

**ADDENDUM #6 TO FINAL ENVIRONMENTAL IMPACT REPORT-
SAN MATEO RAIL CORRIDOR TOD PLAN AND
BAY MEADOWS PHASE II SPECIFIC PLAN AMENDMENT
(Certified by the San Mateo City Council on April 18, 2005, June 6, 2005 and
November 7, 2005)**

1.0 INTRODUCTION

The California Environmental Quality Act (“**CEQA**”) requires public agencies to analyze and consider the environmental consequences of their decisions to approve development projects over which they exercise discretion. CEQA achieves this objective by requiring agencies to prepare Environmental Impact Reports (“**EIRs**”) for projects with the potential to cause significant impacts on the physical environment. EIRs are public documents that assess environmental effects related to the planning, construction, and operation of a project, and indicate ways to reduce or avoid possible environmental damage. An EIR also discloses any growth-inducing impacts, effects found not to be significant, significant cumulative impacts, and significant impacts that cannot be avoided. The purpose of an EIR is to inform. EIRs are not policy documents that recommend project approval or denial.

As lead agency, the City of San Mateo prepared an EIR for the San Mateo Rail Corridor Transit-Oriented Development Plan and the Bay Meadows II Specific Plan Amendment (“**Specific Plan Amendment**”), in compliance with the California Environmental Quality Act (CEQA) (Public Resources Code, section 21000 *et seq.*) and the State CEQA Guidelines (California Code of Regulations, Section 15000 *et seq.*, as amended). The City Council certified the final EIR for the San Mateo Rail Corridor Transit-Oriented Development Plan & Bay Meadows II Specific Plan Amendment (“**Final EIR**”) at a public hearing on April 18, 2005, approved the San Mateo Rail Corridor Transit-Oriented Development Plan, re-certified the Final EIR for that Plan, and adopted the findings and statement of overriding considerations at a public hearing on June 6, 2005 and approved the Specific Plan Amendment, re-certified the Final EIR for that project, and adopted the findings and statement of overriding considerations at a public hearing on November 7, 2005. As noted at pages 1-6 of the Final EIR, the analysis in the Final EIR was at a “project” level of detail, which anticipated the potential impacts of future discretionary approvals to implement the project. The Final EIR expressly states that applications for subsequent Site Plan and Architectural Review (“**SPAR**”) would not require preparation of subsequent environmental documentation, unless otherwise required by CEQA Section 21166 and CEQA Guidelines Section 15162.¹

¹ Public Resources Code Section 21166 and CEQA Guidelines Section 15162 limit the ability of an agency to require an additional EIR, once one has been certified for a project. Section 21166 and Section 15162 provide that when an environmental impact report has been prepared for a project, no subsequent or supplemental environmental impact report will be required unless certain specified events occur. These events include (a) substantial changes are proposed in the project which will require major revisions of the environmental impact report; (b) substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or (c) new information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available, and the new information shows that (i) the project will have one or more significant effects not discussed in the previous EIR or negative declaration; (ii) significant effects previously examined will be substantially more severe than shown in the previous EIR; (iii) mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or

In its approval of the Bay Meadows Phase II SPAR Application #1 (PA 07-054), the City Council adopted an Addendum to the Final EIR ("Addendum # 1"), concluding that none of the criterion in CEQA Section 21166 or CEQA Guidelines Section 15162 had been met that would require preparation of a subsequent or supplemental EIR and that an Addendum was appropriate. The Planning Commission relied upon the Final EIR and Addendum #1 in adopting Findings for Approval related to CEQA compliance for SPAR #2 (including RES 4), concluding that the approval of SPAR #2 did not require preparation of a subsequent or supplemental EIR. In connection with its approval of a subsequent SPAR for the Nueva High School (PA 12-051), the City prepared Addendum #2 to the Final EIR, concluding that the approval of the SPAR for the Nueva High School also did not require preparation of a subsequent or supplemental EIR. In connection with its approval of the preferred alignment option for the Norfolk Street Sanitary Sewer Connection that was required to be installed for the Bay Meadows Phase II project as a mitigation measure of the EIR, the City prepared Addendum #3 to the Final EIR, concluding that the approval of the preferred alignment option also did not require preparation of a subsequent or supplemental EIR. Subsequently, in connection with modifications to the project approved under SPAR #2 for RES 4, the City prepared Addendum # 4 to the Final EIR, concluding that approval of these modifications to RES 4 did not require preparation of a subsequent or supplemental EIR. Finally, in connection with the modifications to the project approved under SPAR # 1 for Station Blocks 1 and 5, the City prepared Addendum # 5 to the Final EIR, concluding that approval of these modifications did not require preparation of a subsequent or supplemental EIR.

The project proponent has now proposed modifications to the existing SPAR approvals relating to Mixed Use Blocks 2 and 3.

Where a subsequent or supplemental EIR is not required under Section 21166, CEQA Guidelines Section 15164 explains when an addendum to an EIR would be required:

15164. Addendum to an EIR or Negative Declaration.

- "(a) The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.
- (b) An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary or none of the conditions described

[Footnote continued from previous page]

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

For the reasons described in Section 3.2 hereof, the City has determined that none of the circumstances requiring preparation of a subsequent or supplemental EIR are present for the subject SPAR application.

in Section 15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.

- (c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted negative declaration.
- (d) The decision-making body shall consider the addendum with the final EIR or adopted negative declaration prior to making a decision on the project.
- (e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence."

2.0 PROJECT IMPLEMENTATION AND BACKGROUND

The Specific Plan Amendment as analyzed in the Final EIR anticipated a base program of 1,250,000 square feet of office uses, 1,250 residential units and 150,000 square feet of retail uses (the "**Base Program**"). A minimum of 1,000 units and 500,000 square feet of office are required to be provided at build-out of the project under the Specific Plan Amendment (the Final EIR studied the impacts of a range of development intensity within the Bay Meadows project and the larger San Mateo Rail Corridor that informed the City of the impacts that would result at this level of development).

As required by the Specific Plan Amendment (page V-22), the project applicant obtained City Council approval of SPAR #1 (PA 07-054) on April 21, 2008. As part of its approval of SPAR #1, the City Council adopted certain Findings for Approval related to CEQA compliance (Exhibit A to SPAR #1 Administrative Report for the City Council Public Hearing) (the "**SPAR #1 Findings for Approval**") in which it determined that the scope of SPAR #1 is within the scope of the project considered in the Final EIR and Addendum #1.

The project applicant has now submitted a SPAR application for Mixed Use Blocks 2 and 3 to modify the existing SPAR #1 approvals for these two Mixed Use Blocks:

As modified, Mixed Use Block 2 (bordered by S. Delaware Street to the west, 28th Avenue to the north, Kyne Street to the east, and Derby Avenue to the south) would consist of a four-story approximately 182,836-square foot office building with approximately 8,606 square feet of ground floor active use (for a total of approximately 191,442 square feet), at-grade parking at ground level, and three levels of below-grade parking. Mixed Use Block 3 (bordered by S. Delaware Street to the west, Derby Avenue to the north, Kyne Street to the east, and Landing Avenue to the south) would consist of a four-story approximately 120,350-square foot office building with approximately 5,618 square feet of ground active use (for a total of approximately

125,968 square feet), a four-story residential building (67 units), and two levels of below-grade shared parking located on the full block.²

The proposed application includes other minor modifications to the originally approved Mixed Use Blocks 2 AND 3 design (including design guidelines exceptions). The design guideline exceptions include Build-To Zone, Building Placement, Building Massing, and Curb Cut exceptions on Mixed Use Block 2; a Mid-Block Passage Height Exception, Building Placement exception, and Curb Cut exception for the Mixed Use Block 3 Office Building; and, an exception to allow a decorative metal awning which exceeds the 6-foot projection limit from the setback, all as more particularly described in the application materials that which will be considered together with this Addendum. All project elements set forth in the application materials are collectively referred to herein as the “**Mixed Use Blocks 2 and 3 Modifications.**”

When measured in combination with all prior SPAR approvals and modifications within the Specific Plan Amendment area, the Mixed Use Blocks 2 and 3 Modifications would result in a total development at buildout of approximately (1) 1,218,034 square feet of office; (2) 52,255 square feet of retail and other commercial uses; and (3) 1,048 residential units. This cumulative total is within the 1,250,000 square feet of office uses, 150,000 square feet of retail/active uses, and 1,250 residential units analyzed as the Base Program in the Final EIR. This proposed build-out also satisfies both the minimum amount of office square footage and the number residential units required by the Specific Plan Amendment.

The purpose of this Addendum is to analyze the project application for the Mixed Use Blocks 2 and 3 Modifications, and to determine whether the Mixed Use Blocks 2 and 3 Modifications fall within the previously analyzed envelope of impacts specified in the Final EIR and all subsequent Addenda thereto.

After reviewing the facts and analyzing the circumstances, the San Mateo City staff has concluded that a new EIR is not required because none of the circumstances described in CEQA Section 21166 as implemented by CEQA Guidelines Section 15162 are present. This Addendum has been prepared to discuss these issues and the basis for this determination.

3.0 PROJECT IMPACTS RELATED TO TRAFFIC AND AIR QUALITY

3.1 Description of the Issue

As noted above, the Base Program analyzed in the Final EIR included 1,250,000 square feet of office uses, 1,250 residential units and 150,000 square feet of retail uses. A minimum of 1,000 units and 500,000 square feet of office are required to be provided at build-out of the project under the Specific Plan Amendment (the Final EIR studied the impacts of a range of development intensity within the Bay Meadows project and the larger San Mateo Rail Corridor that informed the City of the impacts that would result at this level of development).

² All square footages and parking calculations contained in this Addendum are based on submitted planning application plan drawings. Final building square footages and parking calculations in the final building plans will be required to substantially conform with the approved planning application.

If the Mixed Use Blocks 2 and 3 Modifications are approved, the amount of office space approved at full buildout would equal approximately 1,218,034 square feet, and 52,255 square feet of retail and other commercial uses, in addition to the commercial space utilized for the Nueva High School (approved pursuant to PA 12-051), and the amount of residential space approved at full buildout would equal 1,048 residential units. This overall program is within the Base Program analyzed under the Final EIR.

Only two potential impacts have been identified related to the proposed Mixed Use Blocks 2 and 3 Modifications that warrant further discussion in this Addendum: traffic and traffic-related air quality. The issues presented are (1) whether traffic generated by the proposed Mixed Use Blocks 2 and 3 Modifications would cause the overall project to exceed the trip generation studied in the EIR, and as a result, create new significant environmental effects or result in a substantial increase in the severity of previously identified significant effects related to traffic; and (2) whether an increase in traffic would cause the overall project to exceed the trip generation studied in the EIR, and as a result, create new significant air quality impacts or result in a substantial increase in the severity of previously identified significant impacts related to air quality.

Addendum #1 has already addressed issues related to analysis of climate change impacts in CEQA documents. In addition, the vehicle miles traveled analysis requirements mandated by changes to CEQA since the EIR was certified do not apply to the Mixed Use Blocks 2 and 3 Modifications under applicable provisions of law and CEQA regulations (a more detailed explanation of the legal and factual bases for this conclusion is set forth in Section 3.2 of this Addendum). Accordingly, no further analysis of these issues is required. In addition, because approval of the Mixed Use Blocks 2 and 3 Modifications will ensure consistency with the design guidelines and standards set forth in the Specific Plan Amendment and the Phase II Design Guidelines and Development Standards, the Mixed Use Blocks 2 and 3 Modifications do not reflect a change in the project previously approved under SPAR #1 or in the project analyzed under the Final EIR and Addenda with respect to land use or visual resources. In addition, pursuant to SB 743 and as discussed below in Section 3.2, aesthetic and parking impacts are deemed as a matter of law to be less than significant under CEQA.

3.2 Application of CEQA Guideline Section 15162

Is there substantial evidence in the record revealing that there have been substantial changes proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects as a result of the Station Blocks 1 and 5 Modifications?

No, there is no evidence suggesting that any changes to the project have been proposed that will result in new significant environmental effects or substantial increase in the severity of previously identified significant effects. As noted above, the Final EIR analyzed the impacts of the Specific Plan Amendment authorizing the Base Program at build out. The proposed Mixed Use Blocks 2 and 3 Modifications authorize the construction of approximately 191,442 square feet of office and commercial space on Mixed Use Block 2 and approximately 125,968 square feet of office and commercial space on Mixed Use Block 3, along with 67 dwelling units.

Although this represents an increase in office square footage compared to the square footage approved for these blocks under SPAR #1, the total amount of office square footage proposed for the overall project is approximately 31,966 square feet less than that approved under the Specific Plan Amendment Base Program. The proposed use is therefore consistent with the Specific Plan Amendment that was analyzed in the Final EIR and remains consistent with the minimum and maximum development limits analyzed in the Final EIR. EIRs do not expire, and under applicable law, as long as the analysis remains valid, and there is no evidence of new impacts from the project on the environment, no new EIR or other CEQA documentation is required.

Traffic and Air Quality

Mixed Use Blocks 2 and 3 Modifications are subject to the final conditions of approval for the Specific Plan Amendment that created a “trip budget” to limit the amount of development that could be constructed depending upon the construction of the required grade separated crossings over the Caltrain tracks. The *Bay Meadows II Traffic Management Plan* prepared by Kimley-Horn and Associates, Inc., originally prepared on March 17, 2008 and most recently on February 17, 2021 (latest update attached as Attachment 1 hereto) (the “TMP”) establishes the trip budget for each individual block at the Bay Meadows II project site (including Mixed Use Blocks 2 and 3) and identifies how the trip generation of the project for each phase of development and at full build-out is expected to stay within the applicable trip caps and meet applicable trip reduction goals established in Condition of Approval #40 of the Specific Plan Amendment.

Pursuant to the Conditions of Approval, once construction at either or both the 28th and 31st Avenue grade-separations has commenced and a minimum of site development has been completed and occupied, the Conditions of Approval establish increased trip reduction goals as compared to the pre-grade separation condition. The trip reduction goals are measured in two ways, (1) in the SPAR approval process, the project is required to estimate the maximum number of trips allowed under the trip reduction goal in each stage (i.e., trip budget), and (2) after completion and occupancy, the actual number of trips generated are monitored and compared to the maximum number of trips allowed.

The TMP analyzed build-out of the project including the Mixed Use Blocks 2 and 3 Modifications. It concludes that with the traffic-reducing elements available to Bay Meadows, it is estimated that at buildout, the program approved by the SPARs (including the Mixed Use Blocks 2 and 3 Modifications) will achieve a 26.7% trip reduction in the a.m. peak hour and 28.9% reduction in the p.m. peak hour. This exceeds (i.e., improves upon) the minimum 25% trip reduction goal at build out. At buildout, the project is estimated to generate a total of 2,026 trips in the p.m. peak hour which is 543 trips under the maximum trip cap of 2,569 for Phase III of the post-grade separation conditions.

Therefore, with implementation of the measures set forth in the TMP, the level of vehicular trips generated by the proposed Mixed Use Blocks 2 and 3 Modifications would fit within the Final EIR analysis and therefore would not involve new significant traffic or transportation impacts or a substantial increase in the severity of previously identified significant traffic or transportation impacts beyond those analyzed in the Final EIR.

Additionally, in accordance with the adopted mitigation measures, the City is continuously monitoring traffic and other impacts. The current project data show that actual project impacts

are well below the predicted levels of traffic approved as part of the Specific Plan in 2005. For example, based upon the most recent October 2019 on-the-ground traffic monitoring data, which was collected by taking cordon counts of peak evening hour traffic at each entry point (gateway) to Bay Meadows, the Bay Meadows project is generating approximately 31% fewer p.m. peak hour trips than the trip budget imposed as mitigation in the 2005 EIR analysis (3,083 p.m. peak hour estimated trips vs. 2,113 p.m. peak hour actual trips). Monitoring would continue on an annual basis, including following approval of the Mixed Use Blocks 2 and 3 Modifications.

Because the level of vehicular trips generated by the proposed Mixed Use Blocks 2 and 3 Modifications would fit within the Final EIR analysis, the Mixed Use Blocks 2 and 3 Modifications would likewise not result in any increase in trips that would cause any new or substantial increases in the severity of previously identified air quality impacts related to trip generation from the project.

Parking

Parking impacts of the Mixed Use Blocks 2 and 3 Modifications are, as a matter of law, deemed less than significant due to the provisions enacted by SB 743 (codified at Public Resources Code section 21099(d)(1)). More specifically, SB 743 provides that aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area “shall not be considered significant impacts on the environment.”³

Mixed Use Blocks 2 and 3 satisfy the locational requirements of SB 743 because the sites are entirely surrounded with qualified urban uses and are less than one-half mile (0.35 miles at the farthest point) from the Hillsdale Caltrain Station. Mixed Use Block 2 satisfies the SB 743 use requirements because the development constitutes an “employment center project” given that the property is zoned to allow for commercial uses, and the development has a floor area ratio of 2.5. Mixed Use Block 3 satisfies the SB 743 use requirements because it constitutes a mixed-use residential development. Accordingly, parking impacts do not constitute a significant impact under CEQA for the Mixed Use Blocks 2 and 3 Modifications.

Nonetheless, for information purposes and to separately document compliance with Specific Plan Amendment standards, in connection with the Mixed Use Blocks 2 and 3 Modifications, the project sponsor also submitted a February 17, 2021 update to the original 2008 Parking Management Plan (latest update attached as Attachment 2 hereto, and incorporated by reference herein) (the “PMP”). Based on the current development program identified in the PMP (which includes the Mixed Use Blocks 2 and 3 Modifications), the updated PMP concludes that parking ratios for office buildings in Mixed Use Blocks 2 and 3 would be 2.5-2.6 spaces per 1,000 gross square feet, which is within the Specific Plan standards. The parking ratios for residential

³ “Transit priority areas” are defined, in pertinent part, as those areas within one-half mile of a major transit stop (major transit stops include a “site containing an existing rail transit station”). “Infill sites” are defined as a lot located within an urban area that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses (namely, residential, commercial, institutional, transit, and/or retail uses). “Employment center projects” are defined as a project located on property zoned for commercial uses with a floor area ratio of no less than 0.75.

development on Mixed Use Block 3 would be a maximum of 2.00, and an average of 1.03 spaces per dwelling unit, which is less than the applicable maximum of 2.25 spaces per dwelling unit (inclusive of guest parking) established by the Specific Plan. The proposed Mixed Use Blocks 2 and 3 Modifications comply with the Specific Plan parking standards and requirements. Therefore, the proposed Mixed Use Blocks 2 and 3 Modifications would fit within the applicable parking standards analyzed under the Final EIR, and therefore, for this separate and independent reason, would not involve new significant impacts or a substantial increase in the severity of previously identified significant impacts above that analyzed in the Final EIR.

Is there substantial evidence in the record revealing that there have been substantial changes with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects?

There is no evidence suggesting that there have been substantial changes with respect to the circumstances under which the project is undertaken which will require major revisions to the previous EIR. Issues related to the grade separations and global climate change have already been addressed in Addendum #1, which Addendum is incorporated by reference herein (global climate change and greenhouse gas emissions are further discussed below). Information related to traffic has been addressed in the attached TMP described above, which TMP is incorporated by reference herein. Because the TMP concludes that the trips generated by the project, including the Mixed Use Blocks 2 and 3 Modifications, is within the Final EIR analysis, the Mixed Use Blocks 2 and 3 Modifications would not result in any new or substantially increased air quality impacts related to trip generation.

Because the scope of development included in the pending Mixed Use Blocks 2 and 3 Modifications was already analyzed as part of the aggregate development previously approved, and does not generate any new or different impacts than were previously disclosed in the Final EIR, no further CEQA review is required.

Is there substantial evidence in the record revealing that there is new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified that shows: (1) the project will have one or more significant effects not discussed in the EIR, (2) significant effects previously shown will be substantially more severe than shown in the previous EIR, (3) mitigation measure or alternatives previously found to be infeasible would in fact be feasible, or (4) there are considerably different mitigation measure or alternatives from those analyzed in the previous EIR that would substantially reduce one or more significant effects?

No, there is no evidence suggesting that there is new information of substantial importance relating to new significant effects or the severity of previously identified significant effects, or new alternatives or mitigation measures or the efficacy of previously considered alternatives or mitigation measures. Issues related to global climate change have already been addressed in Addendum #1, and are further discussed below. The proposed use and intensity of development proposed under the Mixed Use Blocks 2 and 3 Modifications are permitted under the Specific Plan Amendment and have been considered in the Final EIR and subsequent addenda thereto. Therefore, the record pertaining to Mixed Use Blocks 2 and 3 Modifications do not represent

new information, but rather is consistent with the information that was known at the time of the Final EIR certification.

The “vehicle miles traveled” or “VMT” transportation impact analysis methodology enacted by SB 743 does not alter the above conclusion. Specifically, the CEQA Guidelines provisions implementing SB 743 and requiring VMT to be used as the method for evaluating CEQA traffic impacts on and after July 1, 2020 (CEQA Guidelines Section 15064.3) makes clear that the VMT requirements apply prospectively only as described in CEQA Guidelines Section 15007.

CEQA Guidelines Section 15007 (b)–(c) provides that new requirements in amendments to the CEQA Guidelines will apply only to steps in the CEQA process not yet undertaken by the date when agencies must comply with the amendments. Additionally, Section 15007(c) provides that if a CEQA document meets the content requirements in effect *when the document is sent out for public review*, the document need not be revised to conform to any new content requirements in Guideline amendments taking effect before the document is finally approved. CEQA Guidelines Section 15164(c) specifies that Addenda are not subject to public review, and so Addenda would not trigger the “public review” test for determining when it is proper to require the VMT analysis contemplated by CEQA Guidelines Sections 15064.3 and 15007(c). In this case, the Final EIR was certified in 2005, long before the VMT requirements became effective. Therefore, the provisions of the CEQA Guidelines outlined above instruct that VMT requirements would not apply to the Mixed Use Blocks 2 and 3 Modifications.

This conclusion is further strengthened by technical guidance recently issued by the Governor’s Office of Planning and Research (the State agency that promulgates the CEQA Guidelines).⁴ The Office of Planning Research (“OPR”) indicated that a “CEQA analysis prepared after July 1 may be able to rely on a previously certified EIR that analyzed traffic impacts using the LOS metric.” OPR instructs that:

“When determining whether subsequent and supplemental analyses are required under Public Resources Code section 21166, the agency should focus the inquiry on whether there are substantial changes in the project or circumstances that would require major revisions of the document, or if new information, which was not known and could not have been known at the time of becomes available. (Pub. Resources Code, § 21166; CEQA Guidelines, §§ 15162-15163.) Agencies should review other streamlining provisions governing the bases for those analyses (see, e.g., CEQA Guidelines, § 15164 [addendum to an EIR or negative declaration]).”

Thus, OPR instructs that enactment of the new VMT methodology does not separately trigger the need for supplemental CEQA analysis if such supplemental analysis is not otherwise required by CEQA Section 21166 and CEQA Guidelines Section 15162. OPR’s instruction on this point was expressly informed by the holding in *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1320.) *Concerned Dublin Citizens* involved facts remarkably similar to the currently proposed Mixed Use Blocks 2 and 3 Modifications.

⁴ California Governor’s Office of Planning and Research, <https://opr.ca.gov/ceqa/updates/sb-743/faq.html#tier-env-doc>, last accessed February 21, 2021.

In that case, the Court of Appeal upheld the City of Dublin's approval of a site-specific "Site Development Review application that was intended to include precise information regarding building architectural design, use of exterior materials, a specific site layout, landscaping plans, conceptual signs plans and other design details" within a previously adopted transit-oriented specific plan proximate to the East Dublin / Pleasanton rail station. (*Id.* at p. 1306.) In *Concerned Dublin Citizens*, project opponents had argued that the City of East Dublin should have required additional CEQA analysis beyond the Program EIR adopted concurrently with the Eastern Dublin Specific Plan. (*Id.* at p. 1309.) In addition to other arguments that were rejected by the court, opponents argued that new supplemental environmental review was necessary because new significance thresholds had been adopted by the Bay Area Air Quality Management District" after the EIR had been certified. (*Id.* at p. 1319.) The Court of Appeal rejected the opponent's contention that new significance thresholds constituted "substantial new information" for purposes of a CEQA Section 21166 analysis. Instead, the Court upheld the City's approval of the site-specific project plans without the need for supplemental environmental review. (*Id.* at p. 1320.)

The Court reached this conclusion on two related grounds: First, information about the effect of greenhouse gas emissions on climate was known long before the City of East Dublin certified its EIR in 2002. Therefore, information about the effects of greenhouse gas emissions did not constitute new information which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified. (*Ibid.*) Importantly, the Court of Appeal further found that the "adoption of guidelines for analyzing and evaluating significance of data does not constitute new information if the underlying information was otherwise known or should have been known at the time the EIR was certified." (*Ibid.*)

The court's holding in *Concerned Dublin Citizens* means that—as OPR also concluded—new supplemental environmental analysis is not required for previously certified EIRs merely because SB 743 adopted VMT-based significance thresholds for new CEQA documents. Instead, the standards of CEQA Section 21166 and CEQA Guidelines Section 15162 *et seq.* continue to control. As documented in this Addendum, the analysis conducted under CEQA Section 21166 and CEQA Guidelines Section 15162 indicate that no further CEQA analysis is properly required for the currently proposed SPAR modifications.

In addition to the above legal conclusion based on the CEQA Guidelines and controlling case law, the conclusion that no further CEQA review of VMT impacts is warranted is also factually supported by the City's currently proposed Traffic Impact Analysis guidelines presented to the City Council in July 2020 as well as CEQA Guidelines Section 15064.3(b)(1). These provisions instruct that the City of San Mateo and other lead agencies "should generally presume that certain projects (including residential, retail and office projects, including mixed use) proposed within a High Quality Transit Area will have a less than significant impact on VMT and thus not warrant further CEQA analysis." High-Quality Transit Areas (HQTAs) are areas located within 1/2 mile of an existing major transit stop. Mixed Use Blocks 2 and 3 fall within this area where VMT impacts are presumed to be less than significant because they are located approximately 0.35 miles (at the farthest point) from the Hillsdale Caltrain Station. Additionally, none of the possible exceptions to this presumption set forth in Section 2.1.1.4 of the City's proposed Traffic Impact Analysis guidelines apply in this instance.

Similar analysis applies to greenhouse gas emissions. As illustrated in *Concerned Dublin Citizens*, the effects of greenhouse gas emissions were known well prior to 2002 when the City of Dublin certified its EIR, and well prior to 2005 when the City of San Mateo certified the Final EIR. Therefore, *Concerned Dublin Citizens* instructs that no further analysis of greenhouse gas emissions would be required for the Mixed Use Blocks 2 and 3 Modifications.

Subsequent CEQA case law similarly supports the conclusion that greenhouse gas emissions need not be analyzed in a supplemental environmental analysis. For example, in *Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788, 805) the Court of Appeal emphasized that once an EIR has been prepared, the “statutory presumption flips in favor of the developer and against further review.” Accordingly, the court rejected the requirement that greenhouse gas emissions be evaluated for a subsequent project even where the original EIR (in that case, prepared in 1997) failed to analyze greenhouse gas emissions at all because, under prong (c) of CEQA Section 21166, information about greenhouse gas emissions was known to the Federal Government since the 1970’s. In the *San Jose* case, the information could have been known to the City of San Jose in 1997 when it prepared the EIR that was defended in that litigation and, accordingly, no new greenhouse gas analysis was required in prospective environmental reviews relying on that original EIR.

As applied to the Mixed Use Blocks 2 and 3 Modifications, information about greenhouse gasses was known when the City certified the Final EIR in 2005, and when it adopted Addendum # 1, which further analyzed this impact area. Therefore, greenhouse gas information does not constitute a new impact and does not constitute a basis for requiring further CEQA review under CEQA Section 21166 and CEQA Guidelines Section 15162.

4.0 BASIS FOR DECISION TO PREPARE AN ADDENDUM

Although there have been no changes to the project studied in the EIR, this addendum is appropriate because some changes or additions are necessary to discuss the change in the amount of development from that approved under SPAR #1, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

More specifically, the Mixed Use Blocks 2 and 3 Modifications are within the overall project analyzed under the Final EIR and all subsequent Addenda thereto and do not constitute a substantial change to the project or the circumstances due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

5.0 ADDITIONAL SUPPORT DEMONSTRATING THAT NO FURTHER CEQA REVIEW IS REQUIRED BASED ON THE LIMITED SCOPE OF THE SPAR REVIEW

There is also a separate and independently sufficient reason why no CEQA review beyond this Addendum is required: Although the SPAR is a “discretionary” approval subject to CEQA, the scope of what the City may regulate through the SPAR is limited to design review, and ensuring consistency with the Specific Plan. The Bay Meadows Phase II Development Agreement adopted pursuant to California Government Code section 65865 *et seq.* “vests” the approvals and legal regulations applicable to the Bay Meadows project, and prohibits the City from imposing

further or additional exactions on the development. The City therefore has no regulatory authority to reduce the amount of development through the SPAR process, and cannot lawfully impose new exactions or fees. Accordingly, there is no “nexus” between the design review conducted as part of the SPAR process, and any information that would be developed as part of an additional CEQA review. Case law has made clear that additional CEQA review is only authorized when the agency has the authority to address the environmental concerns that may be raised in the subsequent analysis. The corollary is that where no authority to mitigate impacts exists, no further CEQA review can be required. (*McCorkle Eastside Neighborhood Group v. City of St. Helena* (2019) 31 Cal.App.5th 80, 87-88 [CEQA review is only authorized when a discretionary approval gives the agency the authority to address the environmental issues that might be indicated in such analysis]; *San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal. App. 4th 924). Given the limited nature of the SPAR review (limited to design review and Specific Plan Amendment compliance), additional CEQA review cannot be required for the SPAR.

Attachment 1: Bay Meadows II Traffic Management Plan [Kimley-Horn and Associates, Inc., updated February 17, 2021]

Attachment 2: Bay Meadows II Parking Management Plan [Kimley-Horn and Associates, Inc., updated February 17, 2021]