August 4, 2017

By E-Mail
Acknowledgement of Receipt Requested

Honorable Mayor and City Council
City of San Jose
c/o City Clerk
200 E. Santa Clara Street
San Jose, CA  95113
Email: cityclerk@sanjoseca.gov

Re:  Appeal of Planning Director’s Reliance on a Categorical Exemption for CEQA Clearance – Approval of Site Development Permit and Vesting Tentative Map – Race Street and West San Carlos Street – File Numbers H17-018 and T16-50

Dear Mayor Liccardo and City Councilmembers:

On behalf of Janice Nelson, Hector Moreno, and Michael Madeiros, the appellants in the above-referenced matter, please accept the following and enclosed submittals in support of their appeal of the Planning Director’s determination that the proposed Race Street and West San Carlos Street Commercial Development Project (the Project”) is categorically exempt from environmental review under the California Environmental Quality Act (“CEQA”) pursuant to section 15332 of the CEQA Guidelines.

Under section 15332(d), a project may not be treated as categorically exempt if its approval would “result in any significant effects relating to traffic, noise, air quality, or water quality.” As discussed below, and as documented in the attached technical reviews from experts in traffic engineering and air quality impact analysis, the June 2017 Initial Study, West San Carlos and Race Street Commercial Development Project (“Initial Study”), prepared by the City of San Jose (“City”) does not provide substantial evidence to support the Statement of Exemption. To the contrary, the Project would demonstrably result in significant impacts to traffic and air quality. In other words, because the Project will have significant impacts in these areas, it does not on its face qualify for the “infill” exemption under section 15332.
Yet even if the Project were to nominally qualify for this exemption, it would still not be exempt from environmental review under section 15300.2 of the Guidelines, which provides exceptions to CEQA’s categorical exemptions for, among other things, projects with significant cumulative impacts and/or significant impacts due to unusual circumstances. The significant traffic, air quality, and human health impacts that the Project will generate, due to the unusual circumstance of developing a commercial grocery/supermarket project on a site that previously housed a sporting goods store, and that has remained vacant for at least seven months.

The Director’s determination that the Project is categorically exempt from CEQA is therefore improper. We ask that the City Council grant the appeal and direct staff to prepare and circulate an appropriate environmental review document in accordance with CEQA. Such a document should evaluate and where feasible mitigate the Project’s significant impacts on air quality, health, and traffic. It should also evaluate the Project’s potential to cause urban decay due to the closing of nearby grocery stores, as requested in the appellants’ prior correspondence with the City.

A. The Project would cause significant traffic impacts.

The Initial Study purports to determine that the Project would have a less than significant impact on traffic because it would not conflict with level of service standards or other standards established by the County congestion management agency. Initial Study, pp. 99-100. The conclusion is based on the analysis in Appendix F, the June 20, 2017 Traffic Operations Analysis (“Traffic Report”) prepared by Hexagon Transportation Consultants, Inc. In particular, the conclusion is based on the “small number of net peak hour vehicle trips that would be generated by the Project.” Initial Study, p. 99.

Under the guidelines for traffic analysis for VTA and the City of San Jose, if a project generates more than 100 net new peak hour trips, a comprehensive traffic analysis is required in order to determine its congestion impacts, including Level Of Service (“LOS”) impacts to affected intersections. Here, by grossly understating the net new trips from the Project as only 17 additional PM peak hour trips, the Initial Study evaded the requirements for a comprehensive traffic study and dismissed Project impacts as less than significant. Because the City failed to follow its own guidance and applied clearly erroneous trip generation rates in its analysis, there is no substantial evidence to support a conclusion that Project congestion impacts are less than significant. As the attached letter from Dan Smith, P.E.\(^1\) explain, the Project would in fact have significant traffic impacts based on an analysis that uses applicable trip rates.

\(^1\) Mr. Smith’s professional qualifications accompany his letter.
Trips for Proposed Use Are Understated: The Initial Study fundamentally misstates the net new trips that would be generated by the Project by incorrectly applying the 42.7 per 1,000 sq. ft. trip generation rate for the Institute of Transportation Engineers (“ITE”) Land Use Category 820, “Shopping Center.” In fact, the applicable rate for the proposed use is 120 trips per 1,000 sq. ft., based on the applicable land use category for “Neighborhood Shopping” in the City of San Jose traffic analysis guidance. By applying the incorrect trip generation rate to the proposed use, the Initial Study grossly understates the net new trips.

Mr. Smith notes that the City of San Jose traffic analysis guidance requires the analyst to use applicable rates from that guidance rather than the ITE rates. However, even if ITE rates were used, the applicable rate for the proposed Smart & Final use is not ITE’s Category 820 Shopping Center rate, but ITE’s much higher Category 850 Supermarket rate, 102 trips per 1,000 sq. ft.. So regardless of whether the analysis uses the applicable City of San Jose trip rate or the applicable ITE rate, the actual rate is much higher than incorrectly applied Shopping Center rate.

Baseline Trips from Discontinued Use Should Be Zero: Furthermore, since the previous retail use was discontinued in 2016, the applicable trip rate for that use is irrelevant. The CEQA baseline for an initial study is the environmental condition at the time the analysis was done in 2017. Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310, 320, fn. 5. This zero baseline is also required by the VTA traffic analysis guidelines, which provide that where “the proposed project involves vacant or underutilized site without development rights, all trips generated by the project would be ‘project trips.’” See Santa Clara Valley Transportation Authority, Transportation Impact Analysis Guidelines, October, 2014, p. 27. By subtracting the trips from the prior use even though the baseline use is zero trips, the Initial Study grossly understates net new trips.

Baseline Trips Are Overstated: Even if the trips from the prior sporting goods store use were properly treated as a baseline trips, the Initial Study overstates those prior trips, and thus understates the net new trips. The Initial Study applies the ITE Shopping Center trip rate instead of applying the instead of the applicable City of San Jose trip rate for Specialty Retail or the applicable ITE trip rate for Sporting Goods Store. By overstating the prior trips, the Initial Study grossly understates net new trips.

Please note that all public agency guidance, regulations, and other documentation referenced in the attached technical reviews are available online at the URL addresses indicated in corresponding footnotes. We will gladly provide electronic and/or hard copies of any of the referenced materials upon request.
The Errors Are Critical and Mask Significant Impacts: A comprehensive traffic report is required if a project generates more than 100 net new trips, because that level of trip generation is likely to generate significant traffic impacts. Mr. Smith explains that, even crediting baseline trips for the discontinued prior use, the Project would generate 230 net new trips (not the mere 17 claimed in the Initial Study) if the analysis were based on the applicable City of San Jose trip rates, and it would generate 173 net new trips if the analysis were based on applicable ITE rates. The net new trips would be even higher if the baseline were properly stated as zero. Thus, the errors in the Initial Study were critical. A comprehensive traffic report should have been prepared.

Given the substantial increase in peak hour trip generation at the site, Mr. Smith explains that there is no doubt that the Project would have a significant traffic impact. For example, the queuing impacts at adjacent intersections would be significant because Project traffic would generate longer left turn queues than the length of the available turning lanes.³

Truck Loading Would Cause Undisclosed Significant Impacts: Mr. Smith explains that the inadequate truck loading facility would result in trucks blocking Earle Lane. This would likely result in significant traffic delays.

Parking Reduction Is Not Justified: The 20 percent reduction in the City’s parking requirement taken by the Project based on proximity to transit is unjustified. The vast majority of supermarket shoppers do not use transit. As Mr. Smith explains, the Project will not have sufficient parking.

Furthermore, San Jose Municipal Code section 20.90.220 provides that the Project must implement at least three transportation demand management measures to qualify for a parking reduction:

A reduction in the required off-street vehicle parking spaces of up to fifty percent may be authorized with a development permit or a development exception if no development permit is required, for structures or uses that conform to all of the following and implement a total of at least three transportation demand management (TDM) measures as specified in the following provisions . . .

San Jose Municipal Code, § 20.90.220. The code section may permit greater than 20 percent reductions for more comprehensive TDM programs, but the plain language quoted above requires at least 3 TDM measures for any reduction. Even if

³ Mr. Smith points out that the queuing analysis is based on grossly understated net new trips. He also points out that the Initial Study improperly dismisses the results of its own statistical analysis.
the Project’s bicycle parking is treated as one TDM measure, the Project comes up short. An auto-dependent supermarket use is simply not a candidate for a parking reduction.

B. The Project would make a considerable contribution to a significant cumulative air quality impact from Toxic Air Contaminants.

1. CEQA requires that a cumulative impact analysis consider all sources of related impacts.

   Cumulative impact analysis requires an agency to make two determinations: (1) whether the impacts of the project in combination with those from other past, present, and future projects are cumulatively significant, and (2) if so, whether the project’s own effect is a considerable contribution. Guidelines, § 15130(a); see Kostka and Zischke, Practice Under the California Environmental Quality Act (2nd Ed., 2014 Update), § 13.39. In step one, the agency must determine whether the combined effect of the project and other projects is significant, because those impacts may be “individually minor but collectively significant.” Communities for a Better Environment v. California Resources Agency (“CBE v. CRA”) (2002) 103 Cal.App.4th 98, 119-120. To provide an adequate step one analysis, the agency must

   • “define the scope of the area affected by the cumulative effect,”
   • explain “the geographic limitation used,”
   • identify the past, present, and future projects “producing related or cumulative impacts” or provide projections of the conditions “contributing to the cumulative effect,”
   • provide a “summary of the expected environmental effects to be produced by those projects.” Guidelines, § 15130(b)(3), (4).

   In step two, if there a significant cumulative effect, the agency must determine whether the project’s contribution is “considerable,” i.e., “whether ‘any additional amount’ of effect should be considered significant in the context of the existing cumulative effect.” CBE v. CRA, supra, 103 Cal.App.4th at 119.

   Importantly, the analysis must consider all sources of “related impacts.” Guidelines, § 15130(a)(1), (b); Los Angeles Unified School Dist. v. City of Los Angeles (“LAUSD”) (1997) 58 Cal.App.4th 1019, 1024-1025 (“cumulatively considerable’ means ‘the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects’” This is because, as the court in LAUSD explained:
“[o]ne of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant, assuming threatening dimensions only when considered in light of the other sources with which they interact.” Id. at 1025.

Thus, cases are clear that an arbitrary limit to the geographic scope of analysis is improper under CEQA. In Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 723-724 the court invalidated an EIR’s cumulative air quality impact analysis because the agency failed to consider the effect of emissions sources outside the County, even though data were available. In Citizens to Preserve the Ojai v. County of Ventura (1985) 126 Cal.App.3d 421, 431-432 the agency erred by omitting consideration of offshore emissions in its cumulative analysis even though these emissions would contribute to cumulative impacts. The agency’s failure to justify omission of offshore emission sources was a failure to comply with CEQA’s legal mandates. See also, Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1213-1214 (failure to consider all relevant projects in its cumulative impact analysis is an “overarching legal flaw”); San Joaquin Raptor Rescue Center v. County of Stanislaus (1994) 27 Cal.App.4th 713, 739-741 (omission of other known development projects in cumulative analysis is error).

2. The health risk assessment is legally inadequate as a cumulative analysis because it fails to consider all toxic air contaminant sources that affect the project site; and the Project would make a considerable contribution to a significant cumulative impact.

As explained in the attached technical review from Greg Gilbert (whose credentials are also attached), the Initial Study and Health Risk Assessment adopt the thresholds of significance from the Bay Area Air Quality Management District (“BAAQMD”) CEQA guidelines to concludes that there is no significant cumulative impact. The BAAQMD significance threshold for cumulative impacts calls for assessing only those sources of toxic air contaminants (“TACs”) that are within a 1,000 foot radius of the Project. Relying on BAAQMD’s significance threshold, the Initial Study and HRA conclude that the cumulative TAC impact is less than significant because the cancer risk from the three identified sources within 1,000 feet is less than the 100 in one million excess cancer threshold adopted by BAAQMD. The Initial Study and HRA give no consideration to the fact that the actual TAC cancer risk at the Project site, considering all of the TAC sources that affect the site, is actually double the 100 in one million excess cancer threshold.

Accordingly, the BAAQMD significance threshold, and the assessment of cumulative impacts relying on it, are erroneous as a matter of law because they exclude consideration of sources beyond 1,000 feet even though CEQA requires
consideration of all sources of TAC emissions affecting the site. The error is precisely analogous to the error in *Kings County Farm Bureau and Citizens to Preserve the Ojai* because the City relies on an arbitrary geographic limit to the scope of cumulative analysis that omits projects with related impacts.

The error is clearly prejudicial. BAAQMD data based on regional TAC modeling and measurement demonstrate that the cancer risk from TAC at the Project site from all sources is well in excess of the 100 in one million threshold adopted by BAAQMD. BAAQMD adopted that 100 in one million threshold based on US EPA guidance for what constitutes the maximum acceptable cancer risk from cumulative sources. Based on the adopted standard for what constitutes the maximum acceptable cancer risk from cumulative sources, there is clearly a significant cumulative impact at the project site.

Because the Initial Study and HRA erroneously conclude that the cumulative impact from all sources is less than significant, they do not even reach the second step in the cumulative analysis, the determination whether the Project’s incremental cancer risk is a considerable contribution. Had the City reached that step, it would have had to find a considerable contribution based on 1) the fact that the Project construction activities are projected to cause an incremental cancer risk of 5.9 in one million or 2) the fact that Project operations, including 14 daily diesel truck and refrigeration unit deliveries will cause a similar incremental cancer risk. BAAQMD provides that if the cancer risk is over its cumulative significance threshold “any additional risk is significant.” BAAQMD, Revised Draft Options and Justification Report, CEQA Thresholds of Significance, October 2009, page 34.

It is not sufficient that the Initial Study and HRA conclude that the cancer risk is less than the 10 in one million threshold adopted by BAAQMD and the City to determine whether the Project, by itself, causes a significant impact. The point of cumulative analysis is to identify those situations in which impacts may be “individually minor but collectively significant.” *CBE v. CRA*, supra, 103 Cal.App.4th at 119-120. Thus, cases are clear that an agency may not conclude that a project does not make a considerable contribution to a significant cumulative impact merely because the Project’s individual contribution is not a significant impact or because it is, by itself, relatively small. *LAUSD*, supra, 58 Cal.App.4th at 1024-25 (“individually insignificant” noise increase may be cumulatively considerable); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718-720 (cannot conclude air quality impacts are not considerable contributions simply because they are not individually significant); *CBE v CRA*, supra, 103 Cal.App.4th 98, 117-118, 120-121 (individually minor impact may be considerable contribution; former CEQA

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Guidelines provision that *de minimis* impacts are less than considerable is legally invalid).

In fact, CEQA requires that an agency determine what constitutes a “considerable contribution” to a significant cumulative impact with reference to the seriousness of the environmental problem: “the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant.” *CBE v. CRA*, supra, 103 Cal.App.4th at 120. Here, the actual cumulative cancer risk from TACs at the Project site is twice as high as the adopted threshold for the maximum acceptable risk.

The law is plain: even if a given project has only an “individually minor” impact, its contribution to an existing environmental problem may nevertheless be “cumulatively considerable,” hence significant, and hence requiring mitigation measures under CEQA. *CBE v. CRA* at 120; *see also* Guidelines, §§ 15355(b), 15065(a)(3).

C. The Project is ineligible for a categorical exemption because mitigation is required to ensure use of Tier 2 or better construction equipment.

As Mr. Gilbert explains, the health risk assessment for construction TAC impacts depends on the assumption that the Project would use at least Tier 2 construction equipment. However, there can be no assurance that the Project would do so unless that requirement is specified as a mitigation measure. Accordingly, the requirement must be specified as mitigation. The Project is not eligible for a categorical exemption since it requires mitigation. *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102.

D. There is no substantial evidence that operational emissions of criteria air pollutants is not a significant impact.

As Mr. Gilbert also explains, the Initial Study erroneously applies the BAAQMD screening criteria for a general office building (346,000 sq. ft.) to this Project to conclude that its emissions of criteria air pollutants (e.g., ozone precursors) is not significant. Furthermore, the modeling of air emissions is based on an automobile trip rate substantially below the applicable rate for this Project. Accordingly, there is no basis in this record to find that air quality impacts are not significant.
For all these reasons, we ask the Council to GRANT the appeal and direct staff to conduct appropriate environmental review of the Project in accordance with CEQA. Thank you for your consideration of these concerns.

Yours sincerely,

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

Mark R. Wolfe
On behalf of Appellants of Janice Nelson, Hector Moreno, and Michael Madeiros

MRW:jhf
cc: Rosalynn Hughey, Interim Director, Planning Division

Enclosures:

1. Dan Smith, Smith Engineering & Management, letter to John Farrow re West San Carlos and Race Street Commercial Development, July 22, 2017
2. Greg Gilbert, technical memorandum re West San Carlos and Race Street Development Project, July 24, 2017
July 22, 2017

Mr. John Farrow
M. R. Wolfe & Associates
555 Sutter Street, Suite 405
San Francisco, CA 94102

Subject: West San Carlos and Race Street Commercial Development H17-018

Dear Mr. Farrow:

Per your request, I have reviewed the City of San Jose's (the "City") Statement of Exemption and Initial Study for the West San Carlos and Race Street Commercial Development (the "Project") under the exemption defined in the California Environmental Quality Act ("CEQA" Guidelines § 15332. My qualifications to perform this review include registration as a Civil and Traffic Engineer in California and 49 years of consulting practice in traffic and transportation engineering. I have both prepared and reviewed the traffic and transportation components of numerous CEQA environmental documents. My professional resume is attached herewith.

The criteria for exemption under CEQA Guidelines § 15332 include a finding that the Project would not result in any significant effects relation to traffic. The conclusion of my review is that the Initial Study on which the Statement of Exemption is based failed to disclose significant traffic impacts of the Project. Hence the requirements of CEQA Guidelines § 15332 are not met and no exemption can be made under this section.

Technical details of my analysis follow.

The Initial Study Analyzes the Trip Generation of the Proposed Project and the Prior Use in a Land Use Category That Is Appropriate to Neither. As a Result, Net New Trips Caused By the Project Are Significantly Understated.
The traffic analysis for the Initial Study1 (hereinafter the IS) evaluates the trip generation for the retail component of the Project and the prior use of the site relying on the average rate for Institution of Transportation Engineers ("ITE") Trip Generation, 9th Edition Land Use Category 820 – Shopping Center. In particular, the traffic analysis applies the ITE average Land Use Category 820 shopping center rates (42.7 trips daily, 0.96 AM peak trips and 3.71 PM peak trips, all rates in trips per thousand square feet) and applies a 25 percent trip reduction for attracted passers-by to both the proposed retail component and the prior retail. Thus, the traffic analysis finds that the proposed retail component would generate 947 daily, 20 am peak and 82 PM peak trips and estimates that the prior retail use would have generated 640 daily, 13 AM peak and 56 PM peak trips. Subtracting the prior retail use trips and also subtracting the prior office use trips (a portion of the trip generation analysis in which we concur), IS Appendix G, Table 2 concludes that the Project would cause +241 daily, -2 am peak and +17 PM peak net new trips. Based on the small numbers of net new peak hour vehicle trips the Project generates, the IS and its Appendix G conclude that the Project is exempt from conducting full Traffic Impact Analyses under both City of San Jose and Valley Transportation Authority ("VTA") Congestion Management Plan ("CMP") policies.

However, the small numbers of net new peak hour trips are the result of erroneously estimating the trip generation of both the proposed retail use and the retail component of the prior use at ITE Land Use Category 820 Shopping Center average rates. The ITE Land Use Category 820 – Shopping Center does not properly apply to either the existing or the proposed use. The retail component of the proposed use is a supermarket of 29,580 square feet, a Smart and Final Store. The retail component of the prior use was a 20,000 square foot Mel Cotton’s Sporting Goods store. Shopping centers ordinarily range from about 100,000 square feet to over 1,000,000 square feet and contain multiple retail stores. Both the Project retail component and the prior use are individual retail stores, are well below shopping center size, are on their own site, and are not shopping centers.

Using the categories appropriate to each retail use makes an enormous difference in the overall trip generation of the proposed Project, the prior use, and the net new peak period trip generation caused by the Project, as documented below. The difference in net new trip generation fundamentally changes the traffic analysis. The Initial Study claims that, due to the small number of net new trips, which it estimates as only 17 PM peak hour trips, the project would not have the potential to degrade service in the surrounding roadways and that the

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1 Traffic related findings of the Initial Study are based on a June 20, 2017 Memorandum from Brian Jackson and Trisha Dudala of Hexagon Transportation Consultants to Akoni Danielson of David Powers & Associates entitled Traffic Operations Analysis for a Commercial Development at Race Street and W. San Carlos Street in San Jose California that is incorporated in the IS as Appendix G.
Project is not required to adhere to the VTS's CMP traffic study requirements. The VTA’s Traffic Impact Analysis guidance only exempts a project if it results in fewer than 100 net new peak hour trips; the guidance specifically requires a full traffic impact study for a project that re-occupies a vacant or underutilized parcel and changes the land use if it generates 100 net new peak hour trips. As explained and documented below, it is clear that the Project will generate well in excess of 100 net new trips based on the correct trip generation rates for the proposed and existing land uses, regardless whether the analysis is based on City of San Jose trip generation rates or ITE trip generation rates, provided that the applicable rates for these land uses are applied.

The City of San Jose’s *Traffic Impact Analysis Handbook – Volume 1 Methodologies and Requirements* specifies that a traffic impact analysis should be “based on the number of peak-hour trips generated by the project using City of San José approved trip generation rates.” The handbook provides trip rates for typical uses in its Appendix B, Table B1, “Common Vehicle Trip Generation Rates For The San Jose Area”. Trip rates from the Institute of Transportation Engineers should only be used for comparison purposes or if the City’s trip rate table does not include the land use:

The Institute of Transportation Engineers (ITE) also provides trip generation rates for a variety of land uses that may be used for comparison purposes or for land uses not included in the City’s table of trip generation rates.

Thus, the proposed Project trip generation and that of the prior use should, in the first instance, be analyzed at the most applicable San Jose rates. For the proposed Project, the applicable trip rate would be for Neighborhood Shopping, for retail under 100,000 square feet, (120 trips per 1000 square feet daily, 4 percent of daily in AM peak, 11 percent of daily in the PM peak). At these rates the 29,580 square-foot proposed project would generate 3550 gross trips daily, 142 in the AM peak and 391 in the PM peak. With allowance for 25 percent passer-by attraction, these trip totals become 2663 trips daily, 107 in the AM peak and 293 in the PM peak. The appropriate San Jose rate for the prior sporting goods retail component would be Specialty Retail (40 trips per 1000 square feet daily, 3 percent of daily in the AM peak hour and 9 percent in the PM peak).

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4 Id.
5 Hereinafter we refer to trip generation rates from San Jose’s *Traffic Impact Analysis Handbook – Volume I Methodologies and Requirements* as “San Jose rates” and from *Trip Generation, 9th Edition* as “ITE rates”.
peak). At these rates, the 20,000 square foot prior retail component would have a gross trip generation of 800 trips daily, 24 trips in the AM peak and 72 trips in the PM peak. With adjustment for 25 percent passer-by attraction, these totals become 600 trips daily, 18 in the AM peak and 54 in the PM peak. Subtracting these prior retail trips and the trips for the prior office component (with the office trips compiled per Appendix G, Table 2) from the trip generation for the Project compiled at San Jose Neighborhood Shopping rates, the net new trips for the Project are 1997 daily, 80 in the AM peak hour and 230 in the PM peak hour. This total of net new peak hour trips exceeds 100 net new trips and therefore requires a formal Traffic Impact Analysis performed under City of San Jose and VTA CMP protocols.

Alternatively, applying the appropriate ITE trip generation rates, there would be still be in excess of 100 net new trips. The appropriate trip generation land use category for the Project’s retail component relying on ITE’s *Trip Generation, 9th Edition* is Category 850- Supermarket. The prior sporting goods store, if analyzed relying on *Trip Generation, 9th Edition*, should be analyzed as Land Use Category 861-Sporting Goods Superstore. If estimated at ITE Category 850 Supermarket rates (102.24 daily, 3.4 AM peak, 9.48 PM peak, all rates trips per thousand square feet), the 29,580 square foot Smart & Final supermarket use would have a gross trip generation of 3,024 daily, 101 AM peak and 280 PM peak trips. Applying a 25 percent reduction for attracted passers-by, these numbers become 2,268 daily, 75 AM peak and 210 PM peak net trips. The prior retail component was a 20,000 square foot sporting goods store. At ITE rates for Category 861 Sporting Goods Store (0.25 AM peak and 1.84 PM peak, all rates in trips per 1000 square feet), the prior retail component would have generated 5 gross trips in the AM peak and 37 gross trips in the PM peak. When these are adjusted for 25 percent passer-by attraction, the totals for the prior retail become 4 trips in the AM peak and 28 trips in the PM peak. Subtracting these trips and those of the prior office use as computed in IS Appendix G, Table 2, the net new peak hour trips caused by the proposed Project become 62 in the AM peak and 173 in the PM peak. Again, because the net new peak hour trips exceed 100, a full traffic impact analysis would be required under City of San Jose and VTA CMP protocols.

Hence, a formal Traffic Impact Analysis is required based on the use of the correct trip generation rates from the City of San Jose or ITE sources for the Project retail and prior retail. No such analysis has been performed. Hence, the traffic analysis relied upon to meet the condition that the Project is found to have no significant traffic effects in order to qualify for Exemption under CEQA Guidelines § 15332 is defective.
It Is Questionable Whether the Prior Use Trip Generation Should Be Deducted From the Project’s Trip Generation At All

CEQA Guidelines § 15125(a) provide that the ordinary baseline for evaluating environmental impacts of a Project is the environmental conditions that exist at the time a Notice of Preparation is produced, or, if no Notice of Preparation is produced, at the time environmental analysis of a project is commenced. The prior use was discontinued in 2016. The City’s file number, H 17-018 appears to indicate that environmental analysis on this Project began in 2017. Hence, a prior use that terminated in 2016 should not be considered in the existing environmental conditions.

Furthermore, under VTA guidelines, "If the proposed project involves vacant or underutilized site without development rights, all trips generated by the project would be ‘project trips.’" Here, the project involves a vacant or underutilized site and also requires a Site Development Permit, so it does not have development rights. So even under the VTA’s guidelines, the baseline for site-generated trips should be zero. Hence, the Net New Project trip generation would be even greater than we have estimated above.

Finally, as a practical traffic matter, the theoretical trips generated by a prior use should not be deducted from the analysis unless the prior use was fully operational at the time the baseline traffic counts were taken. The baseline traffic counts presented in IS Appendix G (for the queuing analysis) are not dated in the document but may have been taken subsequent to the sporting goods store ceasing operations. In order to take the prior use trip generation deductions in any LOS or traffic operation assessments like queuing, it must be demonstrated that the baseline counts reflect and include full operation of the sporting goods store.

The Queuing Analysis Is Flawed By The Understatement Of Net New Trips; It Fails To Acknowledge That, Even With The Understated Net New Trips, The Project Would Cause A Significant New Queuing Impact; And Its Conclusions Regarding Existing And Future Queue Storage Adequacy Are Inconsistent With Queuing Analysis Presented

Queuing analysis is intended to determine whether congestion will result from a new project due to new turning movement demand that results in queues in dedicated turn lanes that exceed the storage capacity of those turn lanes. As is typical for queuing analyses, the traffic analysis for the IS determines whether the storage queues in the 95th percentile case would exceed available storage. A significant impact occurs when the storage capacity is less than the queue length in this 95th percentile case.

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6 Santa Clara Valley Transportation Authority, Transportation Impact Analysis Guidelines, October, 2014, p. 27.
Because, as documented in the sections above, the analysis of the Project's net new trip generation seriously understates the Project's net new trip generation, the inputs to the IS Appendix G queuing analysis are seriously understated. Had the queuing analysis used the properly calculated net new Project trips, significantly greater queues than reported would be disclosed. The analysis must be redone using a proper estimate of net new Project trips.

More problematically, even using the seriously understated net new trip generation data, the queuing analysis documents a significant queuing impact that would be caused by the Project, but the IS fails to acknowledge it. In particular, the queuing analysis results presented in Appendix G, Table 3 documents that the storage capacity for the north bound left turn land of West San Carlos and Race Street is currently modeled as adequate during the PM peak period but would become inadequate with the addition of Project traffic. In short, even using seriously understated net new trips, the queuing analysis demonstrates that the Project would degrade existing conditions so that a currently adequate left turn storage length becomes inadequate. This should be identified as a significant impact. The impact would be even greater had the analysis been based on correctly analyzed net new trips.

Furthermore, the traffic study disingenuously dismisses the results of its queuing analysis as “conservative” based on “field observations.” The results of the queuing computational analysis in Appendix G, Table 3 show that queues in the northbound left turn lane on Race at West San Carlos exceed storage capacity in the AM peak under existing conditions. Despite this calculated result, the traffic analysis claims that “AM peak hour field observations at the study intersection show the vehicle queues for the northbound left-turn moment do not actually exceed the turn pocket storage. Therefore the calculated maximum northbound left-turn vehicle queue length during the AM peak hour is a conservative estimate, and the left-turn pocket is expected to provide adequate vehicle storage under all traffic scenarios.” The purported basis for this rationalization is that when observations were made, the observer did not see the subject queue exceed the storage capacity. This facile reasoning ignores the fundamental basis of queue science – the number of vehicles arriving at an intersection to make a particular movement in a short period of time is random – hence, it is statistically possible to observe an intersection or particular movement for a considerable period of time without observing a high percentile queue event. The narrative conclusion constitutes an unscientific evasion of the results of scientific calculations.7

7 The traffic study seeks to buttress its claim that its computational analysis is “conservative” with reference to observations of PM traffic queuing. This claim is even more absurd, because the computational analysis in Table 3 does not show that the existing PM queue at in the northbound left turn lane on Race at West
Furthermore, even if the existing turn pocket were adequate under existing conditions, there is simply no basis to claim that this turn pocket would “provide adequate vehicle storage under all traffic scenarios,” i.e., future increased traffic due to the Project. This is particularly evident considering that the volume of net new peak hour Project traffic reflected in the calculations is significantly understated due to the use of inapplicable trip rates. Thus, the queue calculations presented in Appendix G, Table 3 are also understated, not “conservative.” If a proper trip generation analysis of the Project had been done, queues would be longer – worse – than those disclosed in the calculations.

The queue analysis also addresses conditions at the intersection of Race Street with Earle Lane. The computational results show the situation to be adequate in all the scenarios analyzed. However, this analysis ignores a concern that we address in depth below that maneuvering of heavy trucks between Earle Lane and the Project’s loading docks, which are located closely adjacent to the Race Earle intersection, involves difficult movements in a tight area that would result in Early being blocked for several moments at a time. This will create queuing conditions unaddressed in the analysis.

**Truck Loading Bay Inadequate**

The Site Plan (Figure 4 in IS Appendix G) shows that the proposed building’s loading bays are located at the southwest corner of the building and accessed/egressed from Earle Lane. The Figure shows a California Legal tractor-trailer rig (maximum overall length 65 feet) in the loading bay. The narrative of IS Appendix G at page 12 states as follows. “The loading spaces were reviewed for truck access by the method of truck turning-movement templates. Access was reviewed for the truck type WB-60, which represents very large semitrailers. The analysis shows that the WB-60 truck types would have adequate access to the on-site loading spaces.” The problem with this is that with a 65 foot overall length tractor trailer rig parked in the loading bay as illustrated in IS Appendix G, there is a bare 50 foot clearance to the far side of Earle Lane. The minimum turning radius for such rigs is 50 feet. Hence, for the articulated rig to make the 90-degree turn from Earle Lane either backing into or driving out of the loading bay, even if the driver made a perfect 50-foot radius turn, the turn would be a paint-scraper if the adjacent property to the south of Earle Lane had a fence, structure or parked cars at the limit line. Current aerial photography shows that the adjacent property has cars parked to the limit line of Earle Lane. Moreover, because the analysts have not inscribed the turning

San Carlos is inadequate, so there was no reason to suppose that field observations would show inadequate turn pocket length. The absence of queueing problems where such problems are not predicted can prove nothing about future conditions when additional traffic is added and problems are predicted.
template on Appendix G, Figure 4, it is not evident whether the maneuver could be made at all if a large truck or multiple trucks were in the adjacent loading bay. Because of the difficulty for large trucks in accessing and egressing the loading dock area, their drivers may just stop in Earle Lane and off-load from there, obstructing traffic in one direction or the other. The Appendix G analysis must be more candid in addressing the obvious difficulties inherent in the site plan relative to the loading docks.

**Potential Parking Inadequacy**

Ordinarily, by City Code, the Project would be required to provide 126 parking spaces. However, because the Project is very close to VTA’s Race – W. San Carlos station on the planned Stevens Creek bus rapid transit line, City Code entitles the Project to an optional reduction of 20 percent of the required spaces. This allows it to provide as few as 101 spaces. The Project sponsor has elected to take the maximum reduction. This is an odd decision for the proposed use since transit riders generally only carry limited incidental convenience supermarket items and the vast majority of supermarket shoppers come by motor vehicle. The 101 space parking supply is further compromised by being comprised of 5 handicapped spaces which are unavailable to the general public and 11 clean air vehicle spaces which are presumably unavailable to the general public. The parking provision is further compromised by the inclusion of 14 compact spaces, the problem with these being that compact car drivers often prefer the convenience of full size spaces and occupy them. When full size spaces are scarce, drivers of full size cars jam their cars into available compact stalls, impairing the use of adjacent stalls. Only 71 of the parking spaces are full size general use stalls and of these have full size depth by overhanging the landscape or walkway areas, a dubious practice that makes mockery of the landscape provisions.

When the overall provisions for truck loading and parking on the site plan are objectively considered, it becomes obvious that the Project Sponsor is jamming to big a supermarket onto too small a site.

**Conclusion**

This completes my current comments on the proposed West San Carlos and Race Street Commercial Development. Because of the flaws in the IS and Appendix G traffic analysis there can be no doubt that the proposed Project would have significant traffic impact and therefore is ineligible for exemption under CEQA Guidelines § 15332.
Sincerely,

Smith Engineering & Management
A California Corporation

Daniel T. Smith Jr., P.E.
President

Attachments:
Resume of Daniel T. Smith Jr., P.E.
SMITH ENGINEERING & MANAGEMENT

DANIEL T. SMITH, Jr.
President

EDUCATION
Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION
California No. 21393 (Civil) Nevada No. 1969 (Civil) Washington No. 99337 (Civil)
California No. 938 (Traffic) Arizona No. 21133 (Civil)

PROFESSIONAL EXPERIENCE
Smith Engineering & Management, 1993 to present, President.
D.G. Associates, 1979 to 1993, Founder, Vice President, Principal Transportation Engineer.
D.L. Leauch, Cather & Company, 1968 to 1979, Senior Transportation Planner.

Engineering specialties and project experience include:

Litigation Consulting: Provides consultation, investigations and expert witness testimony in highway design, transit and traffic engineering matters including condemnation involving transportation access issues, traffic accident involving highway design or traffic engineering factors, land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.


Area Transportation Plan: Principal-in-charge for transportation element of City of Los Angeles General Plan Framework, shaping nation's largest city for two decades into 21st century. Project manager for the transportation element of 100-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf of office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station, extension of Muni-Metro LRT, a multi-modal terminus for LRT; commuter rail and local bus; removal of a quarter mile of the freeway; replacement by new ramps and a boulevard; an internal roadway network overconstrained by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capital Area Plan for the state government's complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, en parking program for downtown Walnut Creek, on downtown transportation plans for San Mateo and redevelopment plans for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

SMITH ENGINEERING & MANAGEMENT
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Transportation Centers. Project manager for Daly City Intermodal Study which developed a $7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Parking. Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking.

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

MEMBERSHIPS
Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS
Co-recipient, Progressive Architecture Citation, Mission Bay Master Plan, with I.M. Pei WRT Associated, 1984.
Improving the Residential Street Environment, with Donald Appleyard et al., U.S. Department of Transportation, 1979.
Planning and Design of Bicycle Facilities: Pitfalls and New Directions, Transportation Research Board, Research Record 570, 1976.
July 24, 2017

RE: West San Carlos and Race Street Commercial Development Project; File No H17-018 and T16-050; Air Quality Comments

At the request of John Farrow, Esq., Autumn Wind Associates has reviewed the Statement of Exemption and Initial Study for the West San Carlos and Race Street Commercial Development Project. The project would demolish and remove existing improvements, and construct a 29,580-square foot building to be used as a Smart and Final store. This comment letter summarizes our concerns after assessing the adequacy of the air quality analysis. As demonstrated in the attached statement of qualifications, Autumn Wind Associates is well qualified to prepare this evaluation based on our experience evaluating air quality issues for numerous public and private clients. For the reasons set forth below, we believe that the Statement of Exemption and Initial Study fails to provide a reasoned, substantive basis for its conclusions.

1. The cumulative toxic air contaminant analysis omits sources beyond 1,000 feet, even though when those sources are included, the excess cancer risk at the project site is at least double the 100 in one million level identified as the acceptable cumulative risk.

The Health Risk Assessment (HRA) adopts the thresholds of significance in the Bay Area Air Quality Management District (BAAQMD) CEQA guidelines. Under BAAQMD’s CEQA guidelines, the health risk from a single source is significant if the excess cancer risk from that source is more than 10 in one million. The cumulative risk is significant if the excess cancer risk from all sources within 1,000 feet of the project site is greater than 100 in one million.

The HRA provides a “combined community risk impact” that purports to consider all toxic air contaminant (TAC) sources located within 1,000 feet of the site. The results are summarized in Table 2, Cumulative Construction Risk Assessment. The table determines that the combined cancer risks from 3 identified sources within 1,000 feet of the project site is 17.4 cancers per one million. The table compares that risk to the BAAQMD threshold for cumulative sources of 100 additional cancers, and concludes that there is no significant cumulative impact.

The BAAQMD significance thresholds for TAC’s were explained and justified in Appendix D to the BAAQMD CEQA guidelines, which is a June 2, 2010 report captioned “Thresholds of Significance Justification.” BAAQMD’s Thresholds of Significance Justification explains that the selection of significant excess cancer thresholds for both single projects and cumulative risk was based on the United States EPA guidance for “acceptable” cancer risk levels, which ranges from 1 in one million to 100 in one million.

...a range of what constitutes a significant increment of cancer risk from any compound has been established by the U.S. EPA. EPA’s guidance for conducting air toxics analyses and making risk management decisions at the facility- and community-scale level considers a range of acceptable cancer risks from one in a million to one in ten thousand (100 in a million). The guidance considers an acceptable range of cancer risk increments to be from one in a million to one in ten thousand. In protecting public health with an ample margin of safety, EPA strives to provide maximum feasible protection against risks to health from HAPs by limiting additional risk to a level no higher than the one in ten thousand estimated risk that a person living near a source would be exposed to at the maximum pollutant concentrations for 70 years. This goal is described in the preamble to the benzene National Emissions Standards for Hazardous Air Pollutants (NESHAP) rulemaking (54 Federal Register 38044, September 14, 1989) and is incorporated by Congress for EPA’s residual risk program under Clean Air Act section 112(f).2

BAAQMD’s cumulative threshold of 100 excess cancers was based on the high end of the EPA acceptable risk range:

Emissions from a new source or emissions affecting a new receptor would be considered significant where ground-level concentrations of carcinogenic TACs from any source result in an increased cancer risk greater than 100.0 in one million.

The significance threshold of 100 in a million increased excess cancer risk would be applied to the cumulative emissions. The 100 in a million threshold is based on EPA guidance for conducting air toxics analyses and making risk management decisions at the facility and community-scale level. In protecting public health with an ample margin of safety, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants (HAPs) by limiting risk to a level no higher than the one in ten thousand (100 in a million) estimated risk that a person living near a source would be exposed to at the maximum pollutant concentrations for 70 years (NESHAP 54 Federal Register 38044, September 14, 1989; CAA section 112(f)). One hundred in a million excess cancer cases is also consistent with the ambient cancer risk in the most pristine portions of the Bay Area based on the District’s recent regional modeling analysis.3

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2 BAAQMD, Thresholds of Significance Justification, June 2010, page D-35.
3 Id., page D-43.
BAAQMD’s approach to cumulative analysis considers only the excess cancers caused by TAC sources within the so-called “Zone of Influence,” which includes only the area within a 1,000-foot radius of the project site.\textsuperscript{4} The stated rationale for this 1,000-foot limitation is that the effects of a particular TAC source tend to attenuate with distance. Thus, BAAQMD explains that “concentrations of particulate matters tend to be reduced substantially at a distance of 1,000 feet downwind from sources such as freeway or large distribution centers.”\textsuperscript{5} BAAQMD also argues that ARB recommends that new receptors not be sited within 1,000 feet of major sources.\textsuperscript{6}

Although the effects of a particular source do attenuate with distance, and although it is obviously inadvisable to site a new receptor adjacent to a major source, cumulative cancer risk at a site is determined by the total TAC concentration from all sources that contribute any TAC concentration to the site, not just the TAC from sources within 1,000 feet. And, in fact, BAAQMD acknowledges that TAC sources more distant than 1,000 feet do cause increased cancer risk:

\ldots the larger the radius, the greater the number of sources considered that may contribute to the risk and the greater the expected modeled risk increment.\textsuperscript{7}

Thus, if an agency seeks to assess the cumulative risk from all sources that affect receptors adjacent to a project site, it is improper to exclude TAC sources that are farther than 1,000 feet if they contribute to the TAC concentration at that location.

In the Bay Area and other urban locations, ambient TAC concentrations are due to many individual TAC sources at varying distances. BAAQMD data establish that the cancer risk from all of the TAC sources that affect the project site at Race and San Carlos Street in San Jose substantially exceeds 100 excess cancers in one million, the level identified by BAAQMD as the acceptable cumulative risk.

For example, BAAQMD’s 2009 justification report for its CEQA thresholds of significance explains that most of the Bay Area population suffers TAC risks well in excess of the 100 in one million excess cancer threshold identified as the acceptable cumulative risk.\textsuperscript{8} The 2009 justification report establishes:

\begin{itemize}
  \item only 2 percent of the population is exposed to background risk less than 200 in one million, and
  \item 50 percent of the population suffer an exposure risk over 500 cancers in one million.\textsuperscript{9}
\end{itemize}

BAAQMD’s 2009 justification report for its CEQA thresholds of significance provides data that demonstrate that the project site itself suffers a disproportionately higher risk than other Bay Area

\begin{itemize}
  \item BAAQMD, CEQA Guidelines, June 2010, updated May 2011, page 2-2. BAAQMD permits an agency to consider sources farther than 1,000 feet under the unusual circumstance that a particularly large source of TACs is located beyond the recommend 1,000-foot range. (Thresholds of Significance Justification, page D-40.) However, this was not done for the project here.
  \item BAAQMD, Thresholds of Significance Justification, June 2010, page D-40.
  \item Id. at page D-38.
  \item Id.
  \item BAAQMD, Revised Draft Options and Justification Report, CEQA Thresholds of Significance, October 2009, available at \texttt{http://www.gsweventcenter.com/\text{GSW} \_\text{RTC} \_\text{References/2009 \_1001 \_BAAQMD.pdf}}. The document contains various options for significance thresholds, including the thresholds eventually adopted in 2010.
  \item Id, pages 55, 58.
\end{itemize}
locations. It identifies San Jose as one of 5 critically affected communities in the Bay Area, i.e., communities that are “disproportionately impacted from high concentrations of TACs.”

Mapping demonstrates that the project site is within the area designated as disproportionately impacted. Modeled inhalation cancer risks at the site from diesel particulate matter (DPM), the dominant TAC source, exceeded 600 per one million based on 2005 emissions data.

More recently, BAAQMD has updated its identification of the disproportionately impacted “communities of concern” based on current emissions data and population characteristics. BAAQMD describes its methodology as a health impact study, not just a screening tool, because it quantifies impacts based on up-to-date pollution concentrations and epidemiologic data that correlates health impacts to pollutants. The study uses pollutant concentrations for TAC from all sources, together with cancer-risk factors for TAC developed by Cal/EPA, to estimate an increase in cancer risk from air pollution. Air pollution concentrations were derived from a combination of modeling and measurements for TACs, PM2.5, and other pollutants present within each gridded area. The analysis is performed at the zip code level as the spatial unit of analysis. The analysis reveals that the excess cancer risk for due to TAC exposure in the 95126 zip code in which the project is located is 202.9 in one million.

In sum, BAAQMD data indicate that the actual cumulative cancer risk from TAC exposure at the project site ranges from 600 in one million, based on 2005 pollutant concentrations, to 200 in one million, based on more recent pollutant concentrations. The cancer risk assessments are based on TAC concentration from all sources present in each zip code area, not just the sources within a particular radius. Thus, the cumulative cancers caused by the TAC concentration at the project site attributable to all TAC emission sources are well in excess of 100 in one million, the level identified as the acceptable cumulative threshold by BAAQMD.

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10 Id., page 54. This information is repeated in the Thresholds of Significance Justification appended to BAAQMD’s 2010 CEQA Air Quality, updated in 2011. (BAAQMD, Thresholds of Significance Justification, June 2010, page D-39.)

11 BAAQMD, Revised Draft Options and Justification Report, CEQA Thresholds of Significance, October 2009, page 56, Figure 2, “Communities of High Concern.”

12 Id., page 57, Figure 3. (The modeling for this analysis is set out in BAAQMD Technical Memorandum, Applied Method for Developing Polygon Boundaries for CARE Impacted Communities, December 2009, available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CARE%20Program/Documents/ImpactedCommunitiesMethodsMemo.ashx?la=en.)


14 Id., page 9.

15 Id., page 11.

16 Id., page 13.

17 BAAQMD, Identifying Areas with Cumulative Impacts from Air Pollution in the San Francisco Bay Area, Version 2, March 2014, attached spreadsheet identified as ImpactCommunities_2_ScoresbyZipCode.xlsx, available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CARE%20Program/Documents/ImpactCommunities_2_ScoresbyZipCode.ashx?la=en; see also BAAQMD, Identifying Areas with Cumulative Impacts from Air Pollution in the San Francisco Bay Area, Version 2, March 2014, page 17, Figure 3 (Cancer Risk map).
BAAQMD explains that its cumulative impact threshold “sets a level beyond which any additional risk is significant.”18 Here, the Health Risk Assessment and Initial Study should have identified a significant cumulative impact because 1) sensitive receptors adjacent to the project will be exposed to more than the 100 in one million excess cancers identified by BAAQMD as the maximum acceptable cumulative risk, and 2) the project will generate additional cancer risk. For example, the health risk assessment indicates that project construction would cause at least 5.9 in one million cancers at the location of sensitive receptors proximate to the project site. And, as discussed below, the project operations would also cause additional cancers from TAC emission from diesel delivery vehicles.

2. The Health Risk Assessment omits TAC emitted by diesel delivery trucks during the operational phase of the project.

The Initial Study indicates that Policy MS-11.2 requires that projects emitting TAC “prepare health risk assessments in accordance with BAAQMD-recommended procedures as part of environmental review and employ effective mitigation to reduce possible health risks to a less than significant level.” However, the Initial Study provides no assessment of the potential significance of any air pollutant emissions during the operational phase of the project, arguing that “the proposed 29,580-square-foot retail/commercial building is below the BAAQMD operational criteria pollutant screening size.”19

BAAQMD’s CEQA guidelines do provide screening levels for criteria pollutants such as ozone precursors, and for greenhouse gases, below which no impact analysis is typically required.20 However, toxic air contaminants are not criteria pollutants or greenhouse gases. In fact, BAAQMD’s CEQA guidelines state that the screening values for criteria pollutants “cannot be used as screening for risk and hazard impacts.”21

BAAQMD’s CEQA guidelines reference screening guidance for TAC sources. However, the guidelines state that screening criteria are not available for sources that would not require permits from BAAQMD, such as retail projects where emissions are primarily from mobile sources.22 For those sources, BAAQMD states that “a more refined analysis is necessary,” i.e., modeled cancer risk based on emissions determined with reference to “the number and activity of vehicle and fleet information.”23 Where project operations involve a substantial number of diesel trucks and associated diesel truck-mounted refrigeration units, a health risk assessment should be undertaken using one of the BAAQMD recommended methods or protocols.24 Accordingly, the City should prepare a health risk assessment for operational emissions just as it prepared a health risk assessment for construction period emissions.

The traffic report for the Initial Study indicates that the project will require about 14 daily deliveries from diesel trucks that generate TAC:

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18 BAAQMD, Revised Draft Options and Justification Report, CEQA Thresholds of Significance, October 2009, page 34.
20 BAAQMD, CEQA Guidelines, June 2010, updated May 2011, pages 3-1 to 3-3.
21 Id., page 3-3.
22 Id., page 5-7.
23 Id.
Deliveries to the project site would occur daily via a wide range of truck types varying from small tractors to large semitrailers. The anticipated number of truck deliveries are noted below:

- Refrigerated Deli/Produce – 4 to 5 deliveries per week
- Frozen Foods – 3 deliveries per week
- Grocery Trailers – 6 deliveries per week
- DSD Vendors (Coke, Pepsi, 7-up, etc.) – 8 to 12 trucks per day

Many of these deliveries would be of refrigerated or frozen foods, which would require truck-mounted refrigeration units (TRUs). TRUs run continuously and are not subject to truck engine idling period limitations. Given the volume of traffic, and the plan to provide only two loading docks, on-site truck movements, idling, and TRU emissions from waiting trucks are likely to be substantial. In addition, the site would require frequent garbage collection, which would also be undertaken with diesel trucks.

Without a health risk assessment for this activity, the precise number of additional cancers from TAC cannot be determined. However, it is reasonable to assume that over the project’s lifetime the diesel truck TAC emissions from daily delivery and refuse collection activities are very likely to cause as many cancers as the diesel TAC emissions from construction equipment during the one-year construction period, which the Health Risk Assessment determined to be 5.9 in one million. Thus, the combined number of cancers caused by both the construction and operational phases is likely in excess of the BAAQMD significance threshold of 10 in one million for a single project.

3. **Mitigation is required to ensure conformance with Tier 2 emissions standards.**

The Health Risk Assessment assumes that all construction equipment will meet at least the Tier 2 engine emission standards. This assumption is not warranted unless a mitigation measure is imposed that requires that construction equipment conform to the Tier 2 emissions standards. In fact, no applicable condition would require conformance with Tier 2 standards, and older Tier 1 or Tier 0 equipment could be used for construction. The older equipment would generate substantially more TAC emissions than assumed in the Health Risk Assessment. Thus, without requiring Tier 2 or better equipment for the construction phase, the City cannot rely on the health risk assessment.

The applicable standard permit conditions do not require Tier 2 equipment. The Initial Study states that the project would be required to conform to BAAQMD BMPs (Best Management Practices) “recommend by BAAQMD to reduce Project construction dust impacts.”

These conditions, which are listed in the Initial Study and also in the BAAQMD CEQA guidelines, do not include a requirement to use Tier 2 or better construction equipment. Furthermore, the City’s own Standard Permit Conditions for non-residential project site development permits does not require Tier 2 engines. The City’s standard conditions list requires only the following air quality conditions:

**Air Quality.** During construction, the following measures shall be incorporated to mitigate any possible significant air quality impacts. *(EC25-2013)*

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26 Id., page 13.
27 Initial Study, pages 24-25.
a. Water all active construction areas at least twice daily.

b. Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.

c. Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.

d. Sweep daily (with water sweepers) all paved access roads, parking areas and staging

e. Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.29

In sum, either the Health Risk Assessment should be revised to eliminate the assumed use of Tier 2 equipment, or a mitigation conditions should require Tier 2 or better equipment.

4. Operational emissions are inadequately assessed.

The Initial Study dismisses operational criteria pollutants as insignificant, arguing that the project is smaller than the BAAQMD criteria pollutant screening level of 346,000 sq. ft. This contention is incorrect because the 346,000 sq. ft. screening level is for a general office building, not the proposed neighborhood shopping use.

Furthermore, the CalEEMod modeling for operational emissions is based on a trip rate of approximately 57 trips per 1,000 sq. ft. We understand that the trip rate actually applicable to the project, based on the City of San Jose traffic impact analysis guidance for neighborhood shopping, is 120 trips per 1,000 sq. ft. Because the CalEEMod modeling does not use the applicable trip rate, it does not provide evidence that operational air quality impacts from criteria pollutants are less than significant.

Should you have any questions or comments regarding this comment letter, please feel free to contact me at your convenience.

Sincerely,

Greg Gilbert
Autumn Wind Associates

29 City of San Jose, [Standard Conditions for] Site Development Permits, 12/9/13, Part 5 – Environmental Conditions, Condition Number 24.
STATEMENT OF QUALIFICATIONS
Greg Gilbert
Autumn Wind Associates

Greg Gilbert is director and founder of Autumn Wind Associates, located northeast of Sacramento, CA. AWA provides expert review, analysis, and estimation of potential air quality and related environmental impacts of proposed land-use development projects involving indirect- (mobile) and stationary (operating under air agency permit) sources of air pollution. He has consulted on air quality land use planning, mobile, and stationary source matters and projects to private and public clients since leaving public service as an air agency manager in 2000. Previously, he was national marketing director for an emissions catalyst products and technology firm with international markets in mobile and stationary sources. Between 1990 and 2000 Mr. Gilbert was employed in two California air agencies, most recently as project manager in the Mobile Source Division of the Sacramento Metropolitan Air Quality Management District (SMAQMD). While at SMAQMD Mr. Gilbert was responsible for managing development and implementation of the agency’s heavy-duty diesel vehicle low-emission incentive program that would later evolve into the statewide Moyer Program; the evaluation of land use-related air quality emission impacts and control strategies, development of California Environmental Quality Act (CEQA) thresholds of significance and mitigations to reduce, offset, or eliminate air quality impacts of new land use; development of air-related CEQA guidance; and creation of the first air quality CEQA mitigation fee program with percentage-based emission reduction mitigation choices provided to the developer.

Since 2001, AWA has provided consulting expertise to private entities and air agencies, conducted research on construction practices and equipment emissions, assisted with development of CEQA land-use guidance documents and mitigation strategies for CA air quality agencies, and provided analysis and modeling of potential air quality impacts identified primarily in Mitigated Negative Declarations and Environmental Impact Reports for proposed land use development projects throughout California. Mr. Gilbert reviews and provides expert written and testimony on CEQA- and development-related project-specific environmental analysis, mitigation, and documentation for a wide range of public-, private-, and environmental-sector clients, including law firms specializing in CEQA-NEPA cases.