

**Mission Crossings Mixed-Use Project
City of Hayward, Alameda County, California**

**Response to Public Comments on the Addendum
to the Mission Boulevard Corridor Specific Plan
Final Program Environmental Impact Report
SCH No. 2011042076**

Prepared for:

City of Hayward - Development Services Department
Planning Division
777 B Street
Hayward, CA 94541

Prepared by:

Impact Sciences, Inc.
505 14th Street, Suite 1230
Oakland, California 94612

May 2017

VARNI, FRASER, HARTWELL & RODGERS

ATTORNEYS AT LAW
650 A STREET
P.O. BOX 570

OF COUNSEL:
JONATHAN DANIEL ADAMS
MICHAEL J. O'TOOLE
P. CECILIA STORR

HAYWARD, CALIFORNIA 94543-0570
PHONE: (510) 886-5000 FAX (510) 538-8797
WEBSITE: VARNIFRASER.COM

April 18, 2017

VIA E-MAIL AND FIRST CLASS MAIL

Ms. Sara Buizer
Planning Manager
CITY OF HAYWARD
777 B Street
Hayward, CA 94541
Sara.Buizer@hayward-ca.gov

Ms. Heather Enders
Chair of Planning Commission
CITY OF HAYWARD
777 B Street
Hayward, CA 94541
Heather.Enders@hayward-ca.gov

Re: City of Hayward – Planning Commission Special Meeting
(Set for April 20, 2017)
“Mission Crossings” proposal – 25501 & 25551 Mission Blvd.
PH-17-025 – Seven (7) action items

Request for postponement of public hearing

Dear Chair Enders, Honorable Planning Commissioners, and Ms. Buizer:

I write on behalf of interested business and property owners to respectfully request that the Commission postpone and reschedule the public hearing on this matter, to allow more time for members of the public – as well as the members of the Commission – to adequately review and respond to the massive amount of documentation that was belatedly released to the public over this past holiday weekend.

L1-1

The application for this proposed project involves the Commission’s discretionary consideration of at least seven (7) significant zoning and land use action items, including proposed amendments to the applicable zoning regulations as well as a proposed addendum to the 2014 General Plan EIR. These are important and substantial questions, and the public and the Commission should be given adequate opportunity to receive and review the voluminous materials included in the Staff Report for this proposal.

L1-2

None of those materials, however, were made available to the public until the afternoon of Friday April 14, 2017, and some of those materials were not made available (on the City’s website) until after 8 p.m. on April 14, 2017. This did not provide the time necessary to adequately review the 1000+ pages of documents belatedly posted.

Response L1-1:

The commenter requested postponement of the previously planned April 20, 2017 City Planning Commission hearing. Since then, the Planning Commission approved the staff recommendation of continuing the public hearing for the proposed project to the next regular meeting of April 27, 2017, to allow time for reviewing the documents pertaining to the proposed Mission Crossings Project that include the technical studies and the Addendum.

Response L1-2:

As provided in the CEQA Guidelines under Section 15164(c), “an addendum does not need to be circulated for public review but can be included in or attached to the final EIR”. However, on April 14, 2017, as part of its staff report the City of Hayward Planning Division made the Addendum and associated technical studies available to the public available to the public on the City of Hayward Planning Commission webpage. The staff report was part of the agenda packet for the Planning Commission special meeting that was to be held on April 20, 2017

Ms. Sara Buizer
 Ms. Heather Enders
 April 18, 2017
 Page 2

Out of an abundance of caution and because I have not had the opportunity to fully understand the multiple pages of documents which were ultimately provided, I would call to your attention the following concerns and/or improprieties which might exist in the process which has been followed to date:

- L1-3 | 1. It is not appropriate to undertake an analysis of a matter this complex without a focused EIR and/or a new EIR.
- L1-4 | 2. Since the preparation of the EIR upon which this proposed amendment and this application has been justified, there have been several dramatic changes in the area in question:
 - a. The new roadway system which has been built on Mission Blvd. has taken full effect. Traffic loads during morning and afternoon peak hours are thus significantly increased. This coincides with the times that people normally arrive at and/or depart from hotels/motels on Mission Blvd. This would seem to indicate a need for a thorough study as to peak traffic flows and the need for lights at Mission Blvd. and Torrano Avenue and/or Harder Road and Orchard Avenue as well as related noise and air quality issues.
 - L1-5 | b. There has been a significant increase in the automotive sales activity on Mission Blvd. At this time, we have three of the most productive automotive dealerships in Northern California on Mission Blvd. (Toyota, Honda and Volkswagen) with sales figures which exceed all other similar locations in Northern California. In addition, we have a new Mitsubishi dealership which is doing an excellent job and which is immediately adjacent to this site. In addition, we have Sonic, which is a national automotive dealership group acquiring the former Chevrolet site on Mission Blvd. and proposing to place their Honda dealership at that location.
 - L1-6 | c. The Quality Inn has just opened 66 additional motel rooms and there are two other pending applications for hotels on Mission Blvd. in close proximity to the site in question. They both propose approximately 90 motel rooms. One of them is directly across Mission Blvd. from the applicant's property and has already been approved for commencement of construction.
 - L1-7 | 3. The information we have reviewed to date, in particular the economic analysis of the benefits of the Marriott do not take into consideration the possible effect on room rates due to the Quality Inn expansion and the 180 additional motel rooms proposed on Mission Blvd. in close proximity to the site. In addition, the economic study does

Response L1-3:

The City of Hayward and its CEQA consultant prepared an addendum in compliance with the CEQA Guidelines Section 15164.

The proposed mixed-use development would be similar but at a smaller density than the land use designation of the project site analyzed in the Mission Boulevard Corridor Specific Plan Final EIR (MBCSP FEIR).

In compliance with CEQA Guidelines Section 15162(a), the environmental review presented in the Addendum examined the following to determine if a subsequent or supplemental EIR should be prepared for the proposed project:

- Whether 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;
- Whether substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Whether new information of substantial importance shows any of the following:
 - ◊ The project will have one or more significant effects not discussed in the previous EIR;
 - ◊ Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - ◊ Mitigation measures previously found not to be feasible would in fact be feasible and would substantially reduce one or more sig-

Response L1-3 (continued):

nificant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

- ◊ Mitigation measures 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.

The Addendum demonstrates that the proposed changes at the project site to the MBCSP contained in the proposed project satisfy the requirement contained in the CEQA Guidelines Section 15164 for the use of an addendum to an EIR. As documented in the Addendum, the City’s staff concluded that the proposed changes do not require the preparation of a subsequent or supplemental EIR pursuant to Section 15162 of the CEQA Guidelines due to the absence of new or substantially more adverse significant impacts than those analyzed in the certified MBCSP FEIR. In addition, the proposed changes do not require new mitigation measures different from those identified in the MBCSP FEIR to reduce the proposed project.

The City’s staff determined the proposed project would not meet any of the above criteria and no subsequent or supplemental EIR should be prepared.

Response L1-4:

As the commenter notes, traffic conditions have changed since the preparation of the MBCSP FEIR. To evaluate traffic impacts that would result from implementation of the proposed Mission Crossings Project, the City of Hayward conducted a project-specific traffic analysis that accounted for the current traffic conditions. As documented in the traffic study the Addendum

concluded that the Mission Crossings Project would result in less-than-significant traffic impacts.

Response L1-5:

[Comment is related to project merit]

Response L1-6:

[Comment is related to project merit]

Response L1-7:

[Comment is related to project merit]

Ms. Sara Buizer
Ms. Heather Enders
April 18, 2017
Page 3

L1-7

not analyze the collateral negative effect on the automotive industry by allowing the bifurcation of auto row with a motel and/or 140 poorly designed 3-story residential units in an area which is dominated by automotive uses and automotive repair facilities.

4. Finally, the environmental documents reviewed to date do not include any historical analysis of the prior hotels which have been built in Hayward and where they were built as well as alternate locations for hotels in Hayward. For example, there are three significant hotels which have existed in Hayward:

L1-8

- a. The one on Main Street which is presently occupied by the Chamber of Commerce which was a Wells Fargo Hotel prior to 1900 with a stable and a watering hole, etc.
- b. The classic Green Shutter Hotel at B Street and Main Street which is currently under renovation.
- c. The Doric Hotel at the intersection of D Street and Mission Blvd. which was a full scale hotel operation with breakfast, lunch and dinner and entertainment.
- d. That hotels have traditionally been located in the downtown. The significance of this is also that the travel distance from a downtown hotel is shorter and more efficient than the travel distance from a motel on Mission Blvd. to the Cal State East Bay campus due to the traffic flows which now exist on Mission Blvd.

Accordingly, I request that this matter be postponed for public hearing, on or after April 27, 2017 so that adequate thought can be given to the statistical information provided to date and the need for a full or focused EIR on the issues above described. Thank you for your consideration of this request.

Very truly yours,

VARNI FRASER HARTWELL & RODGERS

Anthony B. Varni

Response L1-8:

In compliance with the CEQA Guidelines, the Addendum addressed the potential impacts of the proposed project on significant historical resources. As described in the Addendum, based on the Built Environment Assessment that was prepared for the project site by an architectural historian who meets the standards of the Secretary of the Interior, none of the project site's existing buildings were found to contribute to an eligible historic district defined under the California Register of Historical Resources. In addition, the Built Environment Assessment found that none of the buildings or properties adjacent to the project site are listed, pending or determined to be eligible for listing on the California Register of Historical Resources, and no local, state or federal historically or architecturally significant structures, landmarks, or points of interest have been identified near the project site. The Addendum concludes that the proposed project would have no impact on historical resources.

VARNI, FRASER, HARTWELL & RODGERS

ATTORNEYS AT LAW
650 A STREET
P.O. BOX 570

HAYWARD, CALIFORNIA 94543-0570

PHONE: (510) 886-5000 FAX (510) 538-8797

WEBSITE: VARNIFRASER.COM

OF COUNSEL:
JONATHAN DANIEL ADAMS
MICHAEL J. O'TOOLE
P. CECILIA STORR

April 20, 2017

VIA E-MAIL AND FIRST CLASS MAIL

Ms. Sara Buizer
Planning Manager
CITY OF HAYWARD
777 B Street
Hayward, CA 94541
Sara.Buizer@hayward-ca.gov

Ms. Heather Enders
Chair of Planning Commission
CITY OF HAYWARD
777 B Street
Hayward, CA 94541
Heather.Enders@hayward-ca.gov

Re: City of Hayward – Planning Commission Special Meeting
(Set for April 20, 2017)
“Mission Crossings” proposal – 25501 & 25551 Mission Blvd.
PH-17-025 – Seven (7) action items

Dear Chair Enders, Honorable Planning Commissioners, and Ms. Buizer:

L2-1

On April 18, 2017, I wrote to the City on behalf of Robin Wilma and other interested business and property owners to respectfully request that the Commission postpone and reschedule the hearing on this matter. One of my expressed concerns was the fact that we had received in excess of 1,000 pages of documentation on Friday evening of Easter week (Friday, April 14, 2017). Within the last 24 hours I have received another significant batch of documents from the City which were not provided to us until the afternoon of Wednesday, April 19, 2017.

I have now had the opportunity to briefly review all of this information and I would like to call to your attention certain significant deficiencies:

L2-2

1. There are no studies with regard to the direct or indirect impacts on auto row from the construction of this project at this location. I would imagine that Dollar Street as well as Torrano Avenue will be impacted by people living in these units and parking on these streets therefore disrupting possible customers of auto row.

L2-3

2. There is no data as to the amount of sales and other taxes paid by auto row to the City, in particular during the last two years.

Response L2-1:

The commenter requested postponement of the previously planned April 20, 2017 City Planning Commission hearing. Since then, the Planning Commission approved the staff recommendation of continuing the public hearing for the proposed project to the next regular meeting of April 27, 2017, to allow time for reviewing the documents pertaining to the proposed Mission Crossings Project that include the technical studies and the Addendum.

Response L2-2:

As noted in the Traffic Impact Analysis prepared for the proposed Mission Crossings Project and included in the Addendum in Appendix H, the hotel and retail portion of the proposed project would include a total of 83 parking spaces and the residential portion would provide a total of 305 parking spaces. Based on the City’s Form-Based Code, there is no minimum off-street automobile parking requirement for non-residential uses and the 305 residential spaces exceed the 297 required by City code. The traffic analysis concludes that the proposed project would provide more than adequate parking for the site.

Response L2-3:

[Comment is related to project merit]

Ms. Sara Buizer
Ms. Heather Enders
April 20, 2017
Page 2

L2-4

3. The data relied upon by the Applicant to justify the Marriott Hotel presumes an 84% occupancy rate. Direct conversations with representatives of Marriott would indicate that Hayward should anticipate between 70%-75% occupancy rate at best at this location. The economic reports also clearly provide that the data they relied upon was provided by the Applicant and not by their own independent research. There is no information in any of these reports as to the capabilities or the credentials of the Applicant which would allow it to instruct its consultants that there will be 84% occupancy.

L2-5

4. Within the last two years there have been significant increases in a.m. and p.m. traffic on Mission Blvd. The intersection of Torrano Avenue and Mission Blvd. is difficult at best. It is almost impossible for people heading north on Mission Blvd. during peak hours to get to the Marriott or the residential units on the west side without going to Berry Avenue and making a U-turn or without turning on Harder Road and then on Dollar Street. People using the hotel will not have this local knowledge.

L2-6

5. There are air quality issues which have been recently identified as shown by enclosed article from the Wednesday, April 19, 2017 San Francisco Chronicle.

6. It would now appear that the Bay Area Air Quality Management District (of which the City of Hayward is a member agency) is seriously studying air quality issues in the Bay Area and is contemplating serious changes in lifestyles that will result. I am also enclosing the front page article from the San Francisco Chronicle dated April 20, 2017. In that Hayward is a member agency of this authority, it would seem that this information was readily available and should have been included in the report.

As I have additional time, I will point out additional issues which should be addressed in a focused EIR or a new EIR before this project is considered for approval or disapproval.

Very truly yours,

VARNI FRASER HARTWELL & RODGERS

Anthony B. Varni

Enclosures

Response L2-4:

[Comment is related to project merit]

Response L2-5:

As the comments notes and as indicated in the Traffic Impact Analysis prepared for the Mission Crossings Project, the median on Mission Boulevard directly in front of the Project site and at the Mission Boulevard/Torrano Avenue (North) intersection (#3) limit northbound left-turn access into the project site. Therefore, project trips for the hotel portion have to make a U-turn at Berry Avenue to access the driveway on Mission Boulevard and the project trips for the residential portion would have to make a left-turn to access the driveway on Berry Avenue. As the Traffic Impact Analysis notes, these queues would not spill back to adjacent intersections. Due to the center median on Mission Boulevard, the storage length of the northbound left-turn lane may be increased with minimal impact to other modes.

Response L2-6:

Although the proposed project would be similar but at a smaller density than the land use designation of the project site analyzed in the MBCSP FEIR, the City of Hayward prepared a quantitative air quality analysis in compliance with the Bay Area Air Quality Management District Guidelines. The Air Quality and Greenhouse Gases Technical Report is included in Appendix A of the Addendum. Based on the technical report, the Addendum concludes that the proposed project would have less-than-significant impacts related to air quality.

With respect to impacts related to greenhouse gases, the Addendum concludes that the proposed project would include the Best Management Practices to reduce exhaust emissions from construction vehicles and equipment which would reduce GHG emissions. The Addendum also notes that the proposed project is within the scope of the Specific Plan in terms of the types of land uses, overall development footprint, and the density of the proposed development. Consequently, the residential population and employment growth asso-

Response L2-6 (continued):

ciated with the proposed project would be also within the population and employment estimates presented in the MBCSP FEIR. The Addendum concludes that the GHG emissions associated with the project are accounted for in the estimate of total and per capita GHG emissions reported in the MBCSP FEIR. Therefore, the impact of the GHG emissions associated with the proposed project's would be less-than-significant.

VARNI, FRASER, HARTWELL & RODGERS

ATTORNEYS AT LAW

650 A STREET

P.O. BOX 570

HAYWARD, CALIFORNIA 94543-0570

PHONE: (510) 886-5000 FAX (510) 538-8797

WEBSITE: VARNIFRASER.COM

OF COUNSEL:
JONATHAN DANIEL ADAMS
MICHAEL J. O'TOOLE
P. CECILIA STORR

April 20, 2017

VIA E-MAIL AND FIRST CLASS MAIL

Ms. Sara Buizer
Planning Manager
CITY OF HAYWARD
777 B Street
Hayward, CA 94541
Sara.Buizer@hayward-ca.gov

Ms. Heather Enders
Chair, Planning Commission
CITY OF HAYWARD
777 B Street
Hayward, CA 94541
Mike.Porto@hayward-ca.gov

Re: City of Hayward: Projects in the "South Hayward BART/Mission Boulevard Form-Based Code District" (the "South Mission Blvd. Corridor")

Renewed request for postponement and comments/objections

Dear Ms. Buizer and Ms. Enders:

This will follow up my letter of April 18, 2017, requesting a postponement of the hearing on this matter, and amplify our concerns about the deficiencies of the proposed public review and consideration of this project.

1. Request for postponement

At roughly 2 p.m. on Wednesday April 19, 2017, we received an email message from the City Planning Department (Mr. Goldassio) attaching a series of new and additional documents apparently being offered for belated inclusion in the staff report for hearing by the Commission on April 20. Such late additional materials are objectionable, are not timely, in violation of the Brown Act, and may not lawfully be considered or discussed at the Commission hearing if it remains set on April 20. We renew our request for postponement of this hearing.

2. Failure to comply with CEQA:

As stated in my previous letter on this matter, the environmental review of the project provided to the public thus far is inadequate, and fails to comply with the requirements of the California Environmental Quality Act ("CEQA").

"The central purpose of CEQA is to ensure that agencies and the public are adequately informed of the environmental effects of proposed agency action." (*Friends of the College of*

Response L3-1:

The commenter requested postponement of the previously planned April 20, 2017 City Planning Commission hearing. Since then, the Planning Commission approved the staff recommendation of continuing the public hearing for the proposed project to the next regular meeting of April 27, 2017, to allow time for reviewing the documents pertaining to the proposed Mission Crossings Project that include the technical studies and the Addendum.

Response L3-2:

As provided in the CEQA Guidelines under Section 15164(c), "an addendum does not need to be circulated for public review but can be included in or attached to the final EIR". However, on April 14, 2017, as part of its staff report the City of Hayward Planning Division made the Addendum and associated technical studies available to the public available to the public on the City of Hayward Planning Commission webpage. The staff report was part of the agenda packet for the Planning Commission special meeting that was to be held on April 20, 2017.

L3-1

L3-2

Ms. Sara Buzier
 Ms. Heather Enders
 April 20, 2017
 Page 2

L3-2 | *San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5th 937, 951.)

L3-3 | The Staff Report (released on Friday April 14, 2017) reported that an Addendum to the Environmental Impact Report (“EIR”) prepared for the Mission Boulevard Specific Plan and certified in January 2014 (“MBCSP EIR”) has been prepared in connection with the City’s consideration of the proposed project. The Addendum is apparently intended to fulfill the City’s obligations under CEQA as to this project. However, reliance on an Addendum would be inappropriate and inadequate for analysis of this significant new project and the changed circumstances surrounding the proposed project. First, the decision to rely on an Addendum was not legally appropriate nor factually justified. Second, not only is the proposed reliance on an Addendum unjustified, but the Addendum itself is deficient and fails to comply with CEQA.

A. The proposed use of an Addendum to the 2014 Program EIR for the Mission Boulevard Corridor Specific Plan (“MBCSP”) is not authorized under CEQA.

L3-4 | The Staff Report does not cite any legal authority for the applicants’ proposal to use an Addendum to the 2014 EIR for the Specific Plan as the basis for the City’s CEQA analysis of this new project. The use of an Addendum to conduct CEQA review of a *project* that has previously undergone CEQA analysis is governed by Section 15164 of the CEQA Guidelines, in the context of conducting subsequent review of a project EIR. An Addendum is authorized only in situations where a “project EIR” or other project-level CEQA analysis has been conducted for projects having substantial identity. That is not the case here, and use of an Addendum is unauthorized.

L3-5 | The applicant has improperly proposed that the City rely on an Addendum to the 2014 EIR for the Mission Boulevard Corridor Specific Plan (“MBCSP”). However, that was a *program level* EIR, (Guidelines § 15168), distinct from the current proposed specific mixed use project. The current proposal is not the same as, or even consistent with the MBCSP; to the contrary it seeks numerous zoning amendments and other deviations from the policies of the 2014 Plan.

B. The proposal that the City should rely on an Addendum is unjustified.

L3-6 | The limited material belatedly produced to the public last Friday does not support the suggestion that CEQA review of this new project can be legally done by way of a mere Addendum to a three-year old project-level EIR. The City has a non-delegable duty to assure compliance with CEQA. The Staff Report indicates that someone apparently decided to avoid preparing a new EIR or mitigated negative declaration for this new project, and instead decided to try to proceed by using an Addendum to the 2014 MBCSP EIR.

Neither the Staff Report nor the Addendum reveal who made the decision to proceed by way of preparing an Addendum to the 2014 MBCSP EIR in this case, rather than by preparing

Response L3-3:

The City of Hayward and its CEQA consultant prepared an addendum in compliance with the CEQA Guidelines Section 15164. The proposed mixed-use development would be similar but at a smaller density than the land use designation of the project site analyzed in the Mission Boulevard Corridor Specific Plan Final EIR (MBCSP FEIR).

In compliance with CEQA Guidelines Section 15162(a), the environmental review presented in the Addendum examined the following to determine if a subsequent or supplemental EIR should be prepared for the proposed project:

- Whether 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;
- Whether substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Whether new information of substantial importance shows any of the following:

The project will have one or more significant effects not discussed in the previous EIR;

Significant effects previously examined will be substantially more severe than shown in the previous EIR;

Response L3-3 (continued):

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, but the project proponents decline to adopt the mitigation measure or alternative; or

Mitigation measures 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.

The Addendum demonstrates that the proposed changes at the project site to the MBCSP contained in the proposed project satisfy the requirement contained in the CEQA Guidelines Section 15164 for the use of an addendum to an EIR. As documented in the Addendum, the City's staff concluded that the proposed changes do not require the preparation of a subsequent or supplemental EIR pursuant to Section 15162 of the CEQA Guidelines due to the absence of new or substantially more adverse significant impacts than those analyzed in the certified MBCSP FEIR. In addition, the proposed changes do not require new mitigation measures different from those identified in the MBCSP FEIR to reduce the proposed project. The City's staff determined the proposed project would not meet any of the above criteria and no subsequent or supplemental EIR should be prepared.

Response L3-4:

As described above under Response L3-3, the proposed mixed-use development would be similar but at a smaller density than the land use designation of the project site analyzed in the MBCSP FEIR. The development of the pro-

ject site analyzed in the MBCSP FEIR assumed a total of 186 units with 166 of those units located on the project site at 25501 and 25551 Mission Boulevard and the remaining 20 units located on the project site at 671 Berry Avenue. The Mission Crossings Project is proposing a total of 140 residential units, which is 46 units less than what was previously planned in the Specific Plan. In addition, the development analyzed in the MBCSP FEIR for the project site assumed 89,039 square feet of commercial development to be located on the project site at 25501 and 25551 Mission Boulevard. The proposed Mission Crossings Project is proposing a total of 83,202 square feet of hotel-building area (including the 7,225 square feet of commercial space and 3,382 square feet of conference room meeting space). This represents 5,837 square feet less commercial development than what was planned in the MBCSP EIR.

Because the proposed project would be smaller in scale, the severity of impacts would be less than those identified in the MBCSP FEIR. However, to additionally support the Addendum analysis, the City of Hayward prepared technical studies to quantify the impacts of the proposed Mission Crossings project and to examine the potential impact of changes to the circumstances or new information since the preparation of the MBCSP FEIR. The technical analysis of the proposed project also examined whether new mitigation measures would be required to substantially reduce one or more significant effects on the environment.

Response L3-5:

The proposed change from the development analyzed in the MBCSP FEIR is in the zoning designation for a portion of the project site from T4-2 Urban General Zone with a Commercial Overlay Zone 1 to T4-2 Urban General Zone with a Commercial Overlay Zone 2 to allow ground floor residential with Conditional Use Permits. As noted in the Addendum, changing the overlay zoning designation would not require amendment of the General Plan or existing zoning maps. Therefore, the Addendum concludes that the

Response L3-5 (continued):

proposed project would have a less-than-significant impact associated with the change in zoning designation.

Response L3-6:

The commenter is claiming that the applicant proposed to the City to rely on an Addendum to the MBCSP FEIR. As the Planning Manager, Ms. Sara Buzier, noted during the public meeting on April 27, 2017, the CEQA consultant – Impact Sciences, for the proposed Mission Crossings Project was selected and directly contracted by the City. All CEQA communication including the Addendum review was solely between the City and its CEQA consultant. The applicant's contribution was limited to providing the City's staff with information associated with the project's design needed for the evaluation of the potential environmental impacts. The applicant did not review the Addendum or influence any part of the analysis. The Addendum was made available to the applicant at the same time it was made available to the public through the staff report posted as part of the agenda packet on the City of Hayward Planning Commission webpage for the Planning Commission special meeting that was to be held on April 20, 2017. As described under Response L3-3 above, the City analyzed the Mission Crossings Project to confirm whether a supplemental or subsequent EIR was needed and concluded that an Addendum was the appropriate environmental document for the project.

Ms. Sara Buzier
 Ms. Heather Enders
 April 20, 2017
 Page 3

L3-6 | and circulating a new EIR or at least a Supplemental or Subsequent EIR (“SEIR”). The limited public record does not reveal when or how that decision was made.

L3-7 | The California Supreme Court recently explained a lead agency must comply with CEQA’s “subsequent review provisions” (i.e., Pub. Res. Code § 21166; CEQA Guidelines §§ 15162-15164) where it seeks to rely on use of an “addendum” to a previously-certified CEQA document in conducting review of the same, or related, project. (*Friends of the College of San Mateo Gardens, supra*, 1 Cal.5th at 948-954.) In addition to the errors noted previously, neither the one-paragraph reference to “environmental review” in the Staff Report (at p. 18) nor the Addendum itself demonstrate compliance with those subsequent review provisions, nor do they provide substantial evidence sufficient to support the decision to recommend use of the Addendum, rather than a more comprehensive and informative CEQA document, as required by the Supreme Court.

L3-8 | **C. The City may not use an Addendum to a 2014 “Program” EIR as its CEQA-compliance for review of this specific new project.**

The 2014 MBCSP EIR was prepared at “program level” for the City’s use in evaluating impacts of a Specific Plan, not for project-level analysis of a new mixed use/hotel/townhouse development project requiring changes to zoning district boundaries and other significant changes to the land use plans and policies adopted in the Specific Plan. To the extent that the Staff Report argues that the proposed project is “the same as or within the scope of” the 2014 Program EIR for the Specific Plan, then the CEQA review of this new proposal would not be governed by Pub. Res. Code § 21166 (as assumed in the Addendum) but rather may be governed by the more exacting standards of Pub. Res. Code § 21094(c) [tiered EIR]. (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1321.)

Even if it could be claimed that the 2014 MBCSP EIR provides some informational value for the analysis of the impacts of this new project, the record nevertheless fails to support the conclusion that an Addendum would be the proper way for the City to “comply with its obligations under those [subsequent review] provisions.” (1 Cal.5th at 953.) To the contrary, the magnitude and extent of the differences between this specific project and the planning program studied at a less-detailed program level in the 2014 EIR, and the changed circumstances and new information relevant to the consideration of this project are such that – at a minimum -- major revisions to the 2014 EIR would be required, calling for preparation of an SEIR, if not a brand new project-specific EIR or focused EIR.

L3-9 | **D. The Addendum does not reflect the City’s independent judgment.**

Even if it could be shown that an Addendum could be appropriate in this situation, the record must demonstrate that the City exercised its independent judgment in deciding to use the Addendum. While lead agencies are allowed to rely on reports prepared by project applicants, or

Response L3-7:

Please refer to Response L3-3 above that describes the City’s procedure and examination of the proposed project to decide on the most appropriate CEQA path for the Mission Crossings Project. As documented in the Addendum, the City’s staff concluded that the proposed changes do not require the preparation of a subsequent or supplemental EIR pursuant to Section 15162 of the CEQA Guidelines due to the absence of new or substantially more adverse significant impacts than those analyzed in the certified MBCSP FEIR. In addition, the proposed changes do not require new mitigation measures different from those identified in the MBCSP FEIR to reduce the proposed project. The City’s staff determined the proposed project would not meet any of the above criteria and no subsequent or supplemental EIR should be prepared.

Response L3-8:

Please refer to Response L3-4 above that compares the scope and scale of the proposed Mission Crossings Project with the development of the project site analyzed in MBCSP FEIR.

The proposed project would be smaller in scale and therefore the severity of impacts would be less than those identified in the MBCSP FEIR. However, to additionally support the Addendum analysis, the City of Hayward prepared technical studies to quantify the impacts of the proposed Mission Crossings Project and to examine if changes to the circumstances or new information would result in new significant adverse impacts or substantially more severe adverse impacts to those identified in the MBCSP FEIR. The technical analysis of the proposed project also examined whether new mitigation measures would be required to substantially reduce one or more significant effects on the environment. Based on the project-specific analysis, the City’s staff concluded that the proposed changes do not require the preparation of a subse-

Response L3-8 (continued):

quent or supplemental EIR pursuant to Section 15162 of the CEQA Guidelines due to the absence of new or substantially more adverse significant impacts than those analyzed in the certified MBCSP FEIR.

Response L3-9:

Please refer to Response L3-6 that describes the independent review process conducted by the City of Hayward. As noted under Response L3-6, the CEQA consultant was contracted by the City and prepared the Addendum based on directions and guidance from the staff planners of the City of Hayward Planning Division. The applicant's contribution was limited to providing accurate project design information to the City to complete the environmental analysis. The applicant did not review the Addendum or influence any part of the analysis. The Addendum was made available to the applicant at the same time it was made available to the public through the staff report posted as part of the agenda packet on the City of Hayward Planning Commission webpage for the Planning Commission special meeting that was to be held on April 20, 2017.

Ms. Sara Buzier
 Ms. Heather Enders
 April 20, 2017
 Page 4

L3-9

consultants, this imposes an additional duty on the lead agency to “independently review and analyze” such material. (Pub. Res. Code, § 21082.1 (c)); also CEQA Guidelines § 15084(e). Before using a draft prepared by another person, the Lead Agency shall subject the draft to the agency’s own review and analysis...)

There is no evidence that the Addendum here has been “subjected to the City’s own review and analysis” as required. The Addendum is not visibly approved or signed by any City of Hayward official. Indeed, it is doubtful that this Addendum (prepared by an outside consultant) was even available to the City of Hayward for its independent “review and analysis” before it was released to the public and the Commission last Friday. It appears that the Staff Report was drafted before the Addendum was received from the consultant.

E. The information in the Addendum is not sufficient to support the recommendation to avoid preparing a new EIR, or at least an SEIR.

L3-10

A lead agency’s independent decision to rely on an Addendum rather than to prepare a new EIR or an SEIR must be supported by substantial evidence in the record, demonstrating that the conditions of Guidelines 16164 have been met, i.e., that some changes or additions to the previously certified EIR are necessary but that none of the conditions of Guidelines 15162 or 15163 calling for preparation of an SEIR exist. Although the Addendum recites those conclusions, it fails to provide substantial evidence to support them.

The Addendum does not address the significant changes in the circumstances surrounding the project site, or the new information of environmental significance to the project, arising since the Specific Plan EIR was certified in January 2014. My letter of April 18, 2017, listed several examples of such changed circumstances and new information.

The Addendum focuses on the differences between this specific project and the conditions described in the 2014 EIR, and attempts to erroneously minimize the significance or severity of those differences, without substantial evidentiary support.

L3-11

For one example, the Addendum argues (at page 93) that although the application before the Commission seeks amendments to the City’s new form-based zoning, and changing the coverage of the two commercial overlay zoning districts so as to expand the area allowing ground floor residential uses, “these actions would not require the amendment of the General Plan or the zoning maps.” This is not only unsupported by evidence, it is contrary to the application itself. The Addendum’s conclusion that this project would have no new or more severe impacts that were not fully analyzed in the 2014 EIR is unsupported.

L3-12

Another example of a deficiency in the Addendum is revealed in its discussion of impacts on traffic and transportation (pp. 117- 127). The Addendum asserts that the project would not cumulatively contribute to degradation of levels of service (LOS) at studied intersections that fall below the City’s threshold of significance. However, that minimizes the actual impact of the

Response L3-10:

Please refer to Response L3-3 that describes the analysis process. The Addendum demonstrates that the proposed changes at the project site to the MBCSP that are contained in the proposed project satisfy the requirement contained in the CEQA Guidelines Section 15164 for the use of an addendum to an EIR.

The Addendum examined whether the proposed project includes substantial changes, whether substantial changes occur with respect to the circumstances under which the project is undertaken, or whether new information of substantial importance shows any of the following:

- The project will have one or more significant effects not discussed in the previous EIR;
- Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- 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, but the project proponents decline to adopt the mitigation measure or alternative; or
- Mitigation measures 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.

As documented in the Addendum, the City’s staff concluded that the proposed changes do not require the preparation of a subsequent or supplemental EIR pursuant to Section 15162 of the CEQA Guidelines due to the absence of new or substantially more adverse significant impacts than those analyzed in

Response L3-10 (continued):

the certified MBCSP FEIR. In addition, the proposed changes do not require new mitigation measures different from those identified in the MBCSP FEIR to reduce the proposed project. The City's staff determined the proposed project would not meet any of the above criteria and no subsequent or supplemental EIR should be prepared.

Response L3-11:

For each CEQA resource topic, the Addendum includes a discussion of the impacts associated with the project changes and a discussion of potential impacts associated with changes in circumstances or new information.

As noted in the Addendum, in the Land Use and Land Use Planning section, the proposed development would change the overlay zoning designation for a portion of the project site from T4-2 Commercial Overlay Zone 1 to T4-2 Commercial Overlay Zone 2 to allow ground floor residential with a conditional use permit. The Addendum notes that changing the overlay zoning designation would not require amendment of the General Plan or existing zoning maps. The Addendum concludes that the proposed project would have a less-than-significant impact on applicable land use plan, policy, or regulation.

Response L3-12:

The commenter notes that the traffic analysis in the Addendum relies on significance thresholds that are more tolerant than the one used in the MBCSP FEIR. As documented in the Addendum, the traffic analysis used the City's updated significance thresholds for traffic as these have been revised in the 2040 General Plan. The 2040 General Plan EIR certified on July 1, 2014 and completed after the certification of the MBCSP FEIR is the City's overarching

planning document and supports the implementation of the MBCSP to guide future development and infrastructure improvements within the Mission Boulevard Corridor Area.

The commenter notes that traffic analysis should have been performed in compliance with Senate Bill 743 which requires traffic impacts to be measured using vehicle miles traveled vehicle miles traveled per capita, automobile trip generation rates, or automobile trips generated. On January 20, 2016, the Governor's Office of Planning and Research (OPR) released for public review a revised proposal for changes to the CEQA Guidelines that will change the way that transportation impacts are analyzed under CEQA. Once the CEQA Guidelines are amended to include those alternative criteria, vehicles delay at intersections would no longer be considered a significant impact under CEQA. OPR has not yet released the final CEQA Guidelines updating the analysis of transportation impacts and the City of Hayward has not yet adopted the new transportation criteria. Therefore, the analysis relied on the most up-to-date City's significance thresholds for transportation impacts.

Ms. Sara Buzier
 Ms. Heather Enders
 April 20, 2017
 Page 5

L3-12

project on traffic congestion, because the City changed (raised) its threshold of significance when it adopted the 2040 General Plan, after the 2014 MBCSP EIR was certified, so that LOS E which was previously unacceptable at peak hour is now acceptable under the new standards (Addendum, p. 122). Table 7 indicates that the LOS at several of the studied intersections will be seriously degraded under “interim 2020 conditions” and under “2035 cumulative conditions.” (E.g., intersections at Berry Avenue, Harder Rd., and Tennyson drop to LOS E or F.) The assertions of “no new impact” in the Addendum are thus based on misleading “apples to oranges” comparisons of the standards used in the 2014 EIR and the new, more traffic-tolerant standards used by the Addendum’s preparers.

In addition, the Addendum’s assertion of “no significant traffic impacts” attributable to the project is based on the Addendum’s reliance on the more traffic-tolerant thresholds of significance in the City’s 2040 General Plan. The Addendum thus commits the same errors, and unfounded assumptions, that were recently condemned by the Court of Appeal in *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, where the Court invalidated the EIR for a 300+ unit residential infill project for flawed traffic impacts analysis. Mere reliance on a threshold of significance in a general plan does not mean that there are no traffic impacts.

Finally, the traffic analysis in the Addendum appears oblivious to the strong guidance of the OPR urging that new CEQA studies should replace LOS analysis and instead move toward usage of VMT methodologies as called for by SB 743.

F. The Addendum used an inappropriate method of impact analysis.

L3-13

Use of a mere Addendum to a three-year old *program-level* EIR is inappropriate and fails to provide the specific *project-level* environmental analysis of this proposed project, changed circumstances, and new information relevant to the project as required by CEQA.

Even assuming that an addendum document could lawfully be used here, the “checklist” approach used in the Addendum failed to make or reveal the appropriate information to facilitate environmental decision-making on the project, i.e., inapt comparison between impacts of this specific project and the more generalized impacts discussed in the 2014 Plan EIR. The Addendum does not consistently disclose whether it finds that the project will have more or different impacts than those impacts (where relevant comparisons can be made) reported in the 2014 Plan EIR, nor whether the project may have more acute or more severe impacts than those reported in the 2014 Plan EIR.

3. Other Comments

L3-14

The documents do not show that the project would be “consistent” with the City’s general plan or the 2014 Specific Plan. For example, the project requires significant changes to the new

Response L3-13:

The Addendum notes changes in circumstances or new information pertaining to tribal cultural resources, greenhouse gas emissions, and traffic. However, the Addendum demonstrates that changes in circumstances or substantial new information would not trigger additional environmental review. The project-specific analyses concluded that the project would not have more severe significant impacts to those identified in the MBCSP EIR, and the project would not require any new mitigation measures.

Response L3-14:

Please refer to Response L3-4 that describes changes to the development at the project site analyzed in the MBCSP FEIR. The proposed change from the development analyzed in the MBCSP FEIR is in the zoning designation for a portion of the project site from T4-2 Urban General Zone with a Commercial Overlay Zone 1 to T4-2 Urban General Zone with a Commercial Overlay Zone 2 to allow ground floor residential with Conditional Use Permits. As noted in the Addendum, changing the overlay zoning designation would not require amendment of the General Plan or existing zoning maps. Therefore, the Addendum concludes that the proposed project would have a less-than-significant impact associated with the change in zoning designation.

Ms. Sara Buzier
Ms. Heather Enders
April 20, 2017
Page 6

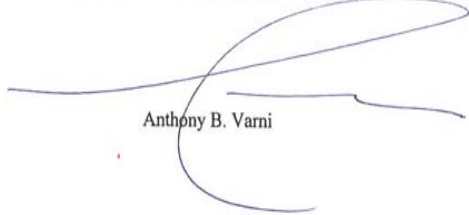
L3-14

zoning ordinance and deviations from the Specific Plan, in order to accommodate the residential aspects of the Project.

This project would be a significant change of direction for the City and it should be important to the Commission to allow the public an adequate opportunity to review and analyze the voluminous documents being relied on to advocate for approval of the project.

Very truly yours,

VARNI FRASER HARTWELL & RODGERS

A handwritten signature in blue ink, appearing to read 'Anthony B. Varni', is written over a horizontal line. The signature is stylized with a large loop at the end.

Anthony B. Varni