

**CITY COUNCIL MEETING  
TUESDAY, MAY 9, 2017**

COMMUNICATIONS RECEIVED IN OPPOSITION TO

PH 17-025

MISSION CROSSINGS PROJECT

# VARNI, FRASER, HARTWELL & RODGERS

ATTORNEYS AT LAW

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JONATHAN DANIEL ADAMS

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May 2, 2017

**HAND DELIVERED TO:**

Ms. Miriam Lens, City Clerk  
CITY OF HAYWARD  
777 B Street  
Hayward, CA 94541

Re: Appeal of April 27, 2017 action of the Hayward City Planning Department with regard to the Mission Crossing Project (Application No.: 201602751)

Dear Ms. Lens:

On Thursday, April 27<sup>th</sup> the Hayward Planning Commission recommended approval of the Meritage 140 unit three story attached housing project and the 90 unit Marriot/Meritage motel at the corner of Mission Blvd. and Torrano Avenue. This letter constitutes the appeal of the action of the Planning Commission taken that evening. The basis of that appeal is as follows:

1. The purpose of the Planning Commission hearing was to make a recommendation with regard to certain aspects of the Mission Crossing Project on Mission Blvd. in Hayward. Those aspects are outlined in Exhibit A attached hereto. At the public hearing before the Planning Commission there were nine or ten people in the audience who opposed the project and there were approximately five emails or letters to the Planning Commission opposing the project. AT THE MEETING THE CHAIRMAN OF THE GRC OF THE HAYWARD CHAMBER OF COMMERCE requested that the hearing be delayed so that the GRC and the Chamber Board could make a recommendation with regard to this project. The Planning Commission rejected the request for a continuance and then proceeded to approve the project.
2. The matter before the Planning Commission included 7 distinct actions that were required for this project so that it could move forward to the City Council. RATHER THAN TAKING THE 7 MATTERS INDIVIDUALLY, THE PLANNING COMMISSION CHOSE TO HANDLE THEM AS ONE MATTER. They then allowed the applicant and his consultants to speak for approximately one hour. They also allowed the City Staff who favored the project to speak for approximately a half hour. WHEN IT CAME TIME FOR THE OPPOSITION TO SPEAK, THE

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CHAIRMAN OF THE PLANNING COMMISSION RESTRICTED THE INPUT FROM THE OPPONENTS TO THREE MINUTES PER PERSON. If the chairman of the Planning Commission had handled the items individually each member of the public who wanted to speak in opposition to the application would have received no less than a total of 21 minutes to speak. On one or two occasions, the Planning Commission allowed certain speakers two additional minutes or a total of five minutes to speak. In most instances, they held the speakers to three minutes. The complexity of the 7 items to be discussed was such that they could not be discussed in three minutes let alone commented on.

3. THE POSITION OF THE MAJORITY OF THE PUBLIC MEMBER SPEAKING IN OPPOSITION TO THE PROJECT WAS THAT THE TRAFFIC ON MISSION BLVD. HAS GROWN SO DIFFICULT THAT NO MORE RESIDENTIAL UNITS SHOULD BE ALLOWED IN THIS AREA AND FURTHER THE PROPOSED MOTEL WOULD BE BETTER BUILT IN THE DOWNTOWN WHERE VISITORS COULD WALK TO RESTAURANTS, THE THEATER, THE GROCERY STORE, THE BANKS, ETC. Several of the Planning Commission members spoke in support of the need to address the traffic situation that now exists on Mission Blvd. during peak morning/afternoon flows. THERE WAS NO TESTIMONY OF ANY NATURE WHATSOEVER THAT THE TRAFFIC ON MISSION BLVD. WAS ACCEPTABLE.
4. The applicant during the presentation presented information as to the positive financial results of having a 91 unit motel at this site. They also presented information that there was no future in the Hayward auto row and that the old deteriorated Ford dealership site would be more beneficial to the community if it were removed even for a non-automotive use. THE APPLICANT TESTIFIED THAT THE UNITS PROPOSED WOULD BE THREE, FOUR AND FIVE BEDROOMS. THE REPORT PROVIDED BY THE APPLICANT WITH REGARD TO THE VITALITY OF HAYWARD AUTO ROW MADE NO MENTION OF THE RECENTLY OPENED MITSUBISHI DEALERSHIP. WHEN QUESTIONED, THE ECONOMIC DEVELOPMENT DIRECTOR FOR THE CITY OF HAYWARD ADMITTED THAT THE NEW MITSUBISHI DEALERSHIP WAS EXTREMELY SUCCESSFUL AND WAS ONE OF THE BEST MITSUBISHI DEALERSHIPS IN THE BAY AREA.
5. The economic development director and all people in attendance agreed that Sonic, which is a national automotive dealership group, had entered into an agreement to purchase the Pentecostal church site which was formerly the Chevrolet dealership on Mission Blvd. THE ANNOUNCED CONCEPT WAS THAT HAYWARD HONDA WOULD MOVE FROM THEIR CURRENT SITE AT THE INTERSECTION OF CARLOS BEE AND MISSION BLVD. TO THIS CHEVROLET DEALERSHIP SITE. With this accomplished, there would be two good, thriving auto dealerships

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- (Honda and Mitsubishi) south of the subject property and three good, thriving auto dealerships (Volkswagen, Toyota, Nissan) north of the subject property.
6. The economic development director made mention of the significant income the City would receive from the Marriott motel at the corner of Torrano Avenue and Mission Blvd. In turn, at arriving at that opinion, he was relying on a report PREPARED AT THE REQUEST OF AND WITH INFORMATION PROVIDED BY THE APPLICANT, MERITAGE. This information included an opinion that there would be 84% occupancy of such a motel and that such motel would generate income to the City in excess of \$500,000 a year. This projection with regard to income was also based upon information provided by the applicant and not by the consultant. The auto industry consultant who provided a letter report to the Planning Department concluded that the Hayward auto row was dead. IN TURN, HE MADE NO MENTION, NOR DID HE SEEM TO BE AWARE OF THE EXISTENCE OF the Mitsubishi dealership and their performance or the plan to move the Honda dealership to bigger quarters.
  7. The opposition requested that the City study the environmental, economic and social impacts of additional traffic on Mission Blvd. which would result from the construction of a 140 three, four and five bedroom residential project and a 90 unit Marriott motel. THE OPPOSITION HAD PROVIDED THE CITY WITH A LETTER, A COPY OF WHICH IS ATTACHED HERETO MARKED EXHIBIT B, OUTLINING THE REASON WHY A FOCUSED OR COMPLETE EIR SHOULD BE DONE WITH REGARD TO THE IMPACTS ON ADJACENT OWNERS AND ON PEOPLE USING MISSION BLVD.
  8. The appellant asks the City Council to deny this request to approve 140 three, four and five bedroom residential units and a 90 unit motel for the following reasons:
    - a. There was no revised EIR but merely an addendum to an existing EIR when all participants, including staff, agree that there was an unanticipated traffic impact on Mission Blvd. due to the recent redesign and redirection of traffic flows through the City.
    - b. The Planning Commission was in error when they combined all 7 matters for one vote and also would not allow members of the public to speak more than a total of three minutes on the entire package proposed before the Planning Commission that evening. The failure to allow the public to speak on such a complex matter is in the nature of a violation of the Brown Act which invites and supports public involvement and comment with regard to proposed governmental actions.



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- c. The 7 items included two changes in the zoning ordinances of the City. 5 of the 7 items were in the nature of changes to the conditions of approval which the Planning staff felt should be ruled on by the Planning Commission. TO ALLOW THE APPROVE OF ALL 7 ITEMS (2 ORDINANCES AND 5 TERMS AND CONDITIONS) BY ONE VOTE IS TO CONFUSE THE PUBLIC AND ALSO TO CREATE A SITUATION WHERE THE CITY COUNCIL WILL BE ASKED TO ACT ON THE 2 ORDINANCES IN CONJUNCTION WITH THE OTHER 5 ITEMS. THE TWO ORDINANCES REQUIRE A SECOND READING AND CANNOT BE APPROVED AT THE SAME TIME AS THE APPROVAL OF THE TERMS AND CONDITIONS SET FORTH IN THE 5 ITEMS. The entire matter must either be continued until the second reading on the zoning changes or the entire item should be sent back to the Planning Commission for individual votes on each of the 7 items.
- d. The appellants prior to the hearing indicated to the Planning staff and the Planning Commission the need to update the 2014 EIR. The factual basis used in such 2014 EIR was developed in 2011. THERE WAS NO TESTIMONY OF ANY NATURE WHATSOEVER THAT IN 2011 OR 2014 THERE WAS ANY IDEA HOW CONGESTED MISSION BLVD. WOULD BE DUE TO ITS REDESIGN AND INCREASED TRAFFIC LOADS IN A.M. AND P.M. PEAK TIMES. Certain Planning Commission members indicated it took them almost an hour to go from Harder Road to D Street in Hayward on an afternoon visit. Others indicated similar distress going south on Mission Blvd. during morning peak hours. MANY OF THE PEOPLE IN ATTENDANCE WHO SPOKE IN OPPOSITION TO THE PROJECT WERE CONCERNED WITH THE NUMBER OF PEOPLE USING MISSION BLVD. IN THE MORNING WHICH CHOSE TO TURN RIGHT ON TORRANO AND THEN LEFT ON DOLLAR TRYING TO CIRCUMVENT OR AVOID THE INTERSECTION AT HARDER AND MISSION BLVD. THE STUDY DONE BY THE STAFF PROVIDED NO EXPLANATION AS TO WHY THESE CHANGES IN TRAFFIC PATTERNS AND TRAFFIC RATES SHOULD NOT HAVE BEEN THE SUBJECT OF A FOCUSED EIR OR A NEW EIR. The staff also did not seem to anticipate the fact that with four or five bedroom units there was a likelihood of more than one family living in these units and more than two car spaces were needed for each unit.
- e. A member of the public got up and questioned the air quality issues and/or noise issues which were created by the new traffic patterns as well as by the fact that these homes were proposed to be built in the middle of a light industrial/commercial area. FINALLY, A MEMBER OF THE PLANNING COMMISSION QUESTIONED WHETHER OR NOT THIS WAS THE BEST LOCATION FOR A MARRIOTT MOTEL IN THAT IT WAS HER

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BELIEF THAT PEOPLE WHO WOULD STAY AT MOTELS WOULD WANT TO WALK TO LUNCH, TO DINNER, TO A SHOW, TO THE GROCERY STORE, ETC. It was her feeling that a motel at this location would not make any of this possible.

- f. INFORMATION PROVIDED TO THE PLANNING STAFF WOULD INDICATE THERE ARE ALREADY 1,090 motel rooms in Hayward and an additional 270 planned when you include the 90 unit Marriott project in question. It would seem that one of the 90 unit projects which are being processed IS ALSO A MARRIOTT FLAGGED MOTEL. There is no mention that this 90 unit flagged Marriott hotel on the west side of Mission Blvd. between Torrano and Harder Road could be approved and the one under discussion could be disapproved without any harm to the college or public.

The people who have opposed the motel and/or the housing units proposed will come to the upcoming City Council meeting and will again renew their request that the City defer action on this request until the Chamber of Commerce has made a recommendation to the City Council. They will also request adequate time to speak on all of the issues presented. IN SOME MANNER THE PROPONENT OF THE PROJECT FELT JUSTIFIED IN REPRESENTING TO THE PLANNING COMMISSION THAT THE CHAMBER OF COMMERCE HAD NOT BEEN DILIGENT IN PURSUING AN OPPORTUNITY TO MAKE A RECOMMENDATION WITH REGARD TO THIS PROJECT. THE PROPONENT REPRESENTED TO THE PLANNING COMMISSION that this lack of diligence was extremely detrimental to the project for financial reasons which were not disclosed. The opposition was not allowed to fully respond to these statements because they had exhausted their allotted three minutes to speak.

Very truly yours,

VARNI FRASER HARTWELL & RODGERS



Anthony B. Varni

Enclosures  
cc: Sara Buzier  
Michael Lawson

**EXHIBIT A**

HAYWARD CITY COUNCIL  
NOTICE OF PUBLIC HEARING  
MISSION CROSSINGS PROJECT  
APPLICATION No. 201602751

DATE: TUESDAY, MAY 9, 2017  
TIME: 7:00 P.M.

The Hayward City Council will hold a public hearing at the above date and time to consider approval of Application No. 201602751 for Zone Change from T4-2 Commercial Overlay Zone 1 to T4-2 Commercial Overlay Zone 2 for a 1.9-acre portion of one parcel, Site Plan Review, Conditional Use Permit to allow ground floor residential in Commercial Overlay Zone 2, Administrative Use Permit to allow hotel/lodging in the T4-2 zone, Warrants for excess parking provisions in the form-based code, and Vesting Tentative Tract Map 8345 associated with the subdivision and construction of a 93-room hotel, 7,225 square feet of community serving retail use, 140 three-story townhomes, and related infrastructure and site improvements on a 9.72-acre site located at 25501 & 25551 Mission Boulevard and 671 Berry Avenue between Torrano Avenue and Berry Avenue in Hayward, CA. Assessor Parcel Numbers (APNs) 444-0060-004-00, 444-0060-019-04, 444-0060-030-00, and 444-0060-031-00. MLC Holdings, Inc. (Applicant). Auto Nation, Ltd. and Charles L. Pifer (Property Owners).

The project is located at **25501 & 25551 Mission Boulevard** in the T4-2 Commercial Overlay Zone 1 and T4-2 Commercial Overlay Zone 2 Zoning Districts, and is designated Sustainable Mixed Use in the General Plan.

You are invited to attend the public hearing before the City Council to speak or offer written evidence for or against this proposal in advance of the hearing. Copy of the staff report and Addendum to the Mission Boulevard Corridor Specific Plan EIR may be viewed at the Hayward Main City Library, 835 C Street, the Weekes Branch Library, 27300 Patrick Avenue, or at the City of Hayward Planning Division, 777 B Street, or on the City's website at <http://www.hayward-ca.gov/content/projects-under-environmental-review-0>.

Copies of staff reports are available the Friday before the hearing on the City's website at <https://hayward.legistar.com/Calendar.aspx>.

For additional information, please contact:

**Mike Porto, Consulting Planner**  
City of Hayward, Planning Division  
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Phone: (510) 583-4005  
Fax: (510) 583-3649  
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CITY OF  
**HAYWARD**  
HEART OF THE BAY

Planning Division  
777 B Street, Hayward, CA 94541-5007



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APR 28 2017  
MAILED FROM ZIP CODE 94545

Attachment IX

Anthony Varni  
650 A Street  
Hayward, CA 94543

**PLEASE TAKE NOTICE** that if you file a lawsuit challenging any final decision on the subject of this notice, the issues in the lawsuit may be limited to the issues which were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing. By Resolution the City Council has imposed the 90-day time deadline set forth in C.C.P. Section 1094.6 for filing of any lawsuit challenging final action on an item which is subject to C.C.P. Section 1094.5.



**Reference:**

201602751 TTM 8345, ZC,CUP  
Justin Derby (*Applicant*)  
Auto Mission LTD and Charles Pifer (*Owners*)

Si necesita esta información en español, por favor llame al teléfono 510-583-4400.



TDD: (510) 247-3340. For disabilities assistance, call 48 hours in advance: (510) 583-4200



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JONATHAN DANIEL ADAMS

MICHAEL J. O'TOOLE

F. 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*



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*San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5<sup>th</sup> 937, 951.)

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.**

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.

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.**

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



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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.

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.5<sup>th</sup> 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.

**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.4<sup>th</sup> 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.5<sup>th</sup> 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.

**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

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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.**

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.

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.

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

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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.**

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**

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

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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



Anthony B. Varni

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**OF COUNSEL:**

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April 20, 2017

**VIA E-MAIL AND FIRST CLASS MAIL**

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 Planning Manager  
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 Chair, Planning Commission  
 CITY OF HAYWARD  
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Re: City of Hayward: Projects in the "South Hayward BART/Mission Boulevard Form-Based Code District" (the "South Mission Blvd. Corridor")

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**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").

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*San Mateo Gardens v. San Mateo County Community College District* (2016) 1 Cal.5<sup>th</sup> 937, 951.)

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.**

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.

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.**

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



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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.

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.5<sup>th</sup> 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.

**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.4<sup>th</sup> 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.5<sup>th</sup> 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.

**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



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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.**

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.

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.

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

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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.**

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**

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

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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



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April 20, 2017

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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:

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:

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.
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.

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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.
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.
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



# Climate change making air dirtier; Bay Area hit hard

By Kurtis Alexander

Even as the nation makes strides cleaning up dirty air, many parts of California, including the Bay Area, are struggling to reduce air pollution in the face of climate change.

The hordes of fossil-fuel-burning cars and trucks that have become emblematic of the Golden State are combining with overall hotter, dryer weather — and wildfires and dust storms — to fill the skies with more and more soot, according to a report released Tuesday by the American Lung Association.

The Bay Area was alongside parts of the Central Valley, which after years of improvement saw increases in the number of days with unhealthy levels of soot between 2012 and 2015, the report shows. The Bay Area ranked among the country's 10 worst regions for what is known as particle pollution.

While much of the problem can be traced to the five-year drought, which came to an end this winter, the American Lung Association expects only temporary relief from sooty skies as the state struggles with a future marked by a changing climate.

"We were lucky to have a wet year this year," said Bonnie Holmes-Gen, senior director for air quality and climate change with the American Lung Association in California. "That will certainly result in lower levels of particle pollution, but we know that these extreme events are becoming the

## Most polluted

### YEAR-ROUND PARTICLE

1. Visalia-Porterville-Hanford (Tulare/Kings counties)
2. Bakersfield
3. Fresno-Madera
4. San Jose-San Francisco-Oakland-Stockton
5. Los Angeles-Long Beach
6. Modesto-Merced
7. El Centro (San Diego County)
8. Pittsburgh
9. Cleveland
10. San Luis Obispo-Paso Robles-Arroyo Grande

### OZONE (SMOG)

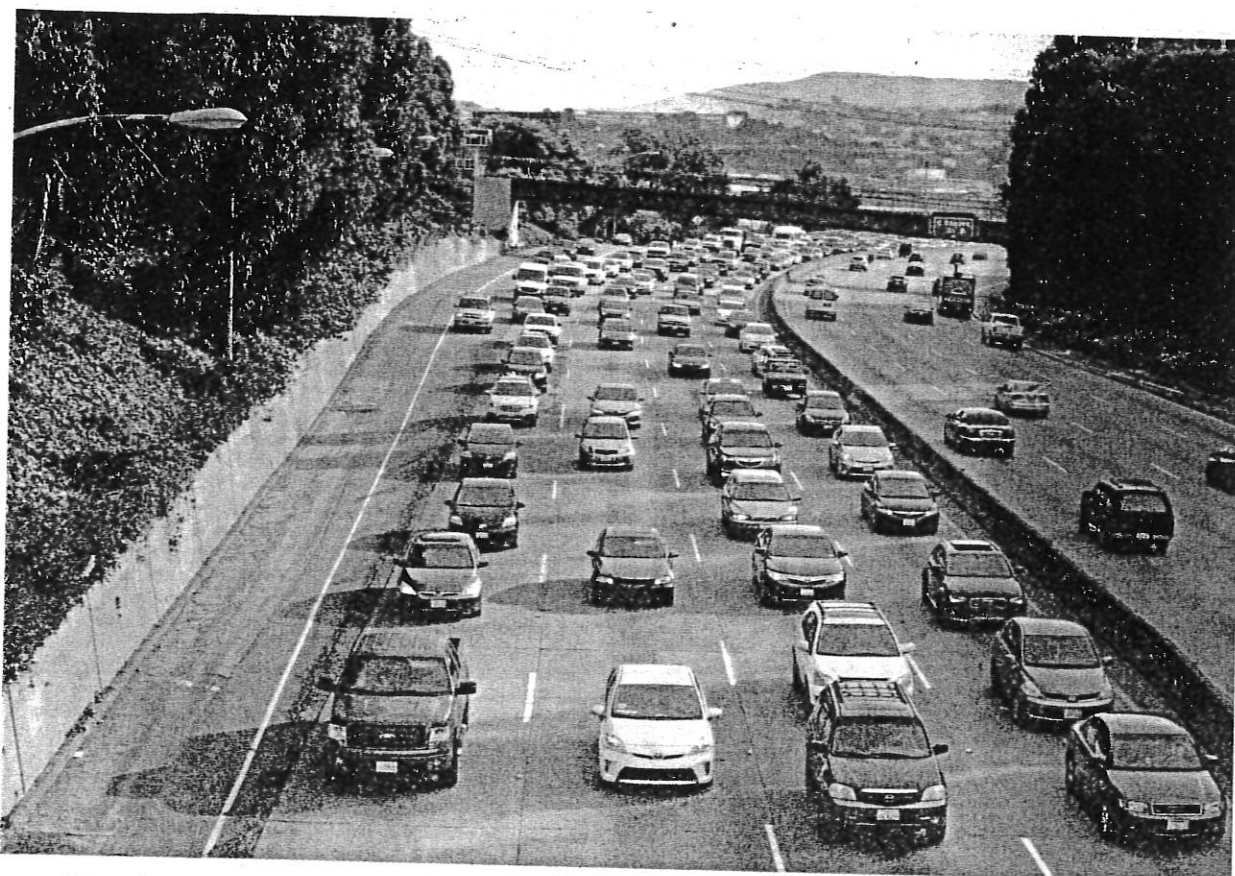
1. Los Angeles-Long Beach
2. Bakersfield
3. Fresno-Madera
4. Visalia-Porterville-Hanford
5. Phoenix-Mesa-Scottsdale, Ariz.
6. Modesto-Merced
7. San Diego-Carlsbad
8. Sacramento-Roseville
9. New York-Newark
10. Las Vegas

Source: American Lung Association

new normal."

Alongside ozone, particle pollution is one of the most widespread air pollutants. The tiny solid and liquid particles that define it proliferated with the wildfires that raged during the drought — and the lack of rain that normally tempers dust and debris from construction and agriculture.

More traditional sources of particle pollution include tailpipe emissions and power plants. The origins of the



Gabrielle Lurie / The Chronicle

**Heavy traffic, as seen on Highway 101 in San Francisco, increases the ozone pollution in the Bay Area's air.**

pollutant are mostly the same as ozone, though the two are generated under different conditions. Both are hazardous and pose increased risk for heart disease, lung cancer and asthma.

While the number of days that the Bay Area as a whole experienced unhealthy levels of particle pollution is not contained in the report, the region is listed as being the nation's sixth-worst for short-term spikes in particulate matter and fourth-worst for year-round totals.

The region, as defined in the report, includes more than the nine counties that typically comprise it. Stockton is included, for example. This worsens the area's pollu-

tion rating, though particulate matter still rose even without the inclusion of San Joaquin County.

Just a few days with pollution measuring above the federal Air Quality Index each year is enough to present a serious health risk, according to the report.

The San Joaquin Valley areas of Bakersfield, Visalia (Tulare County) and Fresno surpassed the Bay Area for particle pollution, while the Los Angeles-Long Beach region was slightly cleaner than the Bay Area.

Mirroring the national picture, most of California saw a drop in ozone, also called smog, which the American Lung Association credited to

tighter state and federal environmental laws.

Still, the state's notorious traffic congestion left it one of most ozone-polluted areas in the nation. Topping the list was the long-plagued Los Angeles area, followed by the Bakersfield and Fresno regions. The Bay Area was a distant 18th.

Between ozone and particle pollution, more than 90 percent of Californians live in areas with unhealthy air at some point in the year, according to the report.

While there is room for improvement, the American Lung Association's 18th "State of the Air" report shows a trend of less pollution since its first publication. Since last year's release,

the number of people nationwide who were exposed to unhealthy air at some point dropped from 166 million to 125 million.

The report's authors said it was critical that the government continue tough environmental policies like the federal Clean Air Act. The Trump administration has moved to weaken such protections.

"This is a real ongoing public health crisis," said Olivia Gertz, president of the American Lung Association in California, "and it affects everyone."

*Kurtis Alexander is a San Francisco Chronicle staff writer. Email: [kalexander@sfbchronicle.com](mailto:kalexander@sfbchronicle.com) Twitter: [@kurtisalexander](https://twitter.com/kurtisalexander)*



# Air pollution agency focuses on warming

## District adopts plan likely to alter lifestyles in Bay Area

By Kurtis Alexander

The Bay Area's little-known pollution control district jumped into the fight against climate change Wednesday with a first-of-its-kind regional plan that promises big changes in residents' daily lives.

With calls for charging tolls to drive on freeways, doing away with gas heat and even urging meat-free meals, the agency is reaching beyond its usual targets of oil refineries and diesel trucks to push for cuts in greenhouse gases on a much broader scale.

"When thinking about the scale of climate change, we realized this had to be an all-in approach, everything in on the table," said Abby Young, climate protection manager for the Bay Area Air Quality Management District.

For its 62-year history, the air district's main job has been policing the nine-county Bay Area for dirty skies, declaring "Spare the Air" days when ozone and particulate matter levels reached unhealthy levels. Bay Area residents were affected most directly when the agency banned fireplace blazes on pollution-clogged winter nights and won the power to levy fines against violators.

The agency's new "Spare the Air, Cool the Climate" strategy makes global warming an equal priority, by targeting heat-trapping emissions.

The plan, approved Wednesday by a unanimous vote of the agency's governing board

*Air continues on A10*



Liz Hafalia / The Chronicle

Pamela DeMartini and Ed Cohen view gray hazy skies over downtown San Francisco. A Bay Area pollution agency has expanded its focus to "Spare the Air, Cool the Climate."

► **Clean power:** Mayor Ed Lee's goal is that at least half of San Francisco's electricity come from renewable sources by 2020. **D1**

# Bay Area agency plan goes all in on climate change

*Air from page A1*

at a meeting in San Francisco, lays out 85 measures that seek to reduce pollutants from industry, transportation, agriculture, homes and businesses.

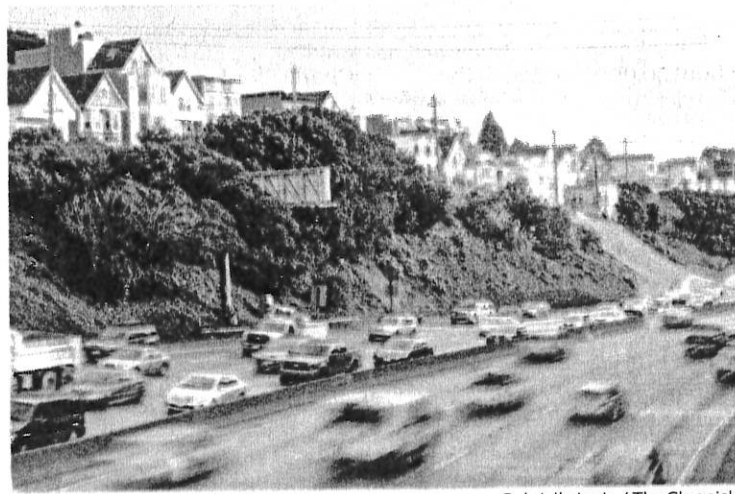
No regulations take effect immediately, only a commitment to move forward. Some can be implemented by the district directly, but many will require joint action with other agencies. The district committed \$4.5 million to initiate such partnerships.

“Reducing air pollution and greenhouse gases is everyone’s responsibility,” said Jack Broadbent, the district’s executive officer. “How we live and travel, what we buy, how we heat our homes, and what we consume all impact air quality, our health and produce greenhouse gases that impact our planet and ultimately, our quality of life.”

Under the plan, the agency will use its unilateral authority to tighten emission rules for oil refineries in the East Bay. Alongside cars and trucks, industry is the region’s top source of pollution.

Landfills, dairies and water treatment plants are also targeted for new restrictions.

To address transportation, the district will work alongside cities and transit agencies to encourage greener travel — making roads friendlier for electric cars with more charging stations and encouraging regional ride-shares and carpools.



Gabrielle Lurie / The Chronicle

**Traffic as seen on Highway 101 in San Francisco is a leading source of greenhouse gases that contribute to global warming.**

The agency will also look to extend its “Spare the Air” day messaging to encourage slower driving, in hopes of reducing vehicle emissions on smoggy days. It will also seek to discourage overall car use by advocating for freeway tolls during high-traffic times, reductions in on-street parking and a higher gasoline tax.

The plan also calls on the district to explore new rules, and potential prohibitions, on fossil fuel-based heating and water-heating systems in homes and businesses. Agency funds could be used to create rebates for swapping out old, polluting appliances. Residential solar installations would also be encouraged through rebates.

Finally, the district is eyeing a campaign to promote eating less meat, as meat production

is tough on the planet in a number of ways.

“That doesn’t mean everyone has to become vegan,” Young said. “We just have to do everything we can, and probably changing our diets is part of that.”

The plan comes as California leaders pledge aggressive action on climate change, a resolve that has been strengthened with the Trump administration’s efforts to rewrite federal environmental policy in hopes of encouraging economic growth. Bay Area air quality officials hope to set an example of what can be done regionally to take up the battle.

Several cities and counties have introduced programs to cut greenhouse gases, including San Francisco, but few have the regulatory power and

reach of the state-chartered air district.

“If not here, where is there another location better suited to take on this leadership role?” Young said.

The district’s goal is to reduce emission of ozone-causing pollutants in the Bay Area by at least 21 tons per day and particulate matter, or soot, by 3 tons per day. It envisions reducing greenhouse gas emissions by 4.4 million metric tons by 2030 — the equivalent of removing more than 900,000 fossil-fuel-burning vehicles from the road each year.

Officials with the air-quality district say such reductions would save residents and local governments more than \$1 billion a year, much of it in reduced health care costs.

Hundreds of people wrote to the air-quality district in advance of Wednesday’s meeting to support the plan. Not everyone was on board, however: Some critics asked what good a local program would do if other states and nations don’t take similar actions to cut heat-trapping gases.

“If the emissions are reduced here but not elsewhere, climate change is still here,” said Steven Young, a Chevron employee who spoke at the district’s meeting. “And it just gets worse.”

*Kurtis Alexander is a San Francisco Chronicle staff writer. Email: kalexander@sfnchronicle.com Twitter: @kurtisalexander*

## Acting locally

Among the steps approved by the Bay Area Air Quality Management District on Wednesday to try to fight climate change:

- ▶ Require greater monitoring for methane leaks at petroleum refineries.
- ▶ Reduce flaring at refineries to limit gas emissions.
- ▶ Strengthen emission controls and leak standards at landfills.
- ▶ Encourage airports to use cleaner-burning jet fuel.
- ▶ Encourage the replacement of heavy-duty diesel engines in trucks.
- ▶ Explore vehicle tolls in high-congestion areas to discourage driving.
- ▶ Encourage the removal of off-street parking in transit-oriented areas.
- ▶ Support an increase in the gasoline tax.
- ▶ Provide consumer rebates for purchases of gasoline-free cars.
- ▶ Discourage installation of water-heating systems and appliances powered by fossil fuels.
- ▶ Ban all wood-burning fires on “Spare the Air” days, meaning eliminating exemptions.
- ▶ Consider expanding “Spare the Air” messaging to include asking drivers to obey speed limits.
- ▶ Construct new bicycle and pedestrian paths.
- ▶ Start a public outreach campaign to promote climate-friendly diets.

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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:

I have your communication of Wednesday, April 19<sup>th</sup> denying our request for a reasonable continuance of the above matter which will be before the Planning Commission this evening.

Approximately 3 weeks ago, the Applicant made a presentation to the GRC (Government Relations Committee) of the Chamber of Commerce. At that time, the Chamber GRC did not take any action for or against the project. The applicant was given in excess of a half an hour to make a complete presentation. The members of the GRC then asked significant pointed questions with regard to the effect on the auto row, air quality, traffic movements and the effect on the area in general. Within the next two to three weeks, the GRC should again meet and the people who oppose the project will be given an opportunity to speak. Based upon that information, the GRC will take an action and make a recommendation to the Board of the Chamber of Commerce with regard to this project. It has historically been the practice in the City of Hayward that the Chamber be given an opportunity to support or oppose projects which have an economic impact on the City. The members of the Chamber look to the GRC and to the full board of the Chamber to represent their interests. The members of the GRC devote significant amounts of their time to issues such as this and it would seem that their views should be heard. During the recent presentation by the Applicant, there was information provided by members of the GRC which clearly indicated that the construction of this project (both the motel and the housing portion)



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would be disruptive to the auto row. It was also clearly stated by certain members of the Board of the GRC that if they had to choose between having a Marriott at this location or having the auto row continue to prosper, they would choose protecting the auto row. Finally, it was clearly stated by people with knowledge of the subject that many auto manufactures would wish to locate on auto row and if the Applicant Auto Nation would cooperate and support such new dealerships, it would happen.

We would once again request that a short continuance be provided so that the GRC and the Chamber can complete its research and make a recommendation to the Planning Commission.

Very truly yours,

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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.

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.

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.

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:

1. It is not appropriate to undertake an analysis of a matter this complex without a focused EIR and/or a new EIR.
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.
  - 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.
  - 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.
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

Ms. Sara Buizer  
Ms. Heather Enders  
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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:
  - 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



















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**510-538-4000**  
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**Robert Goldassio**

---

**From:** Dianna Briones <nanadianna03@icloud.com>  
**Sent:** Tuesday, April 25, 2017 11:01 AM  
**To:** Mike Porto  
**Subject:** Mission Crossings Project

Dear Ms. Enders,

I am writing to oppose the the development of 140 homes and another hotel/motel on Mission Blvd.

I work on Dollar St. and feel the parking and traffic affecting Torrano, Dollar and Berry Ave. will be horrific to deal with.

Thank you.

Sincerely, Dianna Briones

Sent from my iPhone

## Mike Porto

---

**From:** Sara Buizer  
**Sent:** Tuesday, April 25, 2017 1:39 PM  
**To:** Mike Porto; Robert Goldassio  
**Subject:** FW: Mission Crossings

Another comment for the Mission Crossings project.

*Sara Buizer, AICP*  
Planning Manager  
777 B Street  
Hayward, CA 94541  
(510) 583-4191  
[sara.buizer@hayward-ca.gov](mailto:sara.buizer@hayward-ca.gov)

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**PERMIT CENTER HOURS:** Our Permit Center is Open Monday through Thursday from 8am to 5pm. The permit center is closed on Fridays.

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**From:** Javier Lucatero [mailto:javier@accuratefirestop.com]  
**Sent:** Tuesday, April 25, 2017 12:06 PM  
**To:** Sara Buizer <Sara.Buizer@hayward-ca.gov>; Heather.Enders@hayward-ca.gov  
**Subject:** Mission Crossings

Hello Sara & Heather, Hope all is well

I would like to express my concern about this new development  
Even though we are a subcontractor company, I feel that this new development will increase the parking limitations that we already have  
Our company starts getting deliveries as early as 6 AM and the new residents will start complaining about it sooner or later  
is the developer taking these concerns into consideration?  
Please let me know

Regards,

Javier R. Lucatero  
President  
Cell (510) 715-0162

*Accurate is a minority certified firm.*



**Accurate Firestop and Insulation, Inc.**

25613 Dollar St., Ste 7  
Hayward, CA 94544  
P: 510.886.1169 F: 510.886.0369

**MBE & SBE Certified Firm**

[www.accuratefirestop.com](http://www.accuratefirestop.com)

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**Mike Porto**

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**From:** ericpglanz@comcast.net  
**Sent:** Thursday, April 27, 2017 6:59 AM  
**To:** Sara Buizer; Mike Porto  
**Subject:** Mission Crossings project between Carlos Bee & Harder Rd. at the old Hayward Ford site

Hello. I am writing because I am strongly opposed to this construction. I drive Mission Blvd. to work every day and the traffic is already terrible. There is never anywhere to park and the road conditions are already very bad. Adding these buildings will just make everything worse ten fold. Not to mention what it would do to the Auto industry that we as a City have been trying to revive for years. Mission Crossings project is a terrible idea and i hope you take this life long Hayward resident's advise...DO NOT BUILD THIS!!!!

Thank you for your time

Eric Glanz

**Robert Goldassio**

---

**From:** Sara Buizer  
**Sent:** Thursday, April 27, 2017 1:01 PM  
**To:** Robert Goldassio  
**Subject:** Fwd: Mission Crossings project 25501-25551

Another one

Sent from my iPhone

Begin forwarded message:

**From:** Rich Cameron <[rich@mikestruck.org](mailto:rich@mikestruck.org)>  
**Date:** April 27, 2017 at 12:59:44 PM PDT  
**To:** <[Sara.Buizer@hayward-ca.gov](mailto:Sara.Buizer@hayward-ca.gov)>  
**Subject:** Fwd: Mission Crossings project 25501-25551

----- Forwarded message -----

From: **Rich Cameron** <[rich@mikestruck.org](mailto:rich@mikestruck.org)>  
Date: Thu, Apr 27, 2017 at 12:58 PM  
Subject: Mission Crossings project 25501-25551  
To: [KimH@hayward.org](mailto:KimH@hayward.org), [Mike.Porto@hayward-ca.gov](mailto:Mike.Porto@hayward-ca.gov), [Sara.Bulzer@hayward-ca.gov](mailto:Sara.Bulzer@hayward-ca.gov)

Hi,

I am the business owner of, Mike's Truck & LINE-X of Bay Area, located on Dollar St in Hayward. This proposed project has come to my attention and warranted a comment. I was actually shocked when the residential housing project was built on Dollar St last year. There had to be a variance with the existing zoning for approval and I, for one, wasn't notified. The increased traffic and parking around the project is only going to get worse when the complex reaches full occupancy. I really think deviating from the general plan needs serious consideration specifically the surrounding infrastructure. I just don't see how "fracturing" the city's general plan, as far as zoning, makes sense. In time the proposed property will be occupied by a proper tenant adding no stress to the surrounding infrastructure.

I am oppose to the zoning change.

Thanks,  
Rich Cameron  
[925.272.7666](tel:925.272.7666)



**From:** Stephen Wyszomirski <[StephenW@rclcom.com](mailto:StephenW@rclcom.com)>  
**Date:** April 19, 2017 at 10:36:49 AM PDT  
**To:** <[Sara.Buizer@hayward-ca.gov](mailto:Sara.Buizer@hayward-ca.gov)>, <[Heather.Enders@hayward-ca.gov](mailto:Heather.Enders@hayward-ca.gov)>  
**Subject:** Proposed "Mission Crossing" Development

Dear Sara & Heather,

As a small business owner on Dollar Drive, I am vehemently opposed to the new development referred to as "Mission Crossings". The reduction of Hayward's Light Industrial area is forcing many of small businesses out of the area further increasing commuting throughout the Bay. This development would place undue pressure to our community that cannot be supported with the current roads. While I would like to attend the City Council meeting on April 20<sup>th</sup>, 2017 to express my views personally, I will be out of the Bay Area at that time.

Regards,



Stephen Wyszomirski  
V.P. Engineering  
PH: 510-537-8601  
25613 Dollar Street, Suite 1  
Hayward, Ca 94544

WEBSITE: [WWW.RCLCOM.COM](http://WWW.RCLCOM.COM)  
CALic. 566993    NVLic. 55414



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**From:** Cindy Ogle  
**To:** [Sara Buizer](#)  
**Subject:** Mission Corridor Project  
**Date:** Wednesday, April 19, 2017 4:40:27 PM

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Ms. Sara Buizer:

We own an auto body collision repair facility and have been in the same location on Mission Blvd. Auto Row for fifty-four years. We are strong proponents for the growth and development of Mission Blvd. Both my husband and I oppose the project at hand we feel that this proposal needs further research and investigation; in particular as to how it will impact the infrastructure regarding Mission Blvd.

***Cindy Ogle***

***Hayward Body Shop, Inc.***

*25087 Mission Blvd.*

*Hayward, CA 94544-2514*

*510 538-6700*

*Email: [cindy@haywardbodyshop.com](mailto:cindy@haywardbodyshop.com)*

**From:** pmotive@aol.com  
**To:** [Sara Buizer](#)  
**Subject:** Mission Crossings Proposal  
**Date:** Thursday, April 20, 2017 9:47:04 AM

---

Dear Mrs. Buizer,

We are a small business on Dollar St. in Hayward, Ca. We have been in business for 40 years in Hayward. Today we are writing you to let you know that we are opposed to the Mission Crossings proposal-25501 & 25551 Mission Blvd. Hayward, Ca.

Sincerely,  
Patrick Hendrix  
Susan Hendrix  
Precision Motive

LIKE US ON FACEBOOK

<http://www.facebook.com/pages/Precision-Motive/234066806712863>

**From:** Steven Dunbar  
**To:** [Leigha Schmidt](#); [David Rizk](#); [heather.enders@hayward-ca.gov](mailto:heather.enders@hayward-ca.gov); [Sara Buizer](#)  
**Subject:** Public Comment for Planning Commission Meeting 4/20/17  
**Date:** Thursday, April 20, 2017 12:16:57 PM  
**Attachments:** [pasted1](#)  
[pasted2](#)  
[pasted3](#)  
[image.png](#)  
[image.png](#)  
[image.png](#)

To Planning Commissioners and Staff:

Regarding the Mission Crossings Development:

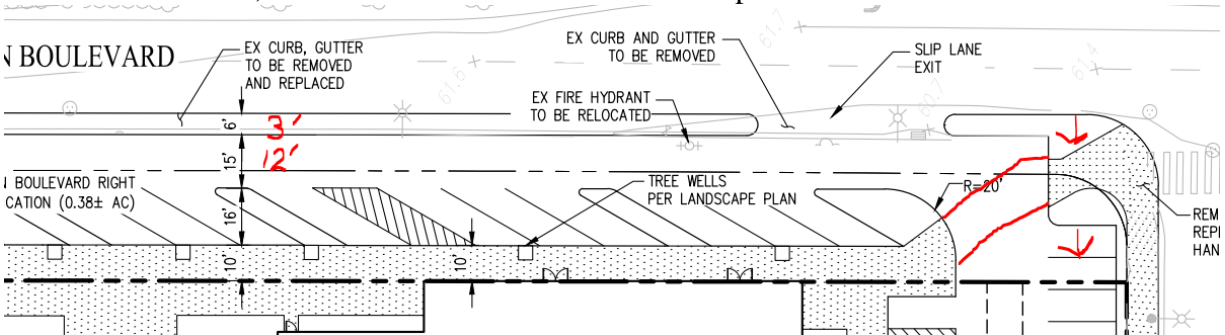
I'm glad we are starting to rebuild Mission Boulevard as envisioned in the specific plan. I'll mention that plan is difficult to access as it was hosted on the old city website - the form based code link at <https://www.hayward-ca.gov/your-government/documents/planning-documents> is also broken.

I have two larger concerns to bring to this public hearing, and a few smaller issues and questions just for my own knowledge.

My primary concern is the slip lane. The design calls for the slip lane to extend out into the current Mission Boulevard right of way. (Figure TM.3) It is difficult to tell what the eventual lane width on Mission would be with this change, and such a change may preclude a bike lane on Mission from being feasible. Mission Boulevard has the right of way to provide protected bike lanes as-is. This extension of the curb would compromise that.

While the staff report mentions the ultimate goal to have most of Mission with this side-street approach, moving the curb out for this project would cause issues with any bike lane extensions north from the currently planned improvements in South Hayward. While the side-street approach is welcome, it will take a very long time to complete such a system, when safety is needed much sooner.

I suggest lowering the lane width of the interior slip lane and the concrete buffer to allow for a future bike lane project. The SE corner could have one parking space removed and the whole island shifted west to accommodate that portion. See the figure below, which may not be perfect for access but I still think is quite a reasonable amount of space. Recommended lane widths are included, arrows show the desired shift of the pedestrian island.



The facility type for cyclists is the primary reason bicycle trips are expected to be extremely low, but there is no permanent barrier to change as it stands.

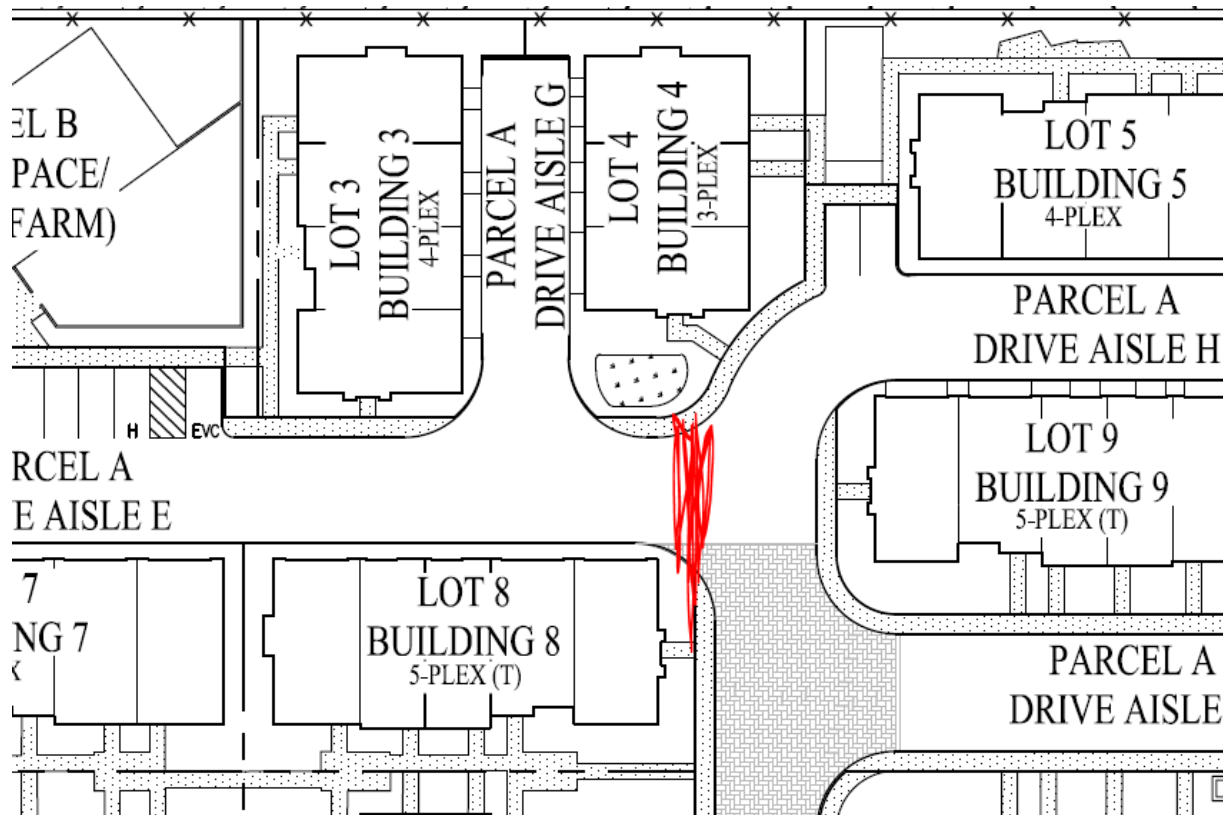
My second larger concern is the wall between the residential and commercial portions of the

development. There seems to be no walking path from the residential to the commercial area through the buffer bio area. There should be such a path, or even a gate, to allow access to the future retail under the hotel without walking all the way around the edge of the property. The security benefits to such a barrier are minimal, in my opinion, given the other low-traffic low-visibility side entrances.

As for my more minor concerns:

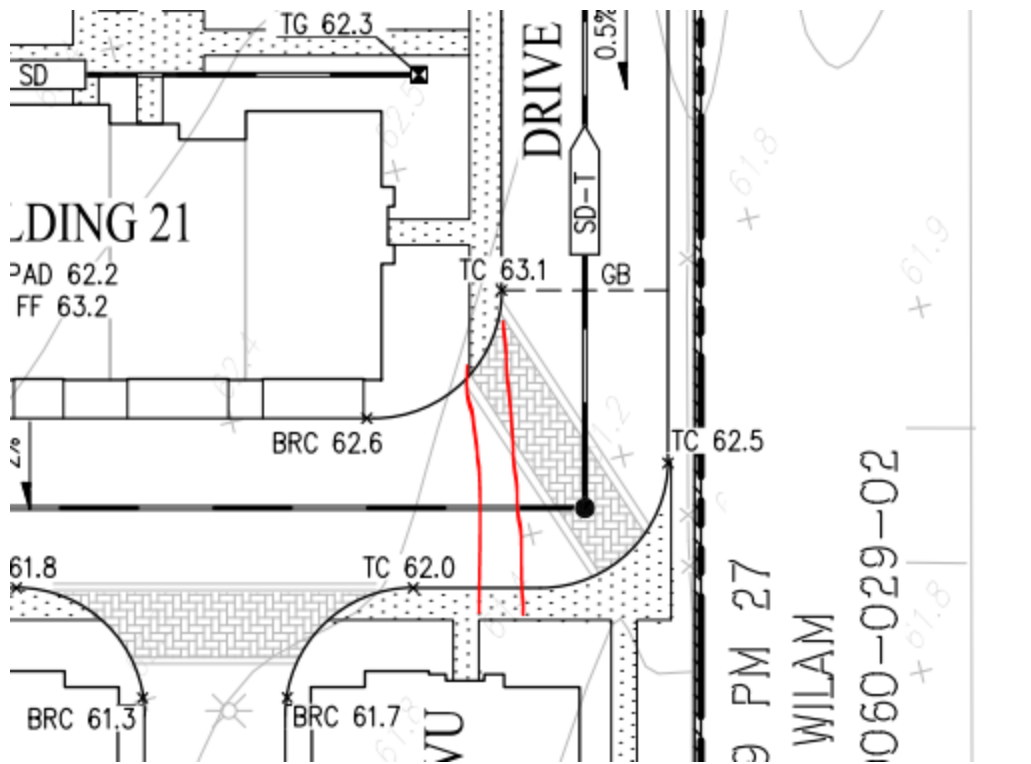
First, there seems to be no crosswalk at the SE portion of the development from the hotel walk to the curb area. That should be included. (See the above picture again)

Second, there should be a crosswalk or marked paver area East to West in the area shown below.

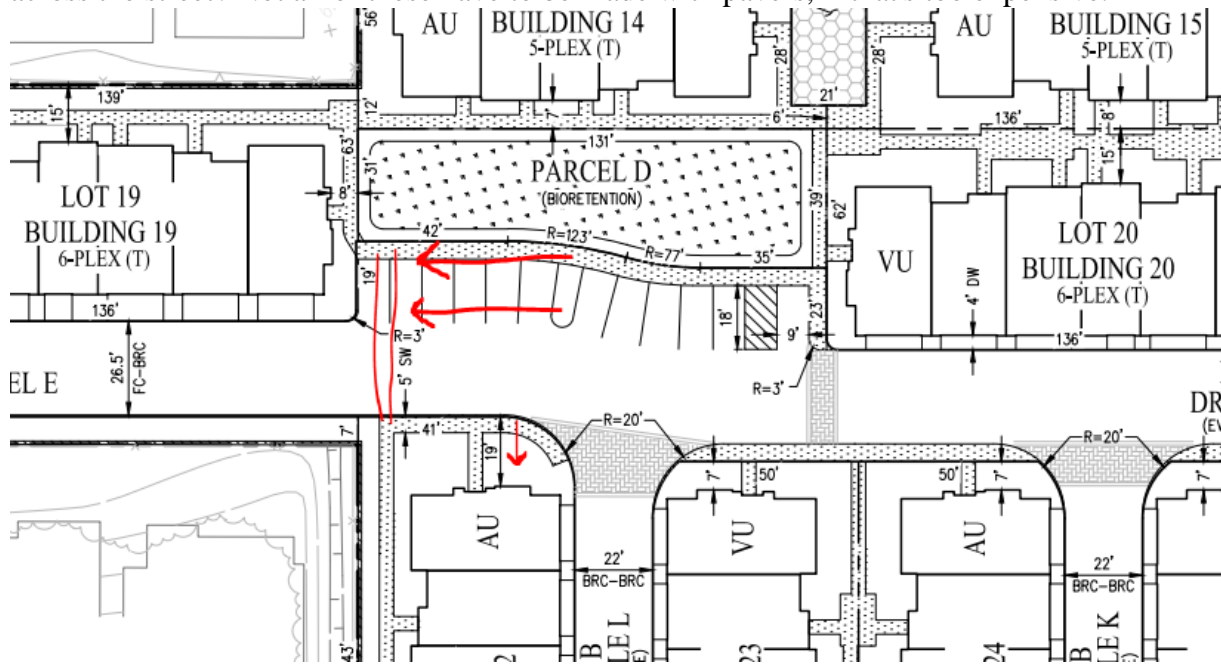


Third, I do not understand the walking path at the southwest corner which does not meet at a right angle with the road. Is there a visibility concern? Most people are not going to be staying in that crosswalk and will walk north as they cross from east to west.





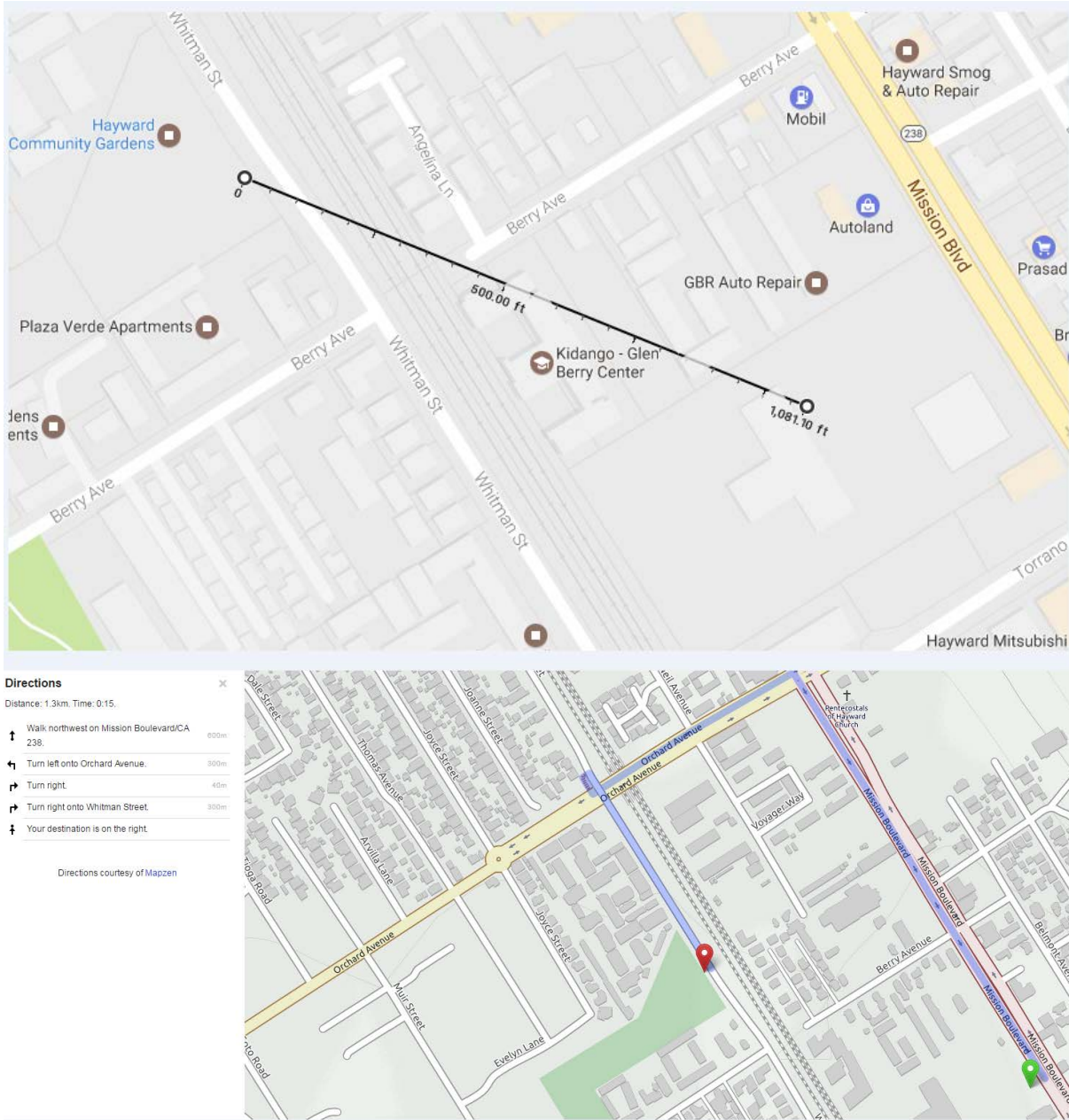
Fourth, could we shift the parking angle at parcel D over to provide another walking path across the street? Not all of these have to be made with pavers, if that's too expensive.



Fifth, the street width within the development seems excessive. If anything, the street could be widened near the turns if necessary for fire access and then slimmed again. The shown fire paths indicate the trucks have plenty of clearance even without starting or finishing in the oncoming lane.

Finally, while the urban farm is admirable, it is somewhat sad that a local neighborhood farm less than 1000ft away from the property is not accessible, because we've neglected to provide

better pedestrian access over the BART tracks. Of course, this is not the developer's issue to address.



Personally, I wish that there were more units overall (or at least more Plan 5 units), as opposed to units that are over 2,000 sq ft (all other unit types), given the bay area housing affordability problem. However, all housing helps and this will prevent displacement elsewhere by pulling high-end owners towards this development, rather than outbidding other potential new residents on existing property.

Other than these details, the mixed use, medium density, multi-street access, economic development, and overall aesthetic are welcome.

Thank you for your attention.

Sincerely,

Steven Dunbar

**Mike Porto**

---

**From:** Serena Kehaulani <serenak67@gmail.com>  
**Sent:** Tuesday, May 2, 2017 8:27 AM  
**To:** Sara Buizer; Mike Porto; kimh@hayward.org  
**Cc:** Dianna Briones  
**Subject:** Mission Crossing Project

Good morning,

My name is Serena Nelson and I work in the area if the proposed project and I strongly oppose this project. When i have to go to CVS or if i hit the Eco-Thrift store during my lunch hour, its horrible trying to navigate through the back street to get back to work.

Thank you for taking the time to hear my concerns.

Kind regards,

**Mike Porto**

---

**From:** John Briones <jbriones1678@gmail.com>  
**Sent:** Tuesday, May 2, 2017 3:18 PM  
**To:** Mike Porto  
**Subject:** Fwd: Building140 homes and 93 room hotel. Location Mission and Torrano avenue in Hayward

----- Forwarded message -----

From: John Briones <[jbriones1678@gmail.com](mailto:jbriones1678@gmail.com)>  
Date: Tue, May 2, 2017 at 3:17 PM  
Subject: Fwd: Building140 homes and 93 room hotel. Location Mission and Torrano avenue in Hayward  
To: [Sara.Buizer@hayward-ca.gov](mailto:Sara.Buizer@hayward-ca.gov) <[Sara.Buizer@hayward-ca.gov](mailto:Sara.Buizer@hayward-ca.gov)>

----- Forwarded message -----

From: John Briones <[jbriones1678@gmail.com](mailto:jbriones1678@gmail.com)>  
Date: Tue, May 2, 2017 at 12:26 PM  
Subject: Building140 homes and 93 room hotel. Location Mission and Torrano avenue in Hayward  
To: D2cellphone <[nanadianna03@yahoo.com](mailto:nanadianna03@yahoo.com)>

I am opposed to this project. This project will increase the traffic in the vicinity including the neighborhood residence. An increase in the traffic also increases accidents and even fatality. The developers of this project only see's the bottom line dollar for their pockets and not the safety of the people living in this sector of the town

Jon Briones  
15960 via Pinale. San Lorenzo

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Sent from Gmail Mobile

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Sent from Gmail Mobile

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Sent from Gmail Mobile



## Mike Porto

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**From:** Aaron Lualhati <lualhatiaaron@yahoo.com>  
**Sent:** Tuesday, May 2, 2017 10:01 PM  
**To:** Sara Buizer; kimH@hayward.org; Mike Porto  
**Subject:** Mission crossing project

Hello,

As a college student, I am opposing the proposal of the new development for housing and hotels on Mission blvd.. Though it may be economically feasible, realistically, it will cause utter chaos on the already crowded environment. As a result, this will prevent many students and business professionals alike to commute to our destinations- making it less enjoyable to contribute to our wonderful society.

Please consider my opposition.

-Aaron

**Mike Porto**

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**From:** Greg Presnell <ibflyinfast@yahoo.com>  
**Sent:** Wednesday, May 3, 2017 1:56 PM  
**To:** KimH@hayward.org  
**Cc:** Mike Porto  
**Subject:** Missions Crossings

I wanted to write you to voice my objection and concern over the mission crossings project. I am concerned that a property zoned commercial could not or should not be used for residential housing. I think it would impact the traffic considerably and would be totally out of place considering the surrounding businesses. Please note my opposition as it comes before the city for approval. Thank you.

Sincerely,  
Greg Presnell

Sent from my iPhone

**Mike Porto**

---

**From:** Jessica Jinkens <jessica.jinkens@yahoo.com>  
**Sent:** Wednesday, May 3, 2017 10:51 AM  
**To:** Sara Buizer; Mike Porto; kimh@hayward.org  
**Cc:** wilmascollision@gmail.com  
**Subject:** Mission Crossing Project

To whom it may concern,

I have been a resident of Hayward my entire life. It is a great place to live and to raise a family. But overloading our already highly populated community would do more harm than good. Please rethink your plan to jam in 140 home plus a hotel into a cramped location that already has traffic flow issues. I am highly opposed to this plan. Thank you for taking the time to hear my concern.

Respectfully,

Jessica Jinkens

Sent from my iPhone

**Mike Porto**

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**From:** Linda Santiago <lindasantiago371@yahoo.com>  
**Sent:** Wednesday, May 3, 2017 4:04 PM  
**To:** Sara Buizer; Mike Porto; KimH@hayward.org  
**Cc:** wilmascollision@gmail.com  
**Subject:** "Mission Crossings" project and 700 Torrano Ave.

I am a long time resident of the city of Hayward, 50 years.

I am strongly OPPOSING the Mission Crossings and 700 Torrano project.

I've been a responsible resident/homeowner in Fairway Park. I'm a registered voter and vote regularly.

I can no longer leave Fairway Park after 3pm and head north on Mission Blvd. because of the congestion that ALREADY exists without this project. I basically can't go anywhere at that time because of the poor planning already that exists of all the surrounding streets around us.

We are being packed and stacked like animals have been, thank goodness for free-range which is healthier for animals and will be for us also.

IF we had roads to support more vehicles and semi trucks that we share, it would be great! BUT we don't.

These projects HAVE TO STOP NOW

We REALLY are not benefiting from them!

We have the new homes up the hill of Tennyson Rd, the old Haymont strip mall, 75 new living homes there, the new townhouses on Dollar St, and the huge project at the old Mervins downtown!

Mission Crossings is not zoned for homes it's businesses. Let people buy cars here in Hayward!

Please help our community, not pack us like Rats!

Thank you

Linda Santiago

371 Inwood Lane, 94544