



February 24, 2017

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**PLANNING DIVISION**

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Planning Division  
Attn: Sara Buizer, Planning Manager  
City of Hayward  
777 B Street  
Hayward, CA 94541

**Re: Appeal of Planning Commission Action – Approval of Vesting Tentative Map and Site Plan Review Application – Lincoln Landing Mixed Use Project (File No. PH17-014)**

To Whom it May Concern:

On behalf of Hayward resident Desirae Schmidt, we hereby appeal the Planning Commission’s February 23, 2017 action certifying a final environmental impact report and approving Vesting Tentative Map and Site Plan Review application No. 201501148, pursuant to Section 10-1.2845 of the Hayward Municipal Code. Enclosed please find a check for \$408.00 made payable to the City of Hayward, which should cover the appeal fee as listed on the City’s Master Fee Schedule. If for any reason this amount is insufficient, please contact the undersigned as soon as possible and we will arrange to forward any balance due.

The grounds for the appeal are as stated in our letter to the Planning Commission dated February 22, 2017, which we attach and incorporate by reference. The relief or action we seek from the City Council is reversal of the Planning Commission’s action in its entirety, with direction to Planning staff to prepare a revised EIR that addresses the deficiencies identified in our February 22 letter.

Subject of  
this  
hearing

Please provide notice of any public hearings on this appeal by mail and electronic mail as follows:

M. R. Wolfe & Associates, P.C.  
Attn: Mark Wolfe  
555 Sutter Street, Suite 405  
San Francisco, CA 94102  
mrw@mrwolfeassociates.com

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Thank you for your attention and acceptance of this appeal.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

A handwritten signature in blue ink, appearing to read 'M. R. Wolfe', with a long horizontal flourish extending to the right.

Mark R. Wolfe  
On behalf of Desirae Schmidt

MRW:  
Attachment  
Enclosure

February 22, 2017

**By E-Mail  
Acknowledgment of Receipt Requested**

Heather Enders, Chair  
Members of the Planning Commission  
c/o City Clerk  
City of Hayward  
777 B Street  
Hayward CA 94541-5007  
Miriam.Lens@hayward-ca.gov

**Re: Lincoln Landing Mixed-Use Project Final EIR**

Dear Chair Enders and Planning Commissioners:

Please accept the following comments on the above-referenced Final EIR for the Lincoln Landing Project (“Project”), submitted on behalf of Hayward resident Desirae Schmidt. We previously submitted comments on the Project’s Draft EIR, and have now reviewed the City’s responses to those and others’ comments as contained in the Final EIR. We respectfully submit that the Final EIR remains deficient in its analyses of the Project’s potential to cause or contribute to traffic and decay impacts in this area of Hayward, as well as in its analysis of viable Project alternatives. We would urge the Planning Commission to decline to certify the Final EIR or approve the Project unless and until these problems are addressed.

1

**I. The Final EIR omits analysis of impacts to affected congestion roadways despite Alameda CTC’s express request that it do so.**

In its November 7, 2016 comment letter on the Draft EIR, the Alameda County Transportation Commission (Alameda CTC)’s requested that the EIR’s traffic analysis be updated to include impacts on Interstate 580, SR 92 (Jackson Street), and Interstate 238. These roadways currently experience heavy congestion throughout the day, especially during the AM and PM peak hours. As Alameda CTC noted in its comments, all of these roadways are Congestion Management Program (CMP) and Metropolitan Transportation System (MTS) network roadways.

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The City has declined to conduct the requested analysis, explaining that Project-generated traffic on these roadways is “minimal,” and that the Project’s land uses are consistent with those considered in the City’s General Plan EIR. (Final EIR p. 2.0-13). Neither point provides a legally adequate justification for failing to perform the analysis.

First, even if the Project’s contribution to new traffic is by itself truly “minimal,” this does not relieve the City of its obligation to evaluate the Project’s cumulative impacts, which is what Alameda CTC essentially asked for. The CEQA Guidelines define “cumulative impacts” as the combined change in the environment resulting from a proposed project in combination with other “past”, “present” (i.e., existing) and foreseeable “future” projects: The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time. Guidelines, § 15355, emphasis added.

CEQA requires an agency first to consider whether the combined effect of the project and other past, present and/or future projects “when considered together” is significant, because such impacts may be “individually minor but collectively significant.” *Communities for a Better Environment v. California Resources Agency* (“CBE”)(2002) 103 Cal.App.4th 98, 119-120. Then, if there is a significant combined effect, the agency must then separately consider whether the project’s contribution to that effect is itself considerable, i.e., “whether ‘any additional amount’ of effect should be considered significant in the context of the existing cumulative effect.” *CBE* at 119; Guidelines, § 15130(a); see also Kostka and Zischke, *Practice Under the California Environmental Quality Act* (2nd ed., 2016 Update), §§ 13.39. 15.52. Cases are clear that an EIR may not conclude a cumulative impact is insignificant merely because the project’s individual contribution to an unacceptable existing condition is, by itself, relatively small. *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025-1026 (rejecting EIR’s reasoning that because noise levels around schools already exceeded governing standards, new noise source would have insignificant impact); *CBE, supra*, 103 Cal.App.4th 98, 117-118, 121 (invalidating CEQA Guidelines provision that *de minimis* impacts are necessarily less than considerable). On the contrary: “the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” *CBE, supra*, 103 Cal.App.4th at 120. Thus, even if a given project has only an “individually minor” impact, its contribution to an existing environmental problem may nevertheless be “cumulatively considerable,” hence significant, and hence requiring mitigation measures under CEQA. *CBE* at 120; see also Guidelines, §§ 15355(b), 15065(a)(3); *LAUSD, supra*, 58 Cal.App.4th at 1024-25

2 cont.

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(individually insignificant noise increase may nonetheless be cumulatively considerable).

Here, although the Draft EIR included some cumulative traffic analysis, it did not do so for the roadways identified by Alameda CTC. Given the severity of existing congestion on these roadways, it is critical that the City evaluate whether the addition of any new traffic, no matter how “minimal” could result in a cumulatively considerable contribution to an existing cumulative impact.

3 cont.

**II. The Final EIR’s response to comments on the Draft EIR are inadequate, and the analysis remains deficient.**

CEQA mandates that responses to substantive comments on a draft EIR contain fact-based analysis. *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842 (duty to provide “good faith, reasoned analysis in response”); Guidelines, § 15088(c) (“[c]onclusory statements unsupported by factual information will not suffice”). Where comments seek omitted facts or analysis essential to a draft EIR’s conclusions, the failure to correct those omissions “renders the EIR defective as an informational document.” *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1244 (failure to provide reasoned analysis in response to comments pointing out uncertainty of water supply). In *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, the court held an agency violated CEQA by providing only conclusory responses to comments requesting documentation of existing vehicle emissions levels.

4

In our comments on the Draft EIR’s traffic analysis, we asked the City to expand its transportation impact analysis to include an assessment of the Project’s potential effects on the policies of the City’s General Plan Mobility Element, which promote expansion of the use of multi-modal public transit, bicycling, and walking in lieu of automobile reliance. The Final EIR essentially dismisses this comment, stating that “[t]he City has no standards for bikeability or sustainability plans related to a project’s traffic and transportation impacts,” and arguing that the set of proposed Transportation Demand Management measures included as part of the Project somehow eliminates the need to consider these impacts on General Plan policies. We submit that these comment responses are inadequate under CEQA.

5

Likewise, our comments on the Draft EIR pointed out that an urban decay analysis should be conducted to evaluate the potential for the Project’s retail component to cause or accelerate store closures in nearby retail spaces, in light of the high retail vacancy data reported by LoopNet.com. The response in the Final EIR faults us for not providing information regarding the location and condition of the vacant retail space referenced. However, CEQA places the burden of investigation and disclosure squarely on the lead agency, not the commenting public, by requiring that an agency “use its best efforts to find out and disclose all it reasonably can.”

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Guidelines, § 15044; *East Bay MUD v. Dept. of Forestry & Fire Prot.* (1996) 43 Cal.App.4th 1113, 1133. Thus, an agency's failure to use its best, good-faith efforts to investigate, disclose, or mitigate environmental impacts is an abuse of discretion warranting reversal. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 724. We submit these comment responses, too, are inadequate under CEQA.

6 cont.

Finally, our Draft EIR comments pointed out that the proposed justification for rejecting Alternative 2, the Reduced Development Alternative, was perfunctory and analytically deficient. The Final EIR's response is likewise perfunctory. It basically reasserts that even though the Alternative would have materially fewer environmental impacts in areas including traffic, water use, waste generation, and aesthetics, it would be "less than optimal," and a "missed opportunity" because it would have fewer residential units and would eliminate the unidentified ground-floor retailer. This statement amounts to an improper policy judgment that the Planning Commission itself should make based on actual facts and analysis presented to it in the EIR. Again, requires a lead agency to respond to reasonable public comments seeking additional information with "good faith, reasoned analysis," and not conclusory unsupported statements. The EIR's justification for rejecting Alternative 2 remains inadequate.

7

Finally, on behalf of Ms. Schmidt, we second and support the concerns expressed by other agencies, organizations and individuals on both the Draft and Final EIR for this Project.

In conclusion, we urge the Planning Commission to DECLINE to certify the Final EIR and approve the Project at this time, and instead to direct staff to prepare a revised Draft EIR that addresses the deficiencies identified above and in earlier correspondence.

Thank you for your consideration of these comments and concerns.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



Mark R. Wolfe  
On behalf of Desirae Schmidt

MRW:

## Lincoln Landing Responses to MR Wolfe Appeal

### Response 1

The commenter states the EIR is deficient in its analyses of the Project's traffic, potential to contribute to urban decay, and viable alternatives. Further detail on these issues is provided in the appellant's letter dated February 22, 2017. Responses to those specific comments are included below.

### Response 2

The commenter states the EIR omits analysis of specific roadways that was requested by the Alameda County Transportation Commission (CTC), including Interstate 580, State Route 92 (Jackson Street), and Interstate 238.

However, that information was provided in the Draft EIR's traffic study and in responses to CTC's letter in the Final EIR. As discussed on Final EIR page 2.0-13,

"[a]s noted on Draft EIR page 3.1-23, 25 percent of the project's daily trips (1,818 vehicles per day) will be added to Jackson Street. This equates to about 1.5 percent of the 120,000 vehicles per day on the busiest part of Jackson Street. The proposed project would add an estimated 1,090 vehicles per day to I-238, which currently carries about 145,000 vehicles per day. This constitutes an approximately 0.8 percent increase in traffic on this roadway. As noted on page 35 of the traffic study, the project would have '...a minimal impact on I-880 and I-580. For example, it is estimated that the full project will add 80 trips, less than 0.2 percent, to the approximately 277,000 vehicles per day on I-880 and 318 trips, less than 0.8 percent, to the 201,000 vehicles per day on I-580.' It should also be noted that the proposed project is consistent with the land uses assumed for the project site in the General Plan, thus project-related traffic was already considered on these regional roadways in the General Plan EIR. Because project contributions to these roadways would be considered insignificant increases in daily traffic, additional analysis was not conducted."

It is important to note that these traffic counts represent daily trips. Generally, peak hour trips constitute about 10% of the full day trips. The proportion of the Project's contribution to the regional roadway peak hour trips would continue to be between 0.2 and 1.5 percent of the regional peak hour trips. In a letter from CTC dated February 23, 2017, CTC noted that they reviewed the responses contained in the Final EIR and found that those responses adequately addressed CTC comments related to the Project's contribution to trips on these specific roadways.

To confirm these determinations, the expert traffic firm TJKM reviewed the Project's contribution to freeway traffic, including I-238, I-580, I-880, and SR 92, under existing and future cumulative scenarios. TJKM confirmed that each of these highways, during peak hours (the most congested times of the day), would see its vehicle to capacity ratio either stay the same or increase by about 0.1 percent or less. (See TJKM Traffic Analysis Addendum, dated April 12, 2017, included as Attachment XV to the City Council Staff Report and incorporated herein by reference.) Such changes are minimal and less than significant in all cases, and under all methodologies. For instance, in the nearby Tri-Valley area (also within Alameda County), the LOS standard for Congestion Management Agency analysis of roadway segments is LOS E. An impact would be considered significant when the Project traffic cause a Metropolitan Transportation System network segment to fall from an acceptable LOS E (roadway segment, freeway segment, or freeway

ramp v/c ratio of 0.99 or less) in the No Project case to an unacceptable LOS F (v/c of 1.00 or more); or, if a segment is already operating at LOS F in the No Project case, the v/c ratio increases by more than 0.02 (for example, from 1.03 to 1.06). As shown in Tables 1 through 4 of the TJKM Addendum, the Project does not cause a degradation of LOS on local freeway segments, and never increases the v/c ratio on these highways by more than 0.01.

CEQA Guidelines Section 15204(c) states, “[r]eviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.” The commenter provides no evidence to support a conclusion that the failure to do additional analysis would result in new or more severe effects than disclosed in the EIR. TJKM, the engineering firm that prepared the Traffic Analysis for the Project, and CTC’s expert opinion regarding potential for impacts on these roadways confirms the findings in the EIR and further analysis is not required.

### **Response 3**

The commenter again states the EIR should analyze the roadways called out in CTC’s comment letter on the Draft EIR, stating that the cumulative effects on these roadways should be considered. Cumulative traffic impacts are addressed on Draft EIR pages 3.1-46 through 3.1-56. In addition, as noted in Response 2 above, the Project is consistent with the land uses assumed for the Project site in the General Plan, thus Project-related traffic was already considered on these regional roadways in the General Plan EIR, which considered cumulative traffic impacts.

In this case, the EIR contained the data requested by the CTC, and the City determined that an increase of 0.2 to 1.5 percent on the subject roadways would not constitute a significant impact under CEQA requiring any additional mitigation measures beyond the measures set forth in Mitigation Measure (MM) 3.1.2.<sup>1</sup> Meanwhile, data shows that Project-related contributions to area freeways would be between 0.2 and 0.8 percent of existing freeway traffic, and that Project’s contribution to the regional roadway peak hour trips, in terms of volume, would continue to be between 0.2 and 1.5 percent of the regional peak hour trips. In a letter from CTC dated February 23, 2017, CTC noted that they reviewed the responses contained in the Final EIR and found that those responses adequately addressed CTC comments related to the Project’s contribution to trips on these specific roadways. To confirm these determinations, the expert traffic firm TJKM reviewed the Project’s contribution to freeway traffic, including I-238, I-580, I-880, and SR 92, under existing and future cumulative scenarios. TJKM confirmed that each of these highways, during peak hours (the most congested times of the day), would see its vehicle to capacity ratio either stay the same or increase by about 0.1 percent or less, which is less than significant (see Response 1, above).

As noted above, CTC reviewed the response provided in the Final EIR and determined that the Final EIR adequately addressed their concerns, the commenter’s objections notwithstanding. Therefore, cumulative traffic was adequately addressed and no further analysis is required.

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<sup>1</sup> That mitigation measure requires submittal of a Transportation Demand Management Plan with measures, such as shuttle service, transit passes, on-site car sharing programs, unbundled parking costs, bicycle racks and lockers, on-site bicycle and pedestrian amenities, shared parking, on-site bike share program and identification of an on-site Transportation Demand Management Coordinator.



#### Response 4

The commenter refers to a case (*California Oak Foundation v. City of Santa Clarita*) in which the EIR failed to present evidence to support the conclusions in the EIR. The commenter states, “[w]here comments seek omitted facts or analysis to a draft EIR’s conclusions, the failure to correct those omissions “renders the EIR defective...”

However, the EIR for the Project *does* include evidence to support its conclusions, which is based upon traffic modeling using data and methodology that is accepted by traffic engineers and utilized in countless prior EIRs and related environmental analyses. As noted above and in the Draft and Final EIR, the Project’s contribution to the roadways referenced by the commenter range from 0.2 percent to 1.5 percent of the total traffic on those roadways. (See, for example, page 35 of the Draft EIR’s traffic study.) Those volumes were based on quantitative modeling prepared by a traffic engineering firm and constitutes substantial evidence in the record. CTC concurs with the finding in the Final EIR that the Project’s contributions would not constitute a significant impact or require additional analysis.

Pursuant to CEQA Guidelines Section 15064(f), “[t]he decision as to whether a Project may have one or more significant effects shall be based on *substantial evidence* in the record of the lead agency.” The commenter provides no evidence not already considered in the Draft and Final EIR that there would be a significant impact, but merely speculates that impacts could occur and requests additional analysis over and above what was already determined adequate by CTC, the regional transportation agency overseeing impacts to these regional roadways. Given the lack of evidence provided by the commenter, the City is not obligated to provide additional analysis.

#### Response 5

The commenter states that previous comments submitted on the Draft EIR regarding effects of the Project on the policies contained in the City’s Mobility Element were ignored. However, the commenter failed to acknowledge that the Draft EIR addresses the Project’s consistency with the General Plan’s Mobility Element in multiple places, including on pages 3.0-37, 3.0-38 3.1-35, 3.1-45, and 3.1-46. Specifically, the EIR discusses how the Project’s support of multi-modal transportation choices and transportation demand management policies, as set forth on pages 3.1-22 and 3.2-23 and in MM 3.1.2 of the Draft EIR, ensure the Project is consistent with relevant Goals and Policies of the Mobility Element. Topics that the Draft EIR addresses include the Project’s construction of sidewalks along all Project frontages and on areas not physically connected to the site, such as across the street from the Project site on Hazel Avenue and at the McKeever Avenue/Maple Court intersection; the Project’s significant improvements to the existing Alameda County Flood Control maintenance path that runs along the western property line, referred to as the Creek Walk in the Project description; the Project’s installation of pedestrian scaled lights, new ground surfacing, safety rails and landscaped terraced retaining walls to encourage bicycle and pedestrian use of the currently gated and unutilized maintenance road; and the Project’s compatibility with the City of Hayward Bicycle Master Plan and other applicable laws and policies. In addition to those improvements, the proposed development is required to contribute to a shuttle system that would run from the Project site to BART, which is consistent with Mobility Goal 7 to meet public transit needs and provide greater mobility to residents and workers and to comply with MM 3.1.2, which is detailed above to reduce single occupancy car use.

The Mobility Element Goals and Policies referenced by the appellant, including Goals M-1, M-3, M-4, M-5, M-6, and M-9, are general, citywide aims such as providing the citizenry with safe pedestrian and bicycle networks. The existing analysis in the Project EIR, as set forth above, substantively addresses the Project's consistency with similar Goals and Policies in the Mobility Element, and further discussion would not add any meaningful information to the Project's environmental review. It is important to note that the appellant fails to provide evidence of inconsistency with the Mobility Element in comments on the Draft EIR and, in the current appeal-related comments, continues to fail to provide evidence of inconsistency with the Mobility Element or how any potential inconsistency could then lead to a physical environmental effect.

Finally, with respect to the Final EIR's comment that the City has no standards for bikeability and sustainability plans, this language in the Final EIR is a reference to the Draft EIR's statement that "General Plan Goals and Policies are not intended to provide *specific standards and limitations on development*; that is the role of the zoning ordinance and other applicable plans." (Draft EIR, p. 3.0-37.) But significance thresholds under CEQA are different matters entirely. Here, the applicable threshold of significance for purposes of the Project EIR is whether the Project will "conflict with adopted policies, plans, or program regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance of safety of such facilities." (Draft EIR, page 3.1-24\_) This threshold is derivative of the model threshold established in Appendix G to the CEQA Guidelines, which has been developed by the California Office of Planning and Research. The Draft EIR correctly applies the threshold, evaluating the Project's consistency with the City of Hayward Bicycle Master Plan, various applicable development standards, and those relevant Mobility Element Goals and Policies that are specific enough to facilitate meaningful analysis. (See, for example, pages 3.1-44 to 3.1-46 of the Draft EIR.)

Taken together, the Draft and Final EIR conclude, based on the Project improvements, contributions to off-site improvements, and implementation of a robust TDM plan as required per MM 3.1.2, that the proposed development is consistent with the General Plan Mobility Element and would support transit, bicycling and walking in lieu of automobile reliance.

Given the evidence in the record that supports the Project's consistency with the Mobility Element and the lack of evidence supporting the commenter's assertions, no further analysis is required.

### **Response 6**

The commenter refers to previous comments submitted on the Draft EIR, in which the commenter summarizes data obtained from LoopNet, an online source. The previous comment contends that "there are currently a dozen or more commercial properties of significant size (between 2,500 and 90,000 square feet) available for lease or sale in Hayward, totaling as much as 160,000 square feet of available retail space within the City." As acknowledged by the commenter, the original comment did not provide the raw data that includes locations of the buildings.

Contrary to the commenter's assertion that lead agency is responsible for the "burden of investigation and disclosure," CEQA Guidelines Section 15204(a) states, "the adequacy of an EIR is determined in terms of what is reasonably feasible" and that "CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters." As noted above, Guidelines Section 15204(c) states, "[r]eviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the

comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.”

The EIR did provide substantial evidence in the record that the circumstances necessary for urban decay would not result from development of the Project, concluding that there are approximately 1.25 million square feet of retail space in the Downtown Specific Plan Area, of which approximately 24,000 square (or approximately 2%) are vacant. This contradicts the appellant’s claim. It also should be pointed out that most of the vacant commercial space (i.e., retail, office, and other commercial space) in the Project vicinity are *office uses located on the Project site and on a property across Foothill Boulevard*, and not existing retail space within other local commercial communities. (Final EIR, page 2.0-65.)<sup>2</sup> With respect to the on-site vacancy, the existing vacant building has been subject to graffiti and squatting, as described on page 2.0-74 of the Final EIR, and has been the subject of numerous calls for service, as described in the Staff Report prepared for the Project. This was also supported by testimony of nearby residents at the public hearing before the City’s Planning Commission, who stated that the existing building on the site represents the most unpleasant and least safe part of their daily walk in the neighborhood, thus serving as a true symbol of urban decay. Given the actual amount of vacant retail square footage in the downtown area is small based on the City’s record, which has been confirmed by a recent expert report evaluating the Project’s potential to result in urban decay,<sup>3</sup> and given that the condition of the 335,000 square-foot vacant office building on the Project site is deteriorated, the Project would in fact directly ameliorate the lion’s share of commercial vacancies in the Hayward Downtown area, thereby reducing the risk of urban blight.

The appellant also claims that the Project’s retail component could cause or accelerate store closures in existing Downtown retail spaces. This claim is contradicted by substantial evidence in the administrative record. Evidence in the administrative record shows the following:

- Hayward is the sixth largest city in the San Francisco Bay Area and the third largest city in Alameda County, with a population of more than 150,000 people and an employment base of nearly 74,000 jobs. Based on the Association of Bay Area Governments’ projections, the City’s population is expected to grow to 164,610 by 2021, and the City’s number of jobs is expected to increase by roughly 17 percent to 87,800 jobs by 2040. The projected population and employment growth is estimated to increase total Citywide retail demand by roughly \$132 million in the next five years. The City therefore has substantial and growing capacity to serve different segments of the retail market providing different retail experiences. Developments like the Lincoln Landing Project may create incentive for retailers who may not have previously considered locating in Hayward to consider it because other retailers are locating there. The General Plan and Downtown Specific Plan anticipate this level of development in the area to achieve densities that promote transit, bicycling, and walking in lieu of automobile reliance, which would further promote the goals of the Mobility Element.

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<sup>2</sup> Office vacancies in the City in 2017 was 17 percent; the Project will directly alleviate this vacancy issue by replacing 335,000 square feet of office space with 80,500 square feet of retail space.

<sup>3</sup> Since 2012, the City’s retail has experienced increases in rental rates and decreases in vacancy, with lease rates increasing from \$16 per square foot in 2012 to \$21 per square foot in 2016.

- The addition of Project residents to the City's population will create a demand for retail purchases of \$15.8 million dollars, \$11.7 million of which is expected to be captured within the City's limits, based on the City's recent "capture rate" of resident spending potential. Even under the aggressive assumption that more than 60 percent of the \$11.7 million in new Project residents' spending occurs in the retail on the Project site itself, at least \$4.4 million would be satisfied by businesses located outside the Project site but within the City's limits — i.e., the Project would benefit existing, off-site local businesses, particularly in Downtown Hayward. This analysis is contained in an economic study by Economic & Planning Systems, Inc. (EPS), dated September 12, 2016 and entitled *Fiscal and Economic Impact Analysis of Lincoln Landing, EPS # 161130*. (Attachment X to the City Council Staff Report). Please see pages 2, 8, and 9 of the Fiscal Impact Analysis.
- Even *without* the expected growth in retail demand from the Project's residents and other general growth in the City, there are six categories of retail sales that could be located on the Project site without affecting existing retailers in the City, because the City is currently undersupplied with such businesses. These categories include furniture and home furnishing stores; food and beverage stores; gas stations; clothing stores; sporting goods and hobby stores; and food services and drinking outlets. The most recent studies indicate that the amount of "leakage" the City experiences collectively amounts to more than \$150 million in sales. This fact is confirmed by a recently prepared memorandum entitled *Lincoln Landing Urban Decay Analysis*, authored by EPS and dated April 12, 2017, included as Attachment XVI to the City Council Staff Report and incorporated herein (referred to as the "Urban Decay Analysis"), which constitutes a separate and independent verification analysis related to the Project's potential to cause urban decay. This analysis confirms existing evidence in the record that the Project is unlikely to cause urban decay. (Urban Decay Analysis, page 8.)
- In addition, according to the City's Economic Development Division, the current vacant retail space availability within Hayward does not include space for a major anchor retailer. The Lincoln Landing Project contemplates a major 30,000 square foot anchor retailer and would expand potential for interested retailers seeking large retail spaces.
- The Project's retail component is anticipated to generate more than \$36 million in retail sales within the City, which would be primarily from consumers not residing at the Project, including consumers from beyond the City of Hayward. (Fiscal Impact Analysis, pages 8-9.) It is reasonably foreseeable that nonlocal consumers would also spend money patronizing existing, local businesses. This is the concept behind the City's identification of the Project site as a "catalyst" site.
- The Urban Decay Analysis confirms that urban decay impacts are unlikely. The Project will contribute approximately one percent of additional retail space to the Hayward "trade area." (Urban Decay Analysis, page 10.) While the Project would capture 27 percent of new demand associated with population and employment growth in the area, and while the Project in combination with other reasonably foreseeable retail projects would, together, capture 54 percent of demand, it is expected that substantial, additional retail demand would exist. (Urban Decay Analysis, pages 10 to 11.) Even if, in the short-term, the Project drew sales away from existing retailers (which is not expected, but is discussed herein for the purpose of presenting a conservative hypothetical), the strong demand for retail space



in Hayward evinced by low vacancies and climbing rents indicate that property owners and tenants are likely to continue experiencing an economic incentive to maintain their businesses and properties with the expectation that longer-term market trends are likely to be favorable. (Urban Decay Analysis, page 10.)

Ultimately, urban decay is a condition in which long-term vacancies result in blight and the general deterioration and decay of an area. There are a number of concerns presented by the appellant's claims. First, the commenter provides no evidence regarding the location of the vacant retail properties referenced in the comment. Even so, insofar as appellant claims that "as much as 160,000 square feet of vacant retail space" exists in the City, this statistic, when compared against the approximately 7.7 million square feet of retail space in the City (see Urban Decay Analysis, page 6), in fact confirms a vacancy rate of about 2 percent within the City, which represents a very strong market. Finally, the snapshot of vacancies in Hayward that the commenter provided also fails to establish the prospect of "long-term" vacancies, or that the vacancy of any specific property or properties would attract vandals and otherwise result in aesthetic deterioration.

All evidence in the administrative record indicates the Project will not cause urban decay. In making claims to the contrary, what the appellant has presented does not qualify as substantial evidence.

### **Response 7**

The commenter states that the justification for rejecting Alternative 2 was analytically deficient and amounted to an improper policy judgment that should have been left to the Planning Commission. The Draft EIR does not reject Alternative 2 from consideration: rather, the Draft EIR provides a comparative analysis of the physical environmental impacts of that alternative relative to the Project, consistent with CEQA Guidelines Section 15126.6. As stated on DEIR page 4.0-1, the purpose of the alternative is to evaluate the alternatives to avoid or lessen the Project's significant impacts.

Alternative 2 would include approximately half of the proposed residential units and commercial square footage proposed for the site, as described in detail on Draft EIR pages 4.0-5 and 6, resulting in proportionate reductions in water use, waste generation, and aesthetics referenced by the commenter. Although Alternative 2 would also result in proportionally reduced traffic-related impacts, it is essential to note that the Alternative, like the Project, would result in significant and unavoidable traffic-related impacts under cumulative conditions.

As stated in the Planning Commission and City Council Staff Reports prepared for the Project and in the Fiscal and Impact Analysis (Attachment X to the City Council Staff Report), the proposed Project is expected to add 452 middle income households whose expenditures would increase retail sales by approximately \$12 million annually, particularly in and near Downtown Hayward due to proximity of the Project site; to add 1,182 temporary and 349 permanent jobs; and the commercial uses on the site would generate approximately \$29 million in retail sales.

The "missed opportunity" described in the Draft EIR and Planning Commission staff report associated with Alternative 2 refers to eliminating nearly half of the commercial square footage and half of the residential units, compared with that proposed with the Project. The General Plan calls for a much higher density and intensity of use than Alternative 2 includes on a site that is located within an identified Priority Development Area (PDA), an identified area where substantial housing and employment growth is appropriate and necessary to achieve statewide climate change goals.

The EIR identified the reduced physical environmental impacts associated with this alternative but also identified that the alternative would only reduce traffic-related impacts in the near-term while still resulting in significant and unavoidable traffic impacts under cumulative conditions.

Alternative 2 would be less financially feasible; would reduce the number of dwelling units within one-half mile of high quality transit and Downtown services; and would result in under-development of a catalyst site within an identified PDA such that it would not achieve economic goals set forth in City planning documents. These disclosures in the alternatives analysis are not intended to, nor would they preclude, the Planning Commission or the City Council from exercising independent judgement and approving this or any other alternative analyzed in the Draft EIR.

The foregoing facts demonstrate that Alternative 2 is not feasible for various reasons. First, a reduction in the size of the Project would prevent the realization of two fundamental Project objectives: (1) "Create a regional destination that will enhance Hayward's reputation in the larger Bay Area and signal increased investment;" and (2) "Create a development that is consistent with and promotes the City's Economic Development Strategic Plan, which identifies the Project site as a 'key retail and catalyst site as appropriate for a large-scale mixed-use development.'" (Draft EIR, page 2.0-2.)

With respect to the first Project objective, a regional commercial destination is a commercial development containing retail and other commercial businesses that is located near a highway and encompasses, generally, 100,000 to 800,000 square feet. Regional destinations encompassing slightly lesser square feet still may qualify as a regional retail magnet where they contain space for at least one major anchor tenant, accompanied by minor, complementary retail uses. (See Urban Decay Analysis, pages 1.) The proposed Project is located along State Route 238, within proximity to Interstate 580, and would contain 80,500 square feet of retail space, including 50,000 square feet for two major commercial anchor tenants (with the remaining commercial space designated for complementary retail tenants). (Draft EIR, page 2.0-11). The Project alternatives, meanwhile, would contain a maximum of 40,500 square feet and eliminate the Project proponent's ability to provide commercial development with a major, popular anchor tenant (which could also affect the ability of the development to attract more popular, minor tenants), thereby precluding the alternatives from qualifying as a regional commercial destination. Therefore, these alternatives would fail to realize the fundamental Project objective of creating a "regional destination that will enhance Hayward's reputation in the larger Bay Area and signal increased investment."

Frustrating the realization of a fundamental Project objective also, separately and independently, frustrates key City policies set forth the City's Economic Development Strategic Plan (EDSP). A conflict with a critical City policy is, meanwhile, a separate and independent basis for finding that Alternative 2 is infeasible.

Regarding the substance of the EDSP, the Project site is identified in it as a "key retail and catalyst site" that is "appropriate for a large-scale mixed use development." (Draft EIR, page 2.0-2.) The City's EDSP specified a goal to "recruit and secure new businesses in priority locations," and articulated eight tasks and four performance measures to help the City achieve this goal. (EDSP, pages 3, 15.) One of those performance measures is to "close sales tax leakage year over year in each retail category" (EDSP, page 15), with the latest reports showing that total leakage is estimated to amount to \$150 million per year (Urban Decay Analysis, page 8). The Project, according to the Fiscal Impact Analysis, will provide an opportunity to capture a significant portion of leakage. A reduced-size Project, meanwhile, would not include an anchor tenant, which acts as a

magnet for consumers, retaining local shoppers and attracting nonlocal shoppers. (Urban Decay Analysis, pages 8 to 11.)

Finally, in providing a blueprint for economic growth, the EDSP identifies the Project site as a “Key Retail Area” and a “Catalyst Site,” where such sites were selected on the basis of their underutilization, size, proximity to major corridors, potential impact on associated retail areas, and high visibility. (EDSP, pp. 22, 24.) As explained above, retail centers that are sizeable, easily accessible, and anchored by major tenants serve as a magnet for consumers. But such centers also attract new, complementary retailers and other commercial uses to the centers’ vicinities. A reduced-size Project, such as the scale of development under Alternatives 2 and 3, would offer only 40,500 square feet of commercial space, foreclosing the possibility of hosting one or more major anchor tenants. Such a configuration would look no different than other retail developments in the area, with little to no potential to attract nonlocal consumers. Meanwhile, the reduced-size Project alternatives contemplate 276 to 376 fewer dwelling units than the Project’s 476 dwelling units. As discussed in the Fiscal Impact Analysis, 476 new homes would generate a consumer demand of nearly \$16 million dollars (with about \$6 million in demand expected for goods and services offered by off-site, local businesses), thereby incentivizing new businesses to relocate to Downtown Hayward. Alternatives 2 and 3, which do not have a “critical mass” of new commercial businesses, and which would bring substantially fewer residents to the site (thereby reducing the population of “built-in” customers of on-site and nearby off-site businesses), would fail to catalyze further retail development and economic growth in the Hayward Downtown area as envisioned by the EDSP.

The reduced-size alternatives thus fail to meet fundamental Project objectives and would frustrate the realization of important economic goals and strategies that the City has outlined in the EDSP.