to the substantial scale of development, the EIR determined that the project would result in significant unavoidable impacts related to GHG and criteria pollutant emissions, as discussed in the comment. The EIR presents all feasible measures that can be applied to future development and presents a range of project alternatives to the decision-makers. However, due to the scale of the development proposed by the Downtown Strategy 2040, criteria pollutant impacts are significant and unavoidable, and would continue to be so with alternative levels of housing and/or jobs.

Comment K.8: *The plan will have significant impacts on nearby sensitive receptor sites that are likely to increase adverse health impacts:* As quoted Appendix B “Air Quality and GHG Analysis,” the BAAQMD CEQA Air Quality Guidelines consider exposure of sensitive receptors to air pollutant levels that result in an unacceptable cancer risk or hazard, to be significant. Sensitive receptors, which include vulnerable population including children under 14, the elderly over 65, athletes, and people with cardiovascular and chronic respiratory diseases. The report notes that the downtown area includes many current proposed sites with high concentrations of sensitive receptors such as residents, schools, hospitals, daycare centers, or retirements homes. According to the summary of the report analysis of increased health risks, the DTS 2040 Plan would “permit and facilitate the development of new sensitive receptors, such as new homes, in locations near arterial and collector roadways, highways, and stationary sources of TAC emissions. Screening levels indicate that sensitive receptors within the DTS 2040 Plan Area would be exposed to levels of TACs and/or PM2.5 that could cause an unacceptable cancer risk or hazard near highways and stationary sources.”

Response K.8: This comment restates analysis from pages 66-67 of the EIR, which discusses the siting of future sensitive receptors in proximity to sources of TAC emissions. As discussed on page 33 of the EIR, the California Supreme Court in a December 2015 opinion in *California Building Industry Association v. Bay Area Air Quality Management District*, 62 Cal. 4th 369 (*BIA v. BAAQMD*) confirmed that CEQA, with several specific exceptions, is concerned with the impacts of a project on the environment, not the effects the existing environment may have on a project. Therefore, the evaluation of the significance of project impacts under CEQA in the EIR focuses on impacts of the project on the environment. As a result, the siting of future sensitive receptors in proximity to sources of TAC emissions is not a CEQA issue. However, the EIR analyzed this issue in the context of consistency with the City’s own plans and policies. The discussion in the EIR of the potential effect of existing TAC sources on future projects states that future projects will be required to comply with 2040 General Plan Policy MS-11.1 to “Require completion of air quality modeling for sensitive land uses such as new residential developments that are located near sources of pollution such as freeways and industrial uses. Require new residential development projects and projects categorized as sensitive receptors to incorporate effective mitigation into project designs or be located an adequate distance from sources of TACs to avoid significant risks to

health and safety.” As discussed in the EIR, site-specific modeling will be required prior to development of residential or other sensitive uses that could be affected by TACs associated with roadways or stationary sources, in accordance with BAAQMD and City requirements and GP Policy MS-11.1. If elevated exposures are identified, projects would be required to incorporate mitigation into project design or be located an adequate distance from TAC sources to avoid significant risks to health and safety. Design measures may include the installation of indoor air quality filters and ventilation and the planting of pollution absorbing trees and vegetation in buffer areas. The 2040 General Plan EIR concluded that this mechanism for screening and mitigating the effects of TACs would reduce potential impacts to sensitive receptors to a less than significant level.

Comment K.9: *The proposed EIR is likely to result in significant construction particles being released as part of the increased housing and office development. Though the construction period is noted in the report to be relatively short, based on announced development projects like the Google development, it appears that the Downtown area is likely to see sustained development and construction activity over the next 20 years.*

Response K.9: The EIR addresses construction air quality impacts through the Downtown Strategy’s 2040 horizon year. As stated on page 62 of the EIR, “...given the Downtown development program can be built over the next 20 or more years, it is not possible to predict exactly what construction activity will occur in any one year or where within the boundaries of Downtown. Therefore, future project-level environmental review will be required of individual development projects to account for their construction impacts.” The EIR identifies programmatic measures required for all future projects to reduce construction emissions, as well as additional measures for projects exceeding the BAAQMD screening levels (refer to “Measures Included in the Project to Reduce Construction Emissions” on pages 63-65 of the EIR). The EIR assumes that all future projects under the Downtown Strategy 2040 would not exceed construction emissions thresholds with incorporation of appropriate measures, but also states that “In the event a future project would exceed the average daily or annual emission threshold or otherwise result in a significant impact based on current BAAQMD Guidelines and City requirements, supplemental environmental review may be required prior to project approval or implementation to identify the additional feasible measures necessary to reduce emissions to less than significant levels.” Future development projects that would result in construction emissions in excess of BAAQMD standards would undergo supplemental review to either identify feasible mitigation to stay below the standards, or disclose significant impacts in a supplemental EIR.

Comment K.10: This construction activity, supercharged by the 25% increase in the commercial development capacity will lead to significant and unmitigable environmental impacts. The report notes that “emissions commonly associated with construction activities include fugitive dust from soil disturbance, fuel combustion from mobile heavy-duty diesel- and gasoline-powered equipment, portable auxiliary equipment, and worker commute trips. During construction, fugitive dust, the dominant source of respirable particulate matter (PM10) and fine particulate matter (PM2.5) emissions, is generated when wheels or blades disturb surface materials. Demolition and renovation of buildings can also generate fugitive PM10 and PM2.5 emissions. Uncontrolled dust from construction can become a nuisance and potential health hazard to those living and working nearby.” The report also notes the traffic generated by diesel-powered of most construction equipment can

result in substantial nitrogen oxide (NOX), Particle Material 10 (PM10) and Particle Material 2.5 (PM2.5) emissions. Moreover, these environmental effects are exacerbated by the commutes of construction workers and the building coatings that are sources of Reactive Organic Gases (ROG) emissions. Worker commute trips and architectural coatings are dominant sources of reactive organic gases (ROG) emissions.

Response K.10: Please refer to Response K.9.

Comment K.11: 3. The Strategy does not address the RHNA mandated by the state’s housing element law

California’s housing element law requires local governments to consider projected housing needs by income level to guide planning decisions. The Association of Bay Area Governments (ABAG) identified the following housing needs: 20,843 affordable housing units in San José (2014-2022). 59.4% of the housing needs identified by ABAG’s Regional Housing Needs Assessment (RHNA) in San José are for affordable units (9,233 very-low income units, 5,428 low-income units, 6,188 moderate-income units). The City of San José’s affordable housing efforts and the plan within the Strategy differs significantly from the distribution of housing needs identified by ABAG. The plan does not appear to help advance RHNA’s affordable housing needs outright (only requiring 15% percent inclusionary policy or in-lieu fees, and as noted earlier ignoring San José’s Affordable Housing exemption for Downtown High Rise construction). An alternative that included plans to add significant amounts of affordable housing to meet San José’s RHNA would add additional clarity to the Strategy.

We hope the City will take the time to address the issues raised here and improve the Strategy and its EIR so that it addresses the needs all of local workers on tech campuses and thereby better mitigates its environmental impacts.

Response K.11: For the Bay Area, the current Regional Housing Needs Allocation (RHNA) cycle covers an approximately 8.8-year projection period from January 1, 2014 to October 31, 2022. The programs contained in the City’s current State-certified Housing Element correspond to the State’s planning period from January 31, 2015-January 31, 2023. The total RHNA for Santa Clara County in the 2014-2022 cycle is 58,836 housing units, of which 35,080 units (approximately 60 percent) are assigned to San José.

The City’s Housing Element includes a housing needs assessment to address the demand for affordable housing in San José. The Silicon Valley region as a whole is housing-poor because residential production lags behind job growth. However, the City of San José is also jobs-poor, so there is regional inequity in the provision of housing in Santa Clara County for the region’s workforce.

The City’s Housing Element documents that the City has a Planned Supply/Inventory of housing capacity within the General Plan’s Urban Service Area to accommodate San José’s RHNA to the year 2023 in eight categories, including Downtown. These categories are: “already entitled”; Downtown; Planned Communities; Urban Villages; vacant land; North San José; a citywide “pool” allocation; and Underutilized Redevelopable Parcels.

One of the primary purposes of shifting up in time and transferring capacity geographically for 4,000 dwelling units into Downtown is to facilitate housing development that could include affordable housing well-served by transit, services, and jobs.

The EIR analysis does not preclude the City from adopting policy changes for the Downtown area to further incentivize affordable housing beyond the measures contained in the General Plan and in other City policies and ordinances. Whether the proposed added capacity of dwelling units in the Downtown Strategy boundary might be developed in the future as mostly deed-restricted affordable housing or not, under the Downtown Strategy 2040 project assumptions, the level of significance of the environmental impacts from the future housing as analyzed in the EIR would not increase. The transportation analysis assumes a mix of households at various income levels based on market conditions. If by policy the City decides to make the dwelling units only eligible to households having below area median income (i.e., deed-restricted affordable housing), then the assumption is that there would be the same or lower automobile use by these households thereby resulting in lower transportation-related impacts as compared to market-rate housing. This assumption is based on data showing the high cost of automobile use compared to other more affordable transportation options. In Downtown, automobile use is lower than that Citywide for all household types due to good transit accessibility and the high cost of parking. For these reasons, the impacts of the affordable housing scenario proposed by the comment is covered by analysis in the EIR.

L. Responses to Comment Letter L from SV@Home (dated October 23, 2018)⁵

Comment L.1: On behalf of SV@Home and our members, we are pleased to have the opportunity to comment on the Draft EIR for the Downtown Strategy 2040 General Plan Update. SV@Home supports the expanded Downtown frame, particularly as we begin to envision development in the Diridon Station Area Plan and surrounding neighborhoods. We are also very supportive of any action that adds residential dwelling unit capacity to the Downtown. A vibrant downtown needs both residents and employees.

We do, however, have three concerns about the underlying assumptions of the EIR.

- 1) We do not agree with the strategy of shifting growth allowances from other Urban Villages to Downtown.

While we agree that we need more housing in the Downtown, and appreciate the efforts to expand these allowances, we should not be reducing the opportunities for residential growth in other parts of the City. We simply need more housing everywhere.

Response L.1: The comment above expresses policy preferences related to the amount of proposed residential units in the City and does not raise specific environmental issues under CEQA; therefore, no further response is required. The comment is acknowledged and noted in the public record for consideration by the decision makers.

Comment L.2: 2. We believe that the additional 4000 dwelling units proposed by the Downtown Strategy 2040 General Plan Update, and reflected in the EIR, is insufficient based on plans for new employment growth in the Plan Area.

With the Diridon Station Plan underway, and plans for as many as 20-30,000 new jobs, more housing is needed. Members of the SAAG have consistently placed the importance of housing, and affordable housing in particular, at the top of the priority list for the Station Area.

We understand that the GP 2040 was designed as a “Jobs-First” General plan. But our housing needs have become significantly more acute since the Plan was adopted in 2011, even as the City has made strides in acknowledging the challenge and working to bring more residential development on line.

When originally adopted, the San José General Plan contemplate the development of 48,659 new jobs and 11,160 new homes within the Downtown and Station area plans (which have now been combined to includes both sides of Highway 87, as far west as the Caltrain tracks) by 2040. This can be translated as 4.36 new jobs per new dwelling unit.

The proposed GP update would add 10,000 jobs and 4,000 dwelling units to the anticipated amount of development by 2040, which represents a ratio of 2.5 jobs per dwelling unit added to the amount of anticipated development.

⁵ Please note that the comment letter was received after the comment period ended. Responses to this comment letter are provided as a courtesy only.

However, if you take the total into account (58,469 new jobs and 15,160 new units) and subtract out what has already been permitted (estimate based on City of San José Planning, Building, and Code Enforcement data and staff), 48,569 jobs and 7,190 dwelling units remain – or 6.77 new jobs per new dwelling unit.

We believe that these remaining 7,190 residential units will not provide the allowance necessary to accommodate expected growth, and that if residential development is constrained by these allowances, the resulting jobs per housing ratio will set back our collective efforts to respond to the housing needs of our city.

Response L.2: The comment above expresses policy preferences related to the amount of proposed dwelling units in the City and, other than the issue of the jobs/housing imbalance, does not raise specific environmental issues under CEQA. It should be noted that the 2040 General Plan provides capacity for 120,000 net new dwelling units and an additional 382,000 jobs in San José by 2040. Based on the San José General Plan Four Year Review completed in 2016, San José by 2040 could have 1.1 jobs per employed resident, which is a substantial change beyond the existing 0.8 to 1 ratio. As discussed on page 247 of the Downtown Strategy 2040 EIR, because the project would not change the overall amount of jobs and housing planned for the City in the 2040 General Plan, the Downtown Strategy 2040 would contribute to the significant unavoidable jobs/housing imbalance impact identified in the 2040 General Plan EIR. The Downtown Strategy 2040 EIR identified the project’s contribution as a significant unavoidable cumulative impact (Impact C-PH-1). However, the Downtown Strategy EIR would shift housing capacity from elsewhere in the City and from the future Horizons’ timeline to now, thereby making more housing capacity available in Downtown, and in the near term rather than in the future.

Comment L.3: 3. We are also concerned that the new expanded Downtown Planned Growth Area boundaries, which are bounded to the west by the Cal Train tracks, are not coterminous with the boundaries of the original Diridon Station Area plan, which includes territory on both sides of the Cal Train tracks.

The proposed amendment to the General Plan that is covered by the pending EIR would take all the planned growth capacity (both jobs and housing) that was included in the Diridon Station Plan and assign them all to Downtown. Thus, the areas west of the tracks that are planned for higher density residential development in the Diridon Station Area – 1) the NW corner of Stockton & Julian; 2) the area bounded by the tracks to east, San Carlos to the south, Sunol St. to the west, and Park Ave. to the north (which includes the 300-unit all-affordable project proposed by First Community Housing)’ and (3) some residual sites on the south side of San Carlos between the tracks and Sunol St. – would apparently be left with no development capacity, which could amount to several hundred planned units that would no longer be in a Downtown Planned Growth Area.

If it is determined that this is indeed the case, this issue will need to be addressed in the pending EIR, or General Plan amendments for residential development expected for these areas will lack necessary CEQA clearance.

Response L.3: The comment does not raise any CEQA issue. The Downtown Strategy 2040 would not change the amount of development planned for the Diridon Station Area Plan

(DSAP) area, including the specific locations mentioned in the comment. The DSAP EIR still provides CEQA clearance for development proposals on properties located within the DSAP area but outside of the Downtown Strategy 2040 area that are consistent with the DSAP.

Comment L.4: It is an exciting time for San José and future of its Downtown. That said, it is important that the Downtown Strategy 2040 recognize the increased demand for housing to ensure that every job has a home.

Response L.4: This comment discusses an increased demand for housing and does not raise a specific environmental issue under CEQA related to the proposed Downtown Strategy 2040 project; therefore, no further response is required. The comment is acknowledged and noted in the public record for consideration by the decision makers.

SECTION 5.0 DRAFT EIR TEXT REVISIONS

This section contains revisions to the text of the Downtown Strategy 2040 Draft EIR dated September 2018. Revised or new language is underlined. All deletions are shown with a ~~line through the text~~.

Page xv Summary, Known Areas of Controversy; the paragraph will be **REVISED** as follows:

Pursuant to Section 15123(b)(2) of the state CEQA Guidelines, an EIR shall identify areas of controversy known to the lead agency including issues raised by agencies and the public. The City has made extensive efforts to engage members of the business and development community in the planning process, as well as residents within the immediate area and surrounding long-established neighborhoods. Comments were received on the Notice of Preparation and are included in Appendix A of this EIR. While general concerns were raised typical of large urban ~~development~~ projects, there are no known areas of controversy.

Page 27 Section 2.6.2.1, Future Actions; the fifth bullet point will be **REVISED** as follows:

- Issuance of entitlements such as Site Development Permits, Planned Development (PD) Permits, Special or Conditional Use Permits, encroachment permits (minor and major), Historic Preservation Permits, and Demolition Permits.

Page 89 Section 3.4.3.6, Consistency with Local Policies and Ordinances; the footnote in the second paragraph will be **REVISED** as follows:

⁵² County of Santa Clara, City of San José, City of Morgan Hill, City of Gilroy, Santa Clara Valley Water District, and Santa Clara Valley Transportation Authority. ~~Draft Santa Clara Valley Habitat Plan. Final Santa Clara Valley Habitat Plan. December 2010. August 2012.~~ Available at: http://www.scv-habitatplan.org/www/site/alias_default/341/public_draft_habitat_plan.aspx. <https://scv-habitatagency.org/178/Santa-Clara-Valley-Habitat-Plan>.

Page 144 Table 3.8-1: General Plan Policies - GHG Emissions; add the following three rows to the table:

<u>Policy MS-2.6</u>	<u>Promote roofing design and surface treatments that reduce the heat island effect of new and existing development and support reduced energy use, reduced air pollution, and a healthy urban forest. Connect businesses and residents with cool roof rebate programs through City outreach efforts.</u>
<u>Policy MS-21.1</u>	<u>Manage the Community Forest to achieve San José’s environmental goals for water and energy conservation, wildlife habitat preservation, stormwater retention, heat reduction in urban areas, energy conservation, and the removal of carbon dioxide from the atmosphere.</u>

Policy TR-1.16	<u>Develop a strategy to construct a network of public and private alternative fuel vehicle charging/fueling stations city wide.</u> <u>Revise parking standards to require the installation of electric charging infrastructure at new large employment sites and large, multiple family residential developments.</u>
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Page 173 Section 3.10.2.2, Dam Safety; the second paragraph will be **REVISED** as follows:

The Downtown Strategy 2040 area is located within a dam failure inundation zone for Lenihan Dam at Lexington Reservoir and Anderson Dam at Anderson Reservoir. Both dams were constructed in the 1950’s and are owned and operated by the SCVWD. The SCVWD has received preliminary findings of a seismic study of Anderson Dam that show the material at the base of the dam could liquefy in a 7.25 magnitude earthquake on the nearby Calaveras Fault. The SCVWD is currently studying what corrective measures are needed to ensure public safety and has imposed storage restrictions at Anderson Dam. The SCVWD is planning to complete design and construction of a seismic retrofit by the end of ~~2018~~ 2028. The operating restriction will remain in place until the project is completed.

Page 209 Section 3.11.2.4, Shade and Shadow; the second paragraph will be **REVISED** as follows:

The City identifies significant shade and shadow impacts as occurring when a building or other structure located in the Downtown area substantially reduces natural sunlight on six major public open spaces (St. James Park, Plaza of Palms, Plaza de Cesar Chavez, Paseo de San Antonio, Guadalupe River Park and McEnery Park), measured on winter solstice when the sun is lowest in the sky (December 21st); the spring equinox, when day and night are approximately equal in length (March 21st); and the summer solstice when the sun is at its highest point in the sky (June 21st).

Page 281 Table 3.15-2: 2040 Roadway Network Improvements; the note in the final row of the table will be **REVISED** as follows:

Improvements #3, 5, 11, 12, ~~14~~, 13, 15, 16, 18, and 25 are completed or in process. However, the improvements are included as future improvements since the CSJ model base year represents 2015 conditions and each of the improvements were completed after 2015.

Appendix A: Draft EIR Comment Letters

From: "Aghegnehu, Ben" <ben.aghegnehu@rda.sccgov.org>
Date: October 16, 2018 at 4:14:39 PM PDT
To: "Jenny.Nusbaum@sanjoseca.gov" <Jenny.Nusbaum@sanjoseca.gov>
Cc: "Talbo, Ellen" <Ellen.Talbo@rda.sccgov.org>
Subject: File No. PP15-102 - NOA-DEIR for the San Jose Downtown Strategy 2040 Plan Project

October 16, 2018

Jenny Nusbaum
Department of Planning, Building, and Code Enforcement
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113-1905

SUBJECT: NOTICE OF AVAILABILITY OF A DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR) for the San Jose Downtown Strategy 2040 Plan Project.

Dear Mrs. Jenny Nusbaum:

The County of Santa Clara Roads and Airports Department appreciates the opportunity to review the Notice of Availability of a Draft Environmental Impact Report and is submitting the following comments:

1. The timings used in AM LOS analysis for County intersections are not correct, please contact County for correct timing settings.
2. The Bascom Avenue Complete Street is a Study and not a project which is not funded. Therefore intersection level improvements should be considered to minimize impacts.
3. The DEIR should look into an 8-phase signal operation at Bascom and Fruitdale as an impact mitigation.

If you have any questions or concerns about these comments, please contact me at 408-573-2462 or ben.aghegnehu@rda.sccgov.org

Thank you,

Ben Aghegnehu
Associate Transportation Planner
County of Santa Clara | Roads & Airports
101 Skyport Rd | San Jose, CA, 95110
408-573-2462 (o)

From: Cerezo, Melissa <Melissa.Cerezo@vta.org>
Sent: Monday, October 22, 2018 6:18 PM
To: Nusbaum, Jenny
Cc: Molseed, Roy
Subject: VTA Comments on Downtown Strategy 2040 DEIR [SJ1519]

Jenny,

VTA staff has reviewed the Draft EIR for the Downtown Strategy 2040 Plan (File Number PP15-102; State Clearinghouse Number 2003042127). VTA appreciates the City's engagement with VTA throughout the Downtown Strategy 2040 planning process. We have the following comments.

Local Transportation Analysis

The DEIR/TIA notes that “most of the potential development parcels included within The Downtown Strategy 2040 plan area will meet the City’s VMT analysis screening criteria” per Policy 5-1 and would not trigger a VMT analysis (TIA p. 25). VTA supports such screening criteria, which address key factors for transit-supportiveness, such as the project location in relation to high-quality transit, project density, and parking considerations. However, such VMT analysis does not address an individual project’s site design, specifically access to transit, and transit operational impacts. VTA recommends that projects included in the Downtown Strategy 2040 prepare a Local Transportation Analysis per Policy 5-1, and that the City provide such LTAs, or other early project materials to VTA for review and comment. If the LTA identifies impacts or negative effects on transit operations, transit priority measures should be identified in consultation with VTA. Such measures could include contributions to any applicable projects that improve transit speed and reliability.

VTA recommends early coordination (at the preliminary project stage) of Downtown Strategy 2040 projects in order to address critical site planning considerations with the goal to maximize transit-integration opportunities, prevent potential conflicts, and facilitate successful transit-oriented/multimodal-supportive projects.

Congestion Management Program

As stated in the DEIR/TIA, the City is still required to conform to the requirements of the VTA Congestion Management Program (CMP), which is governed by state CMP legislation. While VTA is supportive of the City’s use of Vehicle Miles Traveled as its CEQA methodology for transportation impacts in conformance with SB 743, the CMP guidelines currently refer to an LOS standard for CMP purposes. Per the DEIR/TIA, the Downtown Strategy 2040 identifies impacts to CMP facilities, such as CMP intersections and freeway segments. The DEIR/TIA does not identify feasible mitigation measures for the identified CMP impacts. VTA requests a meeting between VTA and the City to identify potential mitigation measures that may satisfy VTA CMP requirements and meet the City’s goals for multimodal transportation.

Thank you for the opportunity to review this project. We look forward to further coordination on the abovementioned items. Please don't hesitate to contact me with questions or comments.

Sincerely,

Melissa

Melissa R. Cerezo, AICP

Senior Transportation Planner

Santa Clara Valley Transportation Authority
3331 North First Street, Building B
San Jose, CA 95134-1927
Phone **408-321-7572**



Conserve paper. Think before you print.

File: 29510
Guadalupe River

X-Fac: Los Gatos Creek
Central Pipeline

October 22, 2018

Ms. Jenny Nusbaum
Department of Planning, Building and Code Enforcement
City of San Jose
200 East Santa Clara Street, 3rd Floor
San Jose, CA 95113-1905

Subject: Draft EIR for the San Jose Downtown Strategy 2040, City File No. PP15-102

Dear Ms. Nusbaum:

The Santa Clara Valley Water District (District) has reviewed the Draft EIR (DEIR) for the San Jose Downtown Strategy 2040, City File No. PP15-102, received by the District on September 7, 2018.

Based on our review of the DEIR submitted we have the following comments:

1. District has fee title property and easement over Los Gatos Creek and Guadalupe River located within the project area. Additionally, the District's Central Pipeline runs through the area. In accordance with the District Water Resources Protection Ordinance, any work within the District right of way (fee and easement) or crossing any District facility requires the issuance of a District permit and the District to be considered a responsible agency under CEQA.
2. The DEIR should consider the potential for regulatory requirements to change from 100-year to 200-year flood protection and climate change in the future. The 200-year requirement has been imposed in other parts of the country and State so the possibility of such a change exists.
3. The DEIR notes in multiple places that impacts to the riparian corridor will be minimized by enforcement of the City's Riparian Corridor Policy. To minimize impacts to riparian corridors the project should be consistent with the Guidelines and Standards for Land Use Near Streams and the City's Riparian Corridor Policy. Typical minimum setbacks are 100-feet from the existing creek top of bank/riparian corridor to buildings and developed areas. While the City's Riparian Corridor Policy allows for reduced riparian setbacks in the downtown area, the District strongly advocates for maximizing the



setbacks and providing measures to enhance and restore the riparian corridor whenever possible.

4. To protect the genetic integrity of the existing native riparian vegetation, including mitigation plantings, along Los Gatos Creek and the Guadalupe River, all projects should follow Design Guides 1-4 of the *Guidelines and Standards for Land Use Near Streams*. In particular, landscape based stormwater quality improvements and landscaping should utilize locally grown propagules for any local native riparian species proposed or utilize non-local natives or non-invasive ornamentals. Use of box size trees should be limited to non-local native riparian species and non-invasive ornamentals.
5. The DEIR should clearly note if any new vehicular and/or pedestrian crossings Los Gatos Creek or the Guadalupe River, including improvements to existing crossings are proposed. Such work will require District permits and we highly recommend to minimize the number of creek crossings and combine vehicular and pedestrian crossings where possible to minimize impacts to the riparian habitat.
6. The DEIR notes on page 79 in the Biological Resources Section, that no modifications of Los Gatos Creek or the Guadalupe River are proposed, except for the possible replacement of sanitary sewer siphons or new or replaced storm drain outfalls. However, the discussion in the Hydrology and Water Quality section and page 333 Stormwater Impacts do not indicate the potential for upgrading the storm drains, including outfalls to Los Gatos Creek and the Guadalupe River. The discussions related to improvements to the storm drain system and outfalls should be consistent throughout the document.
7. Page 173 incorrectly notes that the Anderson Dam retrofit project is on schedule for completion in 2018. The project is still in the planning/design, with an anticipated completion date of 2028.
8. Page 182 notes to reduce impacts related to flood hazards, development will be required to have the lowest floor elevation of new structures above the FEMA mapped base flood elevation. While elevating structures will reduce impacts to the structures, it does not reduce potential impacts of development impeding or redirecting flood flows. The discussion should provide measures for ensuring impacts to flood flows are evaluated as part of each development proposed within special flood hazard areas. Any increase in the runoff (both peak flow and volume) due to development must be mitigated to pre-development runoff (both peak flow and volume) for not only 100-year storm events, but also for more frequent events such as the 2-year, 5-year, 10-year, and 25 year events.

Ms. Jenny Nusbaum
Page 3
October 22, 2018

Reference District File No. 29510 on further correspondence regarding this project. If you have any questions or need further information, you can reach me at (408) 630-2479.

Sincerely,

A handwritten signature in blue ink, appearing to read "Lisa Brancatelli", with a stylized flourish extending to the right.

Lisa Brancatelli
Assistant Engineer II
Community Projects Review Unit

cc: U. Chatwani, C. Haggerty, L. Brancatelli, File



September 10, 2018

Jenny Nusbaum
City of San Jose
200 East Santa Clara St., 3rd Floor
San Jose, CA 95113

Ref: Gas and Electric Transmission and Distribution

Dear Ms. Nusbaum,

Thank you for submitting PP15-102 plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: https://www.pge.com/en_US/business/services/building-and-renovation/overview/overview.page.
2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.
3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851 filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

Sincerely,

Plan Review Team
Land Management



October 18, 2018

Ms. Jenny Nusbaum
Principal Planner, Environmental Review
City of San Jose
200 E. Santa Clara Street, 3rd Floor
San Jose, CA 95113
Jenny.nusbaum@sanjoseca.gov

RE: PP15-102, San Jose Downtown Strategy 2040 Draft Program Environmental Impact Report, September 2018

Dear Ms. Nusbaum,

On behalf of 329 homes and over 550 residents of the Axis Residential Tower ("Axis") located at 38 N. Almaden Boulevard in Downtown San Jose, I am submitting this comment letter related to the Downtown Strategy 2040 Draft Program Environmental Impact Report ("DSPEIR"). We respectfully ask that our comments receive substantive responses.

Our residents understand that new development in the Downtown is integral to creating a vibrant, balanced, transit-oriented downtown area. In fact, many of us purchased units at Axis eagerly anticipating the continued revitalization of Downtown and the associated benefits: proximity to restaurants, entertainment and retail establishments, jobs, and state-of-the-art transit opportunities.

Background of Axis

The 22-story Axis tower was constructed in 2008 with 329 units, the vast majority of which are owner-occupied. The original environmental document for the Axis project was the 47 Notre Dame Supplemental EIR ("Axis SEIR"), which tiered off the original Downtown Strategy 2000 Program EIR. Page 1 of the Axis SEIR described the project as the construction of "a 22-story (approximately 228 feet above grade), L-shaped 350-unit residential condominium on the northwest corner of the property (referred to as Phase I)."

The project description continues on page 4 of the Axis SEIR and includes the following: "The southwest corner of the site, adjacent to the Hotel De Anza, will be developed with a six-story residential/retail building (referred to as Phase II) with two levels of below grade parking that are open to and accessed through the Phase I underground parking area. The Phase II building will be comprised of approximately 35 condominium units and 8,000 square feet of retail."

As stated on page 18 of the Axis SEIR, "To minimize the overall visual impact of the residential tower on the Hotel De Anza, the tower is proposed to be located with the greatest possible

setback from the hotel on the project site at the northwest corner of the block.” In fact, the Axis building itself is also stepped back from the hotel as shown in the attached photo. The construction of the 6-story Phase II building was not evaluated in great detail as it would not have been taller than the Hotel De Anza and would not block views of the hotel’s iconic rooftop neon sign. In other words, it would not have contributed significantly to the impact of the Axis structure, as described in the Axis SEIR.

Current Proposal for Hotel Project

The Phase II building was never constructed, although the developer gave Axis residents his personal assurances during sales of the condominium units that the future structure would not be taller than six stories. This same developer is now in the process of seeking entitlements for a 19-story, 272-room hotel (the Hotel Project – Project Number H18-038) on the small 8,000 square foot lot at the southwest corner of the block.

The Hotel Project would not include any parking, although the previous Phase II project included two levels of below grade parking. It may be that this parking is not part of the proposed Hotel Project because the developer would need to obtain an easement to access this parking from the existing Axis underground parking area, as originally planned. Or perhaps this parking is not included because of the engineering and design difficulty of fitting an underground parking structure onto a postage-stamp parcel, and the resulting costs. Whatever the reason, however, a hotel of this size with no parking would create an operational nightmare for both Axis residents and other nearby residential and office developments. For example, the Hotel Project’s valet operations would overflow into the public right of way and would almost surely trespass onto Axis’ driveway. In addition, all other modes of traffic (including bicyclists, pedestrians, and bus transit) in the project area would be adversely affected.

Our other issues with the proposed Hotel Project include the elimination of all views from and the loss of privacy for the residential units that face to the south. These views are why many of the residents purchased these units especially in light of the assurances provided by the developer that these views would never be restricted. As you can imagine, having the windows of a hotel facing the Axis building with very little setback would be unnerving to many of our residents, and again, the proposed building was never expected to be taller than six stories.

We are also very concerned about how the Hotel De Anza, its distinctive Art Deco roofline parapet, its rooftop neon sign, and the diving lady painting will be affected by the construction of a 19-story hotel immediately adjacent to the hotel. As stated on page 18 of the Axis SEIR pertaining to the diving lady painting on the western façade of the Hotel De Anza building, “At the time that the De Anza was listed as a historic building, the painting was not included as a defining feature because of its relatively new age in comparison to the rest of the building. However, the painting has become a local icon and is widely recognized by San Jose residents. In order to avoid blocking the painting from view as people travel east on West Santa Clara Street, the Phase II building will provide a sufficient setback and a stepped design on the east side of the building to ensure an unobstructed view of the painting. In addition, the construction

materials and design of the Phase II building are proposed to be compatible with the Hotel De Anza and create the look of a contiguous pedestrian corridor along West Santa Clara Street. Furthermore, the project would conform to the City of San Jose Design Guidelines.”

The Hotel De Anza is one of the finest examples of Zigzag Moderne Art Deco style in the city of San Jose, and by far the best known. Its most widely recognized features are the stepped, zigzag parapet that extends across the entire ninth and tenth floor roofline of its front façade and the neon sign that tops the central parapet. Both the San Jose Design Guidelines and National Register guidelines stipulate that new construction should not dwarf an adjacent historic building.

The plans we have seen thus far for the 19-story Hotel Project do not respect the architecture or historic considerations of the Hotel De Anza. They appear to overcrowd and dwarf the structure and to completely block any views of the diving lady, and more importantly, the stepped parapet and the De Anza’s iconic rooftop neon sign. In fact, the plans show a building that actually spreads out as it gets taller. This is in direct conflict with the previous environmental review completed for the 47 Notre Dame Axis SEIR.

Further, page 30 of the Axis SEIR states the following: “It should also be noted that it was the conscious decision of the project proponent [of the Axis project] to site the proposed residential tower on the northwest corner of the block to ensure the greatest setback from the Hotel De Anza, thus minimizing the tower’s effect on the Hotel De Anza. The above notwithstanding, the Hotel De Anza was intended to be a visible landmark and has historically been the tallest building on the block since it was constructed. Its primary view corridor at present is from the south on Almaden Boulevard. According to the historic consultant, the addition of a tower taller than the roof of the De Anza, or its roof sign, significantly impacts the historic character of the property by reducing its position of prominence. This impact is site-specific and is specific to the Hotel De Anza since its stature played a role in its importance.”

Again, it is inconceivable to us that a 19-story structure could now be considered at 8 N Almaden Boulevard when the previous environmental review was for a 6-story residential/retail structure at the southwest corner of the site.

As stated in the Axis SEIR, the construction of the Axis project would obscure views of the Hotel De Anza from Highway 87 in the southbound direction, and it is true that Axis partially obscures this view; however, the Hotel De Anza and its iconic sign can still be seen from the northbound direction and from the Guadalupe River Park on the west side of the highway (see attached daytime and nighttime photos). The loss of the view of the hotel and its sign from the park was not considered under the Axis EIR in the determination of a significant unavoidable impact on the integrity of the setting of the Hotel De Anza. Further, the impact identified in the Axis SEIR was determined for a project that was the construction of a 6-story structure that could not have obscured the view from either the highway or the park. We request that a new Environmental Impact Report (EIR) be prepared to evaluate this new impact not previously identified in the Axis SEIR.

Downtown Strategy 2040 Draft Program EIR

Again, we support the overall continued redevelopment of the Downtown area as envisioned in the Downtown Strategy 2040. We also understand that it is the intent of the City for the environmental review provided in this new DSPEIR to cover the impacts of the proposed hotel project. We would like to point out that the DSPEIR is a program-level EIR and does not provide project specific environmental review for a 19-story hotel structure with no parking adjacent to a historic structure and a residential tower. For this reason, we respectfully request that a project specific environmental impact report be prepared for the proposed project.

This request is supported by the following statement included in the DSPEIR on page 40: “To reiterate, the Downtown Strategy 2040 is a planning document to guide development; it does not propose specific development projects at this time. Therefore, the following discussions provide program-level review of the potential aesthetic impacts that may result from implementation of the Downtown Strategy 2040. Future projects under the Downtown Strategy 2040 will be subject to subsequent environmental review and assessment of project-specific aesthetic impacts.”

Because the proposed Hotel Project is a project-specific development, and because site-specific aesthetic and historic impacts would be significant and unavoidable, specific mitigation measures should be presented in a new EIR for the Hotel Project. Program-level and General-Plan level impacts and mitigation measures are not specific enough to evaluate the construction of the 19-story Hotel Project immediately adjacent to a historic structure. This is especially true since the previous environmental review assumed a 6-story structure on the project site.

Aesthetic Impacts

As stated on page 40 of the DSPEIR, the discussion supports the use of General Plan policies and Design Guidelines to provide program-level mitigation for impacts to scenic views. “For example, in accordance with 2040 General Plan Policies CD-10.2 and CD-10.3, new development adjacent to Gateways, Grand Boulevards, and freeways shall be designed to preserve and enhance attractive natural and man-made vistas.” The proposed Hotel Project is along such a “Grand Boulevard” – Santa Clara Street, yet the design is far from one that preserves and enhances attractive natural and man-made vistas. In fact, the design would completely destroy the views from the street and surrounding land uses.

In determining impacts to visual character, the implementation of Design Guidelines and General Plan policies are expected to ensure that buildings in Downtown support high quality development. When considering Table 3.1-2: Design Guidelines by Category on page 41 of the DSPEIR, the proposed Hotel Project plans do not exhibit many of the guidelines in the table. For example, under “Building Form”, the Hotel Project does not “minimize bulk” or have a “distinctive design for interesting views to and from the building”. Under “Building Context”, the proposed hotel building does not reflect “the architectural context” of the existing Hotel De Anza nor is it “compatible with existing buildings” along the Grand Boulevard. Again, we request a

determination of specific impacts of the proposed Hotel Project in light of the Design Guidelines and the identification of site-specific mitigation measures in a new EIR.

This section of the DSPEIR also evaluates compatibility with surrounding development. As stated on page 43 of the DSPEIR, “For the purposes of this EIR, it is assumed that all future projects will reduce aesthetic impacts to a less than significant level through project design. In the event a future project proposes features that could substantially degrade the existing visual character, additional environmental review and detailed evaluation of resources and mitigation measures will be required prior to approval or implementation.” As we have demonstrated, the proposed hotel structure is inappropriately massive, intrusive, and incompatible with surrounding development, including the Hotel De Anza.

In fact, the preliminary review already conducted by the City’s planning department states that the new building should not dwarf the historic structure. It also states that the proposed hotel façade closest to the historic hotel has a window/glass geometry and height of a much larger scale than the Hotel De Anza. The Hotel De Anza’s tiered and “stepped back” façade and vertical Art Deco elements should have “some reference in the design of the new hotel”. The review states that these issues must be addressed. The current Hotel Project plans show no such considerations and project-specific impacts and mitigation measures must be identified in a new EIR.

Construction-Related Impacts

Axis residents are also very concerned about noise, air quality, and traffic operations during construction of the proposed Hotel Project. Page 65 of the Downtown Strategy DSPEIR states the following: “In the event a future project would exceed the average daily or annual emission threshold or otherwise result in a significant impact based on current BAAQMD Guidelines and City requirements, supplemental environmental review may be required prior to project approval or implementation to identify the additional feasible measures necessary to reduce emissions to less than significant levels.”

No such evaluation has been completed for the 19-story structure and it is unknown how long existing residents would be subject to such emissions. In addition, a construction Toxic Air Contaminant (TAC) evaluation has not been prepared to determine potential cancer risks to the sensitive residential land uses at Axis during construction. These project-specific impacts and mitigation measures must be evaluated in a new EIR.

Construction noise and vibration must also be addressed. Again, the mitigation measures included in the DSPEIR are general measures based on the Municipal Code and are not site-specific. Given the recent cracks and structural damage experienced in high-rise development in San Francisco, site-specific construction-related impacts associated with pile driving and geotechnical considerations must be evaluated. This is to ensure that the surrounding high-rise development will not be affected by this new construction that will undoubtedly require pile

driving and other vibration-generating construction techniques. Impacts to the Hotel De Anza must also be addressed. These impacts must be disclosed in a new EIR.

In addition, the small 8,000 square-foot lot is severely constricted with busy roadways located along the only two accessible sides of the property. It is not apparent where construction staging of materials and equipment will occur, and specifically where the crane would be located for the duration of what will likely be years-long construction. We are concerned about crane operations trespassing over the Axis driveway. We are also not in favor of City streets being used for the development of private projects, particularly where potentially hazardous crane operations might need to occur over a busy public street. To allow any construction staging on Santa Clara Street with its heavy traffic load and bus rapid transit lines or N. Almaden Boulevard, which is one-way, would result in significant short-term traffic impacts and safety impacts not specifically discussed in the DSPEIR. This will be especially true if N. Almaden Boulevard is converted to a two-way street.

Parking and Traffic

Unbelievably, the proposed Hotel Project does not include any on-site parking and it is not known where these cars will be staged or ultimately parked. According to the preliminary review conducted by the planning department, 0.35 parking spaces are required per room. Therefore, a 272-room hotel would require 95 spaces, yet the project does not include any parking. In addition, it is unclear where valet parking could even be employed or where cars trying to access the hotel could be stacked.

With the proposal to convert N. Almaden Boulevard to a two-way street, the lanes of traffic would be much narrower. There is no indication that traffic operations would not be chaotic and result in safety impacts to pedestrians, bicyclists, bus transit, and vehicles accessing the project area. This is the current situation at the 100-room Hotel De Anza where valet parking on Notre Dame Avenue regularly backs up northbound traffic on the street, especially during commute hours which can correspond to hotel check-in and check-out. In addition, these conditions would also block existing driveways, including those utilized by Axis residents.

The DSPEIR states that operational transportation analyses will be required for projects as they come forward. However, we contend that impacts associated with not providing ANY parking have the potential to result in significant safety impacts not specifically identified in the DSPEIR. A new EIR that addresses operational impacts specific to the proposed project is required. In addition, it is not apparent how freight and service vehicles, including waste disposal trucks, would access the site without blocking the surrounding streets and our access driveways.

Conclusion

The Axis Homeowners Association strongly supports Downtown San Jose's continued revitalization. Our residents are community leaders and active participants in planning activities in the Downtown area. We live, play, and work in Downtown now and are committed to ensuring

that future Downtown development respects the existing surrounding land uses and viewsheds as well as the historical context. However, new construction incompatible with adjacent structures and landmarks is directly at odds with the vision set forth in Downtown Strategy 2040 and ultimately does not promote continued beautification or enhancement of the Downtown area.

For the reasons identified above, including the fact that all previous environmental documents prepared assumed a 6-story structure on the site, a new project-specific EIR must be prepared for the 8 N. Almaden Boulevard hotel project (H18-038).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. T. Cusick', with a large, stylized initial 'C' at the end.

Thomas T. Cusick
President, Axis Homeowners Association

cc:
Richard Doyle, City Attorney
Mayor Sam Liccardo
Councilmember Raul Peralez
Dave Sykes, City Manager
Councilmember Charles Jones
Councilmember Sergio Jimenez
Councilmember Lan Diep
Councilmember and Vice Mayor Magdalena Carrasco
Councilmember Devora Davis
Councilmember Tam Nguyen
Councilmember Sylvia Arenas
Councilmember Donald Rocha
Councilmember Johnny Khamis
Thai-Chau Le, Planner, Environmental Review
Rosalyann Hughey, Director, Department of Planning
Patrick Kelly, Supervising Planner, Planning Division
Nizar Slim, Project Manager, Planning Division
City Clerk
Commissioner John Leyba
Commissioner Ada Marquez
Commissioner Peter Allen, Chair Planning Commission
Commissioner Shiloh Ballard, Vice Chair Planning Commission
Commissioner Melanie Griswold
Commissioner Namrata Vora
Commissioner Michelle Yesney



Photo of Axis Building (38 N. Almaden Boulevard) taken from the south side of Santa Clara Street looking to the northeast. The stepped back nature of the building can be seen as well as its placement at the northwest corner of the block. Its distance and stepped back design respects the historical integrity of the Hotel De Anza and roof sign seen to the right.



View of the Hotel De Anza and neon sign looking to the east taken from the Guadalupe River Park on the west side of SR 87. The hotel sign is easily seen, even with the lighted tennis courts in the foreground.



Daytime view of Axis, Hotel De Anza, and Comerica Bank building looking to the east from the tennis courts in the Guadalupe River Park. The proposed 19-story hotel project would remove all views of the historic structure from the public open space.

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October 22, 2018

Via Email and US Mail

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Re: Preliminary Comments on the Draft Environmental Impact Report for the San Jose Downtown Strategy 2040 Plan (Downtown Strategy 2040)

Dear Ms. Nusbaum:

We submit these preliminary comments on behalf of San Jose Residents for Responsible Development (“Residents”) regarding the Draft Environmental Impact Report (“DEIR”) for the Downtown Strategy 2040 Plan, File No. PP15-102, (“Downtown Strategy” or “Project”).

The Project proposes 1) Text and Land Use Amendments to update the General Plan so that future development Downtown is consistent with planned regional transportation improvements and to increase the development capacity within the Downtown boundary through the transfer of 4,000 dwelling units and 10,000 jobs (approximately 3 million square feet) from later horizon General Plan growth areas to Downtown; 2) establish an Employment Priority Area Overlay to support Downtown San José’s growth; 3) change the General Plan Land Use/Transportation Diagram designations on specific parcels within the Transit Center Employment Growth Area of the Downtown Strategy 2040 bounded area to align development possibilities with the Downtown Strategy 2040’s priorities; 4) clarify that within the Downtown Strategy 2040 area if development permits expire on a site, then the previously entitled capacity on that site will revert back to the un-entitled remaining capacity under the Downtown Strategy 2040 EIR; 5) replace the existing San José Downtown Strategy adopted by the City Council in 2005 with a new Downtown Strategy 2040; 6) zoning amendments to align the boundaries of the Downtown Zoning area to be consistent with the boundaries of the Downtown

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Strategy 2040 area and the General Plan; and 7) various other amendments to the Municipal Code to respond to lifestyle changes within the City.¹

We conducted an initial review of the DEIR and its appendices with the assistance of our technical consultants, air quality consultant Hadley Nolan and hazardous materials and hydrology expert Matt Hagemann, P.G., C.Hg, of Soil Water Air Protection Enterprise (“SWAPE”)², as well as expert traffic engineer Daniel Smith, P.E.³ The attached expert comments require separate responses under CEQA.

Based on our initial review, it is clear that the DEIR is significantly flawed and does not comply with the requirements of the California Environmental Quality Act (“CEQA”).⁴ In particular, the DEIR lacks substantial evidence to support its conclusions that the Project will result in less than significant impacts in several resource categories, including hazardous materials, construction air quality impacts, and transportation impacts. The DEIR also fails to disclose existing substantial evidence demonstrating that proposed project buildouts within the Downtown Strategy Project area, including the 4th & St. John Project site, are likely to result in significant impacts that the DEIR fails to disclose and mitigate. The City may not approve the Project until the City prepares a legally adequate revised environmental impact report (“EIR”) that fully and accurately discloses the Project’s potentially significant impacts and incorporates all feasible mitigation measures to minimize those impacts to the fullest extent feasible. The City similarly may not rely on this DEIR for tiering purposes unless these substantial errors and omissions are corrected.

We are continuing to review the DEIR reference documents which were provided to us by the City just six days ago, and are awaiting a response to our October 11, 2018 Public Records Act for documents related to the Project. We reserve the right to supplement these comments at a later date following review of these documents, and at any later proceedings related to the Project.⁵

I. STATEMENT OF INTEREST

San Jose Residents for Responsible Development is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public

¹ See DEIR Notice of Availability (“NOA”), pp. 2-3.

² SWAPE’s technical comments and curriculum vitae are attached hereto as Exhibit A.

³ Mr. Smith’s technical comments and curriculum vitae are attached hereto as Exhibit B.

⁴ Public Resources Code (“PRC”) section 21000 *et seq.*; 14 Cal. Code Regs. (“CCR”) section 15000 *et seq.*

⁵ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (“*Bakersfield*”) (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

and worker health and safety hazards and environmental impacts of the Project. The association includes: City of San Jose residents Jeff Dreyer Sr. and Paul Oller; the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, and their members and their families; and other individuals that live and/or work in the City of San Jose and Santa Clara County.

Individual members of San Jose Residents and the affiliated labor organizations live, work, recreate and raise their families in Santa Clara County, including the City of San Jose. They would be directly affected by the Project's 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. San Jose Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances).⁶ The EIR is the very heart of CEQA.⁷ "The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."⁸

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.⁹ "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"¹⁰ The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible

⁶ See, e.g., PRC § 21100.

⁷ *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

⁸ *Comtys. for a Better Env' v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 ("*CBE v. CRA*").

⁹ 14 CCR § 15002(a)(1).

¹⁰ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

officials to environmental changes before they have reached ecological points of no return.”¹¹

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.¹² The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”¹³ If the project will have a significant effect on the environment, the agency may approve the project only if it finds 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.”¹⁴

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘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.*”¹⁵ As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.”¹⁶

A. Programmatic EIRs and Subsequent Environmental Review.

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering, or other appropriate process can be used for analysis of the project’s

¹¹ *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.

¹² 14 CCR§ 15002(a)(2) and (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

¹³ 14 CCR §15002(a)(2).

¹⁴ PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

¹⁵ *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), *quoting, Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

¹⁶ *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.¹⁷

Under CEQA Guidelines Section 15168, program EIRs may be used for a series of related actions that can be characterized as one large project. If a program EIR is sufficiently comprehensive, Section 15168 allows the lead agency to dispense with further environmental review for later activities within the program if they were adequately covered in the program EIR.¹⁸ Section 15152 also allows agencies to “tier” a project-specific analysis to a prior program EIR, including one prepared for a general plan amendment, to streamline regulatory procedures and eliminate repetitive discussions of the same issues in successive EIR’s.¹⁹

CEQA provides narrow opportunities for subsequent environmental review following adoption of a programmatic document. When a program EIR has been prepared pursuant to Section 15168, CEQA provides that “no subsequent or supplemental environmental impact report shall be required” unless at least one or more of the following occurs: (1) “[s]ubstantial changes are proposed in the project which will require major revisions of the environmental impact report,” (2) there are “[s]ubstantial changes” to the project’s circumstances that will require major revisions to the EIR, or (3) “new information becomes available, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted” which demonstrates that the project will have impacts not previously analyzed, or that previously identified impacts can be mitigated with measures not previously required.²⁰ The same “subsequent review” standards apply to subsequent CEQA review of changes to a project when a project-level CEQA document was originally prepared.²¹

Section 15152 provides more exacting standards for subsequent review of later projects, prohibiting preparation of subsequent EIRs or negative declarations unless the later project may result in impacts which (1) were not examined as significant effects on the environment in the prior EIR; or (2) are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions,

¹⁷ CEQA Guidelines §§ 15060, 15063(c).

¹⁸ 14 CCR § 15168(c).

¹⁹ PRC §§ 21093, 21094; 14 CCR § 15152; *Ctr. for Sierra Nevada Conserv. v. El Dorado* (2012) 202 Cal.App.4th 1156, 1171; *Las Virgenes Homeowners Fed’n, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 307.

²⁰ PRC § 21166; 14 CCR § 15162(a); 14 CCR § 15168(c)(2).

²¹ *Id.*

or other means.²² However, subsequent review under Section 15152 remains circumscribed by the scope of review performed in the initial programmatic document.

III. THE DEIR FAILS TO ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS OF THE DOWNTOWN STRATEGY PROJECT

A. The DEIR Fails to Comply With CEQA's Requirements for Program-Level Environmental Review

CEQA requires analysis of the environmental effects of a project at the earliest possible stage in the planning process.²³ In particular, an agency must analyze the impacts of all future development contemplated by the adoption or amendment of a general planning document prior to the adoption or amendment.²⁴ Failure to do so constitutes a prejudicial abuse of discretion by the lead agency, and a failure to proceed in the manner required by law.²⁵ The DEIR fails to perform this basic analysis for many of the Project's impacts by authorizing increased levels of development which are only partially analyzed in the DEIR.

The existing development capacity authorized by the Downtown Strategy 2000 EIR, and amended by the 2040 General Plan EIR and Addendum, includes:

- 11.2 million square feet of office development (2.8 million square feet per phase)
- 10,360 residential units (2,125 units per phase)
- 1.4 million square feet of retail development (350,000 square feet per phase)
- 3,600 hotel rooms (900 rooms per phase).²⁶

The Project proposes to increase the number of residential units in Downtown to 14,360 units, an increase of 4,000 units compared to what is currently planned in the 2040 General Plan, and to increase office square footage to 14.2 million sf, a 3 million sf increase over currently authorized 2040 General Plan levels.²⁷ These increases also require moving residential units from other Growth Areas or Urban Villages outside of Downtown such that overall residential units anticipated within the City would not

²² PRC § 21094; 14 CCR § 15152(f)(1), (2).

²³ *Laurel Heights Improvement Assn. v. Regents of University of California* ("Laurel Heights I") (1988) 47 Cal. 3d 376, 396; *City of Redlands v. San Bernardino County* (2002) 96 Cal.App.4th 398, 410.

²⁴ PRC § 21080(a) 14 CCR § 15378(a)(1); 14 § CCR 15146; *City of Redlands v. County of San Bernardino*, 96 Cal.App.4th at 409; *Christward Ministry v. Superior Ct.* (1986) 184 Cal.App.3d 180, 194.

²⁵ *Madera Oversight* 199 Cal.App.4th at 76-77; *Christward Ministry*, 184 Cal.App.3d at 182.

²⁶ DEIR, p. 9.

²⁷ DEIR, p. 9, Table 2.4-1.

change, and moving 3,000,000 sf of planned office development (approximately 10,000 jobs) from Coyote Valley to Downtown.²⁸ The Project therefore proposes a significant increase in both the quantity and location of allowable development within the Downtown Strategy areas of the City.

The DEIR includes a detailed “project-level” analysis for just three impact areas – traffic, air quality, and noise impacts.²⁹ The DEIR then asserts that the remainder of the Project’s impacts are analyzed at a “programmatic” level, and “may” be subject to subsequent project-level review at the time specific buildout developments are proposed, including hazardous materials impacts, construction emissions, and historic resources, to name a few.³⁰ However, these sections are both misleading and inaccurate because, in the same sections, the DEIR nevertheless concludes that the Project’s unquantified impacts on these resource areas will be mitigated to less than significant levels with future mitigation.

The DEIR clearly should have evaluated whether the development authorized by the Project should be allowed at the proposed site, which is a separate question from whether a future developer should be granted a permit in an area already authorized for such use. The City is obligated by law to analyze the potentially significant impacts from future development authorized by the Project, and is not permitted to defer its analysis to future permitting proceedings for impacts on resources that can be determined at the time of initial CEQA review.

Moreover, the City has stated in *numerous* other cases that it can approve subsequent projects as within the scope of the program covered by a prior plan-level EIR and not require further environmental review if the information regarding potentially significant impacts is known at the time the prior environmental review document was prepared.³¹ The legal standard to challenge that finding would require the public to provide substantial evidence that the subsequent project is larger than what was allowed by the prior document, that there are substantial changes in the circumstances under which the project is undertaken or that *new information which was not known and could not be known at the time the EIR was prepared* shows that there are new or more severe impacts or new mitigation measures to reduce those impacts.³² Here, since the City has

²⁸ DEIR, p. 7.

²⁹ DEIR, p. 4.

³⁰ DEIR, Sections 3.3, 3.5, 3.9.

³¹ See Sampling of City of San Jose Addendums finding subsequent projects covered within scope of prior environmental review.

³² Public Resources Code §21166.

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information now that future development allowed by the Project may result in significant impacts, the City is required to analyze these impacts at this time.

The DEIR's lack of analysis results in a failure to inform the public of the scope of potentially significant environmental impacts that may result from Project development, and a failure to require any mitigation to reduce these impacts to less than significant levels, in violation of CEQA.

B. The DEIR Fails to Disclose the Extent of Known Soil and Groundwater Contamination Within the Project Area and Fails to Include Adequate Mitigation For Potentially Significant Known Contamination

The DEIR discloses that there are approximately 103 properties within the Downtown Area that are listed as closed Leaking Underground Storage Tank (LUST) cases, five properties listed as open LUST cases, eight DTSC cleanup sites, one military cleanup site, 14 open cleanup program site cases, and 12 closed cleanup program site cases.³³ The DEIR acknowledges that “new development under the proposed Downtown Strategy 2040 could occur in areas with soil contamination” which “may contain a variety of chemical compounds associated with fuels, oils, solvents, metals, or other hazardous substances originating from historical and/or current land uses.”³⁴ The DEIR further acknowledges that some of this contamination may have migrated via shallow groundwater to properties in the Downtown area, and that, “[i]f not appropriately managed, contamination from past releases could present health risks to construction workers and/or the public during the site preparation, dewatering, construction, and maintenance activities.”³⁵ However, the DEIR fails to disclose current levels of contamination and admittedly defers all analysis and mitigation of soil and groundwater contamination impacts to “subsequent analysis” that the City anticipates will be performed in post-approval studies.³⁶ The DEIR concludes that the Project's hazardous materials impacts related to soil and groundwater contamination will be less than significant.³⁷ This conclusion is not supported by any evidence in the DEIR, and is contradicted by publicly available evidence related to projects within the Plan area.

Residents' experts previously commented that a 2017 Phase I Environmental Site Assessment (“ESA”) that was performed for the 4th & St. John Project site documented residual soil and groundwater contamination at the site which exceeds San Francisco Bay

³³ DEIR, p. 151-152.

³⁴ *Id.*

³⁵ DEIR, p. 159.

³⁶ DEIR, p. 159.

³⁷ DEIR, p. 161.

Regional Water Quality Board (“SFBRWQCB”) Environmental Screening Levels (“ESLs”).³⁸ The contamination included benzene detections at 31 parts per billion (“ppb”), which SWAPE explained exceeded the ESL of 1 ppb in shallow groundwater and creates a vapor intrusion risk in a residential scenario.³⁹ SWAPE’s 2017 consultant reports further explained that this contamination, which will be disturbed by Project construction, is likely to pose a health risk to the public. SWAPE’s reports were submitted to the City in 2017, prior to the release of this DEIR, and are part of the Administrative Record in Residents’ pending litigation over the 4th & St. John Project.⁴⁰ Nevertheless, the DEIR fails entirely to discuss these impacts. The DEIR fails to disclose the existing contamination at 4th & St. Jon as a potentially significant impact, fails to include the 4th & St. John Phase I ESA, and fails to disclose the potentially significant health risk from exacerbating the site’s existing contamination impacts during Project construction. The DEIR must be revised to disclose these impacts, as well as the existing levels of known contamination at the other project sites within the Plan area.

Residents’ experts also commented in 2017 that the City’s proposed development of a site management plan for the 4th & St. John Project site was inadequate mitigation because it contained no regulatory standards and would only be implemented upon future Project development, this improperly deferring mitigation to address known contamination.⁴¹ The DEIR for the Plan contains similarly inadequate mitigation which proposes to create post-approval Soil Management Plans and Remedial Action Workplans that contain no regulatory standards.⁴² The DEIR must be revised to disclose the levels of existing contamination within the Plan area, and to include clear and binding mitigation that meets regulatory standards.

C. The DEIR Fails to Disclose Construction Emissions from Future Developments Within the Downtown Strategy Project Area, and Fails to Ensure that Construction Impacts Will Be Adequately Disclosed and Mitigated During Future Buildout

The DEIR states that it is not possible to analyze construction emissions at the Plan stage because the City cannot predict exactly what construction activity will occur “in any one year or where within the boundaries of Downtown.”⁴³ The DEIR then claims that

³⁸ See Exhibit A, p. 7.

³⁹ See SWAPE 11/17/17 comments on 4th & St, John, p. 2.

⁴⁰ Exhibit C contains the Administrative Record in *San Jose Residents for Responsible Development et al. v. City of San Jose et al.*, Santa Clara Superior Court Case No. 18-CV-321709 (filed January 11, 2018).

⁴¹ *Exhibit A, p. 7.*

⁴² DEIR, pp. 159-161.

⁴³ DEIR, p. 62.

“future project-level environmental review will be required of individual development projects to account for their construction impacts.”⁴⁴ The DEIR then concludes, without analysis, that construction criteria pollutant emissions for future projects built under the Plan will be less than significant.⁴⁵ The DEIR’s conclusion is based on two unsupported assumptions.

First, the DEIR states “it is assumed that all future projects under the Downtown Strategy 2040 would not exceed the average daily or annual emissions during construction.”⁴⁶ This assumption is based on the DEIR’s unsupported conclusion that all individual development projects within the Plan area will be smaller than the BAAQMD Construction Emission Screening Levels of 240 dwelling units, 554 hotel rooms, or 277,000 square feet of office or other commercial/retail uses.⁴⁷ However, the DEIR provides no evidence to support its reliance on this assumption, and it is indeed contradicted by existing permits and approvals within the Plan area. For example, the City’s 2017 approval of the General Plan Amendment for 4th & St. John authorized a minimum of 337 dwelling units, and up to 728 dwelling units and up to approximately 1,189,000 square feet of commercial/office uses on a 0.91-acre portion of the Project area. The 4th & St. John Project alone, which represents just 1/1920th of the Plan Project’s approximately 3-square mile⁴⁸ size, is therefore more than double the BAAQMD screening criteria for analyzing construction emissions, yet the DEIR fails to mention it and fails to include any analysis of the 4th & St John Project’s construction emissions.

Second, the DEIR assumes that, in the event a future project *does* exceed BAAQMD Screening Levels, the construction emissions from those projects will be reduced to less than significant levels by supplemental environmental review which “may be required” prior to project approval or implementation.⁴⁹ The DEIR contains no evidence to support this assumption. Nor could it, because the City cannot predict, without a quantitative assessment, that unidentified mitigation measures that are intended to be applied to undefined projects to reduce undetermined construction emission impacts will be 100% effective at reducing construction air quality impacts to less than significant levels.

The DEIR must be revised to remove these unsupported significance conclusions and add binding requirements that all subsequent buildout projects within the Plan area that meet or exceed BAAQMD Screening Thresholds shall be required to prepare a

⁴⁴ DEIR, p. 62.

⁴⁵ DEIR, p. 65.

⁴⁶ DEIR, p. 65.

⁴⁷ *Id.*; DEIR, p. 63.

⁴⁸ DEIR Notice of Availability, p. 1.

⁴⁹ DEIR, p. 65.

supplemental EIR which includes a quantitative air quality analysis to determine the significance of the project's construction emissions and implement all feasible mitigation measures.

D. The DEIR Fails to Accurately Measure the Project's Traffic Impacts

The DEIR analyzes Project transportation impacts under the Vehicle Miles Traveled ("VMT") per Capita metric provision of SB 743. However, as traffic consultant Mr. Smith explains, VMT per capita generated in the Project area is an incomplete metric for measuring traffic impacts.

The DEIR relies on 2015 baseline conditions to begin its traffic analysis, at which time the Downtown Strategy Plan population was 12,548 and that the employment total in the area was 33,608 jobs and that this population and employment total generated a net VMT of 433,728 (sum of 103,562 and 340,166).⁵⁰ Mr. Smith calculates that, under the existing General Plan, by 2040, the population would be 34,104, the employment would be 82,162 and these components would generate a net VMT of 997,831.⁵¹ As a result, Mr. Smith explains that the increases in total VMT under the existing General Plan and the Downtown Strategy and its alternatives would result in a 230 percent increase over baseline under the existing General Plan, 254 percent increase over baseline for the Downtown Strategy, and respectively 258 percent and 262 percent over baseline for Downtown Strategy Alternatives 1 and 2.⁵²

The DEIR overlooked this evidence, instead using VMT per Capita as the sole traffic metric. As Mr. Smith explains, VMT per Capita values remain the same despite population increases, and therefore fail to provide an adequate analysis of the increase in severity of traffic conditions posed by the increased population authorized by the Project. Mr. Smith explains that total VMT generated by the Project must be considered in conjunction with total VMT experienced within the Project area in order to accurately assess the severity of the Project's traffic impacts. The DEIR must be revised to include a meaningful analysis of the Project's traffic impacts at full buildout.

IV. CONCLUSION

The DEIR fails to meet the informational and public participation requirements of CEQA because it fails to disclose and mitigate the Project's potentially significant

⁵⁰ DEIR, Appendix D Table ES-1.

⁵¹ Exhibit B, p. 2.

⁵² Exhibit B, p. 2.

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environmental impacts, and purports to conclude that several Project impacts are less than significant with little or no supporting evidence. Reliance on the DEIR for future project buildouts is likely to result in serious environmental impacts escaping necessary environmental review. The DEIR must be revised and recirculated to correct these serious errors and omissions.

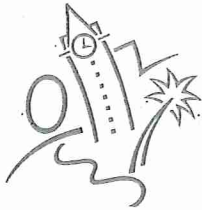
Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Christina Caro

CMC:acp
Attachments



**SAN JOSE DOWNTOWN
ASSOCIATION**

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Jenny Nusbaum
Planner, Department of Planning, Building and Code Enforcement
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

RE: Comments on the Downtown Strategy 2040 EIR Update

Dear Jenny,

The San Jose Downtown Association (SJDA) provides the following comments regarding the upcoming Downtown Strategy 2040 EIR Update. We applaud the City of San Jose Planning Department for taking on the Downtown Strategy EIR Update as we plan for downtown's future development and growth.

This growth potential is well represented in table 2.4-1, where residential capacities are being expanded by 4,000 units and office capacities are increased by three million square feet. As we note later in our comments, however, we are concerned these targets foreshadow obsolescence and undershoot potential capacities, requiring us to start the EIR process again almost immediately upon the conclusion of these updates. This may be particularly pronounced as it relates to the future growth of the west side of downtown.

This point is further reinforced in Section 2.4.2, most notably in the following language: "Downtown Strategy 2040 is not a General Plan, Specific Plan, or Redevelopment Plan." This raises multiple points that we would like to detail here, in a general sense, and are also covered in section-by-section comments provided below:

- SJDA believes that a comprehensive downtown strategy is required at the present time, and that an EIR update, particularly one not entirely inclusive of the westside of downtown, is insufficient for our area's present and future needs. This EIR update calls itself a "Downtown Strategy," but unlike the "Downtown Strategy 2000" it seeks to replace and "continue," this document is not based on a public strategic planning process but looks to refresh strategy developed in the late 1990's dot-com and redevelopment era. While we appreciate the "substantive recommendations with important policy implications" (page 14) contained within, we feel that a lack of previous

adherence to these recommendations could put the future smart growth of downtown at risk unless a firmer plan and strategy is developed.

- SJDA feels strongly that the westside of downtown should be integrated into the downtown EIR and strategic planning, and downtown should be treated as one downtown and not two separate and distinct districts. We are concerned that, throughout this EIR, it appears that these two areas are being treated separately. This is not consistent with our Downtown Vision and why it alarms us this EIR update proclaims itself a “Downtown Strategy.”
- Given the need to integrate downtown core and westside development capacities, especially for future higher densities that could be accommodated with relaxation of current building height limitations, we expect a new downtown EIR update to begin almost immediately concluding this one.

That said, we do appreciate the overall work city staff has put into this effort, and would like to provide the following specific comments to the proposed EIR update:

Expanding the Downtown Boundary (Section 2.4.3)

We agree with and applaud the inclusion of North Fourth Street between East St. John and East Julian into the existing boundaries of downtown, as detailed in Figure 2.4.1. Due to the growth of downtown, we are facing pressure in all directions for boundary expansion of the downtown, and while we welcome the proposed addition, we believe that further discussion should be had on a broader expansion of downtown boundaries in the next update.

Downtown Transportation Plan (Section 2.5)

With the amount of ongoing transportation projects in the downtown, an overall Downtown Transportation Plan is long overdue. We very much welcome its inclusion in this EIR update and look forward to working with the City to see its successful adoption.

SJDA is supportive of the broader policy goals contained in the 2040 General Plan around improved pedestrian experiences, increased bicycle access and lanes, more convenient transit travel, and reducing the overall reliance on automobile transportation and parking.

However, downtown possesses very few east-west and north-south through streets, and data consistently shows us that automobile transportation is still a dominant means by which patrons visit our downtown businesses. Any movement towards a future dominated less by the automobile should be deliberately managed and data-driven, and a downtown transportation plan will help us meet this goal.

Employment Priority Area (Section 2.4.6)

We do not think a highly prescriptive Employment Priority Area Overlay is good policy for downtown at this time. In recent months, overly prescriptive downtown zoning has been an impediment to the filling of vacant storefronts and inactive downtown spaces, and the proposed employment priority overlay (Figure 2.4.2) encapsulates an area within the Historic District where this problem is most acute. We do not feel that adding an additional overlay is appropriate at this time in our development.

Future Potential Projects in the Diridon Station Area (Section 2.6.3)

SJDA is excited about the commercial growth opportunity on the westside of downtown, particularly as it relates to the possible Google project. We also understand that this project, or any specific project for that matter, is not a subject of a broader EIR update, and more detailed environmental review will accompany project development plans. However, we would like to raise two points to this section.

First, we object to the phraseology "Google Village Project." This project, which has not yet been proposed, should not be viewed by the city as a separate "urban village," but rather an integrated portion of downtown San Jose. This is crucial for overall integration of the area west of 87 into the broader downtown.

Second, since this section states five million square feet of office use is planned for the Diridon Station Area Plan (DSAP), we figure the overall Downtown-wide office capacity can be utilized for the westside, and vice-versa, until this capacity can be adjusted in the aforementioned EIR update that will follow this one.

Historic Resources (Section 3.5.1.5)

SJDA would like to see the completion of the downtown historic inventory in the near future.

Land Use and Planning – Existing Conditions (Section 3.11.1.1)

As demonstrated in Figure 3.11-1, we agree with the three area classifications specified in the EIR. However, we believe strongly that the classification of one of these areas as the "Diridon Station Area Urban Village" should be changed to reflect an integrated downtown strategy.

In addition to the points already raised about this misclassification, it is also important to note that "urban village" has a connotation for planning that is separate from the one enjoyed downtown. Classified as "Commercial-Development (C/D)," downtown enjoys the opportunity for fast-paced growth and specific uses, which differs greatly from an urban village classification (Table 3.11-1).

Since we do not believe it is the city's intention to see the westside of downtown zoned as an urban village, and we continue to desire an integrated downtown, we would recommend the removal of this designation from this area now and into the future.

Airport-related Plans and Regulations (Section 3.11.3)

SJDA is an advocate for Federal Aviation Administration (FAA) guidelines on building heights on the westside of downtown. It is curious to us that the document does not mention the City's standing practice of requiring building heights more strictly than does the FAA; perhaps we should find that encouraging in this document. We support the application of the Code of Federal Aviation Regulations as the governing document for building heights in this corridor.

Shade and Shadow (Section 3.11.2.4)

We do not believe that shade and shadow impacts should be measured on such a limited basis (natural sunlight on public open spaces). For example, shade and shadow should also be taken into consideration when the natural sunlight is blocked on long-standing private spaces as well, as this challenge will become ever more present as downtown continues to grow.

Construction Mitigation (Section 3.12.2.3)

There is no doubt that noise is an "unavoidable impact associated with traffic generated by the Downtown Strategy 2040." It is important to note that noise and traffic are two of many construction mitigation concerns in the downtown. We need construction mitigation guidelines for all of downtown, and we look forward to working with City staff to craft them in 2019.

Further, this section is perhaps the most curious for us by way of placement in the document. The paragraph detailing the development of the westside goes into greater detail with regards to the 14.2 million square feet of office space, claiming that "further development would exceed the planned Downtown Strategy 2040 development capacities for the area west of SR 87." We would recommend re-ordering this section to another spot in the document, as opposed to being buried in a section about construction mitigation and noise pollution. Additionally, we would reiterate our objection to the term "Google Village" project.

Finally, this section further highlights our concern about this document undershooting the growth potential of downtown at this critical time. If the area "west of SR 87" (which is different – and larger – than DSAP) is projected to exceed the overall office development goals of Downtown Strategy 2040, we have the opportunity to aim higher on the next update, and tie it into an actual strategy plan.

We look forward to working with the various city departments and neighborhood stakeholders as part of this process. Throughout, we will be a consistent voice for an integrated downtown plan, a comprehensive strategy, and for large-scale, big idea thinking for the future of our downtown. We welcome the work the city and community partners are undertaking to plan appropriately for the collective future of downtown San Jose.

Sincerely,

A handwritten signature in black ink, appearing to read "Knies". The signature is fluid and cursive, with the first letter being a large, stylized "K".

Scott Knies
Executive Director

CC: Mayor Sam Liccardo
Councilmember Raul Peralez
Kim Walesh
Jim Ortbal
Rosalynn Hughey
Michael Brilliot
Michael Rewkiewicz
Derrick Seaver
Nate LeBlanc

City of San Jose
Department of Planning, Building and Code Enforcement
Attn: Jenny Nusbaum
Jenny.Nusbaum@sanjoseca.gov

Subject: Comments to EIR, File No. PP15-102

Department of Planning Officials:

Santa Clara University, Bellarmine College Preparatory, Notre Dame High School and other Catholic entities are property owners of 95 South Market Street (APN 259-40-084) which is identified as being within the proposed Employment Priority Area (EPA) overlay in the Downtown SJ 2040 plan. The current zoning of this property parcel is DC (Downtown Commercial).

We are writing to express our concerns with the proposed EPA overlay that would impose limitations on our future development plans for this property, which are as follows:

1. The proposed EPA overlay zone area is too broad since the location of the Downtown BART station has not yet been determined or finalized. The EPA overlay area would only be applicable to properties within a one block radius of the BART station. Therefore, the EPA zone designation should be based on the actual BART station location after it has been approved.
2. The 95 S. Market street property is located more than one block from the currently proposed Downtown BART station. Therefore the property would not and should not be included in the one block radius designation.
3. The EPA designation would immediately create unwelcomed limitations on the development of properties downtown where more creative solutions could otherwise be developed in order to better balance the needs of retail, employment and housing. Other large cities have not created such blanket exclusions for projects with a combination of ground level retail, commercial office and residential in a single project. Property owners

would prefer to have the option to propose multi-use development projects that can benefit the City, businesses, employees and residents. The 95 S. Market property has a unique corner location facing the Cathedral, Museum of Art and Cesar Chavez Plaza where a multi-use project for retail, commercial and residential could be considered.

4. The limitations imposed by the EPA overlay penalize existing property owners who have not redeveloped their properties. There are several examples of properties within the EPA overlay that either have already been developed as housing or where residential housing is currently approved or under construction. (for example; [Marshall Square](#), 7 stories, 190 residential units with 9,400 sq ft retail. 27West, 22 stories, 350 residential units, with 17,500sq ft of retail.)

In summary, we believe the property at 95 S. Market Street should not be included in the EPA overlay area and are opposed to the limitations the EPA designation creates on the types of development projects that could be proposed for the property site in the future.

Sincerely,

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Mathewson Hall
960 West Hedding Street
San jose, CA 95126

Notre Dame High School
Business Office
Student Learning Center
596 South Second Street
San Jose, CA, 95112



October 22, 2018

Ms. Christina Caro
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

**Subject: Update to the CEQA Analysis for the San Jose Downtown Strategy
2040 Plan Project** P 18044

Dear Ms. Caro:

Per your request, I reviewed the San Jose Downtown Strategy 2040 Plan Project (the "Project"). My review is with respect to transportation and circulation considerations.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and 50 years professional consulting practice in these fields. I have both prepared and reviewed the Transportation and Traffic sections of environmental documents pursuant to the California Environmental Quality Act ("CEQA"). My professional resume is attached hereto. Technical comments on the FEIR follow:

VMT Per Capita Generated in the Project Area Is an Incomplete Metric for Measuring Traffic Impacts in the Subject Plan Area

The DEIR attempts to evaluate Project transportation impacts solely under the Vehicle Miles Traveled (VMT) per Capita metric provision of SB 743, eschewing the conventional delay/Level of Service (LOS) analysis. The VMT (vehicle miles traveled) per Capita (referring hereinafter to both VMT per unit population and VMT per employee as a single phrase while still recognizing that each has a separate rate) metric is a useful indicator when planning for a broad area or region, such as where generally identifying areas where development should be encouraged or discouraged, particularly when concentrating on considerations

such as Air Quality pollutant and Greenhouse Gas emissions since these have a rather direct correlation to VMT. However, when planning for a discrete area, VMT per Capita as the sole traffic metric gives absolutely no indication when a plan has packed so much development into an area as to make transportation and quality of life conditions unacceptable - the VMT per Capita values will just stay the same or perhaps even improve (become lower) somewhat. To draw any some inference about how much development is sustainable based on VMT, Total VMT generated by the plan and total VMT experienced within the subject area must be considered.

Appendix D Table ES-1 indicates that in the baseline (2015) condition, the Downtown Strategy Plan population was 12,548 and that the employment total in the area was 33,608 jobs and that this population and employment total generated a net VMT of 433,728 (sum of 103,562 and 340,166) in 2015. By 2040 under the existing General Plan the population would be 34,104, the employment would be 82,162 and these components would generate a net VMT of 997,831. Under the AGP/DTS, the population and employment totals would be 42,704 persons and 92,108 jobs producing a net VMT of 1,104,092. Under the AGP/DTS Alternative 1 and Alternative 2, the population and employment totals would be the same as under the basic AGP/DTS but the net VMT generated would rise to 1,119,230 and 1,135,235. Obviously, the increases in total VMT under the existing General Plan and the DTS and its alternatives, 230 percent over baseline under the existing General Plan, 254 percent over baseline for the DTS, and respectively 258 percent and 262 percent over baseline for DTS Alternatives 1 and 2 are highly significant and detrimental. However, the DEIR and its Appendix D choose to ignore the significance of this evidence.

These data are summarized in tabular fashion below.

Scenario	Population	Jobs	Net VMT	% Over Baseline
2015 Baseline	12,548	33,608	433,728	-
Year 2040 General Plan	34,104	82,162	997,831	230%
DTS 2040	42,704	92,108	1,104,092	254%
DTS 2040 Alt 1	42,704	92,108	1,119,230	258%
DTS 2040 Alt 2	42,704	92,108	1,135,235	262%

The Analysis Fails to Consider the Project’s Impacts on Public Transit

Although the Appendix D transportation analysis projects hefty increases in transit ridership, it fails to analyze whether transit services will be increased sufficiently to meet this increased burden. This is inadequate.

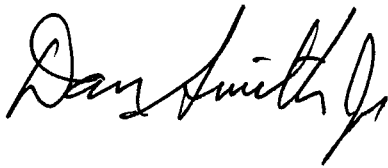
Ms. Christina Caro
Adams Broadwell Joseph & Cardozo
October 22, 2018
Page 3

Conclusion

Given all of the foregoing, the DEIR's evaluation of impacts on transportation is inadequate and must be completely revised and recirculated in draft status

Sincerely,

Smith Engineering & Management
A California Corporation



Daniel T. Smith Jr., P.E.
President



SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr.
President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present, President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

Transportation Centers. Project manager for Daly City Intermodal Study which developed a \$7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking .

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.

Improving The Residential Street Environment, with Donald Appleyard *et al.*, U.S. Department of Transportation, 1979.

Strategic Concepts in Residential Neighborhood Traffic Control, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.



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October 22, 2018

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Subject: Comments on the San Jose Downtown Strategy 2040 Plan

Dear Ms. Caro,

We have reviewed the September 2018 Draft Environmental Impact Report (DEIR) for the San Jose Downtown Strategy 2040 Plan (“Project”) located in the City of San José (“City”). The Plan’s project site is currently subject to the Downtown Strategy 2000 and the Envision San Jose 2040 General Plan (General Plan). In order to be consistent with the General Plan, the City proposes to update the 2000 Downtown Strategy to 2040. The 2040 Downtown Strategy proposes a General Plan Amendment (GPA) in order to expand the boundary of the Downtown area to include the east side of North 4th Street between St. John and Julian Streets. This GPA was previously evaluated in a separate October 2017 Initial Study/Mitigated Negative Declaration (IS/MND)¹ for the Fourth and St. John General Plan Amendment & Rezoning Project (“4th and St. John Project”), which we evaluated in a November 13, 2017 comment letter. In addition to the 4th and St. John GPA, the DEIR is proposing another GPA that would increase the development capacity of the downtown area by 4,000 dwelling units and approximately 3 million square feet of office space than what is proposed in the General Plan. In total, the Project proposes to have a total of 14,360 residential units, 14.2 million square feet of office space, 1.4 million square feet of retail space, and 3,600 hotel guest rooms in operation by 2040.

Our review concludes that DEIR fails to adequately evaluate the Project’s Air Quality and Greenhouse Gas (GHG) impacts. As a result, the emissions that will be generated during operation are not properly mitigated. An updated Environmental Impact Report (EIR) should be prepared to adequately mitigate the air quality and GHG impacts that the Project will have on the surrounding environment.

¹ <http://www.sanjoseca.gov/DocumentCenter/View/72867>

Air Quality and Greenhouse Gas

Failure to Implement All Feasible Mitigation Measures

According to the DEIR, the Project relies on air and GHG emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod")². Based on the emissions estimates in the Project's CalEEMod output files, the DEIR determines that the Project would generate significant operational criteria air pollutants emissions and GHG emissions when compared to the Bay Area Air Quality Management District's (BAAQMD) significance thresholds (p. 60, p. 147).

As a result, the Project proposes several mitigation measures that future projects will be required to implement (p. ix-x). Furthermore, as previously mentioned, the Plan is subject to requirements set forth in the General Plan, which has also proposed both policy and action measures in order to identify and reduce emissions that the Plan and future projects located within the Downtown area are required to follow (Table 3.3-2, p. 55-57 and Table 3.8-1, p. 143-144). However, even after implementation of these mitigation measures, the DEIR concludes that the criteria air pollutants and GHG emissions would result in significant and unavoidable impacts (p. 61 and p. 148). While it is true that the Project would result in significant impacts, the DEIR's conclusion that these impacts are "significant and unavoidable" is entirely unsupported.

Pursuant to the California Environmental Quality Act (CEQA), Lead Agencies are required to mitigate or avoid significant environmental impacts associated with discretionary projects. Environmental documents for projects that have any significant environmental impacts must identify all feasible mitigation measures or alternatives to reduce the impacts below a level of significance.³ Implementation of mitigation measures means that they must be made conditions of project approval and included in a Mitigation Monitoring and Reporting Plan (MMRP).⁴ If, after implementation of all feasible mitigation measures, a project is still deemed to have significant environmental impacts, the Lead Agency can approve a project, but must adopt a Statement of Overriding Consideration to explain why further mitigation measures are not feasible and why approval of a project with significant unavoidable impacts is warranted.⁵

The BAAQMD 2017 CEQA Guidelines specify that the significance threshold for long-range development plans like the Project is "no net increase in emissions."⁶ The Guidelines explain that, in order to conclude that a development plan's air quality impacts are significant and unavoidable, the Lead Agency must "evaluate individual as well as cumulative impacts of general plans, and all feasible mitigation

² CalEEMod website, available at: <http://www.caleemod.com/>

³ Pub. Res. Code §§ 21002, 21081(a).

⁴ 14 CCR § 15126.4(a)(2); see BAAQMD 2017 CEQA Guidelines, p. 4-7 (Implementation of mitigation measures "means that they are made conditions of project approval and included in a Mitigation Monitoring and Reporting Plan (MMRP).").

⁵ 14 CCR § 15091; BAAQMD 2017 CEQA Guidelines p. 5-16 (cumulative health risk from exposure to TACs and PM_{2.5}), p. 6-4 (carbon monoxide emissions); p. 8-3 (construction impacts); see also http://www.valleyair.org/transportation/GAMAQI_3-19-15.pdf, p. 115 of 125

⁶ BAAQMD 2017 CEQA Guidelines p. 9-1.

measures must be incorporated within the proposed plan to reduce significant air quality impacts.”⁷ Accordingly, an air quality impact can only be labeled as significant and unavoidable after all available, feasible mitigation is considered and incorporated as enforceable mitigation measures in the Project’s conditions of approval.

Review of the Plan’s proposed mitigation measures demonstrates that the DEIR fails to implement all feasible mitigation to reduce the Project’s significant air quality impacts to the greatest extent feasible prior to declaring them significant and unavoidable. Therefore, the DEIR’s conclusion that the Project’s operational air quality and GHG emissions are significant and unavoidable is unsubstantiated. Additional mitigation measures should be identified and incorporated in order to reduce the Project’s air quality impacts to the maximum extent possible. Until all feasible mitigation is reviewed and incorporated as binding mitigation in the EIR, impacts cannot be considered significant and unavoidable.

Additional Feasible Mitigation Measures Available to Reduce Operational Emissions

We have reviewed the DEIR and have identified several mitigation measures that the Downtown Strategy Plan either failed to incorporate or could make stricter, which would further reduce the Project’s operational air quality and GHG emissions. Additional mitigation measures that could be implemented to reduce emissions are discussed below.

There are several feasible mitigation measures available to reduce VOC emissions (also referred to as ROG), including the following, which are routinely identified in other CEQA matters as feasible mitigation measures:

- Use of Zero-VOC Emissions Paint for Projects Within the Downtown Strategy Project Area:
 - The use of zero-VOC emission paint has been required for numerous projects that have undergone CEQA review.⁸ Zero-VOC emission VOC paints are commercially available.⁹
 - The DEIR states that future projects that exceed the BAAQMD’s Screening tables will be required to “Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., Regulation 8, Rule 3: Architectural Coatings)” (p. 64). We recommend that this measure be expanded to all future developments within the Downtown area. Thus, all future projects, regardless of the size, will be required to use low VOC coatings during both construction and operation.

The DEIR proposes to implement a transportation demand program (TDM) and proposes several Transportation Control Measures (TCMs) that the TDM will implement (p. 60). Additionally, the General Plan Policy LU-3.5 aims to “Balance the need for parking to support a thriving Downtown with the need to minimize impacts of parking on a vibrant pedestrian and transit-oriented urban environment” (p. 202). In order to further mitigate the criteria air pollutant emissions resulting from the Plan and to further implement the General Plan policy, we have identified additional measures that can be added to

⁷ BAAQMD 2017 CEQA Guidelines p. 9-1.

⁸ <http://www.longbeach.gov/pw/eir/specdistregionalgov/03-sdrg-scaqmd-122205.pdf>

⁹ http://www.benjaminmoore.com/en-us/for-your-home/paint-products/natura-waterborne-interior-paint?lang=en_US&role=H#adv=0&tab=2 and <http://www.mlandman.com/gbuildinginfo/lowvocpaints.shtml>

the TDM from CAPCOA's Quantifying Greenhouse Gas Mitigation Measures.¹⁰ Mitigation for criteria pollutant emissions should include consideration of the following mobile mitigation measures to be added to the TDM in an effort to reduce operational emissions to below thresholds:

Parking Measures

The DEIR's TDM Plan includes several parking measures, that include: provide preferential parking for carpools and vanpools, implementing parking fees for single occupancy vehicle commuters, and implementing a cash-out program for employees (p. 61). We propose that the following measures be added to the TDM's parking measures in an effort to further reduce the mobile source emissions that will be generated in the Downtown area:

Limit the Parking Supply That Can Be Allotted to Future Developments Within the Downtown Strategy Project Area

We recommend that the Downtown Strategy change parking requirements and types of supply within the Plan site to encourage "smart growth" development and alternative transportation choices by Downtown residents and employees, resulting in less VMTs. This will be accomplished in a multi-faceted strategy:

- Elimination (or reduction) of minimum parking requirements
- Creation of maximum parking requirements

Require Future Developments Within the Downtown Strategy Project Area to Price Workplace Parking

We further recommend that the Downtown Strategy require future businesses to price workplace parking at employment centers as a means of encouraging the use of public transportation or carpooling, and discouraging single-driver vehicle commutes. This may include: explicitly charging for parking for its employees, implementing above market rate pricing, validating parking only for invited guests, not providing employee parking and transportation allowances, and educating employees about available alternatives.

Require Future Developments Within the Downtown Strategy Project Area to Provide Electric Vehicle Chargers

According to The International Council of Clean Transportation, California's electric vehicle market grew 29% from 2016 to 2017, with San José being one of the leading markets.¹¹ However, the City of San Jose only has 53 electric vehicle (EV) chargers currently in operation, primarily located in downtown public garage areas.¹² Therefore, in order to encourage the use of electric vehicles and limit tailpipe emissions, we recommend that the Plan require that future projects within the Downtown Strategy Project Area:

- Provide additional electric parking in public parking structures;

¹⁰ <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

¹¹ <https://www.theicct.org/sites/default/files/publications/CA-cityEV-Briefing-20180507.pdf>, p.3

¹² <http://www.sanjoseca.gov/index.aspx?NID=3800>

- Require a specified percentage of parking located at residential, retail, and office projects within the Plan area to be equipped with conductive/inductive electric vehicle charging stations and signage prohibiting parking of non-electric vehicles.

Furthermore, we recommend other measures that could be incorporated into the Downtown Strategy, which would further reduce the Plan’s GHG emissions. Additional mitigation measures that could be implemented to reduce GHG emissions include, but are not limited to, the following:¹³

- Develop and follow a “green streets guide” for the Downtown area that requires:
 - Use of minimal amounts of concrete and asphalt;
 - Installation of permeable pavement to allow for storm water infiltration; and
 - Use of groundcovers rather than pavement to reduce heat reflection.¹⁴

When combined together, these measures offer a cost-effective, feasible way to incorporate lower-emitting design features into the proposed Plan, which subsequently, reduces criteria air pollutants and GHG emissions released during Project operation. An updated EIR must be prepared to include additional mitigation measures and expand the mitigation already proposed. The Project Applicant also needs to demonstrate commitment to the implementation of these measures prior to Project approval, to ensure that the Project’s operational emissions are reduced to the maximum extent possible.

The DEIR Fails to Disclose Construction Emissions from Future Developments Within the Downtown Strategy Project Area, and Fails to Ensure that Construction Impacts Will Be Adequately Disclosed and Mitigated During Future Buildout

The DEIR states that it is not possible to analyze construction emissions at the Plan stage because the City cannot predict exactly what construction activity will occur “in any one year or where within the boundaries of Downtown.”¹⁵ The DEIR then claims that “future project-level environmental review will be required of individual development projects to account for their construction impacts.”¹⁶ The DEIR then concludes, without analysis, that construction criteria pollutant emissions for future projects built under the Plan will be less than significant.¹⁷ The DEIR’s conclusion is based on two unsupported assumptions.

First, the DEIR states “it is assumed that all future projects under the Downtown Strategy 2040 would not exceed the average daily or annual emissions during construction.”¹⁸ This assumption is based on

¹³ http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf

¹⁴ Cool Houston Plan;

http://www.harcresearch.org/sites/default/files/documents/projects/CoolHoustonPlan_0.pdf

¹⁵ DEIR, p. 62.

¹⁶ DEIR, p. 62.

¹⁷ DEIR, p. 65.

¹⁸ DEIR, p. 65.

the DEIR's unsupported conclusion that all individual development projects within the Plan area will be smaller than the BAAQMD Construction Emission Screening Levels of 240 dwelling units, 554 hotel rooms, or 277,000 square feet of office or other commercial/retail uses.¹⁹ However, the DEIR provides no evidence to support its reliance on this assumption, and it is indeed contradicted by existing permits and approvals within the Plan area. For example, the City's 2017 approval of the General Plan Amendment for 4th & St. John authorized a minimum of 337 dwelling units, and up to 728 dwelling units and up to approximately 1,189,000 square feet of commercial/office uses on a 0.91-acre portion of the Project area. The 4th & St. John Project alone, which represents just 1/1920th of the Plan Project's approximately 3-square mile²⁰ size, is therefore more than double the BAAQMD screening criteria for analyzing construction emissions, yet the DEIR fails to mention it and fails to include any analysis of the 4th & St John Project's construction emissions.

Second, the DEIR assumes that, in the event a future project *does* exceed BAAQMD Screening Levels, the construction emissions from those projects will be reduced to less than significant levels by supplemental environmental review which "may be required" prior to project approval or implementation.²¹ The DEIR contains no evidence to support this assumption. Nor could it, because the City cannot predict, without a quantitative assessment, that unidentified mitigation measures that are intended to be applied to undefined projects to reduce undetermined construction emission impacts will be 100% effective at reducing construction air quality impacts to less than significant levels.

The DEIR must be revised to remove these unsupported significance conclusions and add binding requirements that all subsequent buildout projects within the Plan area that meet or exceed BAAQMD Screening Thresholds shall be required to prepare a supplemental EIR which includes a quantitative air quality analysis to determine the significance of the project's construction emissions and implement all feasible mitigation measures.

The DEIR Fails to Disclose the Extent of Known Soil and Groundwater Contamination Within the Project Area and Fails to Include Adequate Mitigation For Potentially Significant Known Contamination

The DEIR discloses that there are approximately 103 properties within the Downtown Area that are listed as closed Leaking Underground Storage Tank (LUST) cases, five properties listed as open LUST cases, eight DTSC cleanup sites, one military cleanup site, 14 open cleanup program site cases, and 12 closed cleanup program site cases.²² The DEIR acknowledges that "new development under the proposed Downtown Strategy 2040 could occur in areas with soil contamination" which "may contain a variety of chemical compounds associated with fuels, oils, solvents, metals, or other hazardous

¹⁹ *Id.*; DEIR, p. 63.

²⁰ DEIR Notice of Availability, p. 1.

²¹ DEIR, p. 65.

²² DEIR, p. 151-152.

substances originating from historical and/or current land uses.”²³ The DEIR further acknowledges that some of this contamination may have migrated via shallow groundwater to properties in the Downtown area, and that, “[i]f not appropriately managed, contamination from past releases could present health risks to construction workers and/or the public during the site preparation, dewatering, construction, and maintenance activities.”²⁴ However, the DEIR fails to disclose current levels of contamination and admittedly defers all analysis and mitigation of soil and groundwater contamination impacts to “subsequent analysis” that the City anticipates will be performed in post-approval studies.²⁵ The DEIR then concludes that the Project’s hazardous materials impacts related to soil and groundwater contamination will be less than significant.²⁶ This conclusion is not supported by any evidence in the DEIR, and is contradicted by publicly available evidence related to projects within the Plan area.

We previously commented that a 2017 Phase I Environmental Site Assessment (ESA) that was performed for the 4th & St. John Project site documented residual soil and groundwater contamination at the site which exceeds San Francisco Bay Regional Water Quality Board (SFBRWQCB) Environmental Screening Levels (ESLs). The contamination included benzene detections at 31 parts per billion (ppb), which exceeded the ESL of 1 ppb in shallow groundwater and creates a vapor intrusion risk in a residential scenario.²⁷ We previously explained that this contamination, which will be disturbed by Project construction, is likely to pose a health risk to the public. The DEIR fails to disclose this contamination as a potentially significant impact, fails to include the 4th & St. John Phase I ESA, and fails to disclose the potentially significant health risk from exacerbating the site’s existing contamination impacts during Project construction. The DEIR must be revised to disclose these impacts, as well as the existing levels of known contamination at the other project sites within the Plan area.

We also commented that the City’s proposed development of a site management plan for the 4th & St. John Project site was inadequate mitigation because it contained no regulatory standards and would only be implemented upon future Project development, this improperly deferring mitigation to address known contamination.²⁸ The DEIR for the Plan contains similarly inadequate mitigation which proposes to create post-approval Soil Management Plans and Remedial Action Workplans that contain no regulatory standards.²⁹ The DEIR must be revised to disclose the levels of existing contamination within the Plan area, and to include clear and binding mitigation that meets regulatory standards.

²³ *Id.*

²⁴ DEIR, p. 159.

²⁵ DEIR, p. 159.

²⁶ DEIR, p. 161.

²⁷ See SWAPE 11/17/17 comments on 4th & St. John, p. 2.

²⁸ *Id.*

²⁹ DEIR, pp. 159-161.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt Hagemann". The signature is fluid and cursive, with a long horizontal stroke at the end.

Matt Hagemann, P.G., C.Hg.

A handwritten signature in black ink, appearing to read "Hadley Nolan". The signature is cursive and somewhat stylized.

Hadley Nolan

Tel: (949) 887-9013

Email: mhagemann@swape.com

Matthew F. Hagemann, P.G., C.Hg., QSD, QSP

**Geologic and Hydrogeologic Characterization
Investigation and Remediation Strategies
Litigation Support and Testifying Expert
Industrial Stormwater Compliance
CEQA Review**

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.

B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2014, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt’s responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

With Komex H2O Science Inc., Matt’s duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nationwide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9.

Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, *Oxygenates in Water: Critical Information and Research Needs*.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific

principles into the policy-making process.

- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F.** 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukunaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Clean up at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examinations, 2009-2011.

HADLEY KATHRYN NOLAN



Technical Consultation, Data Analysis and
Litigation Support for the Environment

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EDUCATION

UNIVERSITY OF CALIFORNIA, LOS ANGELES B.S. ENVIRONMENTAL SCIENCES & ENVIRONMENTAL SYSTEMS AND SOCIETY JUNE 2016

PROJECT EXPERIENCE

SOIL WATER AIR PROTECTION ENTERPRISE

SANTA MONICA, CA

AIR QUALITY SPECIALIST

SENIOR PROJECT ANALYST: CEQA ANALYSIS & MODELING

- Modeled construction and operational activities for proposed land use projects using CalEEMod to quantify criteria air pollutant and greenhouse gas (GHG) emissions.
- Organized presentations containing figures and tables that compare results of criteria air pollutant analyses to thresholds.
- Quantified ambient air concentrations at sensitive receptor locations using AERSCREEN, a U.S. EPA recommended screening level dispersion model.
- Conducted construction and operational health risk assessments for residential, worker, and school children sensitive receptors.
- Prepared reports that discuss adequacy of air quality and health risk analyses conducted for proposed land use developments subject to CEQA review by verifying compliance with local, state, and regional regulations.

SENIOR PROJECT ANALYST: GREENHOUSE GAS MODELING AND DETERMINATION OF SIGNIFICANCE

- Evaluated environmental impact reports for proposed projects to identify discrepancies with the methods used to quantify and assess GHG impacts.
- Quantified GHG emissions for proposed projects using CalEEMod to produce reports, tables, and figures that compare emissions to applicable CEQA thresholds and reduction targets.
- Determined compliance of proposed land use developments with AB 32 GHG reduction targets, with GHG significance thresholds recommended by Air Quality Management Districts in California, and with guidelines set forth by CEQA.

PROJECT ANALYST: ASSESSMENT OF AIR QUALITY IMPACTS FROM PROPOSED DIRECT TRANSFER FACILITY

- Assessed air quality impacts resulting from implementation of a proposed Collection Service Agreement for Exclusive Residential and Commercial Garbage, Recyclable Materials, and Organic Waste Collection Services for a community.
- Organized tables and maps to demonstrate potential air quality impacts resulting from proposed hauling trip routes.
- Conducted air quality analyses that compared quantified criteria air pollutant emissions released during construction of direct transfer facility to the Bay Area Air Quality Management District's (BAAQMD) significance thresholds.
- Prepared final analytical report to demonstrate local and regional air quality impacts, as well as GHG impacts.

PROJECT ANALYST: EXPOSURE ASSESSMENT OF LEAD PRODUCTS FOR PROPOSITION 65 COMPLIANCE DETERMINATION

- Calculated human exposure and lifetime health risk for over 300 lead products undergoing Proposition 65 compliance review.
- Compiled and analyzed laboratory testing data and produced tables, charts, and graphs to exhibit emission levels.
- Compared finalized testing data to Proposition 65 Maximum Allowable Dose Levels (MADLs) to determine level of compliance.
- Prepared final analytical lead exposure Certificate of Merit (COM) reports and organized supporting data for use in environmental enforcement statute Proposition 65 cases.

ACCOMPLISHMENTS

- **Academic Honoree**, Dean's List, University of California, Los Angeles

MAR 2013, MAR 2014, JAN 2015, JAN 2016

WORKING PARTNERSHIPS USA

10/22/2018

Department of Planning, Building, and Code Enforcement
ATTN: Jenny Nausbaum
200 East Santa Clara St., 3rd Floor
San Jose, CA 95113

Dear Ms. Nausbaum,

Subject: Draft Environmental Impact Report (EIR) for the Downtown Strategy 2040

The following comments on the Draft EIR for Downtown Strategy 2040 (“the Strategy”) are submitted on behalf of Working Partnerships USA, a community organization bringing together the power of grassroots organizing and public policy innovation to drive the movement for a just economy in Silicon Valley by tackling the root causes of inequality and poverty.

Tech companies like Google, Adobe and others planning to expand in downtown San Jose and other such firms the City hopes to attract to new commercial office space depend on the work of many thousands of cafeteria workers, janitors, security guards, shuttle drivers, groundskeepers, laundry attendants, massage therapists, and other service workers. According to a study by the Bay Area Council Economic Institute, the tech industry generates approximately 4.3 jobs in local goods and services for each additional direct tech job, and has the largest jobs multiplier of any industry.¹ This means that for every new direct tech job in Downtown San Jose, four service jobs are created such as food service employees, janitors, ride-share drivers, and nurses. We want to ensure that the perspectives of the thousands of tech service workers likely to be working in Downtown San Jose are accounted for in this development process, as proposed project’s like Google’s 8 million square foot Google Village, referred to numerous time in this document, move forward. Tech service workers working in the millions of additional square feet of commercial office space proposed to be added under this plan also stand to be impacted by this plan as local employees, commuters, and residents. We believe that the Downtown Strategy 2040 can be improved to achieve superior environmental impact mitigation through increased trip internalization, creating neighborhoods which are more inclusive and diverse, better mitigating the impacts of traffic and air quality hazards.

While we appreciate the plan’s efforts to address the City’s fiscal issues, we remain concerned that adding either 3 or 4.2 square feet of additional office space downtown adding X workers in the strategy or listed alternatives while only adding 4,000 units of additional housing Downtown for new workers, without assurances of how much of that housing will be affordable to growing numbers of low wage service workers, will only lead to additional growth-induced impacts. It is troubling that the EIR did not examine any alternatives that included additional affordable housing construction. By not allowing additional housing, the Strategy will produce results in longer commutes, increases traffic congestion, degradation of

¹ “Technology Works: High-Tech Employment and Wages in the United States” Technology Works: Hi-Tech Employment and Wages in the United States, 2012, p. 5, available at <http://documents.bayareacouncil.org/TechReport.pdf>.

Also see “The New Geography of Jobs”, Enrico Moretti. First Mariner Books. 2013.

air quality, increased greenhouse gases, and causes other transportation-related environmental impacts.² As leading advocates for tech service workers, we are concerned that the Downtown Strategy 2040 will not create enough housing that is affordable to the thousands of additional low-wage service workers in jobs working on-site or indirectly with new commercial office operation in Downtown San Jose, thereby undermining the plan's goal of limiting vehicle miles traveled. Low-wage workers like tech service workers are more likely to travel longer distances because of the housing affordability crisis spreading across Silicon Valley.³ Within the potential Google Village alone, our partners in Silicon Valley Rising estimate the potential for an additional 8,000-10,000 service contract workers as food service workers, janitors, security officers and shuttle bus drivers alone if the development's operation mimics those in Google's Mountain View operations. Low wage service workers are also increasingly being displaced to other cities in Northern California further away from San Jose and accessible regional transit options, likely leading those who continue working in the region to need to spend extra time in cars on the road. Our partners in Silicon Valley Rising surveyed tech service workers and found a majority of those surveyed have families with children.⁴ A study by UC Santa Cruz's Everett Program researchers on contracted workers in Silicon Valley found that 22% of Silicon Valley's contract industry workers live in households with multiple unrelated families because of the lack of affordable housing.⁵ We estimated in a 2016 report that the majority of tech's blue collar workers were Black or Latino^{6,7}, whereas tech's engineers and leadership are majority white and overwhelmingly male. Google's tech employees are 1% Black and 3% Hispanic.⁸

Also, despite commitments by the City of San Jose to address the Google Village within its own Environmental Review, it is troubling that this project not only references the Google Village 14 times, but that this proposal would add between 1.2 and 2.4 million square feet of commercial office space in the area where Google has continued to buy land (where currently 5 million square feet is envisioned). It is also troubling that the document addresses some of the development impacts of a potential Google project before the company has even submitted a development application and without providing mitigations for those impacts. This seems entirely inappropriate, and the City should consider leaving additions to Diridon Station Area office growth, and references to specific project-specific impacts of that office growth, to future project-level environmental reviews submitted through the project development process.

The best way to address the growth induced impacts is to create affordable housing that is carefully targeted toward the diverse mix of new workers in Downtown San Jose. Because of the insufficient efforts to add housing at the appropriate levels of income, and of the lack of attention to low-wage workers' potential impacts on transportation and traffic, the EIR fails to comply with CEQA's mandate to provide complete and accurate information, especially project-specific information, about foreseeable environmental impacts of the project.

2

³ "The highly paid technical and business services workers who live in Silicon Valley have relatively short commute times, since they typically work nearby. It's middle- and lower-income workers — teachers and firefighters, security guards at tech campuses, waiters at restaurants — who have been priced out of the Peninsula and are spending much more time in traffic" <https://ww2.kqed.org/news/2016/04/07/in-search-of-cheaper-housing-silicon-valley-workers-face-long-commutes/>

⁴ In two surveys of cafeteria workers at Intel and Cisco conducted by UNITE HERE found that 53% and 70% of surveyed cafeteria workers had families with children. Survey conducted in January and October 2016 respectively.

⁵ See Silicon Valley Technology Industries Contract Workforce Assessment. Chris Benner and Kyle Neering. University of California Santa Cruz. March 29, 2016. Available at

<http://www.everettprogram.org/main/wpcontent/uploads/Contract-Workforce-Assessment.pdf>

⁶ See Tech's Invisible Workforce. A report by Working Partnerships USA and Silicon Valley Rising. March

⁷. Available at <http://www.wpusa.org/Publication/TechsInvisibleWorkforce.pdf>

⁸ <https://www.google.com/diversity/>

Our comments are as follows:

1. The EIR's discussion of Transportation/Traffic and its Transportation Impact Analysis (TIA)'s are incomplete without more clarity on the type and level of affordable housing.

The minimum affordable housing required of developers is 15% affordable units or in-lieu fees, following the City's standard affordable housing requirements. The city's BMR ordinance targets affordability levels at or below 120% of AMI for ownership units and at or below 80% AMI for rental units. For a number of years, Downtown Housing construction has been exempt from providing affordable units or fees to support construction of such units and it is unclear if such exemptions will continue. The Downtown High Rise exemption for Affordable Housing Impact Fees is not noted in the EIR. The plan does not stipulate which types of housing will receive affordable designation (rental or owned, micro-units or two bedrooms, on-site or off-site). The types of housing that receive affordable designation will impact tech service workers. Micro-units will not serve working families. Rentals are more likely to be obtainable than ownership units for low-wage workers, absent down-payment assistance.

The housing strategy is not likely to meet the housing needs of Downtown San Jose's thousands of low-wage service workers. The EIR does not provide a breakdown of the types of employment or income levels of workers projected in Downtown San Jose with the addition of 3 or 4.2 million square feet of office space in the Strategy or listed alternatives. Based on estimates from our Silicon Valley Rising partners, we estimate that Google Village alone may require between 8,000 and 10,000 subcontracted cafeteria workers, janitors, security guards, shuttle drivers, and other facilities workers based in Downtown San Jose.⁹ This estimate does not include other service workers providing the numerous other amenities or services, many made available by Google and other employers, such as massage therapists, hair stylists, laundry attendants, Uber/Lyft drivers, fitness instructors, gym attendants, etc., and other induced goods and service jobs created by tech's jobs multiplier. Without additional requirements to shape the types of housing created (ie. 2-3 bedroom units rather than micro units or co-living spaces) we predict that the housing will likely the family housing needs of low-income workers in Downtown San Jose.

We recommend creating an alternative within the EIR adding additional units of housing and providing for appropriate levels of affordability in new housing. None of the alternatives address the growth impacts of the project like the demand for additional housing created by adding office space. Today even many directly-employed tech workers are having trouble affording market-rate housing, therefore the plan could benefit from an alternative that adds additional housing and sets forth policy to set aside affordable units for low and moderate-income workers as well.¹⁰ Family size and situation of low-income tech workers will vary, including both single-earner and dual-earner households, and both large-family, and single-individual households. The mix of affordable unit allocations should reflect that diversity. An alternative housing strategy should include a provision to ensure that a percentage of each type of unit is set aside for low-income households, ideally with a better mix of family housing. We also strongly recommend adding a provision which gives first priority to households who work in San Jose or in communities at greatest risk of displacement when evaluating potential tenants for the area's affordable housing, in order to ensure increased trip internalization. These preferences are allowable under HUD rules if they do not have a discriminatory effect.

The EIR does not address induced employment growth caused by the tech's service sector multiplier. As previously mentioned, the tech industry creates approximately 4.3 goods and services jobs for each direct tech job. According to economist and multiplier expert Enrico Moretti: "With only a fraction of the jobs,

⁹ Our estimate is based on internal estimates provided by UNITE HERE Local 19, SEIU USWW, and Teamsters Local 853.

¹⁰ <https://www.theguardian.com/technology/2017/feb/27/silicon-aa-cost-of-living-crisis-has-america-highest-paid-feeling-poor>

the innovation sector generates a disproportionate number of additional local jobs and therefore profoundly shapes the local economy”. Moretti uses Apple in Cupertino as an example, “Incredibly, this means that the main effect of Apple on the region’s employment is on jobs outside of high tech.”²⁰ Studies of jobs multipliers distinguish between “tradable” and “non-tradable” sectors. Tech is in the “tradable” sector because it sells goods in regions other than where they are produced. According to the Bay Area Council Economic Institute Report, one new tech job creates approximately 4.3 jobs in local “non-tradable” sectors, meaning sectors whose goods or services are consumed in the same region as where they are produced. These 4.3 “non-tradable” jobs include localized services like restaurants, hotels, healthcare and personal service etc.¹¹ Moretti estimates that for every five jobs that are created, two will be for professional jobs such as doctors, nurses and lawyers, while three will be for unskilled occupations like restaurant and hotel workers or retail clerks etc. The DSEIR predicts that employment in the

Downtown areas allowable growth will increase from 11.2 million square feet currently to 14.2 million square feet in 2040 under proposed project conditions, an increase of 3 million square feet or roughly 10,000 jobs, with an alternative allowing even 1.2 million more square feet. If 70% of these employees are direct tech employees, then in the long term, tech’s multiplier effect will create 43,000 induced jobs in the nontradable sector. Of those 43,000 jobs, 25,800 will be non-professional, presumably low-wage jobs. Without access to local affordable housing, many of these 25,800 low-wage workers will have to drive long distances to serve tech workers in Downtown San Jose. We urge the City to consider the environmental impacts of these tens of thousands of potentially-induced low-wage jobs in terms of added vehicle miles traveled, air quality, noise, traffic and parking needs.

Draft EIR does not provide "project-specific" analysis CEQA, given that there are several decisions still to be made later about major project components, which could dramatically change the long-term and short-term environmental impacts to nearby land uses. Several decisions, including decisions about the size and scope of the Google Village, changes in height policies connected to the One Engine Inoperative policy, the design of the Diridon Station, the layout of transit lines, the use of Constructing Staging Areas for future transit projects, the management of construction related traffic, and other intended development proposals in the pipeline will shape many of the impacts identified in this report. For these reasons, this EIR should not be considered project-specific.

The transportation, parking and vehicle miles traveled estimates will be impacted by inadequacy of affordable housing. Traffic impacts could increase significantly if indirect and induced low wage workers added to the traffic and transit analysis. Any low-wage service workers shut out of Downtown San Jose housing, or who are able to continue to afford housing near other transit routes are likely to drive and to drive long distances. Low wage workers who do not live in San Jose are likely to have longer commutes than their median- to high-wage counterparts who are more likely to be able to afford market rate options in San Jose or closer to work. The bulk of the Strategy’s transportation strategy are likely to be moot for low-wage service workers without affordable housing on site. Many tech service workers live too far away to benefit from any potential transit improvements. The EIR does not state whether a Downtown San Jose employer’s TDM programs are required to address transportation impacts of subcontractors.

Alternatively, more affordable housing can increase transit use. The more that the housing produced is affordable and accessible to all Downtown San Jose workers, the more likely that they will choose to live in the project area, and to walk, bike or take transit to work (increasing internal trips). Increased housing affordability will increase motivation for Downtown San Jose workers of both low and moderate income levels to live where they work and to become riders of Downtown and Diridon Station transit services. Increasing trip internalization for Downtown’s low-wage workers will be better for the physical environment than the trip internalization of their tech employee counterparts because low-wage workers

¹¹ BACEI Report pg. 25

2. The Strategy does not take the necessary steps to address air and construction impacts.

The plan does not support the primary goals of the current Regional Air Quality Plan based on greenhouse gas emissions reduction 2040 targets¹²: The Downtown Strategy 2040's contribution to greenhouse gas emissions (GHG) and climate change for the 2040 timeframe is determined by the Bay Area Air Quality Management District to be "significant and unavoidable." The increase in Greenhouse Gas emissions are not likely to be mitigated by the proposed strategies in the city's plans for GHG reduction. The dramatic increase in VMT based on the increased development capacity downtown will lead to 167, 117 metric tons of CO₂ emissions.

The plan will lead to unmitigable air quality impacts that will have significant impacts on the nearby community and to new residents of the area¹³: The report cites that the full build-out of the Downtown Strategy 2040 would result in a significant increase in criteria pollutants in the Bay Area, contributing to existing violations of ozone standards. The criteria pollutants include increases in nitrogen oxides, carbon monoxide, fugitive dust, and particle materials 10 and 2.5. These pollutants are shown to cause excess cancer risk and increasing the hazard index for other health risks.

The plan will have significant impacts on nearby sensitive receptor sites that are likely to increase adverse health impacts¹⁴: As quoted Appendix B "Air Quality and GHG Analysis," the BAAQMD CEQA Air Quality Guidelines consider exposure of sensitive receptors to air pollutant levels that result in an unacceptable cancer risk or hazard, to be significant. Sensitive receptors, which include vulnerable population including children under 14, the elderly over 65, athletes, and people with cardiovascular and chronic respiratory diseases. The report notes that the downtown area includes many current proposed sites with high concentrations of sensitive receptors such as residents, schools, hospitals, daycare centers, or retirement homes. According to the summary of the report analysis of increased health risks, the DTS 2040 Plan would "permit and facilitate the development of new sensitive receptors, such as new homes, in locations near arterial and collector roadways, highways, and stationary sources of TAC emissions. Screening levels indicate that sensitive receptors within the DTS 2040 Plan Area would be exposed to levels of TACs and/or PM_{2.5} that could cause an unacceptable cancer risk or hazard near highways and stationary sources."

The proposed EIR is likely to result in significant construction particles being released as part of the increased housing and office development¹⁵. Though the construction period is noted in the report to be relatively short, based on announced development projects like the Google development, it appears that the Downtown area is likely to see sustained development and construction activity over the next 20 years. This construction activity, supercharged by the 25% increase in the commercial development capacity will lead to significant and unmitigable environmental impacts. The report notes that "emissions commonly associated with construction activities include fugitive dust from soil disturbance, fuel combustion from mobile heavy-duty diesel- and gasoline-powered equipment, portable auxiliary equipment, and worker commute trips. During construction, fugitive dust, the dominant source of respirable particulate matter (PM₁₀) and

¹² GREENHOUSE GAS EMISSIONS assessment, Pages 141-149
<http://www.sanjoseca.gov/DocumentCenter/View/79629>

¹³ AIR QUALITY assessment, Pages 51-71 <http://www.sanjoseca.gov/DocumentCenter/View/79629>

¹⁴ Existing Conditions, Air Quality Assessment, Pages 57-59
<http://www.sanjoseca.gov/DocumentCenter/View/79629>

¹⁵ Construction Emissions, Air Quality Assessment, Page 62
<http://www.sanjoseca.gov/DocumentCenter/View/79629>

fine particulate matter (PM2.5) emissions, is generated when wheels or blades disturb surface materials. Demolition and renovation of buildings can also generate fugitive PM10 and PM2.5 emissions. Uncontrolled dust from construction can become a nuisance and potential health hazard to those living and working nearby.” The report also notes the traffic generated by diesel-powered of most construction equipment can result in substantial nitrogen oxide (NOX), Particle Material 10 (PM10) and Particle Material 2.5 (PM2.5) emissions. Moreover, these environmental effects are exacerbated by the commutes of construction workers and the building coatings that are sources of Reactive Organic Gases (ROG) emissions. Worker commute trips and architectural coatings are dominant sources of reactive organic gases (ROG) emissions.

3. The Strategy does not address the RHNA mandated by the state’s housing element law

California’s housing element law requires local governments to consider projected housing needs by income level to guide planning decisions. The Association of Bay Area Governments (ABAG) identified the following housing needs: 20,843 affordable housing units in San Jose (2014-2022). 59.4% of the housing needs identified by ABAG’s Regional Housing Needs Assessment (RHNA) in San Jose are for affordable units (9,233 very-low income units, 5,428 low-income units, 6,188 moderate-income units).¹⁶ The City of San Jose’s affordable housing efforts and the plan within the Strategy differs significantly from the distribution of housing needs identified by ABAG. The plan does not appear to help advance RHNA’s affordable housing needs outright (only requiring 15% percent inclusionary policy or in-lieu fees, and as noted earlier ignoring San Jose’s Affordable Housing exemption for Downtown High Rise construction). An alternative that included plans to add significant amounts of affordable housing to meet San Jose’s RHNA would add additional clarity to the Strategy.

We hope the City will take the time to address the issues raised here and improve the Strategy and its EIR so that it addresses the needs all of local workers on tech campuses and thereby better mitigates its environmental impacts.

Sincerely,

Jeffrey Buchanan

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¹⁶ ABAG Final Regional Housing Need Plan, San Francisco Bay Area 2014-2022
[https://abag.ca.gov/planning/housingneeds/pdfs/Final%20RHNA%20\(2014-2022\).pdf](https://abag.ca.gov/planning/housingneeds/pdfs/Final%20RHNA%20(2014-2022).pdf)

TRANSMITTED VIA EMAIL

October 22, 2018

Gerald Boyd and Jenny Nusebaum
 City of San Jose
 200 East Santa Clara Street, 18th Floor
 San Jose, CA 95113

Dear Mr. Boyd and Ms. Nusebaum

RE: Downtown Strategy 2040 – DEIR

On behalf of SV@Home and our members, we are pleased to have the opportunity to comment on the Draft EIR for the Downtown Strategy 2040 General Plan Update. SV@Home supports the expanded Downtown frame, particularly as we begin to envision development in the Diridon Station Area Plan and surrounding neighborhoods. We are also very supportive of any action that adds residential dwelling unit capacity to the Downtown. A vibrant downtown needs both residents and employees.

We do, however, have three concerns about the underlying assumptions of the EIR.

- 1) **We do not agree with the strategy of shifting growth allowances from other Urban Villages to Downtown.**

While we agree that we need more housing in the Downtown, and appreciate the efforts to expand these allowances, we should not be reducing the opportunities for residential growth in other parts of the City. We simply need more housing everywhere.

- 2) **We believe that the additional 4000 dwelling units proposed by the Downtown Strategy 2040 General Plan Update, and reflected in the EIR, is insufficient based on plans for new employment growth in the Plan Area.**

With the Diridon Station Plan underway, and plans for as many as 20-30,000 new jobs, more housing is needed. Members of the SAAG have consistently placed the importance of housing, and affordable housing in particular, at the top of the priority list for the Station Area.

We understand that the GP 2040 was designed as a “Jobs-First” General plan. But our housing needs have become significantly more acute since the Plan was adopted in 2011, even as the City has made strides in acknowledging the challenge and working to bring more residential development on line.

When originally adopted, the San Jose General Plan contemplated the development of 48,659 new jobs and 11,160 new homes within the Downtown and Station area plans (which have now been combined to include both sides of Highway 87, as far west as the Caltrain tracks) by 2040. This can be translated as 4.36 new jobs per new dwelling unit.

Ron Gonzales, Chair
*Hispanic Foundation
 of Silicon Valley*

Janice Jensen, Vice Chair
*Habitat for Humanity
 East Bay/Silicon Valley*

Kevin Zwick, Treasurer
Housing Trust Silicon Valley

Kathy Thibodeaux, Secretary
KM Thibodeaux Consulting LLC

Shiloh Ballard
Silicon Valley Bicycle Coalition

Bob Brownstein
Working Partnerships USA

Gina Dalma
*Silicon Valley Community
 Foundation*

Katie Ferrick
LinkedIn

Amie Fishman
*Non-Profit Housing Association of
 Northern California*

Javier Gonzalez
Google

Poncho Guevara
Sacred Heart Community Service

Nathan Ho
Silicon Valley Leadership Group

Janikke Klem
Technology Credit Union

Jan Lindenthal
MidPen Housing

Jennifer Loving
Destination: Home

Mary Murtagh
EAH Housing

Chris Neale
The Core Companies

Andrea Osgood
Eden Housing

Kelly Snider
Kelly Snider Consulting

Jennifer Van Every
The Van Every Group

Staff

Leslye Corsiglia
Executive Director

The proposed GP update would add 10,000 jobs and 4,000 dwelling units to the anticipated amount of development by 2040, which represents a ratio of 2.5 jobs per dwelling unit added to the amount of anticipated development.

However, if you take the total into account (58,469 new jobs and 15,160 new units) and subtract out what has already been permitted (estimate based on City of San Jose Planning, Building, and Code Enforcement data and staff), 48,569 jobs and 7,190 dwelling units remain-- or 6.77 new jobs per new dwelling unit.

We believe that these remaining 7,190 residential units will not provide the allowance necessary to accommodate expected growth, and that if residential development is constrained by these allowances, the resulting jobs per housing ratio will set back our collective efforts to respond to the housing needs of our city.

- 3) **We are also concerned that the new expanded Downtown Planned Growth Area boundaries, which are bounded to the west by the Cal Train tracks, are not coterminous with the boundaries of the original Diridon Station Area plan, which includes territory on both sides the Cal Train tracks.**

The proposed amendment to the General Plan that is covered by the pending EIR would take all the planned growth capacity (both jobs and housing) that was included in the Diridon Station Plan and assign them all to Downtown. Thus, the areas west of the tracks that are planned for higher density residential development in the Diridon Station Area – 1) the NW corner of Stockton & Julian; 2) the area bounded by the tracks to east, San Carlos to the south, Sunol St. to the west, and Park Ave. to the north (which includes the 300-unit all-affordable project proposed by First Community Housing); and (3) some residual sites on the south side of San Carlos between the tracks and Sunol St. – would apparently be left with no development capacity, which could amount to several hundred planned units that would no longer be in a Downtown Planned Growth Area.

If it is determined that this is indeed the case, this issue will need to be addressed in the pending EIR, or General Plan amendments for residential development expected for these areas will lack necessary CEQA clearance.

This is an exciting time for San Jose and the future of its Downtown. That said, it is important that the Downtown Strategy 2040 recognize the increased demand for housing to ensure that every job has a home.

Sincerely,



Leslye Corsiglia
Executive Director

