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## memorandum

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**from** Luke Evans, Senior Managing Associate  
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**subject** Memorandum in Response to Appeals for the Design Review and Development Plan Amendment for Harbor Bay Business Park Hotel Facility (2018-6292)

ESA has prepared this memorandum in connection with the City of Alameda Planning Board's December 10, 2018 approval of a Design Review and Development Plan Amendment to permit construction of a 172-room hotel and restaurant in the Harbor Bay Business Park, immediately adjacent to the Harbor Bay Ferry Terminal. Following the Board's approval of the proposed project, two appeals were filed that challenged the proposed project's approval and identified specific reasons for the challenge. Before responding to the points identified in the two appeals, we have provided a background discussion that summarizes the history of approval actions on the project site and within the larger Harbor Bay Isle development area, of which the project site is a part.

### **Background**

The project area has been subject to review under the California Environmental Quality Act (CEQA) on numerous occasions over the last 45 years, beginning on November 21, 1973, when the City circulated a Draft Environmental Impact Report (EIR) for the Harbor Bay Isle development, which considered a mix of residential and commercial uses for the bulk of the recently-expanded Bay Farm Island. The Final EIR for the plan was certified by the City Council on March 5, 1974 and the plan was approved. Under the plan, the project site that is the subject of this memorandum was designated for commercial uses.

In 1976, the Harbor Bay Isle development was revised to provide for fewer residential units. On October 6, 1976, the City Council adopted Resolution No. 8593, which detailed the project revisions and concluded that the 1974 EIR was adequate to cover the updated project description. As part of this project update, the project site that is the subject of this memorandum retained its commercial land use designation.

Throughout the 1970s and 1980s, the City continued to grant approvals for elements of the larger Harbor Bay Isle development without requiring revisions to the 1974 EIR. During this time, the City made a series of cumulative environmental determinations that the ongoing adjustments to the Harbor Bay Isle project were not substantial changes that would require revisions to the 1974 EIR. The changes were not major, were generally in the direction of impact reduction and mitigation refinement, and were determined to be neither individually nor cumulatively considerable. In general, the project elements that were developed during this period constituted net reductions in land use intensity when compared with the development plan envisioned in 1974, with a resultant lessening of overall impacts, with the most prominent example being the reduction in 1976 of the number of planned residential units from 4,950 as originally approved to 3,200. Throughout this period, the project site that is the subject of this memorandum retained its commercial land use designation.

In 1989, the City completed a comprehensive addendum to the EIR to assess the potential effects of modifications that enlarged the approved business park and roadway system at Harbor Bay. Those plans and entitlements were vested in 1989 by a Development Agreement between the property owners and the City of Alameda. The Addendum provided updated information that showed that the updated project would not result in significant or more severe effects than those identified in the 1974 EIR. Under the Addendum, the project site that is the subject of this memorandum retained its commercial land use designation, though the commercial and office areas of the original development proposal along San Francisco Bay began to be referred to as Harbor Bay Business Park.

Pursuant to the above-referenced approvals and the anticipated impacts of that development identified in the EIR, the owners of the Business Park were required to build all of the public open space along the shoreline and the existing public roadways in the Business Park to accommodate the traffic generated by the anticipated land use program, which includes up to 4.1 million square feet of development.

The following year, in 1990, the City of Alameda amended its General Plan to include specific policies referencing the Development Agreement, the prior entitlements, approvals vested by the Development Agreement, and the appropriateness of hotels in the Harbor Bay Business Park.

Through the 1980s and 1990s, the residential areas of the Harbor Bay Isle project were generally built out to the condition that is currently present. Development within the Harbor Bay Business Park has occurred more incrementally, but the area is largely built out, though several parcels, including the project site that is the subject of this memorandum, remain undeveloped. Overall, when compared with the project as first evaluated in the 1974 EIR, the actual build-out of Harbor Bay Isle has been substantially less than what was originally evaluated and approved in 1974. The aforementioned 35 percent reduction in approved residential units in 1976 is the most emblematic of this overall trend, and has resulted in a substantial lessening of the actual impacts that have arisen from the project's near-build-out condition, particularly for issues like air quality, greenhouse gas (GHG) emissions, and traffic.

On February 25, 2008, the Planning Board approved the Esplanade Development Plan (PLN07-0061), of which the project site is a part, to allow the construction of ten office buildings totaling 109,000 square feet on the 9.22-acre Esplanade site. In 2012, the first of the ten buildings was completed for the Stacy & Witbeck Company.

On May 26, 2015, the Planning Board approved Development Plan Amendment and Design Review No. PLN15-0092 to allow the construction of the 22,868-square-foot McGuire & Hester office building in lieu of two of the nine office buildings remaining in the development. Construction of the building began in early 2016 and has since been completed.

On August 28, 2018, Harbor Bay Hospitality, LLC (the “applicant”) submitted an application for a Development Plan Amendment and Design Review to allow the construction of the proposed hotel and restaurant/cafe and expanded parking lot on the remaining 5.5 acres of the Esplanade site immediately adjacent to the Ferry Terminal parking lot in lieu of the remaining seven approved office buildings.

An agency’s determination as to whether further environmental review is required is limited to environmental impacts that are within the scope of the discretionary approval before it. The agency is not required to undertake further environmental review of impacts that are beyond the reach of the discretion it may exercise in deciding whether to approve an application. (*San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924.) Thus, in accordance with CEQA, the City’s review of the project was conducted within the parameters of the existing environmental documents and in relation to the scope of development allowed by right in the Development Agreement. (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162, 15164.) Changes to development plans that are within the scope of the previously approved project do not trigger preparation of a subsequent EIR. (*Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1318.) To evaluate the effects of the proposed project modifications and the circumstances in which they would be undertaken to determine whether subsequent environmental review would be required pursuant to CEQA, the City examined the potential environmental impacts of the modifications, including the following analyses:

- A traffic and parking analysis conducted by Abrams and Associates, Transportation Engineers that showed that the new hotel, restaurant, and ferry parking proposal would not result in any new or substantially more severe traffic impacts to the surrounding area.
- A survey for burrowing owls and sensitive species was conducted by Monk & Associates Environmental Consultants at the project site on September 10, 2018, and no evidence of the presence of these species or any other special status species was observed on or within a zone of influence of the site.
- A noise analysis conducted by Saxelby Acoustics on September 5, 2018 determined that the project’s design would meet city, state, and county requirements in regard to noise levels through the implementation of standard CNEL building requirements.
- A letter from the Alameda County Airport Land Use Commission on September 27, 2018 in regard to compliance with the safety, noise, and height development requirements of the adjacent Oakland Airport confirmed that the building design would not pose a hazard to air navigation at the Oakland International Airport or in Bay Area airspace.

On October 8, 2018, the Planning Board held a study session to review the proposed hotel development. At the hearing, the Planning Board directed the applicant to make a number of changes to the proposed site plan, landscape and parking plan, and architectural design.

On December 10, 2018, the Planning Board held a public hearing on the project and reviewed the revised design. At that meeting, the Planning Board made CEQA findings and determined that the application is consistent with all existing General Plan and Zoning requirements governing the site and approved a Final Development Plan and Design Review with conditions that the final elevation details and landscaping plans return to the Board for final approval, and conditioned the project to provide at least 100 non-exclusive parking spaces for long term use between the hours of 6 a.m. and 8 p.m., as well as providing for a Ferry Parking Management Plan.

On December 18, 2018, Brian Tremper (petitioner) filed a petition for appeal of the Planning Board decision, and on December 19, 2019, Laborers International Union of North America (LIUNA), Local Union 304 filed a separate petition for appeal of the Planning Board decision. The appeals are attached to the February 5, 2019 City Council Staff Report as Exhibits 3 and 4, respectively.

## **Response to Appeals**

This memorandum summarizes, where appropriate, and responds to the points identified in the two appeals.

### ***I. Brian Tremper Appeal***

#### **A. Adequacy of Traffic Studies**

Contrary to the petitioner's assertion, the traffic study provides sufficient information to fully verify that the total amount of traffic added by the project to roadways beyond the study area would not be sufficient to warrant further analysis of the additional facilities identified in the petitioner's comments. Although it is expected that the majority of hotel traffic would arrive via Ron Cowan Parkway from the direction of Oakland Airport and I-880, the trip distribution used in the impact analysis was conservatively developed based on the actual existing traffic volumes in the area. The study itself actually assumed that only 47 percent of the project traffic would arrive via Ron Cowan Parkway (from the Oakland Airport and I-880) to provide a conservative review of the potential for traffic impacts on local roadways.

The City of Alameda's *Guidelines for Preparation of Traffic Studies and Reports* (November, 2005) specifies that an analysis of traffic impacts is required if a project would add more than 30 peak hour trips or result in a measurable impact on existing traffic volumes (defined as a 3 percent increase or more). As discussed in the project's traffic study, the proposed project would add less than 20 peak hour trips to any of the local roadways in question and would increase the existing traffic volumes by less than 1 percent. In addition, it is important to note that for any intersections that are already operating at LOS E or F, the City's criteria are that a significant impact would only occur if a project would increase the existing volumes by 3 percent or more. For example, in this case the proposed project is forecast to generate no more than 20 peak hour trips on Island Drive, and based on the existing traffic volumes, an increase of approximately 90 trips per hour would be required to result in a 3 percent increase to intersections on this roadway. Based on this information, it was concluded that further analysis of intersections along Auginbaugh Way, McCartney Drive, and Island Drive would not be

expected to yield any additional useful information about the project's potential for transportation impacts.

It should further be noted that during peak hours, the Bay Farm Island bridge experiences volumes that are even higher, which allows the City to safely conclude that the 3 percent significance criteria could not possibly be exceeded, even for those intersections shown to be operating at LOS E or F. Based on the existing traffic volumes at the congested intersection directly south of the bridge (Island Drive and Doolittle Drive), the proposed project would need to add at least 125 peak hour trips to result in a 3 percent increase and thus trigger a significant impact, which is more traffic than the entire project is forecasted to generate. In other words, even if 100 percent of the project traffic was added to that intersection, it still wouldn't be considered a significant impact based on the City's adopted criteria for transportation impacts. (Source: *Threshold of Significance and Procedures for Ranking Modes Where Multiple Priorities are Identified*, Attachment I, Item 9-C, Planning Board Meeting, October 11, 2010.)

With respect to the potential safety concerns along the project's frontage road along the northern side of the project, the design and operation of this existing roadway and the ferry terminal parking lot were examined as part of the transportation impact analysis, and further review of pedestrian and bicycle safety along the roadway was conducted based on comments from City staff. The final study included recommendations for improvements that would improve pedestrian safety and reduce the overall travel speeds on this roadway. It was recommended that the project provide a pedestrian connection to the northeast corner of the site where there is an existing stop-controlled intersection. This existing intersection, in the back corner of the ferry terminal parking lot, currently has stop signs on only two of its three approaches, and it was recommended that a stop sign and a marked crosswalk be placed on the remaining approach. This would create an all-way stop-controlled intersection that would reduce speeds in the area while also helping to facilitate safe pedestrian crossings to the existing walkway on the northeast side of the roadway in this area. An additional crosswalk would also be added across the roadway further to the south, again to provide a safe pedestrian crossing between the project site and the existing walkway that runs adjacent to the lagoon. These improvements were integrated into the project plans, and would be a condition of approval for the project.

Based on each of the points outlined above, it is clear that the project would not result in a new or more severe environmental effect with respect to traffic, and preparation of a subsequent EIR would not be required for this issue.

## **B. Notice to Residents and Project Review**

As presented in the background discussion of this memorandum, this project has been under consideration for many months, and the public has been provided a number of opportunities to provide their input before the Planning Board and to the applicant. As for the public noticing for the project, the City provided noticing for the project consistent with State of California and City public noticing requirements. Staff placed

advertisements in the Alameda Sun, mailed public notices to all property owners and residents within 300 feet of the property, and posted notices along the public paths adjoining the site for the October 8, November 26, and December 10, 2018 meeting dates (the November 26 meeting date was subsequently rescheduled to December 10).

In addition to the State and City required notices, the applicant met with the Harbor Bay Business Park Association on August 21, 2018, and held community meetings with the Harbor Bay Island Neighbors on September 26, 2018, the Freeport Home Owners Association Board on October 11, 2018, and with the Freeport Home Owners Association on November 7, 2018. In summary, the project has met or exceeded State and local requirements for public noticing.

### **C. Adequacy of the 1974 EIR, Requirement for a New EIR**

In *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, 953 (San Mateo Gardens), the Supreme Court reviewed the lead agency's use of a prior environmental document in its review of a current project. The court explained that judging the adequacy of a lead agency's approach on the basis of whether a proposed project amounted to a new project "would inevitably invite arbitrary results" because neither CEQA nor the cases interpreting it contain any standards for determining whether a project qualifies as "new." Instead of resting on whether a project is new "in an abstract sense," the "decision to proceed under CEQA's subsequent review provisions must ... necessarily rest on a determination—whether implicit or explicit—that the original environmental document retains some informational value." "But whether an initial environmental document remains relevant despite changed plans or circumstances — like the question of whether an initial environmental document requires major revisions due to changed plans or circumstances — is a predominantly factual question. It is thus a question for the agency to answer in the first instance, drawing on its particular expertise." (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 215.)

For the currently proposed project, the City of Alameda, acting as lead agency, determined that the Harbor Bay Isle EIR and the subsequent environmental determinations that have been based from that EIR retained informational value that was applicable to the proposed project. In *San Mateo Gardens*, the Court affirmed that once a project has been subject to environmental review and received approval, Section 21166 and CEQA Guidelines Section 15162 limit the circumstances under which a subsequent or supplemental EIR must be prepared. (See also *Committee for Re-Evaluation of the T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237.) In fact, Section 15162(a) provides that when an EIR has been certified or a negative declaration adopted for a project, "*no subsequent EIR shall be prepared for that project*" (emphasis added) unless the lead agency determines that one or more of the following criteria are met:

**15162(a)(1): *Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.***

*Discussion in relation to the proposed project modifications:* The 1974 EIR evaluated the entire Harbor Bay Isle project and determined the resultant impacts using defined development intensities for the various land uses that were proposed. Subsequent CEQA evaluations conducted at various stages of the project's build-out have been conducted in a similar manner, and have augmented the original analysis with updated information. For the project site, the 1974 EIR and all subsequent and applicable CEQA evaluations identified the site for development under a C-M-PD zoning designation, and this designation has been consistently applied to the site for 45 years. The C-M-PD designation provides for, among other things, development of hotel uses and other commercial, office, and manufacturing structures with heights of up to 100 feet *by right*. This designation has been reaffirmed through several General Plan revisions and numerous zoning code revisions, each of which have undergone their own CEQA review. The current General Plan provides for hotel uses under its "Business Park" designation, of which the project site is a part. The General Plan's Land Use Element specifically calls out plans for hotel uses within the Harbor Bay Business Park, and provided that "High-rise buildings, *100 feet as of right* (emphasis added) and 156 feet subject to discretionary review, can be built at the business park."

Based on each of the considerations outlined above, it is clear that the proposed project does not present a substantial change from what was originally evaluated in 1974 and reaffirmed in every subsequent planning determination for the area since that time. At the heart of this discussion, however, is not whether or not a proposed project has changed from what was originally proposed, but whether or not the project would create "new significant environmental effects or a substantial increase in the severity of previously identified significant effects." For the currently proposed project, the answer to that question is a definitive "no." As outlined in the various responses throughout this memorandum, there would be no *new significant* effects that would result from the proposed project, and this is true for each of the issue areas called out by the two petitioners, most notably those related to aesthetics, air quality, biological resources, GHG emissions, land use, noise, and traffic.

**15162(a)(2): *Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.***

*Discussion in relation to the circumstances in which the project is undertaken:*

As with the discussion above, the key element around which this criterion revolves is whether or not the project would create “new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” Again, the answer is “no,” since there would be no *new significant* effects that would result from the proposed project.

**15162(a)(3): *New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:***

**(A) *The project will have one or more significant effects not discussed in the previous EIR or negative declaration.***

*Discussion:* As discussed above and in the other responses within this memorandum, the project would have no new significant effects beyond those identified in the 1974 EIR and subsequent CEQA determinations. As such, this criterion for determining whether a subsequent EIR is required is not applicable to the proposed project.

We note here that the petitioner has made the common and incorrect assumption that just because an environmental document is “old” (which is an undefined and arbitrary definition), a new document must be prepared. This assumption is not correct. Neither the CEQA Statute nor the CEQA Guidelines define an “expiration date” for an EIR or any other environmental document. (See, e.g., *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788.) Rather, CEQA imposes no temporal limit on the validity of an EIR and clearly states that “no subsequent EIR shall be prepared” for a project unless the lead agency determines that a *new significant effect* would occur from project implementation. Therefore, a new significant effect is the fundamental trigger, not the age of the original document. In the absence of any of the triggering events set forth in Public Resources Code section 21166, there is no requirement that the City prepare any subsequent environmental documentation. On this point, the law is quite clear [see Public Resources Code 21166 and CEQA Guidelines 15162(b)]. For this project, a new significant effect has not been identified and no further environmental review is required.



We further note another error in the petitioner's reasoning, and that is the assumption that if a particular environmental topic was not analyzed in an EIR (i.e., GHG emissions), then that EIR is obsolete and a new EIR must be prepared. That view is not supported by CEQA or applicable case law, since CEQA and the courts have consistently acknowledged that regulatory standards, thresholds, and issues of concern are subject to regular change. Rather, the trigger is still whether or not the project would create new significant effects. There is nothing in CEQA that disallows a lead agency from conducting new or updated analysis to determine if a new significant effect would occur for a newly identified issue, even for topics or issues that were not a part of the original EIR. Nor does CEQA impose a particular format for the City's determination regarding subsequent environmental review under Public Resources Code section 21166, and new findings on the project's impacts are not required. (*Save Our Heritage Organization v. City of San Diego* (2018) 28 Cal.App.5th 656.) In the case of this project, GHG emissions were not considered in the previous environmental documents. Subsequent analysis, however, as presented later in this memorandum, has determined that the project would not create a new significant effect with respect to GHG emissions. As such, the requirement for a subsequent EIR is not triggered.

***(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR.***

*Discussion:* As discussed above and in the other responses within this memorandum, the project would have no substantially more severe impacts beyond those identified in the 1974 EIR and subsequent CEQA determinations. As such, this criterion for determining whether a subsequent EIR is required is also not applicable to the proposed project.

***(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.***

*Discussion:* As discussed above and in the other responses within this memorandum, the project would introduce no new significant environmental effects requiring mitigation to reduce a significant effect. As such, this criterion for determining whether a subsequent EIR is required is also not applicable to the proposed project.

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

*Discussion:* As discussed above and in the other responses within this memorandum, the project would introduce no new significant environmental effects requiring mitigation or the implementation of alternatives to lessen a significant effect. As such, this criterion for determining whether a subsequent EIR is required is also not applicable to the proposed project.

***15162(b): If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.***

*Discussion:* As specified in Section 15162(b), a lead agency is required to prepare a subsequent EIR only if one or more of the criteria outlined above are met. Otherwise, the lead agency is granted wide discretion as to the level of environmental documentation it may undertake. In the case of the proposed project, none of the criteria have been met that would trigger preparation of a subsequent EIR, and therefore the City *may not* direct preparation of a subsequent EIR. (Pub. Resources Code, § 21166; see, e.g., *Committee for Re-Evaluation of the T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237.)

#### **D. Project Design and Suitability**

The petitioner's comments in this section largely concern the aesthetic impacts of the project and how it would fit within the community. CEQA defines impacts to aesthetics as substantial adverse effects to designated scenic vistas, impacts to scenic resources within designated state scenic highways, and for urban areas, impacts based on conflicts with applicable zoning and other regulations regarding scenic quality (see CEQA Guidelines, Appendix G, as updated in November, 2018). None of these effects are applicable to the proposed project, as the site is neither part of a designated scenic vista nor within the viewshed of a designated state scenic highway. As for potential zoning conflicts, and as has been discussed previously, there simply are no conflicts, as the site has been slated for commercial development since this portion of Bay Farm Island was created from Bay fill in the late 1960s. The site has retained its C-M-PD zoning designation for 45 years, which provides for, among other things, development of hotel uses and other commercial, office, and manufacturing structures with heights of up to 100 feet *by right*. This designation has been reaffirmed through several General Plan revisions and numerous zoning code revisions, each of which have undergone their own CEQA review. The current General Plan provides for hotel uses under its "Business

Park” designation, of which the project site is a part. The General Plan’s Land Use Element specifically calls out plans for a hotel within the Harbor Bay Business Park, and provides that “High-rise buildings, *100 feet as of right* (emphasis added) and 156 feet subject to discretionary review, can be built at the business park.” Contrary to the petitioner’s assertion, plans for a hotel within the business park have clearly been envisioned for some time, as have plans for buildings that are substantially taller than what is currently present. This consistency of vision for the Harbor Bay Business Park over the last 45 years reaffirms the suitability of the proposed project for the site. As such, the project presents no conflict with applicable zoning and other regulations regarding scenic quality, because those regulations specifically provide for such use.

Ultimately, the petitioner’s objection to the project based on aesthetic grounds represents the opinion of the petitioner as to how the project should be developed. The petitioner’s difference of opinion does not present any new environmental issues that have not been adequately addressed in the previous environmental reviews for the project site, nor does it present any legal basis to interfere with the applicant’s right to develop the site in the manner proposed.

#### **E. Noise Impacts to Local Neighbors**

The City of Alameda General Plan’s Safety and Noise Element and the City’s Noise Ordinance contain standards with which the project would be required to comply as a condition of approval. Compliance with these requirements would avoid significant noise effects to local neighbors. In general, hotels such as the one proposed for the project site are not substantial generators of noise, as they do not provide for intensive noise-generating activities. Generated noise would generally consist of vehicles traveling at low speeds into and out of the site, and perhaps people talking at the building entrances and the outdoor seating areas, open space, and pool areas of the hotel and restaurant. These are not intensive noise-making activities. Moreover, the project buildings would be located sufficiently distant from the nearest existing residences to avoid noise impacts to residents. The hotel’s main entrance, for instance, would be located more than 200 feet from the nearest residential lot line, as would the main entrance to the proposed restaurant. The entrance to the proposed coffee shop would be located approximately 120 feet from the nearest residential lot line. People conversing at these locations, even loudly, would be imperceptible to residents in the nearby neighborhoods, and would not create a substantial increase in ambient noise levels that would exceed City noise standards. Outdoor seating, open space, and pool areas associated with the hotel and restaurant would be located on the far side of the buildings, facing the shoreline, at distances of more than 250 feet from the nearest residences. Landscape maintenance using machines such as leaf blowers and lawn mowers would generate occasional noise in the area, but these activities would take place during daylight hours, and would be similar to the same types of maintenance activities that currently occur on the adjacent properties, including the nearby residential neighborhoods.

Delivery and service entrances to both the hotel and the restaurant would be located on the sides of each building at distances equal to or greater than the distances noted above,

and would not be within the line-of-sight of existing residences. Additional noise abatement would be provided by intervening landscaping, fences, and other structures. Given that noise levels drop by half for every doubling of distance, even loud noises would be unlikely to be heard inside the nearest residences, and those types of noise events are not anticipated for the project considering the nature of its design and purpose. Traffic noise from vehicles entering and exiting the project site is also anticipated to be minimal, given the low-speed nature of the roadway that would front the project site. Speeds on that roadway would be limited to 25 miles-per-hour, which is the same speed as that provided for in the adjoining residential neighborhoods, and vehicles operating at that speed are not producers of significant vehicle noise.

In summary, there would be no significant noise effects to area residents from the proposed project. This is largely due to the design of the project, the distance of noise-producing project elements from existing sensitive receptors, and the overall nature of the proposed facilities.

## ***II. Laborers International Union of North America, Local Union 304 Appeal***

### **A. The hotel project was not addressed in the 1974 EIR and is a separate project from the project addressed in the 1974 EIR.**

This comment has largely been responded to in Response I.C., but we have reproduced that response here for the convenience of the reader, and have also augmented the response to address the specific points that were raised in the LIUNA petition.

In *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, 953 (*San Mateo Gardens*), the Supreme Court reviewed the lead agency's use of a prior environmental document in its review of a current project. The court explained that judging the adequacy of a lead agency's approach on the basis of whether a proposed project amounted to a new project "would inevitably invite arbitrary results" because neither CEQA nor the cases interpreting it contain any standards for determining whether a project qualifies as "new." Instead of resting on whether a project is new "in an abstract sense," the "decision to proceed under CEQA's subsequent review provisions must ... necessarily rest on a determination—whether implicit or explicit—that the original environmental document retains some informational value." "But whether an initial environmental document remains relevant despite changed plans or circumstances — like the question of whether an initial environmental document requires major revisions due to changed plans or circumstances — is a predominantly factual question. It is thus a question for the agency to answer in the first instance, drawing on its particular expertise." (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 215.)

For the project that is the subject of this memorandum, the City of Alameda, acting as lead agency, determined that the 1974 Harbor Bay Isle EIR and the subsequent environmental determinations that have been based from that EIR retained informational value that was applicable to the proposed project. This determination was made on the

basis that the 1974 EIR evaluated the entire Harbor Bay Isle project and determined the resultant impacts using defined development intensities for the various land uses that were proposed. Subsequent CEQA evaluations conducted at various stages of the project's build-out have been conducted in a similar manner, and have augmented the original analysis with updated information. For the project site, the 1974 EIR and all subsequent and applicable CEQA evaluations identified the site for development under a C-M-PD zoning designation, and this designation has been consistently applied to the site for 45 years. The C-M-PD designation provides for, among other things, development of hotel uses and other commercial, office, and manufacturing structures with heights of up to 100 feet *by right*. This designation has been reaffirmed through several General Plan revisions and numerous zoning code revisions, each of which have undergone their own CEQA review. The current General Plan provides for hotel uses under its "Business Park" designation, of which the project site is a part. The General Plan's Land Use Element specifically calls out plans for hotel uses within the Harbor Bay Business Park, and provides that "High-rise buildings, 100 feet *as of right* (emphasis added) and 156 feet subject to discretionary review, can be built at the business park."

Based on each of the considerations outlined above, it is clear that the proposed project does not present a substantial change from what was originally evaluated in 1974 and reaffirmed in every subsequent planning determination for the area since that time. At the heart of this discussion, however, is not whether a proposed project has changed from what was originally proposed, but whether or not the project would create "new significant environmental effects or a substantial increase in the severity of previously identified significant effects" (CEQA Guidelines, § 15162(a)(1)). For the currently proposed project, the answer to that question is a definitive "no." As outlined in the various responses throughout this memorandum there would be no *new significant effects* that would result from the proposed project, and this is true for each of the issue areas called out by the two petitioners, most notably those related to aesthetics, air quality, biological resources, GHG emissions, land use, noise, and traffic.

In *San Mateo Gardens*, the Court affirmed that once a project has been subject to environmental review and received approval, Section 21166 and CEQA Guidelines Section 15162 limit the circumstances under which a subsequent or supplemental EIR must be prepared. (See also *Committee for Re-Evaluation of the T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237.) In fact, Section 15162(a) provides that when an EIR has been certified or a negative declaration adopted for a project, "*no subsequent EIR shall be prepared for that project*" (emphasis added) unless the lead agency determines that one or more of the following criteria are met:

**15162(a)(1): *Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.***

*Discussion in relation to the proposed project modifications:* The 1974 EIR evaluated the entire Harbor Bay Isle project and determined the resultant impacts using defined development intensities for the various land uses that were proposed. Subsequent CEQA evaluations conducted at various stages of the project's build-out have been conducted in a similar manner, and have augmented the original analysis with updated information. For the project site, the 1974 EIR and all subsequent and applicable CEQA evaluations identified the site for development under a C-M-PD zoning designation, and this designation has been consistently applied to the site for 45 years. The C-M-PD designation provides for, among other things, development of hotel uses and other commercial, office, and manufacturing structures with heights of up to 100 feet *by right*. This designation has been reaffirmed through several General Plan revisions and numerous zoning code revisions, each of which have undergone their own CEQA review. The current General Plan provides for hotel uses under its "Business Park" designation, of which the project site is a part. The General Plan's Land Use Element specifically calls out plans for hotel uses within the Harbor Bay Business Park, and provides that "High-rise buildings, *100 feet as of right* (emphasis added) and 156 feet subject to discretionary review, can be built at the business park."

Based on each of the considerations outlined above, it is clear that the proposed project does not present a substantial change from what was originally evaluated in 1974 and reaffirmed in every subsequent planning determination for the area since that time. At the heart of this discussion, however, is not whether or not a proposed project has changed from what was originally proposed, but whether or not the project would create "new significant environmental effects or a substantial increase in the severity of previously identified significant effects." For the currently proposed project, the answer to that question is a definitive "no." As outlined in the various responses throughout this memorandum, there would be no *new significant* effects that would result from the proposed project, and this is true for each of the issue areas called out by the two petitioners, most notably those related to aesthetics, air quality, biological resources, GHG emissions, land use, noise, and traffic.

**15162(a)(2): Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.**

*Discussion in relation to the circumstances in which the project is undertaken:*

As with the discussion above, the key element around which this criterion revolves is whether or not the project would create “new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” Again, the answer is “no,” since there would be no *new significant* effects that would result from the proposed project.

**15162(a)(3): New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:**

**(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration.**

*Discussion:* As discussed above and in the other responses within this memorandum, the project would have no new significant effects beyond those identified in the 1974 EIR and subsequent CEQA determinations. As such, this criterion for determining whether a subsequent EIR is required is not applicable to the proposed project.

We note here that the petitioner has made the common and incorrect assumption that just because an environmental document is “old” (which is an undefined and arbitrary definition), a new document must be prepared. This assumption is not correct. Neither the CEQA Statute nor the CEQA Guidelines define an “expiration date” for an EIR or any other environmental document. Rather, CEQA clearly states that “no subsequent EIR shall be prepared” for a project unless the lead agency determines that a *new significant effect* would occur from project implementation. Therefore, a new significant effect is the fundamental trigger, not the age of the original document. For this project, a new significant effect has not been identified, so this requirement is not triggered.

We further note another error in the petitioner’s reasoning, and that is the assumption that if a particular environmental topic was not analyzed in an EIR (i.e., GHG emissions), then that EIR is obsolete and a new EIR must be prepared. That view is not supported by CEQA or applicable case law, since CEQA and the courts have consistently acknowledged that regulatory standards, thresholds, and issues of concern are subject to regular change. Rather, the trigger is still whether or not the project would

create new significant effects. There is nothing in CEQA that disallows a lead agency from conducting new or updated analysis to determine if a new significant effect would occur for a newly identified issue, even for topics or issues that were not a part of the original EIR. In the case of this project, GHG emissions were not considered in the previous environmental documents. Subsequent analysis, however, as presented later in this memorandum, has determined that the project would not create a new significant effect with respect to GHG emissions. As such, the requirement for a subsequent EIR is not triggered.

***(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR.***

*Discussion:* As discussed above and in the other responses within this memorandum, the project would have no substantially more severe impacts beyond those identified in the 1974 EIR and subsequent CEQA determinations. As such, this criterion for determining whether a subsequent EIR is required is also not applicable to the proposed project.

***(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.***

*Discussion:* As discussed above and in the other responses within this memorandum, the project would introduce no new significant environmental effects requiring mitigation to reduce a significant effect. As such, this criterion for determining whether a subsequent EIR is required is also not applicable to the proposed project.

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

*Discussion:* As discussed above and in the other responses within this memorandum, the project would introduce no new significant environmental effects requiring mitigation or the implementation of alternatives to lessen a significant effect. As such, this criterion for determining whether a subsequent EIR is required is also not applicable to the proposed project.



**15162(b): *If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation.***

*Discussion:* As specified in Section 15162(b), a lead agency is required to prepare a subsequent EIR only if one or more of the criteria outlined above are met. Otherwise, the lead agency is granted wide discretion as to the level of environmental documentation it may undertake. In the case of the proposed project, none of the criteria have been met that would trigger preparation of a subsequent EIR, and therefore the City *may not* direct preparation of a subsequent EIR.

As outlined in the various responses throughout this memorandum there would be no *new significant effects* that would result from the proposed project, and this is true for each of the issue areas called out by the two petitioners, most notably those related to aesthetics, air quality, biological resources, GHG emissions, land use, noise, and traffic.

Of further relevance to this discussion is the fact that the 1974 was presented as a *Program* EIR, as defined in CEQA Guidelines Section 15168. Program EIRs, as defined in the Guidelines, are intended to evaluate:

*...a series of actions that can be characterized as one large project and are related either 1) Geographically; 2) As logical parts in the chain of contemplated actions; 3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program; or 4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways [CEQA Guidelines Section 15168(a)].*

Each of these criteria were applicable to the Harbor Bay Isle project. Thus, in answering the threshold question of “relevance” of the 1974 EIR, the currently proposed project must be considered as a part of the larger Harbor Bay Isle project. (*Cal. Oak Foundation v. U.C. Regents* (2010) 188 Cal.App.4th 227, 271; *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1048-1051; see *Committee for Re-Evaluation of the T-Line Loop, supra*, 6 Cal.App.5th at pp. 1251-1252.) Public Resources Code section 21166 applies with equal force to program and project EIRs. (*Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 802; *May v. City of Milpitas* (2013) 217 Cal.App.4th 1307, 1316-1317.) Accordingly, the currently proposed project is not a separate project from the Harbor Bay Isle project, and the 1974 EIR continues to be the “mother” EIR from which all subsequent development activities within the Harbor Bay Isle project are descended. (*Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937.) The currently proposed project is but one of those

descendants, and is one of the “*logical parts in the chain of contemplated actions*”, as envisioned in 1974 when the Harbor Bay Isle project was approved.

The CEQA Guidelines provide additional guidance in Section 15168(c), where direction is given as to the use of Program EIRs to consider later activities that make up the overall program. Of particular relevance to the currently proposed project is Section 15168(c)(2), which provides the following:

*If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.*

As stated previously, and as will be discussed further below, there would be no *new significant effects* that would result from the proposed project. In such a circumstance, Section 15162(a) is very clear in its statement that “*no subsequent EIR shall be prepared for that project*” (emphasis added) unless the lead agency determines that new significant effects would occur. Because no new significant effects would result from the proposed project, a subsequent EIR is therefore not warranted.

**B. An EIR must be prepared for the proposed hotel because there is substantial evidence of a fair argument that the project may have one or more significant environmental impacts.**

Importantly, throughout its appeal, the petitioner misstates the applicable legal standard. In circumstances such as those presented here, where an EIR has been prepared for the project and the City is evaluating proposed project modifications, the “fair argument” standard asserted by the petitioner does not apply. (Pub. Resources Code, § 21166; *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, 953; see also *Committee for Re-Evaluation of the T-Line Loop v. San Francisco Municipal Transportation Agency* (2016) 6 Cal.App.5th 1237.) The City’s determination that no subsequent environmental review is required is reviewed under the deferential “substantial evidence” standard. (Pub. Resources Code, §§ 21168, 21168.5.) Under the substantial evidence test, the City’s decision that no environmental review is required will be upheld if there is some evidentiary support for it, even if there is equal or conflicting evidence to the contrary. Here, the City’s experts who reviewed the proposed project modifications in relation to the site and provided site-specific analyses are highly regarded experts and their conclusions are based on substantial evidence.

In contrast, upon careful review, the petitioner’s submittal, though voluminous, is insubstantial. Many of the petitioner’s allegations of new or more severe impacts relate to existing conditions and impacts of the environment on the project. These are not CEQA issues. (*California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369.) A number of the petitioner’s allegations of new or more severe impacts relate to issues governed by standard state and local code requirements that do not implicate CEQA. Furthermore, as discussed in detail below, the petitioner’s assertions and the exhibits they rely on are incorrect and

unsubstantiated, and do not, as a factual matter, constitute credible or substantial evidence of any significant environmental impact of the project.

***1. There is substantial evidence of a fair argument that the hotel project's emissions of formaldehyde to the air will have significant health impacts on future employees.***

The petitioner is attempting to equate Bay Area Air Quality Management District (BAAQMD) thresholds for ambient health risks and hazards with worker exposure to indoor pollutants such as formaldehyde. The two are not equivalent. BAAQMD has not promulgated regulations concerning indoor pollutant exposure for compounds such as formaldehyde, except when use of those pollutants contribute to the generation of criteria pollutants through the production of volatile organic compounds (VOCs) and other criteria pollutant precursors. For example, BAAQMD Regulation 8-32 regulates formaldehyde use in the wood products manufacturing industry in the Bay Area, and limits emissions of VOCs during the manufacturing process. These BAAQMD regulations are in no way applicable to worker exposures to formaldehyde or any other pollutant. In fact, BAAQMD methodology for assessing risk and hazard impacts specifically states that workers are not considered sensitive receptors, because all employers must follow regulations set forth by the Occupation Safety and Health Administration (OSHA) to ensure the health and well-being of their employees (BAAQMD, *Recommended Methods for Screening and Modeling Local Risks and Hazards*, May 2011, page 12). BAAQMD's thresholds are therefore not applicable and are immaterial to this discussion.

Regardless, the project would be required to comply with other applicable state and federal regulations concerning formaldehyde emissions. Materials that use formaldehyde have been the subject of active regulatory action for many years, most notably by the California Air Resources Board (CARB) and the U.S. Environmental Protection Agency (EPA). CARB's regulations require that all composite wood products sold in California comply with CARB's Phase 2 criteria for formaldehyde emissions (17 CCR 93120). EPA has also promulgated regulations under the authority provided under the Toxic Substances Control Act (15 USC 2697). Both of these regulatory frameworks are designed to limit exposures of persons who live and/or work where these materials are present. For products sold in California, the more stringent requirement applies, regardless of whether it is a CARB or an EPA requirement. Finally, OSHA has promulgated standards to protect workers that are exposed to formaldehyde (29 CFR 1910.1048). The project would be required to comply with all of these requirements during construction and operation; accordingly, there would be no new significant effect created by the project.

***2. The traffic analysis prepared for the proposed hotel is not substantial evidence of no traffic impacts because it leaves out key intersections most likely to be adversely affected by the project's traffic.***

This comment has already been responded to in Response I.A, but we have reproduced that response here for the convenience of the reader.

Contrary to the petitioner's assertion, the traffic study provides sufficient information to fully verify that the total amount of traffic added by the project to roadways beyond the study area would not be sufficient to warrant further analysis of the additional facilities identified in the petitioner's comments. Although it is expected that the majority of hotel traffic would arrive via Ron Cowan Parkway from the direction of Oakland Airport and I-880, the trip distribution used in the impact analysis was conservatively developed based on the actual existing traffic volumes in the area. The study itself actually assumed that only 47 percent of the project traffic would arrive via Ron Cowan Parkway (from the Oakland Airport and I-880) to provide a conservative review of the potential for traffic impacts on local roadways.

The City of Alameda's *Guidelines for Preparation of Traffic Studies and Reports* (November, 2005) specifies that an analysis of traffic impacts is required if a project would add more than 30 peak hour trips or result in a measurable impact on existing traffic volumes (defined as a 3 percent increase or more). As discussed in the project's traffic study, the proposed project would add less than 20 peak hour trips to any of the local roadways in question and would increase the existing traffic volumes by less than 1 percent. In addition, it is important to note that for any intersections that are already operating at LOS E or F, the City's criteria are that a significant impact would only occur if a project would increase the existing volumes by 3 percent or more. For example, in this case the proposed project is forecast to generate no more than 20 peak hour trips on Island Drive, and based on the existing traffic volumes, an increase of approximately 90 trips per hour would be required to result in a 3 percent increase to intersections on this roadway. Based on this information, it was concluded that further analysis of intersections along Auginbaugh Way, McCartney Drive, and Island Drive would not be expected to yield any additional useful information about the project's potential for transportation impacts.

It should further be noted that during peak hours, the Bay Farm Island bridge experiences volumes that are even higher, which allows the City to safely conclude that the 3 percent significance criteria could not possibly be exceeded, even for those intersections shown to be operating at LOS E or F. Based on the existing traffic volumes at the congested intersection directly south of the bridge (Island Drive and Doolittle Drive), the proposed project would need to add at least 125 peak hour trips to result in a 3 percent increase and thus trigger a significant impact, which is more traffic than the entire project is forecasted to generate. In other words, even if 100 percent of the project traffic was added to

that intersection, it still wouldn't be considered a significant impact based on the City's adopted criteria for transportation impacts. (Source: *Threshold of Significance and Procedures for Ranking Modes Where Multiple Priorities Are Identified*, Attachment I, Item 9-C, Planning Board Meeting, October 11, 2010.)

Based on each of the points outlined above, it is clear that the project would not result in a new or more severe environmental effect with respect to traffic, and preparation of a subsequent EIR would not be required for this issue.

***3. There is substantial evidence of a fair argument that the hotel project will have a significant adverse impact on wildlife resulting from numerous collisions of birds, including sensitive species, with the building's windows.***

The petitioner may not be aware that the City of Alameda has instituted design criteria for applicable projects with the aim of reducing avian collisions with buildings and other structures. The City Council adopted a final Bird-Safe Building Standards ordinance on December 18, 2018, which will apply to this project. Prior to that, two major projects approved over the last year (the Encinal Terminals project and the Alameda Marina Master Plan project) contained detailed requirements governing design criteria associated with reducing bird strikes. These requirements were based on the City of San Francisco's guidelines, which the petitioner has praised. As required by the City of Alameda's ordinance, integration of these requirements is a condition of approval for the project. Bird-friendly glazing, for instance, is called out in the project plans. Implementation of these requirements would effectively minimize the project's potential impacts in precisely the manner referred to in the petitioner's comments.

The petitioner also raised the question of potential effects of the project on wildlife residing in Bay waters offshore from the project site. The project, however, proposes no in-water work or improvements along the shoreline, nor the installation of any substantial new lighting in close proximity to the shoreline. In compliance with the approved Esplanade Development Plan, all buildings would be set back from the water's edge, and lighting requirements implemented under the City's design review criteria would minimize spillover of lighting onto adjacent areas. In addition, as part of the aforementioned ordinance concerning Bird-Safe Building Standards, the City has also adopted Dark Skies Standards which regulate excessive illumination, light trespass, and other lighting impacts. These requirements would apply to this project. Accordingly, the petitioner's suggestion that an adverse effect would occur to species residing in San Francisco Bay is substantially overstated.

The information provided by the petitioner concerning birds and other wildlife observed on the site is of interest, but none of the species that were observed on the site are afforded protected status. All of the species identified on-site in the petitioner's report are common and are typical of what can be seen on nearly any vacant suburban parcel on the San Francisco Bay shoreline, and most of these

urban-adapted species would be expected to continue using the site following project implementation. The observations provide no evidence that the site provides nesting or stop-over habitat for any special status species. Indeed, such habitat is not expected on the site, given its urban nature, the fact that it is disked and/or mowed at least once per year for weed abatement purposes, is relatively small in extent, and is subjected to regular disturbance from encroachment onto the site by humans and dogs and other disturbances associated with the adjacent roadways, walkways, commercial properties, and the active Harbor Bay Ferry Terminal that surround the site. Protocol-level surveys for the special status burrowing owl, as suggested by the petitioner, are not warranted for the project area for the simple reason that suitable habitat for this species is not present.

The surveys conducted by Monk & Associates affirmed these conditions, and reported that no active or inactive nests of any kind were found on the property or within its zone of influence, nor were any burrows found that would indicate current or recent occupation by western burrowing owl. As per standard City of Alameda requirements, if construction were planned to begin during the nesting season, preconstruction nesting bird surveys would be conducted once again prior to the commencement of construction, and any active nests discovered would be protected per the requirements of the California Fish and Game Code. This standard implementation of established regulatory requirements, which is applicable to nearly all development projects in the State of California, would ensure that there would be no adverse effects to nesting birds.

In summary, the subject property has been slated for commercial development for more than 40 years. The potential effects of that planned development have been known for decades, and have been reaffirmed through subsequent CEQA analysis on at least a half-dozen occasions as the Harbor Bay Isle planned development has built out. The petitioner's assertions do not put forth any new information that would indicate that there would be any new significant impacts that have not been disclosed previously, or that would not be effectively minimized through the application of existing regulatory requirements.

***4. There is substantial evidence of a fair argument that the hotel project will have significant Greenhouse Gas emission impacts.***

Impacts from greenhouse gas (GHG) emissions were not analyzed in the 1974 Harbor Bay Isle EIR. Therefore, the analysis presented below estimates GHG emissions from both the approved Esplanade Development Plan for the site, and the currently proposed project modifications. Pursuant to CEQA's requirements for subsequent environmental review (see, e.g., CEQA Guidelines sections 15162 and 15164), the analysis below evaluates the proposed project modifications to determine whether the changes to the approved project would result in new or more severe significant environmental impacts. (Pub. Resources Code, § 21166; *Bowman v. City of Petaluma* (1986) 185 Cal.App.3d 1065, 1079 [CEQA's subsequent review provisions are concerned only with the increment of impact

resulting from project revisions]; *Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, 1482 [agency is to consider only the incremental differences between the original project and the modification when evaluating whether the modifications to the original proposal would result in any significant environmental impacts]; *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1073 [same]; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 542 [same].)

The Esplanade Plan provided for construction of ten office buildings totaling 109,000 square feet on the 9.22-acre Esplanade site. In 2012, the first of the ten buildings was completed for the Stacy & Witbeck Company. On May 26, 2015, the Planning Board approved construction of the 22,868-square-foot McGuire & Hester office building in lieu of two of the nine office buildings remaining in the development. Construction of that building began in early 2016 and has since been completed.

The currently proposed project would construct the proposed hotel and restaurant/cafe and an expanded ferry terminal parking lot on the remaining 5.5 acres of the Esplanade site in lieu of the remaining seven approved office buildings. Those seven office buildings would have provided for 66,960 square feet of office space.

Construction and operational GHG emissions for this scenario were evaluated using California Emissions Estimator Model (CalEEMod version 2016.3.2) using model defaults for an office park. GHG emissions for the proposed hotel, restaurant and coffee shop uses were also estimated using CalEEMod, but using a project-specific construction schedule and operational trip generation rates from the project's traffic study. The impact evaluation below is made by comparing the net change in GHG emissions between what is currently approved for the site (seven office buildings totaling 66,960 square feet) and the proposed hotel and restaurant/cafe project.

GHG emissions such as carbon dioxide, methane and nitrous oxide would be generated both during construction and operation of the project. Construction activities would generate GHG emissions primarily from the combustion of fossil fuels from vehicle trips for the transport and delivery of construction equipment and materials to the site, construction worker commute, and operation of construction equipment at the site. For quantifying a project's GHG emissions from operations, BAAQMD recommends that all GHG emissions from the project be estimated, including direct and indirect GHG emissions. Direct emissions refer to emissions produced onsite from combustion of energy, such as natural gas used in furnaces and boilers, and fuel combustion from mobile sources associated with people travelling to and from the site. Indirect emissions are produced offsite from energy production, treatment and conveyance of water used and wastewater generated at the site, and disposal of solid waste associated

with the uses. BAAQMD has provided guidance on detailed methods for modeling GHG emissions from proposed projects in its CEQA Guidelines (BAAQMD, *California Environmental Quality Act Air Quality Guidelines*, May 2017).

In its guidelines, BAAQMD does not provide numerical thresholds for evaluating significance of construction GHG emissions, but instead, encourages lead agencies to quantify and disclose GHG emissions from construction and incorporate best management practices to reduce GHG emissions during construction, as feasible and applicable. For operational impacts, BAAQMD provides a significance threshold of 1,100 metric tons of CO<sub>2</sub>e per year for land use development projects, such as the proposed project. Construction-related GHG emissions, as estimated using CalEEMod were annualized over a project life of 40 years and factored into the total operational GHG emissions inventory to determine significance.

Table 1 below shows construction and operational GHG emissions associated with both the approved project and proposed project modifications. As shown in the table, the proposed project modifications would lead to an increase in GHG emissions generated when compared to what was previously approved. However, this increase would be below the BAAQMD significance threshold and there would therefore not be a significant effect.

**TABLE 1**  
**GHG EMISSIONS FROM PROJECT OPERATION (METRIC TONS PER YEAR)**

Project Component	CO <sub>2</sub> e	
	Proposed	Approved
Area Source Emissions	<0.1	<0.1
Energy Emissions	328.2	179.9
Mobile Emissions	1,122.3	576.9
Solid Waste	61.2	31.3
Water and Wastewater	9.0	19.4
Annual Construction Emissions (Averaged over 40 years)	11.1	10.6
Total Project Emissions	1,532	818
<b>Change between Proposed and Approved</b>	<b>714</b>	
<b>BAAQMD Threshold</b>	<b>1,100</b>	
<b>Significant?</b>	<b>No</b>	



**C. Alternatively, assuming staff is right that the hotel project is the same project addressed by the 1974 EIR, new information and new circumstances have arisen in the interim 44 years that require significant revisions to the 1974 EIR.**

***1. Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.***

The inapplicability of this criteria to the currently proposed project has been discussed previously in Responses and I.C and II.A, and will not be repeated here.

***2. Substantial changes have occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.***

As discussed in Responses I.C and II.A, the key element around which this criterion revolves is whether or not the project would create “new significant environmental effects or a substantial increase in the severity of previously identified significant effects.” Again, the answer is “no,” since there would be no *new significant* effects that would result from the proposed project. Specific responses concerning impacts to traffic and burrowing owls, which were raised in this portion of the petitioner’s comments, can be found in Responses II.B.2 and II.B.3, respectively.

***3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence in 1974, shows that the project will have one or more significant impacts that were not considered or are more severe.***

As discussed in Responses I.C and II.A, the project would introduce no new significant environmental effects requiring mitigation to reduce a significant effect. Specific responses concerning impacts to formaldehyde exposure and bird strikes with buildings, which were raised in this portion of the petitioner’s comments, can be found in Responses II.B.1 and II.B.3, respectively. Based on these considerations, this criterion for determining whether a subsequent EIR is required is also not applicable to the proposed project.

***4. Mitigation measures previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project.***

As discussed in Responses I.C and II.A, the project would introduce no new significant environmental effects requiring mitigation or the implementation of

alternatives to lessen a significant effect. As such, this criterion for determining whether a subsequent EIR is required is also not applicable to the proposed project.

With respect to the petitioner's assertion that the previously-infeasible mitigation measure requiring the applicant to provide electric vehicles to "each house sold" is now feasible, that measure is irrelevant to the currently proposed project. We note that in the petitioner's own comments it is stated that the measure refers only to the residential areas of the Harbor Bay Isle project. It is therefore not applicable to the currently proposed project and is not relevant to this discussion.

***5. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment.***

As discussed in Responses I.C and II.A, the project would introduce no new significant environmental effects requiring mitigation or the implementation of alternatives to lessen a significant effect. As such, this criterion for determining whether a subsequent EIR is required is also not applicable to the proposed project.

In addition to the comment letter sent by the petitioner, the Laborers International Union of North America, Local Union 304 appeal also contained a number of supporting attachments with additional technical information to support the petitioner's arguments. Those attachments are listed below, with additional responses, as applicable.

**Exhibit A: Letter from Francis J. Offerman, dated December 6, 2018**

*The letter from Mr. Francis Offerman, of Indoor Environmental Engineering, provides information to support the petitioner's assertion that the proposed project would subject workers to indoor formaldehyde emissions that are in excess of the BAAQMD's cancer risk thresholds. Mr. Offerman's curriculum vitae are attached to the letter.*

*This comment was responded to in Response II.B.1. That response is reproduced here for the convenience of the reader.*

The petitioner is attempting to equate Bay Area Air Quality Management District (BAAQMD) thresholds for ambient health risks and hazards with worker exposure to indoor pollutants such as formaldehyde. The two are not equivalent. BAAQMD has not promulgated regulations concerning indoor pollutant exposure for compounds, such as formaldehyde, except when use of those pollutants contribute to the generation of criteria pollutants through the production of volatile organic compounds (VOCs) and other criteria pollutant precursors. However, both the California Air Resources Board CARB) and BAAQMD both promulgate regulations to address the potential presence of formaldehyde in building materials. For example, BAAQMD Regulation 8-32 regulates formaldehyde use in the wood products manufacturing industry in the Bay Area, and

limits emissions of VOCs during the manufacturing process. These BAAQMD regulations are in no way applicable to worker exposures to formaldehyde or any other pollutant. In fact, BAAQMD methodology for assessing risk and hazard impacts states that workers are not considered sensitive receptors, because all employers must follow regulations set forth by the Occupation Safety and Health Administration (OSHA) to ensure the health and well-being of their employees (BAAQMD, *Recommended Methods for Screening and Modeling Local Risks and Hazards*, May 2011, page 12). BAAQMD's thresholds are therefore not applicable and are immaterial to this discussion.

Regardless, the project would be required to comply with other applicable state and federal regulations concerning formaldehyde emissions. Materials that use formaldehyde have been the subject of active regulatory action for many years, most notably by CARB and the U.S. Environmental Protection Agency (EPA). CARB's regulations require that all composite wood products sold in California comply with CARB's Phase 2 criteria for formaldehyde emissions (17 CCR 93120). EPA has also promulgated regulations under the authority provided under the Toxic Substances Control Act (15 USC 2697). Both of these regulatory frameworks are designed to limit exposures of persons who live and/or work where these materials are present. For products sold in California, the more stringent requirement applies, regardless of whether it is a CARB or an EPA requirement. Finally, OSHA has promulgated standards to protect workers that are exposed to formaldehyde (29 CFR 1910.1048). The project would be required to comply with all of these requirements during construction and operation; accordingly, there would be no new significant effect created by the project.

**Exhibit B: Letter from Smith Engineering & Management, dated December 6, 2018**

*The letter from Mr. Daniel Smith of Smith Engineering & Management provides a review of the Transportation Impact Analysis (TIA) that was prepared for the proposed project by Abrams Associates. The letter suggests that the TIA's analysis was too limited, and that the 1974 EIR's analysis is outdated and not relevant. Mr. Smith's resume is also provided.*

*This comment was responded to in Response II.B.2. Those responses are reproduced here for the convenience of the reader.*

Contrary to the petitioner's assertion, the traffic study provides sufficient information to fully verify that the total amount of traffic added by the project to roadways beyond the study area would not be sufficient to warrant further analysis of the additional facilities identified in the petitioner's comments. Although it is expected that the majority of hotel traffic would arrive via Ron Cowan Parkway from the direction of Oakland Airport and I-880, the trip distribution used in the impact analysis was conservatively developed based on the actual existing traffic volumes in the area. The study itself actually assumed that only 47 percent of the project traffic would arrive via Ron Cowan Parkway (from the Oakland Airport and I-880) to provide a conservative review of the potential for traffic impacts on local roadways.

The City of Alameda's *Guidelines for Preparation of Traffic Studies and Reports* (November, 2005) specifies that an analysis of traffic impacts is required if a project would add more than 30 peak hour trips or result in a measurable impact on existing traffic volumes (defined as a 3 percent increase or more). As discussed in the project's traffic study, the proposed project would add less than 20 peak hour trips to any of the local roadways in question and would increase the existing traffic volumes by less than 1 percent. In addition, it is important to note that for any intersections that are already operating at LOS E or F, the City's criteria are that a significant impact would only occur if a project would increase the existing volumes by 3 percent or more. For example, in this case the proposed project is forecast to generate no more than 20 peak hour trips on Island Drive, and based on the existing traffic volumes, an increase of approximately 90 trips per hour would be required to result in a 3 percent increase to intersections on this roadway. Based on this information, it was concluded that further analysis of intersections along Auginbaugh Way, McCartney Drive, and Island Drive would not be expected to yield any additional useful information about the project's potential for transportation impacts.

It should further be noted that during peak hours, the Bay Farm Island bridge experiences volumes that are even higher, which allows the City to safely conclude that the 3 percent significance criteria could not possibly be exceeded, even for those intersections shown to be operating at LOS E or F. Based on the existing traffic volumes at the congested intersection directly south of the bridge (Island Drive and Doolittle Drive), the proposed project would need to add at least 125 peak hour trips to result in a 3 percent increase and thus trigger a significant impact, which is more traffic than the entire project is forecasted to generate. In other words, even if 100 percent of the project traffic was added to that intersection, it still wouldn't be considered a significant impact based on the City's adopted criteria for transportation impacts. (Source: *Threshold of Significance and Procedures for Ranking Modes Where Multiple Priorities are Identified*, Attachment I, Item 9-C, Planning Board Meeting, October 11, 2010.)

Based on each of the points outlined above, it is clear that the project *would not result in a new or more severe environmental effect* with respect to traffic, and preparation of a subsequent EIR would not be required for this issue.

#### **Exhibit C: Letter from Shawn Smallwood, dated December 7, 2018**

*The letter describes Dr. Smallwood's education and experience as an ecologist. His curriculum vitae are attached to the letter. Dr. Smallwood describes a visit to the proposed project site, and his observation of numerous wildlife species on or adjacent to the site. Dr. Smallwood suggests that development of the site would create a significant impact to biological resources, particularly impacts to burrowing owls and impacts to other avian species brought about by collisions with the project buildings.*

*This comment was responded to in Response II.B.3. That response is reproduced here for the convenience of the reader.*

The petitioner may not be aware that the City of Alameda has instituted design criteria for applicable projects with the aim of reducing avian collisions with buildings and other structures. The City Council adopted a final Bird-Safe Building Standards ordinance on December 18, 2018, which will apply to this project. Prior to that, two major projects approved over the last year (the Encinal Terminals project and the Alameda Marina Master Plan project) contained detailed requirements governing design criteria associated with reducing bird strikes. These requirements were based on the City of San Francisco's guidelines, which the petitioner has praised. As required by the City of Alameda's ordinance, integration of these requirements is a condition of approval for the project. Bird-friendly glazing, for instance, is called out in the project plans. Implementation of these requirements would effectively minimize the project's potential impacts in precisely the manner referred to in the petitioner's comments.

The petitioner also raised the question of potential effects of the project on wildlife residing in Bay waters offshore from the project site. The project, however, proposes no in-water work or improvements along the shoreline, nor the installation of any substantial new lighting in close proximity to the shoreline. In compliance with the approved Esplanade Development Plan, all buildings would be set back a minimum of 100 feet from the water's edge, and lighting requirements implemented under the City's design review criteria would minimize spillover of lighting onto adjacent areas. In addition, as part of the aforementioned ordinance concerning Bird-Safe Building Standards, the City has also adopted Dark Skies Standards which regulate excessive illumination, light trespass, and other lighting impacts. These requirements would apply to this project. Accordingly, the petitioner's suggestion that an adverse effect would occur to species residing in San Francisco Bay is substantially overstated.

The information provided by the petitioner concerning birds and other wildlife observed on the site is of interest, but none of the species that were observed on the site are afforded protected status. All of the species identified on-site in the petitioner's report are common and are typical of what can be seen on nearly any vacant suburban parcel on the San Francisco Bay shoreline, and most of these urban-adapted species would be expected to continue using the site following project implementation. The observations provide no evidence that the site provides nesting or stop-over habitat for any special status species. Indeed, such habitat is not expected on the site, given its urban nature, the fact that it is disked and/or mowed at least once per year for weed abatement purposes, is relatively small in extent, and is subjected to regular disturbance from encroachment onto the site by humans and dogs and other disturbances associated with the adjacent roadways, walkways, commercial properties, and the active Harbor Bay Ferry Terminal that surround the site. Protocol-level surveys for the special status

burrowing owl, as suggested by the petitioner, are not warranted for the project area for the simple reason that suitable habitat for this species is not present.

The surveys conducted by Monk & Associates affirmed these conditions, and reported that no active or inactive nests of any kind were found on the property or within its zone of influence, nor were any burrows found that would indicate current or recent occupation by western burrowing owl. As per standard City of Alameda requirements, if construction were planned to begin during the nesting season, preconstruction nesting bird surveys would be conducted once again prior to the commencement of construction, and any active nests discovered would be protected per the requirements of the California Fish and Game Code. This standard implementation of established regulatory requirements, which is applicable to nearly all development projects in the State of California, would ensure that there would be no adverse effects to nesting birds.

In summary, the subject property has been slated for commercial development for more than 40 years. The potential effects of that planned development have been known for decades, and have been reaffirmed through subsequent CEQA analysis on at least a half-dozen occasions as the Harbor Bay Isle planned development has built out. The petitioner's information does not put forth any new information that would indicate that there would be any new significant impacts that have not been disclosed previously, or that would not be effectively minimized through the application of existing regulatory requirements.

**Exhibit D: Bay Area Air Quality Management District Air Quality Guidelines**

*This exhibit contains the BAAQMD guidelines that provide direction to lead agencies in their analysis of impacts from criteria pollutants. We assume that these guidelines were included to support the petitioner's view that BAAQMD's cancer risk thresholds for criteria pollutants are applicable to worker exposures to indoor formaldehyde emissions. As discussed in Response II.B.1, BAAQMD's thresholds are not applicable to worker exposure criteria and are therefore immaterial to this discussion. Readers are referred to Response II.B.1 for a detailed discussion of this issue.*

**Exhibit E: Revised Public Review Draft Initial Study, AC by Marriott, West San Jose**

*This exhibit contains excerpts from an Initial Study prepared in the City of San Jose for a hotel project in San Jose. We assume that the intent of providing this exhibit was to show that a project that is similar to the proposed project will create a significant effect with respect to GHG emissions. As discussed in Response II.B.4, that is not the case with the proposed project. Readers are referred to that response for a detailed discussion of this issue.*

**Exhibit F: Petition to the State of California Fish and Game Commission and supporting information for listing the California population of the western burrowing owl (*athene cunicularia hypugaea*) as an endangered or threatened species under the California Endangered Species Act**

*This exhibit contains a petition from a group of petitioners to the California Fish and Game Commission concerning listing of the western burrowing owl under the California Endangered Species Act. We assume that the intent of providing this exhibit was to show that the proposed project would create a significant effect with respect to impacts to burrowing owls. As discussed in Response II.B.3, that is not the case with the proposed project. The species is not present on the site, nor is suitable habitat present for the species. The project would therefore have no effect on burrowing owls or any other special status species. Readers are referred to Response II.B.3 for a detailed discussion of this issue.*

**Conclusion**

Based upon substantial evidence in light of the whole record and as summarized above in the responses provided to the two appeals, it is evident that neither appeal has presented any new information to indicate that the Planning Board's actions, findings, and conclusions were not supported by substantial evidence, were not consistent with General Plan policy, or were inconsistent with the purposes and standards of the Zoning Ordinance. Furthermore, neither appellant has demonstrated that the proposed project would introduce any new significant environmental effects that would trigger preparation of a subsequent EIR, as specified in Public Resources Code section 21166 and CEQA Guidelines Section 15162. (See also CEQA Guidelines, §§ 15164, 15168.) The City has satisfied the requirements of CEQA, and further environmental analysis or documentation for the proposed project is not warranted.