

## **Appendix A: Applicant Response to Comments**

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**Via Electronic Mail Only**

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**RE: Draft Environmental Impact Report (“*DEIR*”)  
Downtown Housing and Economic Opportunity Overlay & EKN Appellation  
Hotel Project (“*Project*”) SCH # 2024040565  
EKN Response to Petaluma Historic Advocates (“*PHA*”) Comment Letter**

Mr. Danly:

This letter is provided on behalf of Project applicant EKN Petaluma LLC in response to the October 21, 2024 letter by Shute Mihaly & Weinberger to the City on behalf of PHA with respect to the Project. EKN appreciates and shares PHA’s desire to preserve and enhance Petaluma’s unique historic downtown. EKN is sincerely interested in revitalizing the City’s downtown area to maintain its future viability by creating a vibrant hotel that includes retail, restaurants and public uses. The hotel will generate transient occupancy tax revenue that can be used to preserve and enhance the City’s historic downtown. After reviewing the comment letter in detail, EKN believes that the comments are fundamentally flawed and misstate the applicable legal requirements and factual context of the Project and its environmental review, as explained below.

**EKN RESPONSE TO PHA OVERARCHING CONCERNS**

**1. There is No Piecemealing**

*PHA asserts as an “overarching concern” that the DEIR “ignores” “sound planning principles” by failing to analyze the Project in the context of the City’s pending General Plan update, assertedly “improperly” “segmenting” the Project and “failing to convey” the “true extent” of the Project’s impacts. (pp. 1-2)*

PHA’s argument that the Project is improper segmenting of the upcoming General Plan update fails to correctly analyze the Project and its context under the applicable language of the California Supreme Court case that PHA relies upon. *Laurel Heights Improvement Assn. v.*

*Regents of Univ. of Cal.* [“*Laurel Heights*”] (1988) 47 Cal.3d 376, 396 does not require the City to consider the Project together with the City’s pending General Plan update.

In *Laurel Heights*, the Supreme Court held that “an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. **Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project.**” (*Laurel Heights, supra*, 47 Cal.3d at p. 396 [bold & underline added].)

Courts have found that agencies improperly piecemealed environmental review of projects in various situations when: (1) the purpose of the reviewed project is to be the first step toward future development; (2) the reviewed project legally compels or practically presumes completion of another action. (See discussion and cited cases in *Aptos Council v. County of Santa Cruz* [“*Aptos Council*”] (2017) 10 Cal.App.5th 266, 282.)

There is no piecemealing, however, when “projects have different proponents, serve different purposes, or can be implemented independently.” (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223.) Here, the Project does not legally compel any particular General Plan update and the Project does not practicably presume completion of the General Plan update, but instead stands on its own.

In a recent remarkably similar case to the present Petaluma situation, the California Court of Appeal, applying the above two-part *Laurel Heights* test, held that a city’s contemplated changes to planning and zoning requirements as part of its ongoing regulatory reform and economic development initiatives are not reasonably foreseeable “consequences” of a particular zoning ordinance altering the density, height and parking requirements for hotels. (*Aptos Council, supra*, 10 Cal.App.5th at 282.) Thus, the County of Santa Cruz was not required to study or propose all of its contemplated reforms at one point although it could have done so by means of a comprehensive reform and programmatic EIR. (*Id.*) Similarly, the General Plan update is not a reasonably foreseeable consequence of the Project overlay and hotel but is separately and legally required.

The position advocated by PHA would unnecessarily restrict a local land use agency’s planning and zoning functions under their police powers by requiring it to wait months and possibly years to study and enact contemplated changes to its planning and zoning land use requirements until the completion of general plan update cycles when the updates become certain. The City should be free to act on General Plan and Zoning Code amendments for particular project proposals when the need, market timing, and financing exist so as not to miss critical windows of opportunity for beneficial projects.



PHA's position that the City must combine its General Plan update with the Overlay is similar to the argument rejected by the California Court of Appeal in *Aptos Council*, stating: "Applying Aptos Council's logic would require the County to wait to begin environmental review and implementation of any reform to Chapter 13.10 until the County has decided precisely what language to use and which ordinances to enact. **The county's effort to modernize certain parts of the County Code is not fixed.** Although there are certain codes and ordinances the County has researched and has determined it will amend, the County asserts that specific amendments are far from set in stone. **Engaging in a single environmental review this early in the process would therefore be meaningless.**" (*Aptos Council, supra*, 10 Cal.App.5th at 284 [bold & underline added].) Similarly, the overlay is not a fixed part of the General Plan update, which at this time is uncertain of its particular provisions.

## **2. There is No Deferral of Meaningful Impacts Analysis**

*PHA asserts, as "another fundamental error," that the DEIR "defers any meaningful analysis of the Overlay portion of the Project." PHA appears to assert that the Project includes all future development under the Overlay and that waiting for future development-specific environmental review is not allowed under CEQA. (p.2)*

PHA's argument about deferral of Overlay impacts analysis both fails to acknowledge significant DEIR analysis of Overlay impacts (see references later in this letter) and also fundamentally misconstrues CEQA and the Overlay portion of the Project, which sets forth planning parameters and zoning regulations, but not specific development location, type and timing other than the Appellation Petaluma hotel. Claims that an EIR's project description should have included related proposals contemplated in a long-range development plan have been decided on the basis of whether or not proposals contemplated in a long-range development plan would proceed as a consequence of project approval.

The court in *Berkeley Keep Jets Over the Bay Comm. v Board of Port Comm'rs* (2001) 91 CA4th 1344, 1362, upheld an EIR for a set of airport development projects against arguments that it should have included other anticipated projects contained in the airport's long-range development plan. The projects identified in the long-range plan were not being proposed for approval, they were not necessary elements of the projects that were proposed for approval, they were not shown to be a foreseeable consequence of those projects, and they were expressly made subject to further environmental review.

Meaningful impacts analysis under CEQA does not require analysis based upon speculation about future development under a project: "Sierra Watch appears to acknowledge, without objection, that these considerations make the sequence and pace of construction largely unknown, but it maintains that the EIR at least should have described the duration of construction for each part of the project. We find differently. The County perhaps could have

speculated how long construction noise would occur over the next 25 years at each specific location in the Village. Perhaps, for example, it could have presumed where buildings would ultimately be located in the Village, and then assumed that all buildings in any given part of the Village would be constructed at the same time—resulting in a shorter period of construction noise. Or perhaps it could have assumed something else altogether. But any estimate, as far as we can tell, would entail a fair bit of speculation. As the EIR explained, the “sequence and pace for constructing various land uses and facilities” would depend on market considerations over decades. And as it further explained, even the specific location of the project's buildings is not yet clear. **So while Sierra Watch may have preferred detailed estimates about construction duration in each specific location in the Village, the EIR was not required to supply speculative estimates. A lead agency, after all, need not speculate about project impacts (see CEQA Guidelines, § 15145) and instead may discuss potential project impacts at a “level of specificity ... determined by the nature of the project and the rule of reason”** (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 233 [183 Cal.Rptr.3d 736]; see also CEQA Guidelines, § 15146).” (*Sierra Watch v. County of Placer* (2021) 69 Cal.App.5th 86, 105 [bold & underline added].)

### **3. The City May Deny Density Bonus Applications That Adversely Impact Historical Properties**

*PHA asserts that City cannot exercise discretionary review of Overlay projects for consistency with historic resource properties under density bonus law, and that density bonus law can mandate height increases beyond the limits of the Overlay and its CUP process. (p.2)*

PHA’s argument that the CUP process is unenforceable fundamentally misstates California’s Density Bonus Law (“**DBL**”) found in Government Code Section 65915. Height increases are generally not considered either a “concession” or an “incentive” under the DBL (see Govt. Code, § 65915(k)) but are separately allowed only in most narrow of circumstances. In order to receive a height increase under the DBL, 100% of the project, including the total units and density bonus units, must be for lower income households. (Govt. Code, §§ 65915(d)(2)(D), 65915(b)(1)(G).) The project must also be located within one-half mile of a major transit stop or in a very low vehicle travel area in a designated county. (Govt. Code, §§ 65915(d)(2)(D).)

Even if the two above criteria could be met for a height increase, an Overlay project may be denied under the DBL if it has a specific, adverse impact upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households. (Govt. Code, §65915(d)(1)(B) & (e)(1).) Thus, under the City’s discretionary CUP process, the City may deny a DBL height increase for a project within the Overlay with an adverse impact upon the City’s historical resources.

#### **4. There is No Unlawful Spot Zoning Associated with the Project**

*PHA asserts that the Overlay is designed to “sidestep” “unlawful” “spot zoning” and “special privilege” with respect to the Hotel portion of the Project. (pp.2-3)*

PHA’s argument that the Overlay seeks to justify spot zoning takes the City’s FAQ out of context and is confused about what is unlawful spot zoning. The City’s FAQ was merely explaining why a variance would not have worked for the Hotel and that the granting of a variance (which was not applied for) would have created a special privilege. The creation of the Overlay is not a variance and does not create a special privilege but instead is a lawful method for encouraging particular development under the City’s police powers for planning and zoning.

“Spot zoning” refers to instances when “a small parcel is restricted and given less rights than the surrounding property.” (*Wilkins v. City of San Bernardino* (1946) 29 Cal.2d 332, 340.) Spot zoning raises constitutional concerns of substantive due process, takings, and equal protection. (*Buckles v. King County* (9th Cir. 1999) 191 F.3d 1127, 1137). It is rooted in the principle that “by a zoning ordinance a city cannot unfairly discriminate against a particular parcel of land.” (*Reynolds v Barrett* (1938) 12 Cal.2d 244, 251.)

In the typical spot zoning case, a city council denies the property owners’ request for rezoning that would allow them to develop their land at a higher density equivalent to surrounding parcels. (*Ross v. City of Yorba Linda* (1991) 1 Cal.App.4th 954, 961-963.) The denial of rezoning in that circumstance is arbitrary and discriminatory, and thus unconstitutional. Significantly, in *Ross*, the court rejected the city’s argument that the zoning was supported by a rational basis—the prevention of encroaching urbanization—explaining that this could not be a rational basis when urbanization had already occurred in the surrounding parcels.

The Overlay situation is the exact opposite of the spot zoning that occurred in *Ross*. Here, the City would be allowing the Hotel property owners to develop their land with less restriction than surrounding urbanized properties, and there is a public interest rational basis for doing so. Although one recent California Court of Appeal case referred to “spot zoning” in the context of a less restrictive zoning, the Court of Appeal concluded that the upzoning of a lot to permit a senior living facility was “permissible” “spot zoning” that was in the public interest and not “unlawful”. (*Foothill Communities Coalition v. County of Orange* (2014) 222 Cal.App.4th 1302, 1311-1319.)

## **5. The DEIR Analyzed the Impacts of the Overlay FAR and Height Increases**

*PHA asserts that the DEIR does not analyze the impacts of the Overlay FAR and height increases. (p. 3)*

PHA's argument that the DEIR does not analyze impacts of the Overlay FAR and height increases fails to take into account significant portions of the DEIR which analyze the impacts of the Overlay FAR and height increases.

With respect to impacts on land use planning and policies, the DEIR contains a lengthy analysis of the Overlay's consistency with the City's General Plan in Section 3.3.5, including a lengthy General Plan Consistency Analysis at Table 3.3-3 which spans 13 pages from page 3.3-22 through 3.3-35. Among the analyses contained in that Table, are the following:

With respect to the General Plan policy of maintaining a balanced land use program that meets long term needs of the community: "The parcels contained within the proposed Overlay would retain their current Land Use designations, which would allow for increased retail and mixed uses, creating increased employment opportunities. It would also allow ground floor residential uses." (DEIR, p. 3.3-22, policy 1-G-1)

With respect to the General Plan policy of promoting a range of land uses at densities and intensities to serve the community's needs within the Urban Growth Boundary (UGB): "The proposed Overlay would increase the maximum allowable floor area ratio (FAR), building height, and lot coverage for parcels within the Overlay Area. This increase would increase the intensity over the surrounding areas, thus promoting greater infill development that would help to serve the community's needs within the UGB." (DEIR, p. 3.3-22, policy 1-P-1)

With respect to the General Plan policy of using land efficiently by promoting infill development at equal or higher density and intensity than surrounding uses: "The purpose of the proposed Overlay is to encourage development in unutilized infill and underutilized parcels within the Overlay Area. The proposed Overlay would encourage development by increasing the maximum allowable FAR, building height, and lot coverage for parcels within the Overlay Area." (DEIR, p. 3.3-23, policy 1-P-2)

With respect to the General Plan policy of encouraging reuse of under-utilized sites along East Washington Street and Petaluma Boulevard as multi-use residential/commercial corridors, allowing ground-floor retail and residential and/or commercial/office uses on upper floors: "The proposed Overlay would allow for increased development intensity in infill and underutilized sites along Petaluma Boulevard, Washington Street, and Western Avenue. Furthermore, the proposed Overlay allows for ground-floor residential uses where they were not previously permitted." (DEIR, p. 3.3-23, policy 1-P-12)

With respect to the General Plan policy of availability of resources to serve new development in the Overlay: “As discussed in Chapter 4, Additional Effects Evaluated in the Initial Study, although the proposed Overlay would permit greater building intensities as compared to the existing zoning allowances, there would be sufficient supplies of water and sufficient capacity at facilities for wastewater, stormwater, and solid waste. The proposed Overlay would not increase the population of the City beyond what has been planned for by the General Plan and as such would not unduly strain City services. The City would monitor water supply levels routinely to ensure water and wastewater demand does not exceed capacity. Additionally, future development would be subject to the payment of applicable water and wastewater capacity fees.” (DEIR, p. 3.3-25, policy 1-P-47)

With respect to the General Plan policy of improving air quality to meet standards and goals: “As discussed in Chapter 4, Additional Effects Evaluated in the Initial Study, all air quality impacts related to implementation of the proposed Overlay would be less than significant. The proposed Overlay does not include site-specific development; however, future development under the proposed Overlay would be required to comply with all applicable air quality standards and goals and would be evaluated on a project-by-project basis. However, the Overlay does promote infill development within the Downtown area, which encourages responsible urban growth. This approach helps reduce greenhouse gas emissions by minimizing the need for car travel, as it places amenities, workplaces, and residences in closer proximity, thus promoting walking, biking, and the use of public transit.” (DEIR, p. 3.3-30, policy 4-G-3)

In addition to the thorough analysis of General Plan policies pertaining to the Overlay’s increased FAR and height, the DEIR analyzes the impact of the Overlay on applicable zoning and other regulations pertaining to scenic quality in Section 3.1.6: “Portions of Overlay Areas A and B are located within the boundaries of the Historic Commercial District, and, as such, future projects within the Historic Commercial District would be subject to the rules and regulations within the City’s discretionary planning entitlement of an HSPAR, all applicable regulations from the Historic Commercial District Design Guidelines, and the Secretary of the Interior’s Standards for the Treatment of Historic Properties. Future projects within the Historic Commercial District would undergo a review and approval process with the City’s HCPC. While the proposed Overlay does not include any project-specific development, all projects proposed under it would be required to adhere to the standards set related to sign design and content, streetscape design, street tree placement, façade designs and materials composition. The **Standards within the Historic Commercial District Design Guidelines would ensure that all development under the proposed Overlay would be harmonious with the surrounding area, appropriately scaled, and maintains and enhances the unique cultural and historic resources of the City.**” (DEIR, p. 3.1-22, § 3.1.6 [bold & underline added])

The DEIR analyzes the impact of the Overlay increased height on cultural resources in Section 3.2.5: “The proposed Overlay applies to parcels that are already deemed developable by the City of Petaluma’s General Plan (General Plan) and Implementing Zoning Ordinance (IZO). Most of the sites within the Overlay Area have been developed. The proposed Overlay would permit certain changes pursuant to an approved Conditional Use Permit (CUP): greater floor area ratio (FAR), building height of up to 75 feet, and lot coverage up to 100 percent. The current General Plan Environmental Impact Report (General Plan EIR) evaluated the potential for impacts related to cultural resources and found them to be less than significant with mitigation incorporated. Since the proposed project only involves additional potential height, lot coverage, and FAR, the potential impacts related to the proposed Overlay concern the net increase in intensity. Projects within the Overlay Area that seek approval for increased height above 45 feet up to a maximum of 60 feet, and/or increased lot coverage above 80 percent, would be required to undergo review for approval of a CUP. A CUP can only be granted if the height is 75-feet or below. In addition to making the findings required by Section 24.060.E, An affirmative findings for each of the following criteria, supported by substantial evidence in the record, is required for approval of a CUP application for increased height up to 60 feet or lot coverage: 1. The additional height is consistent with the applicable purposes of the proposed Overlay; 2. The additional height makes a positive contribution to the overall character of the area and the building would be compatible with its surroundings. The “positive contribution” and “compatibility” will be assessed using a combination of visual studies, line-of-sight drawings, photo simulations, 3-D modeling, and view shed analysis; 3. The additional height would not adversely affect the exterior architectural characteristics or other features of the property which is the subject of the application, nor adversely affect its relationship in terms of harmony and appropriateness with its surroundings, including neighboring structures, nor adversely affect the character, or the historical, architectural, or aesthetic interest or value of the district; 4. The additional height would not result in unreasonable restrictions of light and air from adjacent properties or the public right-of-way, or otherwise be detrimental to the public health, safety, or welfare; and 5. The building design expresses a relationship to an existing datum line or lines of the street wall or adjacent historic resource, if any.” (DEIR, pp. 3.2-49 through 3.2-50, § 3.2.5)

The DEIR also analyzes the impact of the Overlay increased FAR on cultural resources in Section 3.2.5: “Each future development seeking additional lot coverage above 80 percent would also require discretionary review and approval of a CUP. In approving a CUP for increased lot coverage, the Planning Commission must make one or more of the following findings: 1. The development improves the existing streetscape by providing widened sidewalks, additional street trees, new mid-block walkways/ paseos, public plazas, parks, etc.; 2. The additional lot coverage would reflect the prevailing development pattern established by the existing development within the block or abutting block; 3. The development includes adequate provision for recycling and solid waste; 4. The development includes adequate space for street trees, or 5. The development

includes other measures to enhance the pedestrian environment. Additionally, each development within the proposed Overlay would require a Site Plan and Architectural Review (SPAR) permit or an Historic SPAR permit (when located within the Historic Commercial District), which necessitates findings such as compatibility with the surrounding neighborhood and no significant impacts on cultural resources. Moreover, similar to the Hotel, future discretionary actions proposed under the Overlay would undergo CEQA review during the entitlement process, which includes reviewing cultural and tribal cultural impacts based on the specifics of the project and identifying project-specific mitigation measures where needed to reduce potential impacts.” (DEIR, pp. 3.2-50 through 3.2-51, §3.2.5)

In addition, the entirety of Chapter 4 of the DEIR is devoted to discussion of the analysis of other environmental impacts that were not considered potentially significant and the specific reasons for that determination. Among the analysis contained in Chapter 4 is the following with respect to less than significant unplanned growth potential impact from the Overlay:

“The Overlay component of the proposed project is located within the UGB, is **inclusive of two sites identified for housing opportunity in the City’s Housing Element**, and is proposed on sites where **housing development is currently allowed in a mixed-use building**. Additionally, the City’s Density Bonus ordinance provides incentives for the production of affordable housing by permitting an increase in the number of units allowed on a site above typical density standards, reduction in onsite parking requirements, and/or flexibility from development standards for applicable housing projects meeting specified income thresholds. Aside from the proposed Hotel, the Overlay component of the proposed project would not result in direct physical development but would allow future development proposals to increase lot coverage, FAR, and height relative to what is currently allowed by the General Plan and IZO and would also allow development of exclusively residential uses (e.g., not in a mixed-use building), as well as ground floor residential uses. **However, future development would be subject to existing density requirements, including the City’s zoning regulation and Density Bonus Ordinance and the State Density Bonus Law, such that the Overlay would not result in an increase in population beyond what is already projected as part of General Plan buildout, what was already evaluated and disclosed in the General Plan EIR, and what is allowed by State regulation including the Housing Accountability Act**. However, an increased permitted intensity of development under the Overlay could result in the introduction of new employment opportunities and may increase the workforce population, meaning additional people could relocate to the City to fill these new opportunities. **While these provisions would allow for greater development intensity, as explained in Section 2.0, Project Description, actual development over the past 20 years has been less than what the City envisioned in the existing General Plan. Based on this trend, full buildout of nonresidential uses in the Overlay within a 20-year planning horizon is not expected**. As shown in 2-5 in Section 2.0, Project Description, a 25 percent buildout scenario is assumed over the 20-year planning

horizon, which would result in an additional 387,444 square feet of additional buildout, resulting in an additional 628 jobs. **Any incremental increase facilitated by the Overlay would be well within the GP buildout potential, because workforce development has not occurred at the levels anticipated by the General Plan and already analyzed under buildout conditions in the General Plan EIR.** As such, impacts related to substantial unplanned growth from the proposed Overlay would be less than significant.” (DEIR, p. 4-60, § 4.1.11 Population and Housing [bold & underline added])

## **6. The Hotel is Not Out of Scale with Surrounding Historic Buildings**

*PHA asserts that the Hotel is “massively out of scale” with surrounding historic buildings, ‘most of which are only one- and two-stories and do not completely occupy their lots.’ and “will tower over its neighbors” (p. 3)*

The DEIR Section 3.1.6 analysis of the Hotel refutes the assertion that the Hotel will be “massively” or otherwise out of scale: “The proposed Hotel’s impact to visual character was evaluated through the preparation of visual simulations from nine viewpoints in the project vicinity. These visual simulations can be viewed in Exhibit 3.1-3 through Exhibit 3.1-3i. As shown in the Key Map (Exhibit 3.1-3), Viewpoint 1 (Exhibit 3.1-3a), Viewpoint 2 (Exhibit 3.1-3b), Viewpoint 4 (Exhibit 3.1-3d), Viewpoint 5 (Exhibit 3.1-3e), and Viewpoint 7 (Exhibit 3.1-3g) are the viewpoints closest to the proposed project site and combine to illustrate the potential pre- and post-construction views of the proposed Hotel. As depicted in these simulations, the proposed Hotel would be visible from and taller than the surrounding development, as permitted by the proposed Overlay. As depicted, trees and smaller planters would be placed along the project frontage along B Street and Petaluma Boulevard. **The proposed Hotel would feature similar colors and materials as the surrounding development and would be consistent with the character of the surrounding area. The proposed Hotel would be consistent with all aesthetic design regulations as included in the General Plan, Municipal Code, and Historic Commercial District Design Guidelines.** Additional visual simulations, as depicted in Viewpoint 3 (Exhibit 3.1-3c), Viewpoint 6 (Exhibit 3.1- 3f), Viewpoint 8 (Exhibit 3.1-3h), and Viewpoint 9 (Exhibit 3.1-3i), depict the pre- and post-development views of the proposed Hotel from viewpoints further away from the proposed project site. **These exhibits showcase the degree to which, at an increased distance from the project site, the proposed Hotel would be largely or entirely obstructed by intervening development.** Additionally, the Hotel will be required to obtain an HSPAR permit and a CUP for its height and lot coverage, which will require findings related to compatibility with the surrounding neighborhood and that the development would not have significant environmental impacts. Appendix D summarizes the discretionary review and appeals processes related to applications for SPAR, HSPAR and CUP approvals. As such, in compliance with the City’s design standards and all applicable design regulations, construction and operation of the proposed Hotel would not have an adverse effect



on the visual character of the surrounding area. Impacts would be less than significant.” (DEIR, pp. 3.1-23 through 3.1-24 [bold & underline added])

When the Hotel height of approximately 69 feet is displayed with surrounding building heights, it is clearly not “massively” out of scale. Indeed, Exhibit 3.1-1 demonstrates that **just across the way from the Hotel site is the historic resource of the Great Petaluma Mill at 61 feet tall and in the other direction is the Petaluma Historic Museum and Library at 48 feet tall and Monear’s Mystic Theater at 42 feet tall, and behind the Theater are the Masonic Building at 62 feet tall and the Mutual Relief Building at 63 feet tall.** (DEIR, p. 3.1-33, Exhibit 3.1-1)

Furthermore, although not required by CEQA, the DEIR includes a detailed shading and shadow analysis. As depicted in Exhibits 3.1-4a through 3.1-4l and summarized in Section 3.1.6, the Hotel would not result in a substantial new shadow over any routinely useable outdoor space, historic resource, or shadow sensitive uses. (DEIR, pp. 3.1-25 through 3.1-28)

A Historic Built Environment Impacts Assessment “determined that while the proposed Hotel building would be taller than the immediately surrounding buildings, **the use of multiple stories in the Petaluma Historic Commercial District is not without precedent, as the district nomination form prepared in 1994 stated that a variety of heights were present in the district.** In addition, the proposed building would utilize setbacks and cornice line detailing to minimize the height difference visible from the street. The Historic Built Environment Impacts Assessment thus concluded that the proposed Hotel **would not introduce incompatible massing and scale, and the proposed Hotel would be in general conformance with the Petaluma Historic Commercial District Design Guidelines.**” (DEIR, p. 3.2-55, § 3.2.7 [bold & underline added])

## **7. The DEIR Analysis re Hotel Impacts on Historical Resources is Supported by Substantial Evidence**

*PHA asserts that the DEIR does not present substantial evidence that the Hotel will have a less than significant impact on historic resources, and that the DEIR’s reliance on a mitigation measure is in violation of CEQA under Lotus v. Department of Transportation (2014) 223, Cal.App.4th 645, 655-656. (p. 3)*

The DEIR provides a detailed analysis of the substantial evidence and its reasoning for determining that the Hotel will have a less than significant impact on historic resources: “As described above, the CHRIS search identified two historic cultural resources within the Hotel site and 28 historic resources within a 0.25-mile radius of the Hotel site. As described above, the HBEA prepared by South Environmental evaluated two buildings adjacent to the Hotel site, 313 B Street and 20 Petaluma Boulevard South, both of which are over 45 years in age. **Neither building met any local or State significance criteria for a historic resource.** A Historic Built

Environment Impacts Assessment was prepared by South Environmental on June 24, 2024, to determine whether the proposed project would result in impacts to historic built environment resources located within and immediately adjacent to the proposed EKN Appellation Hotel site (Appendix B). The Historic Built Environment Impacts Assessment **does not identify any historical resources within the Hotel site boundaries**. However, it determined that the Hotel site is located in the Historic Commercial District, which was designated as a NRHP historic district in 1995 and as a local historic district in 1999. This district consists predominantly of commercial or mixed-use buildings fronting Petaluma Boulevard or one of the intersecting streets. The Hotel site is immediately adjacent to two at least partially historic-age properties identified as 313 B Street and 20 Petaluma Boulevard South. However, the property at 20 Petaluma Boulevard South was found to be outside the Petaluma Historic Commercial District and was further not found to be eligible at the individual level of significance as part of the current study under State and local designation criterion due to a lack of significant historical associations and architectural merit. **The property at 313 B Street was previously identified as a contributor to the Historic Commercial District but was destroyed by a fire in 2006, leaving only an ancillary building that subsequently received substantial alterations from its original appearance. As such, 313 B Street was determined to no longer have the requisite integrity to convey significance as an individual property or a contributor to the historic district. Given the lack of substantial historic resources on the Hotel site, and the fact that the immediately adjacent properties are not eligible for federal, State, and local designation as historic resources, none of the properties within the neighborhood block containing the proposed EKN Appellation Hotel site are considered historical resources under CEQA.** Nonetheless, given the proposed EKN Appellation Hotel site's location within the Petaluma Historic Commercial District, the proposed EKN Appellation Hotel would be mandatorily developed according to the Petaluma Historic Commercial District Design Guidelines for new construction projects." (DEIR, pp. 3.2-54 through 3.2-55, §3.2.7)

Given the substantial evidence and reasoned analysis as to why there are no impacted historical resources and as to why there would be no impact on any nearby resources, the *Lotus* case cited to by PHA is inapplicable here. In *Lotus*, there was utter failure to analyze the environmental impacts or even identify a standard pursuant to which they were to be measured: "The EIR itself, however, does not reference the handbook or apply the standards it prescribes to evaluate impacts to the old growth redwoods that may be expected to result from the highway construction. In fact, the EIR fails to identify any standard of significance, much less to apply on to an analysis of predictable impacts." (*Lotus, supra*, 223 Cal.App.4th at 655.) Without the analysis of the impacts, there can be no effective consideration of whether the proposed mitigation measure will be effective: "Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine

whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered.” (Id. at 656)

In this DEIR, there is an express analysis of lack of historical resources, lack of Hotel significant impact on historical resources, and then an additional mention of the requirement to nevertheless develop the Hotel under Historic Resources Guidelines—both an analysis of the impact and mention of a mandatory additional discretionary review. *Lotus* simply does not apply here.

### **EKN RESPONSE TO PHA SPECIFIC ITEM I—ADEQUATE PROJECT DESCRIPTION**

*PHA asserts that the DEIR’s Project Description is incomplete because it: (a) is “opaque about the nature of text amendments that will comprise the Overlay”; (b) “fails to provide any forecast of the type, intensity, or range of development that is likely under the Overlay” (c) makes assumptions about the extent of Overlay buildout that are “internally contradictory” and “not supported by substantial evidence.” (pp.4-6)*

#### **(a) The DEIR Contains a General Description of Overlay Technical Terms**

Contrary to PHA’s arguments that the DEIR does not set forth in detail Overlay text amendments, the DEIR Project Description need not include technical details such as every proposed zoning requirement of the Overlay. Instead, CEQA requires only a “general description” of the Project’s technical, economic and environmental characteristics. (14 Cal. Code Regs., §15124(c).) The description of the Project “**should not supply extensive detail** beyond that needed for evaluation and review of the environmental impact.” (14 Cal. Code Regs., §15124.) “General” means involving only the main features of something rather than details or particulars. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28) *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1053 does not require more, as it notes that the key information for a zoning plan are height, mass, and bulk are contained in the project description, even though there were more detailed design criteria that helped support the determination of adequate project description in that case.

Additionally, contrary to PHA’s arguments, the DEIR Project Description does include general descriptive details about the technical terms that will be included in the Overlay General Plan and Zoning Code amendments in a sufficient level of detail as to what standards and findings will be required for both the General Plan Amendment and Zoning Ordinance in two places in the DEIR. (See DEIR, pp. 3.1-20 through 3.1-22 and 3.2-49 through 3.2-51, §§ 3.1.6 & 3.2.5)

The format of an EIR Project Description is not subject to any requirements other than the technical requirements in 14 Cal. Code Regs., §15124. Those project description

requirements may be contained in a separate chapter, part of the introduction, part of the environmental setting and baseline, part of other sections on impacts, etc., as long they contain the elements required by Section 15124 of the CEQA Guidelines.

(b) The DEIR Contains a Forecast of Likely Development Under the Overlay

While the PHA comment pertains to identification of growth inducing impacts of the Project under 14 Cal. Code Regs., §15126(d), and not particularly to Project Description, PHA is incorrect that there is not a forecast of the type, intensity or range of development under the Overlay. The forecast for additional non-residential development induced by the Project's increased potential commercial density is contained in the Project Description and is summarized by a table, with its assumptions contained in a footnote. (DEIR, p. 2-29, Table 2-5. Footnote 5.) Table 2-5 lists the total Overlay area, the potential maximum General Plan buildout at the maximum FAR of 2.5, the currently developed area and FAR, the potential maximum Overlay buildout at the new maximum FAR of 6, and the City Planning estimate of Overlay buildout at 25% of Overlay FAR.

Footnote 5 explains the basis for the City Planning estimate of 25% estimated Overlay buildout, which is that the City has only been able to meet 15% of the City's Central Petaluma Specific Plan maximum estimated buildout for commercial use over the last 20 years. Thus, with the additional incentives of the Overlay, the City is forecasting to increase the estimated buildout up to 25% of maximum potential buildout for commercial use.

(c) The DEIR Forecast is Appropriate, Sufficient and Not Contradictory

Contrary to PHA's assertion that there is no forecast, PHA in the paragraph of its letter directly following that paragraph recognizes the forecast but criticizes the reasoning for the forecast as being insufficient. PHA's criticism misstates the applicable law regarding forecasts for growth inducement. The CEQA Guidelines require that an EIR discuss "the ways in which" the proposed project could foster growth. (14 Cal Code Regs §15126.2(e).)

Under this standard, an EIR is not required to provide a detailed analysis of a project's effects on growth. A general analysis is sufficient: "Nothing in the Guidelines, or in the cases, requires more than a general analysis of projected growth." (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* ["*Napa Citizens*"] (2001) 91 Cal.App.4th 342, 369; see also *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1229; *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 388.) This is more especially the case when future effects will themselves require analysis under CEQA, as would future development under the Overlay. (See *Napa Citizens, supra*, 91 Cal. App.4th at 369.)

Footnote 5 cites to the substantial evidence and reasoning the City Planning relied upon. The use of 25% rather than 15% past performance under the Petaluma Specific Plan is explained by the additional incentives for commercial development provided by the Overlay. Given the relatively small areas in the Overlay, the current General Plan standards for the Overlay, the speculative nature of future development trends, the dynamic economy, the small incremental growth of commercial development under the Overlay, and the fact that future projects within the Overlay will be subject to further environmental review, the evidence and reasoning are sufficient. PHA has not satisfied its burden of demonstrating that the Overlay necessarily would result in development beyond that estimated by the City. (See *Federation of Hillside & Canyon Association v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1265.)

PHA also criticizes the forecast as being too low given the purpose of the Overlay to encourage new development. However, the forecast does take into account new development incentives under the Overlay to increase the estimate for future growth by 10% from the prior actual amount of 15% to the estimated forecast of 25%. Again, the City has provided its facts and reasoning, which constitutes substantial evidence, and PHA provides no contrary facts or evidence.

PHA takes issue with the DEIR statement that the Overlay will sunset with the adoption of the City's 2025 General Plan Update, as if there was some nefarious purpose or change in plan or wrong forecast in the DEIR. That DEIR statement is nothing more than an acknowledgement that with the 2025 General Plan Update, there will be other potential factors affecting growth than the mere increment of the Overlay, and that new information will be presented with that Update that will clarify future growth projections. There is no CEQA violation in giving the best currently available information and noting that more information will be available in the near future from an anticipated updated plan. Again, the growth impacts projection has nothing to do with the Project Description.

#### **EKN RESPONSE TO PHA SPECIFIC ITEM II—NO DEFERRED ANALYSIS**

*PHA asserts that the DEIR “improperly defers” any “meaningful analysis” of the Overlay’s environmental impacts to future discretionary reviews because the DEIR states that the Overlay “would not directly result in physical development” and “includes no project-specific development.” PHA asserts that the Overlay “necessarily” brings more people, noise and traffic to the area, and that, as a “program” EIR, the DEIR must “take into account the environmental impacts of all future development” that would be allowed by the 2025 General Plan Update. (pp. 6-9)*

As explained above in EKN's response to item 2 of the PHA's overarching concerns at pages 3-4 of this letter, PHA fundamentally misconstrues CEQA and the Overlay portion of the Project, which sets forth planning parameters and zoning regulations, but not specific

development location, type and timing other than the Appellation Petaluma hotel. As set forth in the above quotations from the *Berkeley Keep Jets* and *Sierra Watch* cases, when an EIR combines long range planning with a specific development, the EIR does not trigger environmental review for all speculative future projects that may occur under the long range plan. (*Berkeley Keep Jets Over the Bay Comm. v Board of Port Comm'rs*, *supra*, 91 Cal.App.4th at 1357-1363; *Sierra Watch v. County of Placer*, *supra*, 69 Cal.App.5th at 105.)

When a master EIR, program EIR, or another type of first-tier EIR is prepared for a plan or program, with later EIRs to be prepared for projects that will implement the plan or program, the agency may tailor the environmental analysis in the first-tier EIR to match the first-tier stage of the planning process, with the understanding that additional detail will be provided when specific second-tier projects are proposed. The agency may focus the first-tier EIR on the plan or program, so that project-level details may be deferred for review in subsequent EIRs that can assess impacts at a time when the severity of the impacts and their likelihood of occurrence will be known more specifically. (*In re Bay-Delta Programmatic Env't'l Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1172, 1174; *Al Larson Boat Shop, Inc. v Board of Harbor Comm'rs* (1993) 18 Cal.App.4th 729, 746-747; *Rio Vista Farm Bureau Ctr. v County of Solano* (1992) 5 CA4th 351; *Atherton v Board of Supervisors* (1983) 146 Cal.App.3d 346, 351; *City of Rancho Palos Verdes v City Council* (1976) 59 Cal.App.3d 869.)

“Under CEQA's tiering principles, it is proper for a lead agency to use its discretion to focus a first-tier EIR on only the general plan or program, leaving project-level details to subsequent EIR's when specific projects are being considered. (See Cal. Code Regs., tit. 14, § 15152, subd. (b).) This type of tiering permits a lead agency to use a first-tier EIR to adequately identify “significant effects of the planning approval at hand” while deferring the less feasible development of detailed, site-specific information to future environmental documents. (See *id.*, § 15152, subd. (c).)” (*In re Bay-Delta Programmatic Env't'l Impact Report Coordinated Proceedings*, *supra*, 43 Cal.4th at 1174.)

Thus, DEIR analysis of the Overlay aesthetics, cultural resources, and land use and planning that defers project specific review beyond that for the Hotel is appropriate because of the speculative nature of future Overlay development on aesthetics, cultural resources, and land use and planning, which is required to be addressed by future permitting and environmental review.

PHA's assertion that the DEIR fails to analyze and improperly defers analysis of growth from increased Overlay density is incorrect. The DEIR appropriately addresses the Overlay increased density: “The Overlay component of the proposed project **is located within the UGB, is inclusive of two sites identified for housing opportunity in the City's Housing Element, and is proposed on sites where housing development is currently allowed in a mixed-use building**. Additionally, the City's Density Bonus ordinance provides incentives for the

production of affordable housing by permitting an increase in the number of units allowed on a site above typical density standards, reduction in onsite parking requirements, and/or flexibility from development standards for applicable housing projects meeting specified income thresholds. Aside from the proposed Hotel, the Overlay component of the proposed project would not result in direct physical development but would allow future development proposals to increase lot coverage, FAR, and height relative to what is currently allowed by the General Plan and IZO and would also allow development of exclusively residential uses (e.g., not in a mixed-use building), as well as ground floor residential uses. **However, future development would be subject to existing density requirements, including the City's zoning regulation and Density Bonus Ordinance and the State Density Bonus Law, such that the Overlay would not result in an increase in population beyond what is already projected as part of General Plan buildout, what was already evaluated and disclosed in the General Plan EIR, and what is allowed by State regulation including the Housing Accountability Act.**" (DEIR, p. 4-60, § 4.1.11 Population and Housing [bold & underline added])

PHA criticizes DEIR reference to the General Plan buildout and EIR as incorrect because the General Plan does not mention the Overlay, but PHA's argument misses the point. The DEIR is entitled to tier from the General Plan and General Plan program EIR and is not required to further analyze density impacts that have already been analyzed. (14 Cal. Code Regs., § 15168(c).)

The cases cited by PHA are inapposite. The issue wasn't deferred analysis in *California Clean Energy Committee* but instead failure to implement sufficient mitigation measures for the urban decay impacts the EIR proposed to analyze and mitigate: "Here, the programmatic nature of the City's EIR does not remedy the urban decay mitigation measures' shortcomings. Although programmatic, the final EIR purported to study the project as a whole and to implement sufficient mitigation measures to ameliorate the effects of urban decay. No further mitigation measures or EIR studies for the issue of urban decay are promised by the City." (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 200.)

Similarly, in *Stanislaus Natural Heritage Project v. County of Stanislaus*, the EIR identified water supply as a programmatic impact that needed to be addressed in the initial environmental review: "Respondents argue that because they intend to undertake site-specific environmental review of each of the four "phases" of development, they can properly defer analysis of the environmental impacts of supplying water to the project until the actual source of that supply is selected sometime in the future. But "tiering" is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause." (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 199.)

In contrast to those cases, project specific impacts to aesthetics, cultural resources and land use and planning from future projects are not such programmatic impacts and cannot be foreseeably addressed in advance.

### **EKN RESPONSE TO PHA SPECIFIC ITEM III--NO IMPROPER SEGMENTING**

*PHA asserts that the DEIR “improperly considers” the Overlay “separately” from the “imminent” General Plan Update “of which it is a part.” According to PHA, failure to include the General Plan Update with the Overlay prevents meaningful assessment of the environmental impacts of the Overlay. (pp. 9-11)*

As set forth above in item 1 of the EKN response to PHA’s overarching concerns at pages 1-3 of this letter, PHA’s argument fails to satisfy or even correctly address the second prong of the *Laurel Heights* and *Aptos Council* criteria for whether the first project is segmenting. (*Laurel Heights*, *supra*, 47 Cal.3d at p. 396; *Aptos Council*, *supra*, 10 Cal.App.5th at 282.) The Overlay does not legally compel or practically presume completion of the General Plan Update, and the Overlay can and is here being implemented independently. (See also *Banning Ranch Conservancy v. City of Newport Beach*, *supra*, 211 Cal.App.4th at 1223.)

The City is not required to wait to implement the Overlay, and the General Plan Updates are “far from set in stone” such that their consideration together with the Overlay would be meaningless. (See *Aptos Council*, *supra*, 10 Cal.App.5th at 284.) PHA points to no evidence, substantial or otherwise, that the approval of the Overlay will make approval of the unspecified General Plan Updates a fait accompli or prevent adequate environmental review thereof.

### **EKN RESPONSE TO PHA SPECIFIC ITEM IV—NO SPOT ZONING**

*PHA asserts that the Overlay “is a thinly-veiled attempt to hide the fact that approval of Hotel alone would constitute illegal spot zoning.” PHA asserts that the Overlay is “not intended to actually allow development on any other sites, but only to facilitate development of the Hotel,” and is thus a “sham.” (pp. 11-13)*

As set forth above in item 4 of the EKN response to PHA’s overarching concerns at page 5 of this letter, PHA’s argument fails to demonstrate how the Overlay allowing less restrictive higher intensity zoning to foster inner-city redevelopment is illegal spot zoning under *Wilkins* or *Ross*. (*Wilkins v. City of San Bernardino*, *supra*, 29 Cal.2d at 340; *Ross v. City of Yorba Linda*, *supra*, 1 Cal.App.4th at 961-963.) PHA presents no evidence, substantial or otherwise, to support its accusations that the City does not intend to allow development on other Overlay sites or that there is foreseeable development for those other Overlay sites for which the City is withholding environmental analysis. The City is not required to deny the EKN application simply because it contemplates general plan and zoning amendments, as do a great number of development applications that are presented to local land use planning and approval agencies.



## **EKN RESPONSE TO PHA SPECIFIC ITEM V(A)—ADEQUATE HISTORIC RESOURCES ANALYSIS**

*PHA asserts that the DEIR “fails to properly consider the Project’s impacts on historic resources” and “improperly” concludes “without substantial evidence” that the Hotel will not impact historic resources. (pp. 14-15)*

As set forth above in item 7 of the EKN response to PHA’s overarching concerns at pages 11-13 of this letter, the DEIR contains substantial evidence in support of its analysis and conclusion that there is no historical resource that any longer has any significance that could be impacted by the Hotel, in addition to the evidence of lack of impact by the Hotel on historical resources set forth above in Item 6 of the EKN response to PHA’s overarching concerns at pages 9-11 of this letter.

### **1(a). The 313 B Street Building is Not a Historical Resource**

*Relying on an expert, PHA asserts that the modern 313 B Street building is a historical resource, that its identification as a contributor to the Historic Commercial District was never changed, and that there is no substantial evidence by the City’s expert that it is no longer a historical resource. (pp. 15-17)*

When there is a dispute between experts pertaining to environmental impacts and adequacy of an EIR, the lead agency is entitled to weigh the evidence relating to the accuracy and sufficiency of the expert information in the EIR and to decide whether to accept it. The agency may adopt the environmental conclusions reached by the experts that prepared the EIR **even though others may disagree with the underlying data, analysis, or conclusions.** (*Laurel Heights Improvement Ass’n v Regents of Univ. of Cal.*, *supra*, 47 Cal.3d at 408; *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 795. Discrepancies in results arising from different methods for assessing environmental issues **do not undermine the validity of the EIR’s analysis** as long as a **reasonable explanation supporting the EIR’s analysis** is provided. (*Planning & Conserv. League v Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 243.

The existence of differing opinions arising from the same pool of information is not a basis for finding the EIR to be inadequate; the **lead agency has discretion to resolve a dispute among experts about the accuracy of the EIR’s environmental analysis.** (See *East Oakland Stadium Alliance v City of Oakland* (2023) 89 Cal.App.5th 1226, 1262-63 [EIR’s assessment of hazardous chemicals on project site was supported by consultant’s report coupled with absence of criticism by regulatory agency]; *Save the Hill Group v City of Livermore* (2022) 76 Cal.App.5th 1092, 1115 [expert’s report supported finding of no significant hydrological impacts despite other evidence on the issue]; *Tiburon Open Space Comm. v County of Marin* (2022) 78 Cal.App.5th 700, 754–55 [county could rely on methodology and conclusions of traffic consultant to resolve conflicting conclusions about extent of traffic congestion that would result];

*Save Cuyama Valley v County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1069 [county could rely on expert's conclusions regarding hydraulic impacts despite differing opinions by EPA and petitioner's expert]; *Eureka Citizens for Responsible Gov't v City of Eureka* (2007) 147 Cal.App.4th 357 [city could accept expert's findings on noise impacts despite disagreement over methodology used]; *California Oak Found. v City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1243 [city could rely on its water management plan rather than contrary evidence]; *Cadiz Land Co. v Rail Cycle* (2000) 83 Cal.App.4th 74, 102 [county appropriately relied on expert opinions that further geologic trenching not necessary]; *Greenebaum v City of Los Angeles* (1984) 153 Cal.App.3d 391, 413 [city's reliance on statements of its staff in EIR was proper because city planning staff were qualified as experts to provide traffic analysis]; *San Francisco Ecology Ctr. v City & County of San Francisco* (1975) 48 Cal.App.3d 584, 594 [estimates used in EIR cannot be attacked simply because they might conflict with estimates in subsequent studies].)

The lead agency is **free to reject criticism from an expert** or a regulatory agency on a given issue as long as its reasons for doing so are supported by substantial evidence. (*Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.*, *supra*; *North Coast Rivers Alliance v Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614, 642; *California Native Plant Soc'y v City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 626; *Association of Irrigated Residents v County of Madera* (2003) 107 Cal.App.4th 1383, 1397.)

When experts disagree about data or methodology, the EIR should summarize the main points of disagreement. (14 Cal Code Regs §15151; see *Browning-Ferris Indus. v City Council* (1986) 181 Cal.App.3d 852 [agency may choose among differing expert opinions as long as EIR identifies arguments correctly and in responsive manner].) An EIR that fails to address an expert's opinion is not deficient, however, if it otherwise contains an adequate, good faith discussion of the issue. (*California Oak Found. v Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 265 [rejecting claim that EIR was inadequate for not discussing geologists' letters that suggested further study was appropriate].)

If comments on the draft EIR from experts or other agencies indicate that the EIR's analysis of an impact has relied on incorrect data or a flawed methodology, the EIR must provide a good faith, reasoned analysis in response. Conclusory statements unsupported by references to supporting evidence are not sufficient. (14 Cal Code Regs §15088(c).) When the EIR's discussion and analysis is not modified to incorporate the suggestions made in comments on the draft, the EIR must acknowledge the conflicting opinions and explain why they have been rejected, supporting its statements with relevant data. (*Berkeley Keep Jets Over the Bay Comm. v Board of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1367, 1371; *League to Save Lake Tahoe Mtn. Area Preservation Found. v County of Placer* (2022) 75 Cal.App.5th 63, 103–105.)

Before applying these principles to the dispute raised by PHA's experts, it is important to frame the dispute under particular CEQA law pertaining to historic resources.

Projects that may cause a substantial adverse change in the significance of a historical resource are considered to be projects that may have a significant effect on the environment for CEQA purposes. (Pub. Res. Code, §21084.1.) "Historical resource" is defined in Pub Res C §21084.1 to include all sites listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Sites officially designated as historically significant in a local register of historical resources are presumed to be historically or culturally significant.

Pub. Res. Code § 21084.1 creates three categories of historical resources: mandatory historical resources; presumptive historical resources; and property that may be found historical at the discretion of the lead agency. (See *Friends of the Willow Glen Trestle v City of San Jose* (2016) 2 Cal.App.5th 457, 469; *Valley Advocates v City of Fresno* (2008) 160 Cal.App.4th 1039, 1051.)

A resource that has been formally listed in, or determined to be eligible for listing in, the California Register of Historical Resources must be treated as a "historical resource." (Pub. Res. Code, § 21084.1; 14 Cal. Code Regs., § 15064.5(a)(1); see *Save Our Capitol! v Department of Gen. Servs.* (2023) 87 Cal.App.5th 655, 679.) A resource becomes "listed" on the California Register if it is nominated for listing and the State Historical Resources Commission determines that it is "significant" and that it meets one of the four statutory criteria for listing. (Pub Res. Code, § 5024.1(b).)

Sites officially designated in a local register of historic resources as defined in Pub. Res. Code, § 5020.1(k) are presumed to be historically significant. (See Pub. Res. Code, § 21084.1; 14 Cal. Code Regs., § 15064.5(a)(2). Under Pub. Res. Code, § 5020.1(k), designation in a local register is defined to include a resource recognized as historically significant by local ordinance or resolution. (*Valley Advocates v City of Fresno* (2008) 160 Cal.App.4th 1039, 1054.)

Resources identified as significant in a historical resources survey prepared in accordance with the standards in Pub Res C §5024.1(g) are also presumed to be historically significant. Pub Res C §21084.1; 14 Cal Code Regs §15064.5(a)(2). Under Pub Res C §5024.1(g), four independent criteria all must be met to find a significant historical resource based on such a survey:

The survey must be included in the State Historic Resources Inventory;

The survey and its documentation must be prepared in compliance with Office of Historic Preservation procedures and requirements;

The resource must be evaluated by the Office of Historic Preservation and determined to have a significance rating of category 1–5 on DPR Form 523; and

The survey must be updated to include specific information if it is more than 5 years old at the time the resource is nominated for inclusion in the California Register of Historical

Resources. (See *Valley Advocates v. City of Fresno*, *supra*, 160 Cal.App.4th at 1056 [historical resources survey found not to meet the requirements of Pub Res C §5024.1(g)]; see also *Citizens for Responsible Dev.*, *supra*, 39 Cal.App.4th at 502.)

The presumption that a site is a historic resource because of a designation in a local register or a historic resources survey may be overcome if the agency concludes, based on a preponderance of the evidence, that the site is not historically or culturally significant. (Pub. Res. Code, § 21084.1; 14 Cal Code Regs §15064.5(a)(2); see *Coalition for Historical Integrity v City of San Buenaventura* (2023) 92 Cal.App.5th 430, 435-436 [presumption rebutted by finding that statue listed as landmark was never culturally or historically significant].)

Neither PHA nor its expert contends that 313 B Street building is a mandatory historical resource, but instead that it should be a presumed historical resource because it was a contributory building in the survey with respect to the listing of the Petaluma Historic Commercial District. When understood in this context, the expert analysis in the EIR is designed to rebut the presumption that the 313 B Street building is a historical resource. PHA's experts thus are attempting to attack the substantial evidence upon which the EIR experts rely.

The substantial evidence relied upon and analysis by the City's experts is as follows: "Three parcels within Overlay Subarea A are within the National Register Historic District. Two are within the Hotel Development Site. **This property is shown as non-contributing** in the "Contributing and Noncontributing Buildings" map that is included in the Design Guidelines document, because at the time the guidelines were adopted, the site was occupied by a modern service station. However, the building was demolished ca 2009 and the site has subsequently been vacant, so this is no longer the case. The third site within Overlay Subarea A that is within the National Register Historic District is the site occupied by Rex Ace Hardware at 313 B Street. This site is shown as contributing to the historic district. **However, Rex Ace Hardware burned in 2006 and was replaced in 2007. As a result, the building is non-contributing to the National Register Historic District today.** The site was historically made up of **incrementally developed wood buildings**. The **replacement** for the main portion of the site was constructed as **one individual building of Hardiplank synthetic wood**. As a result, it is **not a true reconstruction as defined by the National Park Service's Secretary of Interior's Standards** and is therefore not a historic resource today. Nonetheless, the site is culturally important in the City of Petaluma and is valued for this reason." (DEIR, Appendix B.3, Historic Cultural Resource Report by Painter Preservation, pp. 20-21.)

**Figure 14: Rex Ace Hardware viewed from B and 4<sup>th</sup> streets, 1993**  
*Source: Petaluma Camera Club*



**Figure 15: Rex Ace Hardware today, 2023**  
*Photo by Diana Painter*



As shown by the above photos of the historic 313 B Street buildings and the modern 313 B Street building, there is a stark distinction between the historic five building complex of wooden boards, haphazard window placement and multiple gabled roofs behind a leveled

parapet and the modern single building complex of manufactured synthetic wood, regularized store front windows and flat roofing. Nothing at all about the modern building looks historic.

A second historic expert upon which the DEIR relies, based on that substantial evidence, analyzed the differences between the historic and modern 313 B Street buildings and concluded: “The property at 313 B Street was previously identified as a contributor to the Petaluma Historic Commercial District, but a fire in 2006 destroyed the majority of the property, leaving only on ancillary building at the eastern edge of the property. The remaining ancillary building appears to have been substantially altered from its original appearance. Therefore, due to a near total loss of its original buildings, the property at 313 B Street was found to no longer have the requisite integrity to convey significant as an individual property or a contributor to the historic district.” (DEIR, Appendix B.4, South Environmental Historic Built Environmental Impacts Assessment, p 22.)

As further described in the South Environmental Assessment, the historic 313 B Street complex was described in the 1994 NRHP Historic District nomination form as: “a **conglomeration of one- and two-story wood-framed structures**, the three largest of which (c. 1870) **have gable roofs of corrugated metal and siding of horizontal board or corrugated metal**. Also included one very small brick building (c. 1960) with arched door and window in the rear. The **street elevations join the separate elements with stucco siding and parapets**. In the rear is a large shed (c. 1870) with a gable roof, plain parapet, and large sliding door” (Napoli 1994).” (DEIR, Appendix B.4, South Environmental Historic Built Environmental Impacts Assessment, Continuation Sheet, pp. 11-12 [bold & underline added].)

When comparing the above-described features of the historic 313 B Street complex with the modern 313 B Street building, South Environmental concludes: “Although the new hardware store looks similar to the original, **it is a modern building that was constructed with modern materials** to resemble the front of the original building.” (DEIR, Appendix B.4, South Environmental Historic Built Environmental Impacts Assessment, Continuation Sheet, pp. 11-14 [bold & underline added].)

As purported “contradictory” “evidence,” PHA’s expert (Ver Planck) asserts that because no one ever requested that the contributory status of 313 B Street be removed from the Petaluma Commercial Historic District, that the modern 313 B Street building must be deemed historic. That is a circular argument based upon speculation that fails to counter the evidence of the fire and the reconstruction using modern architectural design and materials relied upon by the EIR. Ver Planck speculates (speculation is not substantial evidence) that the reason no one has changed the 313 B Street building status is because it is a “reasonable facsimile of what previously stood on the site” as to “height, massing, materials, and detailing.” (Ver Planck Response Letter, p. 3)

However, in his Technical Memorandum, Ver Planck concedes the substantial evidence that the DEIR experts Painter Preservation and South Environmental rely upon: “The **newer building replaced several older nineteenth century structures that were destroyed in a fire** in 2006. Although not an exact replica of what had existed on the site previously, the 2007 building largely matches the original in regard to its height, massing, design and materials. The only **real noticeable difference is that** the 2007 building has a **flat roof instead of multiple gable roofs concealed behind a level parapet**. In addition, the replacement building has a **continuous slab foundation instead of multiple perimeter foundations** and a slightly more **“regularized” fenestration pattern** than the original.” (PHA letter, Exhibit B, Ver Planck Technical Memorandum, pp. 3-4)

As noted from the above quote from South Environmental memorandum, the **conglomeration of one- and two-story wood-framed structures**, the **gable roofs of corrugated metal and siding of horizontal board or corrugated metal**, the **small brick building with arched door**, and the **street elevations that join the separate elements with stucco siding and parapets** that were the very characteristics that the 1994 NRHP nomination form relied upon for establishing the contributory nature of the historic 313 B street complex no longer exist in the modern single foundation 313 B Street building with unified elements such as windows and a flat roof with no parapet.

PHA expert claims that 313 B Street was reconstructed per required standards are not supported by substantial evidence. The Secretary of Interior standards are set forth below. (<https://www.nps.gov/orgs/1739/upload/treatment-guidelines-2017-part2-reconstruction-restoration.pdf>, p. 226) Neither PHA nor its expert provides evidence that the below standards were met, including thorough archeological investigation to determine key factors, measures to preserve features and spatial relationships, use of same materials, design, color and texture. Reconstruction is supposed to include: “**Recreating the documented design of exterior features, such as the roof form and its coverings, architectural detailing, windows, entrances and porches, steps and doors, and their historic spatial relationships and proportions**.” (Id. at p. 232 bold & underline added.) As admitted by PHA’s own experts, the roof form, coverings, architectural detailing, windows, entrances and porches, steps and doors, and historic spatial relationships, while known, were altered.



### Standards for Reconstruction

1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture and such reconstruction is essential to the public understanding of the property.
2. Reconstruction of a landscape, building, structure or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.
3. Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.
4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color and texture.
5. A reconstruction will be clearly identified as a contemporary re-creation.
6. Designs that were never executed historically will not be constructed.

To summarize, the DEIR experts Painter Preservation and Southward Environmental have rebutted the presumption that the modern 313 B Street building is a historic resource, by demonstrating all of the historic features that are missing from the modern attempted “reconstruction,” and PHA expert Ver Planck has admitted that those historic features are missing, presents no evidence of appropriate reconstruction, and has only submitted speculation as to reasons why the contributory status of 313 B Street has not yet been amended. Thus, the City may appropriately rely on Painter Preservation and Southward Environmental determinations and evidence in support thereof that the 313 B Street building is not a historic resource and has no basis for accepting the Ver Planck determinations and speculation.

#### **1(b). Substantial Evidence Supports the Hotel as Being Within Design Guidelines**

*PHA asserts that there is no substantial evidence that the Hotel will be within Design Guidelines for the Petaluma Historic Commercial District with respect to the general set of proportions pertaining to height and weight of surrounding buildings. (pp. 17-18)*

As set forth in detail in item 6 of EKN’s responses to PHA’s overarching concerns at pages 10-11 of this letter, the Hotel is not out of scale with surrounding buildings in the Petaluma Historic Commercial District. Included therein were the following substantial evidence and expert opinions:



- The proposed Hotel would be consistent with all aesthetic design regulations as included in the General Plan, Municipal Code, and Historic Commercial District Design Guidelines. (DEIR, pp. 3.1-23 through 3.1-24)
- Exhibit 3.1-1 demonstrates that just across the way from the Hotel site is the historic resource of the Great Petaluma Mill at 61 feet tall and in the other direction is the Petaluma Historic Museum and Library at 48 feet tall and Monear's Mystic Theater at 42 feet tall, and behind the Theater are the Masonic Building at 62 feet tall and the Mutual Relief Building at 63 feet tall. (DEIR, p. 3.1-33, Exhibit 3.1-1)
- A Historic Built Environment Impacts Assessment "determined that while the proposed Hotel building would be taller than the immediately surrounding buildings, the use of multiple stories in the Petaluma Historic Commercial District is not without precedent, **as the district nomination form prepared in 1994 stated that a variety of heights were present in the district.** In addition, the proposed building would utilize setbacks and cornice line detailing to minimize the height difference visible from the street. The Historic Built Environment Impacts Assessment thus concluded that the proposed Hotel would not introduce incompatible massing and scale, and the proposed Hotel would be in general conformance with the Petaluma Historic Commercial District Design Guidelines." (DEIR, p. 3.2-55, § 3.2.7 [bold & underline added])

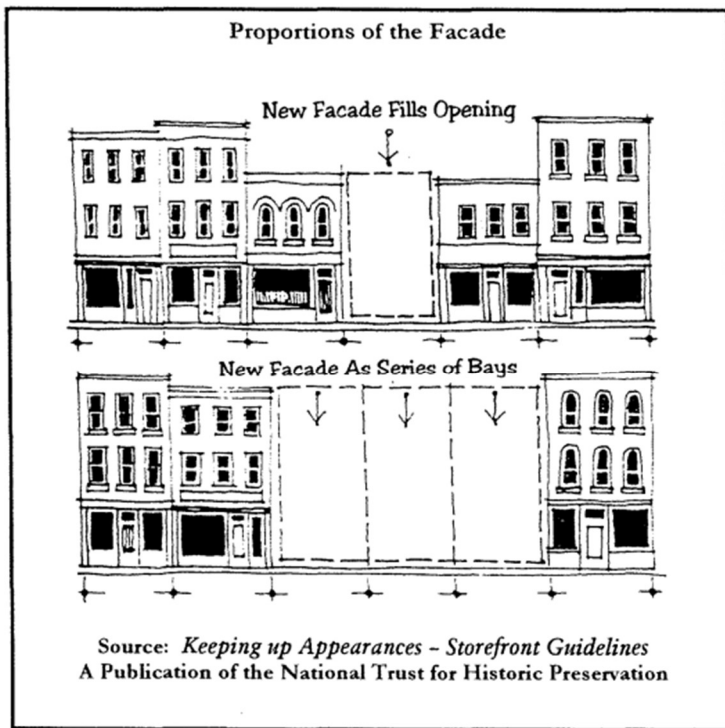
PHA seeks to confuse these findings by asserting that the Design Guidelines impose a height and massing requirement for new construction such as the Hotel. The Design Guidelines, while containing significant detail pertaining to reconstruction and rehabilitation of contributing and non-contributing buildings, contain only one page of sparse general guidelines for new construction on vacant lots, and **say nothing about new construction heights and massing except with respect to infill buildings fitting into existing facades.** The applicable language from the Design Guidelines which PHA cites pertains only to proportions for building facades for infill buildings, which the Hotel is not, as shown in the language and depiction taken from the Design Guidelines:

(<https://storage.googleapis.com/proudcity/petalumaca/uploads/2019/12/DesignGuidelines-Complete.pdf>, p. 38)

## 7.1 PROPORTIONS OF THE FACADE

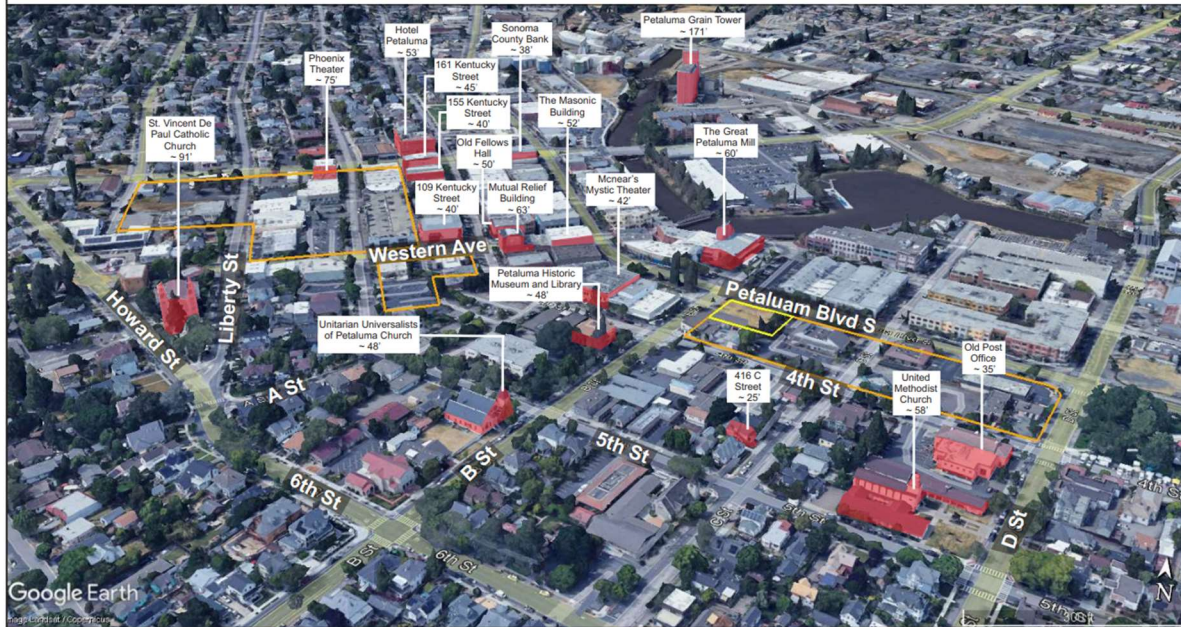
The average height and width of the surrounding buildings determine a general set of proportions for an infill structure. The infill building should fill the entire space and reflect the characteristic rhythm of facades along the street.

If the site is large, the mass of the facade can be broken into a number of small bays, to maintain a rhythm similar to the surrounding buildings.



Similarly inappropriate and inapplicable to the Hotel new construction are citations by PHA's expert to the Secretary of Interior Standards for Rehabilitation, which do not apply to new construction on vacant lots with no prior historical building such as the EKN vacant site, but instead to rehabilitation of existing buildings. (PHA letter, Exhibit B, Ver Planck Technical Memorandum, pp. 12-15)

Even if "surrounding area" compatibility does apply (and not "adjoining property" as subtly substituted by PHA), it only applies to a "general set of proportions" and only to "infill projects" (which the Hotel is not). Furthermore, the Historic District is replete with examples of buildings with similar height and massing as the Hotel, as shown below from DEIR Figure 3.1-1 on page 3.1-33 of the DEIR



**1(c). Reference to the Hotel CUP Mitigation is Not Improper**

*PHA asserts that the mitigation measure of the required CUP inappropriately compresses the mitigation measure to avoid analysis of the Hotel's significant impacts on historic resources. (pp. 18-19)*

PHA's repeated comment was already addressed in item 7 of the EKN response to PHA overarching concerns at pages 11-13 of this letter. PHA ignores that the DEIR provides detailed and reasoned analysis regarding the impacts on historical resources and correctly identifies the potential impact of the Hotel on historic resources as potentially significant. (DEIR, pp. 3.2-52 through 3.2-55) It is only after the mitigation measures are applied that the impact is considered insignificant. (DEIR, pp. 3.2-55 through 3.2-58)

Given the substantial evidence and reasoned analysis as to why there are no impacted historical resources and as to why there would be no impact on any nearby resources, the *Lotus* case cited to by PHA is inapplicable here. In *Lotus*, there was utter failure to analyze the environmental impacts or even identify a standard pursuant to which they were to be measured. (*Lotus, supra*, 223 Cal.App.4th at 655.) Here, unlike in *Lotus*, there is an express analysis of potential impact on historic resources to help determine the effectiveness of the proposed mitigation measures. (*Id.* at 656.)

**1(d). There is No Deferral of Mitigation on Unidentified Impacts to Historic Resources**

*PHA asserts that the mitigation measure of the required CUP for the Hotel improperly defers how to mitigate potential impacts of the Hotel on nearby historic resources. (pp. 19-20)*

Compliance with relevant regulatory standards can provide a basis for determining that the project will not have a significant environmental impact. (*Tracy First v City of Tracy* (2009) 177 Cal.App.4th 912.) A requirement that a project comply with specific laws, regulations or permit requirements may also serve as adequate mitigation of environmental impacts in an appropriate situation. As the court explained in *Oakland Heritage Alliance v City of Oakland* (2011) 195 Cal.App.4th 884, 906, “a condition requiring compliance with regulations is a common and reasonable mitigation measure and may be proper where it is reasonable to expect compliance.” In *Oakland Heritage Alliance*, the court upheld the city’s reliance on standards in the building code and city building ordinances to mitigate seismic impacts.

The Guidelines specify that reliance on compliance with a regulatory permit or similar process is sufficient mitigation if compliance with such standards can be reasonably expected, based on substantial evidence, to reduce the impact to the specified performance standard. (14 Cal. Code Regs. §15126.4(a)(1)(B).) Here the DEIR provides an appropriate analysis of the impact and effectiveness of such a mitigation measure by means of an integrated examination of the measure together with the relevant regulatory standards and oversight provisions sufficient to support the CUP’s use as a mitigation measure. (DEIR, pp. 3.2-56 through 3.2-58; see *Tiburon Open Space Comm. v County of Marin* (2022) 78 Cal.App.5th 700, 763.)

**2. There is No Deferred Analysis of the Overlay’s “Likely” Significant Impact on Historic Resources**

*PHA asserts that the DEIR fails “in the first instance to identify the nature and extent of the likely impacts on historic or cultural resources” of the Overlay. (pp. 20-21)*

PHA’s comment that the DEIR improperly defers analysis of Overlay potential historic and cultural resources impacts is incorrect. The DEIR does a comprehensive analysis of the historic and cultural resources impacts of the Overlay based on its present setting and comprehensive review of the history and culture of the City and Overlay, review of records of each building, review of architectural and cultural reports, review of historic districts, reviews of property investigations, regulatory regimes. (DEIR, pp. 3.2-1 through 3.2-47)

As the DEIR notes, the only additional impacts of the Overlay beyond those previously studied under the General Plan EIR pertain to net increase in intensity: “The proposed Overlay applies to parcels that are already deemed developable by the City of Petaluma’s General Plan (General Plan) and Implementing Zoning Ordinance (IZO). Most of the sites within the Overlay Area have been developed. The proposed Overlay would permit certain changes pursuant to an

approved Conditional Use Permit (CUP): greater floor area ratio (FAR), building height of up to 75 feet, and lot coverage up to 100 percent. The current General Plan Environmental Impact Report (General Plan EIR) evaluated the potential for impacts related to cultural resources and found them to be less than significant with mitigation incorporated. Since the proposed project only involves additional potential height, lot coverage, and FAR, the potential impacts related to the proposed Overlay concern the net increase in intensity.” (DEIR, p. 3.2-49)

With respect to impacts on the historical resources of the Overlay, the DEIR finds: “Development envisioned by the proposed Overlay could result in an increase in new development that could affect known historic resources, eligible resources, or previously unidentified or undesignated historic resources within the Overlay Area. However, as described above, development proposed within the Overlay will require discretionary review, including analysis under CEQA, as well as a SPAR or HSPAR permit which requires findings related to compatibility with the surrounding neighborhood. Developments seeking approval for height above 45 feet or an increase in lot coverage above 80 percent will require a CUP, which includes a requirement that findings be made to ensure that the additional height or lot coverage would not be a detriment to significant historical resources. Future development proposed under the Overlay has the potential to result in direct and indirect impacts to listed or eligible resources including through demolition, relocation, or the construction of a new building that due to its design could potentially conflict with the historic character.” (DEIR, p. 3.2-53)

As already explained in item 2 of the EKN responses to PHA’s overarching concerns at pages 3-4 of this letter and in EKN’s response to PHA’s specific comment 2 at pages 15-18 of this letter, the deferred analysis of environmental impacts of particular future development within the Overlay is appropriate because at present it would be speculative, and deferred mitigation by means of subsequent discretionary permitting and accompanying environmental review is appropriate.

### **3. The DEIR Correctly Cites Density Bonus Law Protections for Historical Resources**

*PHA acknowledges that DBL protects historic resources but asserts that it will not protect historic resources from development of Overlay areas outside the Petaluma Commercial Historic District. (pp. 21-22)*

PHA’s repeated comment was already addressed in item 3 of the EKN responses to PHA’s overarching concerns at page 4 of this letter. PHA appears to acknowledge that the DBL law protects historical resources but asserts that it will not protect historical resources from development within the Overlay located outside of the Petaluma Commercial Historic District. PHA is wrong. The protections under Government Code section 65915 (d)(1)(B) and (e)(1) are not limited to projects within the Historic District but extend to projects outside the District that will affect historic resources within the District. Furthermore, PHA fails to identify what historic

resources there may be outside of the Historic District, if any, that would be affected by development in the Overlay outside of the Historic District.

## **EKN RESPONSE TO PHA SPECIFIC ITEM V(B)—ADEQUATE VISUAL EFFECTS ANALYSIS**

*PHA asserts that the DEIR “fails to adequately analyze and mitigate the Project’s Significant Visual Effects. (pp. 22-25)*

### **1. The DEIR Discloses and Mitigates Hotel Visual Impacts**

PHA’s repeated comment was already addressed in item 6 of the EKN responses to PHA’s overarching concerns at pages 10-11 of this letter. The DEIR does a comprehensive analysis of the visual impacts of the Hotel that includes site analysis, surrounding scenic resources, visual simulations, light and glare, shadow, regulatory framework, visual character and shading analysis throughout the year. (DEIR, pp. 3.1-1 through 3.1-28)

### **2. The DEIR Does Not Improperly Defer Analysis of Overlay Potential Visual Impacts**

PHA’s comment that the DEIR improperly defers analysis of Overlay potential visual impacts is incorrect. The DEIR does a comprehensive analysis of the visual impacts of the Overlay based on its present setting and tiering from the General Plan existing environmental review. That analysis includes site analysis, surrounding scenic resources, visual simulations, light and glare, shadow, regulatory framework, visual character:

- “As such, the visual character surrounding the Overlay Area consists predominantly of adjacent and nearby buildings and related landscaping that largely obscures views of the Petaluma River, Sonoma Mountain to the east and the foothills to the west and south.” (DEIR, p. 3.1-2)
- “The Overlay Area does not contain any Local or National Landmarks, which would be considered scenic resources. Views from the proposed Overlay Area toward the Petaluma River, Sonoma Mountain, and the hillsides and ridgelines to the south are generally obscured by existing intervening development.” (DEIR, p. 3.1-3)
- “However, instances of significant daytime or nighttime glare are likely minimal and or brief due to the fact that buildings in the Overlay Area and surrounding vicinity are of architectural styles that do not include expansive areas of reflective surfaces and have building façades that are often articulated by varying architectural features and relief that aid in minimizing any potential glare (e.g., inset windows and awnings).” (DEIR, p. 3.1-6)
- “Buildings within the proposed Overlay Area include single- and 2-story commercial buildings. Similarly, the surrounding Downtown area contains a mixture of building uses, including residential, with heights ranging up to four stories. In particular, the parking

garage located at 1st Street and D Street is four stories with additional parking on the roof level (fifth story). As such, the level of shading from buildings of various heights already occurs within the Overlay Area and throughout the Downtown area.” (DEIR, p. 3.1-7)

- “The proposed Overlay would not directly result in physical development and as such would not directly alter, interfere, or impact a scenic vista. However, reasonably foreseeable development under the Overlay may impact views of foothills to the west and south of the City, Sonoma Mountain to the east, and the Petaluma River Corridor, which are identified scenic and visual resources in the General Plan. Additionally, foreseeable development under the Overlay has the potential to impact views of scenic resources, including the Historic Districts and individual listed or eligible historic resources.” (DEIR, p. 3.1-17)
- “Because the proposed Overlay would not in and of itself result in physical development, there would be no direct impacts. Additionally, because both the City’s SPAR/HSPAR process and MM CUL-1e, provide a mechanism by which potential impacts to scenic resources are assessed at the project level, future development consistent with the proposed Overlay would not result in a potentially significant impact to scenic resources or vistas.” (DEIR, p. 3.1-18)
- “The proposed Overlay would not result in direct physical development; however, reasonably foreseeable future development under the proposed Overlay may result in increased lighting as compared to existing conditions. Future projects would be subject to independent discretionary review, and any changes in lighting would be subject to performance standards set forth in Section 21.040(D) of the IZO.”

As already explained in item 2 of the EKN responses to PHA’s overarching concerns at pages 3-4 of this letter and in EKN’s response to PHA’s specific comment 2 at pages 15-18 of this letter, the deferred analysis of environmental impacts of particular future development within the Overlay is appropriate because at present it would be speculative, and deferred mitigation by means of subsequent discretionary permitting and accompanying environmental review is appropriate.

### **3. The DEIR Analysis of Project Cumulative Visual Impacts is Adequate**

PHA’s assertions that the DEIR’s analysis of cumulative visual impacts is confusing and contradictory are incorrect. The DEIR appropriately identified each and every potential cumulative development within the Overlay area pursuant to CEQA Guidelines section 15130(b)(1). (DEIR, pp. 3-3 & 3-4, Table 3-1, Cumulative Projects.) The viewshed for the Project cumulative impacts analysis is appropriately the viewshed for the proposed Overlay and Hotel. (DEIR, p. 3.1-28)



The DEIR correctly and separately addresses the separate cumulative impacts of scenic resources/ scenic vistas and consistency with planning and zoning requirements pertaining to visual character and views. With respect to scenic resources/scenic vistas cumulative impacts, it states: “As stated above, there are **no officially designated scenic vistas within the City**, and the **vast majority of the sightlines to scenic resources, including Sonoma Mountain and the foothills to the south, are blocked by intervening development**. However, development consistent with the proposed Overlay would be required to comply with the City’s SPAR/HSPAR process and CUP process which provides a mechanism within which impacts to scenic resources are assessed at the project level. During this process, design features and mitigation, if necessary, would be incorporated to reduce potential impacts related to scenic resources. Because there are no designated scenic vistas in the City and views to scenic resources are predominantly obstructed, compliance with the SPAR/HSPAR for all future projects under the Overlay and the CUP process for all future projects in the Overlay with a height above 45 feet or a lot coverage above 80 percent would ensure that future development consistent with the proposed Overlay would not have the potential to obstruct or detract of scenic vistas and scenic resources. **Therefore, the proposed Overlay would have a less than significant contribution to cumulative impacts on scenic vistas.**” (DEIR, p. 3.1-29, Scenic Vistas Cumulative Impacts Analysis [bod & underline added])

Separately, as to consistency with planning and zoning requirements cumulative impacts, it states: “The proposed Overlay’s contribution to less than significant cumulative impacts would not be cumulatively considerable. As explained above, the proposed Overlay would not result in direct physical changes to the environment, but it is reasonably foreseeable that future development with increased lot coverage, FAR, and building height would occur as a result of the proposed Overlay. **As the proposed Overlay would allow for increased intensity of development as compared to what is currently permitted, future development under the proposed Overlay could change the existing visual character of surrounding areas, including limiting or restricting public views of designated historic districts, such as the Historic Commercial District, and individual historically significant buildings, such as the McNear Building.** Accordingly, **to ensure cohesive development, all future development projects utilizing the increased lot coverage, FAR, and building height would be subject to SPAR (or HSPAR) and CUP review and approval process to ensure compliance with applicable policies and regulations.**” (DEIR, p. 3.1-30, Visual Character and Views [Zoning] Cumulative Impacts Analysis [bold & underline added].)

There is nothing confusing or contradictory or inadequate about these separately addressed and separately analyzed potentially significant cumulative impacts.



## **EKN RESPONSE TO PHA SPECIFIC ITEM V(C)—ADEQUATE TRANSPORTATION IMPACTS ANALYSIS**

### **1. The DEIR Appropriately Requires a Sufficient Valet Service Plan as Mitigation for the Hotel and is Not Required to Provide Traffic Collision Mitigation**

*PHA asserts that the DEIR fails to include a Valet Service Plan for the Hotel and requires a traffic collision analysis and mitigation at a distant intersection*

#### **(a) Valet Plan with Specific Standard for Building Permit Application is Acceptable**

The DEIR analysis for potential geometric design feature hazards assumes that the four valet employees at peak operation would have a service rate of 32 vehicles per hour for both incoming and outgoing vehicles; that is, each employee could service up to eight cars in an hour, or one car every 7.5 minutes, for a total of 32 cars. The DEIR concludes: “Based on the project’s trip generation, which includes 20 inbound vehicles utilizing the valet service during the PM peak-hour period, it appears that having four valet employees would be sufficient to accommodate the anticipated level of valet service demand. If demand is temporarily increased beyond the average, the three valet spaces would provide sufficient queueing to accommodate the increased demand. The probability that there would be three vehicles using all three valet spaces would be less than 10 percent. The probability that there would be more than three vehicles seeking valet services at a given time is less than 6 percent. As such, it is unlikely that vehicles within the valet service area would exceed the available three-vehicle curb space.” (DEIR, pp. 4-60 through 4-70, § 4.1.14)

However, to ensure valet service operations do not exceed the available on street space, the DEIR requires implementation of Mitigation Measure EKN TRA-1 by the applicant: “Upon submittal of plans for building permit, the applicant shall submit a Valet Service Plan prepared by a licensed traffic engineer. The Plan shall, at a minimum, address steps to be taken to ensure the three-vehicle capacity is not exceeded. The Plan shall be subject to review and approval by the City of Petaluma.” (DEIR, p. 4-71, § 4.1.14)

PHA and its expert Mr. Perlmutter do not take issue with this analysis and mitigation but instead assert that the applicant EKN must provide the mitigation valet plan to be considered by the public in the DEIR at the time of Project approval rather than as a required part of the building permit approval. Although argument as to the timing of the Valet Plan is a legal issue and not a competing expert issue, to the extent it was an expert issue, the City is the appropriate entity to determine the correct timing, scope and standards of mitigation measures. (See *Laurel Heights*, *supra*, 47 Cal.3d 376, 407; *Banning Ranch*, *supra*, 211 Cal.App.4th 1209, 1233)

With respect to the legal argument as to the timing of the mitigation measure, the CEQA Guidelines specify that reliance on compliance with a regulatory permit or similar process is

sufficient mitigation if compliance with such standards can be reasonably expected, based on substantial evidence, to reduce the impact to the specified performance standard. (14 Cal Code Regs. § 15126.4(a)(1)(B); see *Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655, 687-688, 699.) The mitigation measure expressly requires that the Valet Plan be submitted by a licensed traffic engineer and that, “at a minimum” the Plan “address steps to be taken to ensure the three-vehicle capacity is not exceeded.” The mitigation measure also requires that the Valet Plan be subject to review and approval by the City. Thus, the mitigation measure will not allow for exceedance of the three-vehicle queue and has safeguards to ensure that. Therefore, the mitigation measure complies with CEQA as a subsequent permitting requirement subject to specific standards.

(b) Collision Analysis and Mitigation is Not Required

In responding to this comment, it is important to place the September 2023 W-Trans Traffic Impact Study (not July 5, 2023 as stated in the PHA letter, and not Exhibit C of the DEIR as stated in the PHA letter) in proper context. Neither CEQA nor the General Plan require a collision analysis at nearby intersections. Instead, the Traffic Impact Study was designed to address a General Plan policy tied to the prior, no longer applicable LOS analysis. As explained in the DEIR: “Under SB 743 congestion or delay-based metrics, such as roadway capacity and Level of Service (LOS) are no longer required for use as performance measures for the evaluation or determination of transportation impacts of projects under CEQA. Accordingly, this section addresses LOS issues independent of CEQA, for use by the City in assessing whether and how to impose conditions of approval needed to maintain the reasonable free flow of traffic. In particular, this section addresses LOS in order to ensure that the proposed project complies with City General Plan Policy 5-P-10 establishing LOS D (35 to 55 second delay) as an intersection level of service throughout the City.” (DEIR, p. 4-57, § 4.1.14)

With respect to the one particular issue for which the Traffic Impact Study was prepared, it was concluded: “As shown in Table 6 the four study intersections would continue to operate at LOS D or better with the addition of project-generated traffic.” and “While the proposed project would not necessarily improve intersection operation, it can be concluded that trips added to the proposed project would make use of excess capacity, resulting in minimal change in the intersection’s operation.” (DEIR, p. 4-58, § 4.1.14) Thus, the study’s discussion about collisions at an intersection located two blocks away from the Project, while contributing to the LOS analysis, is not a separately studied impact, and its gratuitous discussion of reflectors on traffic lights has no relevance as a potential mitigation measure, given the conclusion of no significant impact on LOS.

## **2. The DEIR Appropriately Analyzes Overlay Traffic Impacts**

*PHA asserts that the DEIR improperly defers analysis on Overlay conflicts with plans, design feature hazard or impaired emergency access and VMT impact and that the Overlay lacks any plan identifying roadway and transportation improvements within and near downtown Petaluma that will be required. (pp. 26-27)*

Contrary to PHA, the DEIR contains a thorough three-page analysis of Overlay Traffic Impacts. With respect to General Plan policies, the DEIR concludes: “Specifically, the proposed Overlay component of the project is consistent with General Plan Policy 5-P-43, which calls for supporting efforts for transit-oriented development around transit corridors, including along Washington Street and Petaluma Boulevard. The Overlay would allow for greater building intensity in the City’s Downtown, including along Washington Street, Western Avenue, and Petaluma Boulevard South, thereby encouraging redevelopment of underutilized sites, which would densify the City’s Downtown, encourage transit-oriented development, and, consequently, increase use of alternative transportation such as walking, biking, and public transit.” (DEIR, p. 4-65, § 4.1.14)

With respect to Vehicle Miles Traveled, the DEIR concludes: “Based on data contained in the SCTA model, TAZ 796 has an existing job density of 46.0 jobs per acre. The estimated 387,444 square feet of additional development associated with the proposed project is estimated to result in 628 to 1,286 additional jobs, with the lower end of the range assuming all retail development and the upper end of the range assuming office development.<sup>16</sup> Conservatively assuming the low-range estimate of 628 added jobs, the job density in TAZ 796 would increase to approximately 57.4 jobs per acre. The SCTA VMT Reduction Tool estimates that this increase in job density would reduce baseline VMT per employee by 1.7 percent. Applying this percentage reduction yields an adjusted value of 15.2 VMT per employee for the proposed project and TAZ 796, which is 20 percent below the applicable significance threshold of 18.9 VMT per employee. As such, impacts would be less than significant.” (DEIR, p. 4-66, § 4.1.14)

With respect to future Overlay development that has not yet been designed or allocated as to which type of use, the DEIR appropriately states that future projects will be subject to independent discretionary review and thus evaluated in the future with respect to General Plan policies for facilities and safety, design feature hazards, and adequate emergency access. (DEIR, p. 4-65 through 4-67, § 4.1.14)

As explained above in EKN’s response to item 2 of the PHA’s overarching concerns at pages 3-4 of this letter, PHA and Mr. Perlmutter fundamentally misconstrue CEQA and the Overlay portion of the Project, which sets forth planning parameters and zoning regulations, but not specific development location, type and timing other than the Appellation Petaluma hotel. As

set forth in the above quotations from the *Berkeley Keep Jets* and *Sierra Watch* cases, when an EIR combines long range planning with a specific development, the EIR does not trigger environmental review for all speculative future projects that may occur under the long range plan. (*Berkeley Keep Jets Over the Bay Comm. v Board of Port Comm'rs*, *supra*, 91 Cal.App.4th at 1357-1363; *Sierra Watch v. County of Placer*, *supra*, 69 Cal.App.5th at 105.)

When a master EIR, program EIR, or another type of first-tier EIR is prepared for a plan or program, with later EIRs to be prepared for projects that will implement the plan or program, the agency may tailor the environmental analysis in the first-tier EIR to match the first-tier stage of the planning process, with the understanding that additional detail will be provided when specific second-tier projects are proposed. The agency may focus the first-tier EIR on the plan or program, so that project-level details may be deferred for review in subsequent EIRs that can assess impacts at a time when the severity of the impacts and their likelihood of occurrence will be known more specifically. (*In re Bay-Delta Programmatic Env't'l Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1172, 1174; *Al Larson Boat Shop, Inc. v Board of Harbor Comm'rs* (1993) 18 CA4th 729, 746-747; *Rio Vista Farm Bureau Ctr. v County of Solano* (1992) 5 CA4th 351; *Atherton v Board of Supervisors* (1983) 146 CA3d 346, 351; *City of Rancho Palos Verdes v City Council* (1976) 59 CA3d 869.)

“Under CEQA's tiering principles, it is proper for a lead agency to use its discretion to focus a first-tier EIR on only the general plan or program, leaving project-level details to subsequent EIR's when specific projects are being considered. (See Cal. Code Regs., tit. 14, § 15152, subd. (b).) This type of tiering permits a lead agency to use a first-tier EIR to adequately identify "significant effects of the planning approval at hand" while deferring the less feasible development of detailed, site-specific information to future environmental documents. (See *id.*, § 15152, subd. (c).)” (*In re Bay-Delta Programmatic Env't'l Impact Report Coordinated Proceedings*, *supra*, 43 Cal.4th at 1174.)

Thus, the DEIR provides analysis of most Overlay transportation and traffic impacts and appropriately defers analysis on the remaining impacts because of the speculative nature of future Overlay development on transportation and traffic safety, facilities, design hazards and emergency access.

## **EKN RESPONSE TO PHA SPECIFIC ITEM V(D)—ADEQUATE AIR QUALITY AND CLIMATE CHANGE IMPACTS ANALYSIS**

### **1. The DEIR Appropriately Analyzes Overlay Air Quality and Climate Change Impacts**

*PHA asserts that the DEIR improperly defers any analysis of the Overlay's air quality and climate change impacts, claiming that DEIR was required to provide an estimate of reasonably*

*foreseeable development and associated air quality impacts, and asserting that the DEIR is using compliance with regulations to excuse analysis of impacts.*

Contrary to PHA, the DEIR contains a thorough four-page analysis of Overlay Traffic Impacts. With respect to applicable Air Quality Plans, the DEIR concludes: “The proposed Overlay component of the proposed project supports the primary goals of the Clean Air Plan as it prioritizes densifying development in the City’s Downtown where future residential and commercial uses would be proximate to transit, goods, and services, thereby minimizing reliance on auto travel and in turn reducing air pollutants, which protects public health and the climate. In addition, consistent with locally adopted policies, all new development facilitated by the Overlay would be required to be all-electric, which also supports the primary goals of the Clean Air Plan.” (DEIR, p. 4-3, § 4.1.2)

The DEIR includes a Clean Air Plan consistency table that demonstrates consistency with each relevant control measure in the Clean Air Plan. (DEIR, p. 4-3, Table 4-1, § 4.1.2)

The DEIR also analyzes the Plan Bay area 2050 and concludes: “As stated above, the Overlay component of the proposed project intends to increase the potential for development in the City’s Downtown, proximate to existing transit, which is consistent with Plan Bay Area 2050. As such, the Overlay component of the proposed project would not conflict with Plan Bay Area 2050, and impacts would be less than significant.” (DEIR, p. 4-4, §4.1.2)

With respect to air quality emission standards and impacts on sensitive receptors, the DEIR concludes: “The proposed Overlay in and of itself would not result in any physical development and would not generate any emissions until such time as future development is proposed. Future development in the Overlay would be required to comply with City of Petaluma General Plan 2025 (General Plan) policies in effect at the time of submittal, would be subject to independent review in accordance with CEQA (if not otherwise exempt), and would be evaluated on a project-by-project basis to determine potential air quality impacts at the time a development application is received. As such, air quality impacts of the proposed Overlay component of the proposed project would be less than significant.” (DEIR, p. 4-5, § 4.1.2)

With regard to development of future projects under the Overlay program and speculative assessment of air quality impacts, please refer to the discussion on pages 37 and 38 above. Thus, the DEIR provides analysis of most Overlay air quality and climate change impacts and appropriately defers analysis on the remaining impacts because of the speculative nature of future Overlay development on air quality emissions, impact sensitive receptors and other emissions or odor.

## **2. The DEIR Appropriately Analyzes Cumulative Air Quality Impacts**

*PHA asserts that the DEIR fails to appropriately analyze cumulative impacts from emissions on sensitive receptors by relying on regulations to avoid analyzing impacts and failing to analyze the impacts.*

PHA's position is contrary to the law allowing mitigation measures to be used in determining significant effects for cumulative impacts. An EIR must discuss cumulative impacts when they are significant and the project's incremental contribution is "cumulatively considerable." (14 Cal Code Regs §15130(a)) A project's incremental contribution is cumulatively considerable if the incremental effects of the project are significant "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (14 Cal Code Regs §15065(a)(3))

A lead agency may find that the cumulative impact that will result from the combination of the project's incremental impact and the effects of other projects is not significant. (14 Cal Code Regs §15130(a)(2)) A lead agency may also find that the project's incremental effect is not cumulatively considerable, and that the project's cumulative effect is therefore not significant. 14 Cal Code Regs §15130(a). The cumulative impact must be fully analyzed in the EIR only if the combined impact is significant and the project's incremental effect is found to be cumulatively considerable. (See *League to Save Lake Tahoe Mtn. Area Preservation Foundation v. County of Placer* (2022) 75 Cal.App.5th 63, 148)

An EIR may find that a project's contribution to a significant cumulative impact will not be cumulatively considerable based on appropriate mitigation. This finding can be made if "the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact." (14 Cal Code Regs §15130(a)(3); see *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 277.)

The DEIR made such a finding of mitigation with respect to impacts from emissions on sensitive receptors: "Development of the proposed Hotel, future development as a result of the Overlay, as well as development of cumulative projects, may result in emissions that could affect sensitive receptors. However, all development would be subject to BAAQMD health risk significance thresholds and be required to mitigate as necessary, similar to the mitigation required for the proposed Hotel. Furthermore, the proposed Hotel and future development as a result of the Overlay would consist of activities similar to commercial uses in the immediate vicinity and thus would not be expected to result in a significant source of emissions affecting sensitive receptors. Therefore, the proposed project's incremental contribution would not be cumulatively considerable and the proposed project would not result in a cumulative impact in this regard." (DEIR, p. 4-13, § 4.1.2)

The East Sacramento Partnerships case cited by PHA is not applicable. That case did not deal with a mitigation measure, but instead with a general plan. (*East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 300-301.)

### **EKN RESPONSE TO PHA SPECIFIC ITEM V(E)—ADEQUATE LAND USE IMPACTS ANALYSIS**

*PHA asserts that the DEIR fails to account for applicable General Plan policies which would be inconsistent with the Overlay and Project, defers consistency analysis for other policies, and is clearly erroneous regarding its evaluation. (pp. 28-34)*

PHA misstates the law regarding general plan consistency and inappropriately attempts to usurp the police powers of the City in determining general plan consistency. Under the law, a finding that a particular project is consistent with the general plan requires only that the proposed project be “**compatible** with the objectives, policies, general land uses, and programs specified in” the applicable plan. (Govt. Code, § 66473.5 [bold & underline added].)

The courts have interpreted this provision as requiring that a project be “in agreement or harmony with the terms of the applicable plan, **not in rigid conformity with every detail**” of it. (*San Franciscans Upholding the Downtown Plan v City & County of San Francisco* (2002) 102 CA4th 656, 678 [administrative record supported city’s finding, as required by general plan, that Emporium Building retained no substantial market value in its existing condition despite detailed general plan provisions regarding its historic value]).

A city's findings that a project is consistent with its general plan can be reversed only if they are based on evidence from which no reasonable person could have reached the same conclusion. Courts accord great deference to a local governmental agency's determination of consistency with its own general plan, recognizing that **the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes.** (*San Franciscans Upholding the Downtown Plan v City & County of San Francisco, supra*, 102 CA4th at 677-678.)

Thus, California statutory law, case law, constitutional police powers principles, and common sense forbid what PHA attempts to do by attempting to pit various general plan policies against one another and attempting to stop a project because in certain details it might not align with certain general plan policies, while aligning with the general plan’s overall purpose. General Plan policies are by their very broad nature potentially conflicting and must be interpreted in context with respect to particular development proposals.

Furthermore, PHA’s personal judgments as to whether they believe the Project is inconsistent are entirely irrelevant to the City’s determinations and without explanation or

substantial evidence. For example, how did PHA determine that the Overlay and Hotel do not maintain Petaluma's unique identity, that the Project does not preserve significant historic structures, that the Project does not have or will not provide a Construction Phase Recycling Plan, that the Project does not comply with the Climate Action Plan, does not comply with quality of life, etc.? Also, it would be premature to consider many of the PHA listed policies without Overlay particular development proposals before the City.

The DEIR has listed a substantial number of General Plan policies for which the Project will be compatible, including increased downtown density, height and FAR, ground floor residential housing, and increased commercial development in the downtown area. The City has broad discretion to approve the Project based on those numerous listed policies, and the policies listed by PHA do not require otherwise. Substantial evidence with respect to general plan consistency is what the City Council, not PHA, interprets those policies to mean.

**EKN RESPONSE TO PHA SPECIFIC ITEM V(F)—ADEQUATE POPULATION, HOUSING AND GROWTH INDUCING IMPACTS ANALYSIS**

*PHA asserts that the DEIR fails to forecast the amount of growth likely within the Overlay and fails to assess whether the Overlay will induce substantial population growth directly or indirectly. PHA asserts that there is no substantial evidence to support the conclusion of a lack of increased density, that the General Plan does not anticipate the level of growth under the Overlay. (pp. 35-36)*

The DEIR provides substantial evidence that the Project does not increase the density beyond that allowed in the City's General Plan: "The Overlay component of the proposed project is located within the UGB, is inclusive of two sites identified for housing opportunity in the City's Housing Element, and is proposed on sites where housing development is currently allowed in a mixed-use building. Additionally, the City's Density Bonus ordinance provides incentives for the production of affordable housing by permitting an increase in the number of units allowed on a site above typical density standards, reduction in onsite parking requirements, and/or flexibility from development standards for applicable housing projects meeting specified income thresholds. Aside from the proposed Hotel, the Overlay component of the proposed project would not result in direct physical development but would allow future development proposals to increase lot coverage, FAR, and height relative to what is currently allowed by the General Plan and IZO and would also allow development of exclusively residential uses (e.g., not in a mixed-use building), as well as ground floor residential uses. However, **future development would be subject to existing density requirements**, including the City's zoning regulation and Density Bonus Ordinance and the State Density Bonus Law, **such that the Overlay would not result in an increase in population beyond what is already projected as part of General Plan buildout, what was already evaluated and disclosed in the General**



**Plan EIR, and what is allowed by State regulation including the Housing Accountability Act.**” (DEIR, p. 4-59, § 4.1.11 [Population & Housing-bold & underline added])

Thus, the DEIR’s Overlay growth projection is appropriately geared towards incremental impacts of increased commercial intensity and its indirect impacts: “However, an increased permitted intensity of development under the Overlay could result in the introduction of new employment opportunities and may increase the workforce population, meaning additional people could relocate to the City to fill these new opportunities. While these provisions would allow for greater development intensity, as explained in Section 2.0, Project Description, actual development over the past 20 years has been less than what the City envisioned in the existing General Plan. Based on this trend, full buildout of nonresidential uses in the Overlay within a 20-year planning horizon is not expected. **As shown in 2-5 in Section 2.0, Project Description, a 25 percent buildout scenario is assumed over the 20-year planning horizon, which would result in an additional 387,444 square feet of additional buildout, resulting in an additional 628 jobs. Any incremental increase facilitated by the Overlay would be well within the GP buildout potential, because workforce development has not occurred at the levels anticipated by the General Plan and already analyzed under buildout conditions in the General Plan EIR.** As such, impacts related to substantial unplanned growth from the proposed Overlay would be less than significant.” (DEIR, p. 4-59, § 4.1.11 [Population & Housing-bold & underline added])

As mentioned previously, under *Napa Citizens*, “Nothing in the Guidelines, or in the cases, requires more than a general analysis of projected growth.” (*Napa Citizens, supra*, 91 Cal.App.4th at 369.)

**EKN RESPONSE TO PHA SPECIFIC ITEM V(G)—ADEQUATE PUBLIC SERVICES IMPACTS ANALYSIS**

*PHA asserts that the DEIR fails to adequately analyze the increased demand for essential public services and utilities resulting from the Overlay because of the same projections for population and housing. (p. 36)*

For the same reason that there is no increased density from the Project as set forth in the prior two pages of this letter, there is no significant impact on public services from the Project. As the DEIR explains: “Future development would be subject to existing density requirements such that the Overlay would not result in an increase in population beyond what is already projected as part of General Plan buildout and what was already evaluated and disclosed in the General Plan Final EIR.” (DEIR, p. 4-61)

Thus, pursuant to section 21083.3, the DEIR concludes: “Future development under the proposed Overlay would not adversely impact service ratios, response times, or other performance objectives for fire and police protection, schools, and parks **as future development**

**would occur incrementally and would be subject to all General Plan policies and actions including development impact fees, which offset costs associated with the expansion of public services. Additionally, such development has already been analyzed in the General Plan EIR and impacts have been found to be less than significant.** As such, physical impacts associated with the provision of new or physically altered public facilities, the construction of which could cause significant environmental impacts as a result of the Overlay component of the proposed project would be less than significant.” (DEIR, p. 4-61.)

PHA’s citation to *California Native Plant Society v. County of El Dorado* (2009) 170 Cal.App.4th 1026, 1053-1054 does not help PHA’s argument, but instead supports the DEIR argument that the DEIR may rely on development fees already studied in the City’s General Plan for mitigation of impacts: “**A comprehensive preservation program funded by impact fees may be a sound or even essential strategy for mitigating some development impacts, and the California Supreme Court, this court, and other appellate courts have held that such fees may adequately mitigate environmental impacts.** (1 Kostka & Zischke, Practice Under CEQA (Cont.Ed.Bar 2d ed. 2008) Mitigation Measures, § 14.19, pp. 703-704.) But CEQA is focused on “the effects of projects on the actual environment upon which the proposal will operate.” (*Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354.) Thus, to be considered adequate, **a fee program at some point must be reviewed under CEQA**, either as a tiered review eliminating the need to replicate the review for individual projects, or on a project-level, as-applied basis.” (*Id.* at p. 1030; see also p. 1055.)

## **EKN RESPONSE TO PHA SPECIFIC ITEM VI—ADEQUATE CUMULATIVE IMPACTS ANALYSIS**

### **A. Adequate Analysis of Cumulative Scenic Impacts**

*PHA asserts that the cumulative impacts mitigation for scenic resources of compliance with SPAR/HSPAR and the CUP process is not supported by substantial evidence because it ignores likely cumulative impacts on historic districts.*

As set forth above, PHA’s position is contrary to the law allowing mitigation measures to be used in determining significant effects for cumulative impacts. An EIR may find that a project’s contribution to a significant cumulative impact will not be cumulatively considerable based on appropriate mitigation. This finding can be made if “the project is required to implement or fund its fair share of a mitigation measure or measures designed to alleviate the cumulative impact.” (14 Cal Code Regs §15130(a)(3); see *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 277.) PHA presents no substantial evidence that this mitigation measure will not reduce any potential substantial impacts.

**B. The General Plan Update is Not Required to be Considered as a Cumulative Project**

*PHA asserts that the General Plan Update should be considered a “Project” to be included in the Cumulative Impacts Analysis*

The CEQA Guidelines set forth two methods for satisfying the cumulative impacts analysis requirement: the list-of-projects approach and the summary-of-projections approach. The DEIR uses the list-of-projects approach. That approach is based on a list of past, present, and probable future projects producing related impacts, including, if necessary, projects outside the lead agency’s control. (14 Cal Code Regs §15130(b)(1)(A).)

The basic standard for compiling such a list is that projects should be included when it is reasonable, feasible, and practical to do so, given the information available about the projects, and when failure to include such projects would lead to an inadequate analysis of the severity and significance of the cumulative impacts in question. (*Golden Door Props., LLC v County of San Diego* (2020) 50 Cal.App.5th 467, 529; *Kings County Farm Bureau v City of Hanford* (1990) 221 Cal.App.3d 692, 723; *San Franciscans for Reasonable Growth v City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74.)

Within that framework, a lead agency has discretion to select a reasonable cutoff date for the future projects to include in a cumulative impacts analysis as long as that determination is supported by substantial evidence. (*South of Mkt. Community Action Network v City & County of San Francisco* (2019) 33 Cal.App.5th 321, 336; *Gray v County of Madera* (2008) 167 Cal.App.4th 1099, 1127; *San Franciscans for Reasonable Growth v City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74 fn. 14.) For example, in *Gray v County of Madera*, the court upheld using the date of the pending project application as the cutoff date for determining what projects to include in the analysis.

The court in *San Franciscans for Reasonable Growth*, *supra*, held that a development proposal should be viewed as a probable future project once the environmental review process for the project is underway. A project under environmental review should not be treated as speculative simply because the process for approving the project will be lengthy and the project might ultimately be disapproved. In *Friends of the Eel River v Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 870, the court reached the same conclusion based on pending federal impact reviews for the related projects.

The lead agency’s mere awareness of the possibility of cumulative development is not enough, however, to demonstrate that development should be treated as a probable future project. (*Gray v County of Madera*, *supra*.) A proposal that has not crystallized to the point that it would be reasonable and practical to evaluate its cumulative impacts need not be treated as a probable future project. (*City of Maywood v Los Angeles Unified Sch. Dist.* (2012) 208 Cal.App.4th 362, 397. The *City of Maywood* court held that the petitioner had not met its burden to prove that an

off-ramp, which was claimed to be an element of a proposed freeway project, qualified as a probable future project. Although the environmental review process for the freeway project had begun, there was no evidence in the record showing that construction of the off-ramp was likely or that it was feasible for the school district to analyze its cumulative impacts.

Similarly, in *East Oakland Stadium Alliance v City of Oakland* (2023) 89 CA5th 1226, the court rejected a claim that the EIR's cumulative impacts analysis should have considered the potential future use of the project site to expand the Port of Oakland's turning basin for large vessels. The feasibility of the expansion was still under study and no environmental review was under way. The court found that details were not sufficiently certain to allow for a meaningful cumulative impacts analysis. (89 Cal.App.5th at 1271-1272.)

Applying the above principles to the City's General Plan update, the City's web site reveals that the General Plan update is still in preliminary phases, and that environmental review is not yet underway: "The City of Petaluma is beginning the process to update its General Plan, a comprehensive long-term plan for the City adopted in 2008. We are in the **initial stage of shaping the plan update process** through community outreach and technical analysis." (City Website, <https://cityofpetaluma.org/general-plan/>.) Thus, the DEIR was not required to consider the General Plan update as one of the projects in its cumulative impacts analysis.

## **EKN RESPONSE TO PHA SPECIFIC ITEM VII—ADEQUATE ALTERNATIVES ANALYSIS**

### **A. The DEIR Contains a Reasonable Range of Alternatives**

*PHA asserts that the DEIR "fails to analyze a legally adequate range of alternatives" including additional PHA proposed alternatives to reduce intensity, lower hotel height and FAR, take away the Overlay, and relocate the Hotel.*

The CEQA Guidelines standard for alternatives analysis requires that an EIR should contain a reasonable range of alternatives sufficient to foster informed decision making. (14 Cal Code Regs §15126.6(a).) Under that standard, an EIR may be found legally inadequate only if the range of alternatives it presents is unreasonable in the absence of the omitted alternatives. (*Saltonstall v. City of Sacramento* (2015) 234 Cal.App.4th 549, 576; *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 992.)

In determining the alternatives to be used, the alternatives must reduce or avoid significant environmental impacts, must implement most basic Project objectives, must be potentially feasible, and must be reasonable. (Public Resources Code, § 21002; 14 Cal. Code Regs., §15126.6(a)–(b))

The scope of alternatives reviewed must be considered in light of the nature of the project, the project's impacts, relevant agency policies, and other material facts. (*Mira Mar*

*Mobile Community v City of Oceanside* (2004) 119 Cal.App.4th 477; *City of Rancho Palos Verdes v City Council* (1976) 59 Cal.App.3d 869.) The range of alternatives examined in an EIR should be designed to foster informed decision-making and public participation. (14 Cal. Code Regs., § 15126.6(a)–(f))

“To simplify the CEQA review process and enhance the prospects for approval, project sponsors often anticipate and respond to key environmental issues when designing a project. As a result, the proposed project considered in an EIR may incorporate mitigation measures and design features intended to achieve an optimal balance between project objectives and environmental protection. Such an approach implements the policy encouraging incorporation of “environmental considerations into project conceptualization, design, and planning.” 14 Cal Code Regs §15004(b)(1). Although this approach does not eliminate the need to discuss alternatives in the EIR, **it will necessarily narrow the range of available alternatives** offering environmental advantages in comparison with the project.” (Kostka & Zischke, Practice Under the California Environmental Quality Act (2d ed. Cal. CEB 2024) §15.7 [bold & underline added].)

This narrowing approach was taken by the EKN and the City. (See DEIR, Chapter 2) As a result, the DEIR concludes: “The proposed project would create the following potentially significant impacts all of which would be mitigated to a less than significant level:” (DEIR, p. 6-1, § 6.1.1)

In asserting that the DEIR did not consider a reasonable range of alternatives, PHA has the burden to identify and analyze one or more omitted feasible alternatives. (*Save Our Access–San Gabriel Mountains v Watershed Conserv. Auth.* (2021) 68 CA5th 8, 30, 33) With respect to its burden, PHA fails to identify an omitted feasible alternative and fails to provide any effective analysis of those alternatives which it claims are omitted.

1. PHA Proposed Reduced FAR/Lot Coverage Alternative. *PHA asserts that a reduced intensity (reduced FAR/lot coverage) alternative must be considered.* The DEIR already considers a reduced intensity (reduced height) alternative. And, as PHA admits, the DEIR appropriately rejected a similar reduced intensity (reduced lot coverage) alternative. (PHA letter, p. 40, fn. 12; DEIR p. 6-34, § 6.7.1)

As explained in the DEIR, the DEIR did not consider a variation of the reduced intensity (reduced lot coverage) alternative for several good and valid reasons: (i) the impacts of a reduced intensity (reduced FAR/lot coverage) have already been studied and analyzed as part of the General Plan EIR, thereby fulfilling the CEQA objective of informing the public as to the environmental effects of that alternative; (ii) the reduced intensity alternative would not meet project objectives to increase Downtown housing opportunities on the ground floor and increase

employment opportunities; and (iii) the reduced intensity alternative would not reduce any significant impact because significant impacts are already mitigated. (DEIR, p. 6-33, § 6.7.)

The DEIR need not explore a different reduced intensity alternative. An EIR need not include multiple variations on the alternatives that it does consider. When the relative advantages and disadvantages of other alternatives can be assessed from a review of the alternatives presented in an EIR, the EIR is not defective for not discussing variations on each theme. In *Village Laguna of Laguna Beach, Inc. v Board of Supervisors* (1982) 134 Cal.App.3d 1022, the EIR considered a proposal to amend a general plan to increase development allowed in a large undeveloped area from 10,000 to 20,000 housing units. In addition to the 20,000-unit proposal plan, the EIR discussed alternatives of 7500 units, 10,000 units, 25,000 units, and “no development.” The court held that this range of alternatives was sufficient and that the EIR was not also required to study what project opponents characterized as the “obvious alternative” of 15,000 units. (134 Cal.App.3d at 1028.)

Alternatives that fall within the continuum discussed in the EIR need not be described if they can be understood and evaluated by considering the alternatives that are discussed. (*Cherry Valley Pass Acres & Neighbors v City of Beaumont* (2010) 190 Cal.App.4th 316, 355; see also *Saltonstall v City of Sacramento* (2015) 234 Cal.App.4th 549, 577 [EIR not required to study alternative that would have impacts similar to another alternative that was studied in EIR when no substantial additional environmental information would have been revealed]; *Town of Atherton v California High-Speed Rail Auth.* (2014) 228 Cal.App.4th 314, 356 [EIR not required to evaluate additional alternative routes similar to those evaluated in EIR]; *Mira Mar Mobile Community v City of Oceanside* (2004) 119 Cal.App.4th 477, 491 [EIR need not consider in detail every conceivable variation of alternatives stated]; *Residents Ad Hoc Stadium Comm. v Board of Trustees* (1979) 89 Cal.App.3d 274, 287 [same]; *City of Rancho Palos Verdes v City Council* (1976) 59 CA3d 869, 892 [EIR that discussed range of alternatives to proposed development of site for department stores and shopping mall need not separately discuss reduced size alternative because construction of smaller commercial area was option inherent in alternative involving altered site plan].)

PHA provides no analysis as to how its proposed additional reduced intensity alternative would achieve less significant impacts or better meet the objectives for the Project or be feasible. The word “presumably” on page 40 of the PHA letter reveals that PHA’s counsel is merely speculating.

2. PHA Proposed Reduced Hotel Height and FAR/No Overlay Alternative. *PHA asserts that a reduced height and FAR Hotel minus Overlay must be considered.* PHA is mistaken about whether an alternative must include the project without a necessary project component. An EIR is not required to consider alternatives to a component of a project and should instead focus on alternatives to the project as a whole. (*Yerba Buena Neighborhood Consortium, LLC v*

*Regents of Univ. of Cal.* (2023) 95 Cal. App.5th 779, 797-798; *California Native Plant Soc’y v City of Santa Cruz* (2009) 177 Cal. App.4th 957, 993; *Big Rock Mesas Prop. Owners Ass’n v Board of Supervisors* (1977) 73 Cal.App.3d 218, 227.)

In *Yerba Buena Neighborhood Consortium, LLC*, the court upheld an EIR against a claim that it should have evaluated an offsite alternative for the hospital component of a larger campus expansion plan, finding that the lead agency was under no legal duty to consider that type of alternative. In *California Native Plant Society*, the court upheld an EIR for a greenbelt area master plan against a claim that it should have evaluated off-site alternatives to one of the trails in the plan. In *Big Rock Mesas*, the court upheld an EIR for a residential development against a claim that it should have analyzed alternatives to the extensive grading and unusually steep access road proposed as part of the project, holding that the EIR was adequate because it analyzed alternatives to the entire project and discussed mitigation measures concerning grading and access.

Under the rule of reason governing the adequacy of an alternatives analysis, a lead agency considering a multicomponent project may elect to consider alternatives that reduce or modify some but not all of the individual project components. (*California Oak Found. v Regents of Univ. of Cal.* (2010) 188 Cal.App.4th 227, 275.) Thus, while the City may study an alternative that modifies a component of the Project, as it does with both DEIR Alternatives One and Two, it cannot be required to study altering a different component of the Project. Indeed, the No Project alternative already studies the impacts of not having the Overlay, so there is no additional public information provided by study of the PHA proposed no Overlay and reduced Hotel alternative.

An EIR’s discussion of alternatives need not include alternatives that do not offer significant environmental advantages in comparison with the project or with the alternatives that are presented in the EIR. (14 Cal Code Regs §15126.6(b)); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 929.) In *Tracy First*, the court reviewed an EIR for a new retail store and held that the EIR was not required to evaluate a reduced-size store because the record demonstrated that such an alternative would not reduce significant environmental impacts.

Furthermore, the removal of the Overlay under the PHA proposed alternative would totally eviscerate accomplishment of the Project objectives for Downtown increased intensity, housing and commercial activity. As with the first proposed PHA alternative, there is no PHA analysis for this second proposed PHA alternative as to why it would be an environmentally superior, feasible alternative, especially given its failure to obtain the intended Project objectives.

3. PHA Alternative Hotel Locations/No Overlay Alternative. *PHA asserts that a Hotel location outside of the City Downtown with no overlay must be considered.* Again, as with PHA proposed alternative 2, this PHA proposed alternative would eviscerate Project objectives for Downtown increased intensity, housing and commercial activity. Again, there is no PHA

analysis as to why it would be a feasible alternative, especially given its failure to obtain the intended Project objectives. Again, the No Project alternative already studies the impacts of not having the Overlay, so there is no additional public information provided by study of the no Overlay and Hotel alternative location alternative.

CEQA and the CEQA Guidelines describe in a general way the factors to be considered by a public agency when making a determination relating to the feasibility of alternatives. “Feasible” is defined as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” (14 Cal. Code Regs., § 15364; see also Pub. Res. Code, § 21061.1.).

The CEQA Guidelines on EIR discussions of alternatives expand on this definition with a nonexclusive list of specific factors agencies may consider when assessing the feasibility of alternatives. (14 Cal. Code Regs., § 15126.6(f)(1)) This list focuses on issues that are particularly relevant to the feasibility of off-site alternatives:

- Site suitability;
- Economic viability;
- Availability of infrastructure;
- General plan consistency;
- Other plans or regulatory limitations;
- Jurisdictional boundaries;
- Whether the project proponent already owns the site; and
- Whether the project proponent can acquire, control, or have access to the site if it does not own it.

A lead agency may find that alternative sites are infeasible when costs or other constraints on acquisition of those sites by the applicant would hamper the chances for timely and successful completion of the project. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 574; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753 [evidence that project applicant had no ability to acquire alternative sites was sufficient to show they were not in fact feasible and were not appropriate for inclusion in EIR].)

Here, the DEIR appropriately finds that the applicant “does not own nor can they reasonably acquire any of the suggested sites.” (DEIR, p. 6-34, § 6.7.1) Thus, PHA proposed alternative 3 is per se infeasible.



4. PHA Different Growth Projection Alternative. PHA asserts that a different higher growth Overlay alternative should be considered with a higher growth projection. This PHA argument defies logic. PHA has morphed its argument about asserted low growth projections (see rebuttal of that argument at pages 14-15 of this letter) into an asserted different, more intense Overlay alternative. Aside from the fact that there is no substantial evidence for such a more intense growth of the Overlay, a major problem with PHA's suggestion is that such an alternative will not logically, absent further explanation, involve a reduction in significant impacts from the Project so as to qualify for a legitimate alternative. There is no PHA analysis as to why this conglomerate regurgitation of PHA arguments as to impacts analysis would qualify as a feasible alternative.

**B. The DEIR Alternatives Discussion is Adequate**

*PHA asserts that the alternatives analysis "fails to meaningfully predict any impacts of the alternatives which it considers."*

PHA's position is at odds with the level of detail of analysis for program/plan EIRs such as this DEIR for the Overlay. The level of detail for the analysis of alternatives should correspond to the level of specificity involved in the activity considered in the EIR. The discussion of alternatives in an EIR for a planning level action need not be as precise as the discussion for a specific development project. (14 Cal. Code Regs., § 15146; see *Al Larson Boat Shop, Inc. v Board of Harbor Comm'rs* (1993) 18 Cal.App.4th 729, 746 [An EIR on the adoption of a general plan must focus on secondary effects of adoption, but need not be as precise as an EIR on the specific projects which might follow]; *Rio Vista Farm Bureau Ctr. v County of Solano* (1992) 5 Cal.App.4th 351; *Atherton v Board of Supervisors* (1983) 146 Cal.App.3d 346.)

PHA complains that the DEIR discussion of alternatives significant impacts is insufficiently detailed. Contrary to PHA's argument, CEQA Guidelines do not require such a level of detail as suggested by PHA. The significant adverse environmental effects of each alternative must be discussed, but in less detail than is required for the project's effects. (14 Cal Code Regs §15126.6(d)) A matrix showing the major characteristics and significant environmental effects of each alternative may be used to summarize the comparison of alternatives with the proposed project. (14 Cal Code Regs §15126.6(d); see *Sierra Club v City of Orange* (2008) 163 CA4th 523, 547.)

Thus, the discussion of the Alternative 2 Aesthetic impacts is sufficient to inform the public of the lack of lesser impact from that alternative than the Project on aesthetics resulting from height increases: "As evaluated in Section 3.1, Aesthetics, the proposed Overlay would have less than significant impacts with mitigation. **Because buildings within the Overlay Area contain numerous buildings that are already 60 feet or taller, reducing the size of Overlay Area C would not significantly impact the visual character surrounding the Overlay Area.**

This Alternative would remove the Phoenix Theater and Petaluma Market from the Overlay, and these areas would continue to develop under existing policies. All future development would be required to comply with the policies and actions of the General Plan designed to protect scenic resources. Accordingly, impacts under this Alternative would be largely the same as the proposed project.” (DEIR, p. 6-10, § 6.4.1 [bold & underline added]) PHA’s selective quotation and summary of only that portion of the analysis dealing with applicable mitigation in order to assert a lack of analysis is a repeated gimmick in PHA’s comments.

Similarly, by selectively quoting and summarizing portions of the discussion of the Alternative 2 Hydrology and Water Quality impacts, PHA attempts to confuse the reader and conflate statements about both the Project and Alternative 2 hydrology and water quality impacts being insignificant and within those previously studied under the General Plan with statements about a lesser amount of use with Alternative 2 than the Project, both of which are true and acceptable conclusions and not in conflict with each other, contrary to what PHA would suggest from its selective quoting. The complete statement is: “The Overlay component of the proposed project is located within an urbanized area of Petaluma, which is outside areas identified in the Groundwater Sustainability Plan (GSP) as areas with primary recharge capabilities for the basin. **All future developments under this Alternative would rely on municipal water to meet water demands and would be subject to current regulations which require management of stormwater on-site. As such, impacts to groundwater supply and recharge as a result of this Alternative, similar to the proposed Overlay component of the project, would be less than significant. Additionally, development under this Alternative was already anticipated and was analyzed as part of the General Plan EIR.** Accordingly, impacts under Alternative 2 would be similar to the proposed project, although slightly decreased due to the reduction in Area C.” (DEIR, p. 6-15, § 6.4.1)

PHA continues the same gimmick with respect to the discussion of the Alternative 3 Aesthetic impacts, claiming that the selectively quoted portion is “vague” and “uninformative.” When the entire paragraph is quoted, it is not vague or uninformative: “The project impacts related to aesthetics would be less than significant with mitigation (see Section 3.1, Aesthetics); however, under Alternative 3, the Hotel would not require a CUP, would be consistent with existing development standards related to height, and would similarly require HSPAR. Therefore, Alternative 3 would have a slightly lower level of aesthetic impacts compared to the project.” (DEIR, p. 6-19, § 6.5.1) PHA’s speculation that Alternative 3 is “likely” to “significantly” rather than “slightly” reduce many of the concerns related to aesthetic impacts is not supported by any substantial evidence or facts.

## **EKN CONCLUSION**

The PHA comments do not contain any valid legal reasons or substantial evidence that the DEIR is deficient in any legal, factual or evidentiary manner. They do not focus on the programmatic nature of the Overlay and fail to note or appreciate the careful analysis and phased approach to planning and review contemplated by the Overlay, including future project-specific review. They present no valid legal argument or substantial evidence that the DEIR findings and analysis regarding Hotel potentially significant impacts are incorrect or insufficient. They fail to contain substantial evidence or correct analysis in support of their contentions, as required by law. The PHA comments are fundamentally flawed from a legal and factual standpoint from the get-go with their deficient misdirected “overarching concerns.”

For these reasons, the PHA comments are not meritorious or worthy of consideration by the City as grounds for not approving a Final EIR for the Project or for further delaying prompt approval of a Project FEIR. EKN urges the City to include and to adopt as it sees fit these EKN responses to the PHA comments in its Final EIR, to use the legal and factual analysis contained herein to support approval of a Final EIR based upon the DEIR, and to use these comments in its FEIR findings of approval as the City may see fit.

Thank you for the opportunity to submit the EKN applicant responses to the PHA comments.

Sincerely,



Boyd L. Hill

EKN Development Group

General Counsel and Senior Vice-President

cc: Olivia Ervin, [oervin@cityofpetaluma.org](mailto:oervin@cityofpetaluma.org)

Appellation Petaluma  
Applicant Responses to Comments  
November 15, 2024  
Revised January 10, 2025

**Asselin 1-4**

*Page one of the Asselin letter asserts that the DEIR does not harmonize the Project's Overlay planning and zoning provisions with the land use framework then being considered for the 2025 General Plan Update. The comments appear to argue that the Overlay is "piecemealing" changes intended for the GPU in violation of CEQA.*

CEQA does not require the DEIR for the Overlay to be harmonized with the upcoming General Plan Update. The California Supreme Court holding in *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* ["*Laurel Heights*"] (1988) 47 Cal.3d 376, 396 does not require the City to consider the Project together with the City's pending General Plan update.

In *Laurel Heights*, the Supreme Court held that "an EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.

**Absent these two circumstances, the future expansion need not be considered in the EIR for the proposed project.**" (*Laurel Heights, supra*, 47 Cal.3d at p. 396 [bold & underline added].)

Courts have found that agencies improperly piecemealed environmental review of projects in various situations when: (1) the purpose of the reviewed project is to be the first step toward future development; (2) the reviewed project legally compels or practically presumes completion of another action. (See discussion and cited cases in *Aptos Council v. County of Santa Cruz* ["*Aptos Council*"] (2017) 10 Cal.App.5th 266, 282.)

There is no piecemealing, however, when "projects have different proponents, serve different purposes, or can be implemented independently." (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223.)

In a recent remarkably similar case to the present Petaluma situation, the California Court of Appeal, applying the above two-part *Laurel Heights* test, held that a city's contemplated changes to planning and zoning requirements as part of its ongoing regulatory reform and economic development initiatives are not reasonably foreseeable "consequences" of a particular zoning ordinance altering the density, height and parking requirements for hotels. (*Aptos Council, supra*, 10 Cal.App.5th at 282.) Thus, the County of Santa Cruz was not required to study or propose all of its contemplated reforms at one point although it could have done so by means of a comprehensive reform and programmatic EIR. (*Id.*)

Requiring the City to wait another year for the General Plan Update would unnecessarily restrict a local land use agency's planning and zoning functions under their police powers by requiring them to wait months and possibly years to study and enact contemplated changes to its planning and zoning land use requirements until the completion of general plan update cycles when the updates become certain. The City should be free to act on General Plan and Zoning Code amendments for particular project proposals when the need, market timing, and financing exist so as not to miss critical windows of opportunity.

The position that the City must combine its General Plan update with the Overlay is similar to the argument rejected by the California Court of Appeal in *Aptos Council*, stating: "Applying Aptos Council's logic would require the County to wait to begin environmental review and implementation of any reform to Chapter 13.10 until the County has decided precisely what language to use and which ordinances to enact. **The county's effort to modernize certain parts of the County Code is not fixed.** Although there are certain codes and ordinances the County has researched and has determined it will amend, the County asserts that specific amendments are far from set in stone. **Engaging in a single environmental review this early in the process would therefore be meaningless.**" (*Aptos Council*, *supra*, 10 Cal.App.5th at 284 [bold & underline added].)

#### **Asselin 5-**

*The top half of page two of the Asselin Letter asserts that the DEIR has only a "thin list of items" in the CUP language for increasing building heights up to 75 feet. The letter claims that more detail is needed to protect the Historic Downtown.*

The DEIR Project Description need not include technical detail including every proposed zoning requirement of the Overlay. Instead, CEQA requires only a "general description" of the Project's technical, economic and environmental characteristics. (14 Cal. Code Regs., §15124(c)) The description of the Project "**should not supply extensive detail** beyond that needed for evaluation and review of the environmental impact." (14 Cal. Code Regs., §15124) "General" means involving only the main features of something rather than details or particulars. (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 28) *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1053 does not require more, as it notes that the key information for a zoning plan are height, mass, and bulk are contained in the project description, even though there were more detailed design criteria that helped support the determination of adequate project description in that case. The DEIR Project Description includes general descriptive details about the technical terms that will be included in the Overlay General Plan and Zoning Code amendments in a sufficient level of detail as to what standards and findings will be required for both the General Plan Amendment and Zoning Ordinance in two places in the DEIR. (See DEIR, pp. 3.1-20 through 3.1-22 and 3.2-49 through 3.2-51, §§ 3.1.6 & 3.2.5)

## **Beardsworth 1-2, 5**

*The top half of page 2 of the Beardsworth email claims that the DEIR fails to evaluate the Overlay environmental impacts under CEQA.*

The comment fails to take into account the significant portions of the DEIR that analyze the impacts of the Overlay FAR and height increases and other potential environmental impacts of the Overlay.

With respect to impacts on land use planning and policies, the DEIR contains a lengthy analysis of the Overlay's consistency with the City's General Plan in Section 3.3.5, including a lengthy General Plan Consistency Analysis at Table 3.3-3 which spans 13 pages from page 3.3-22 through 3.3-35. Among the analyses contained in that Table, are the following:

With respect to the General Plan policy of maintaining a balanced land use program that meets long term needs of the community: "The parcels contained within the proposed Overlay would retain their current Land Use designations, which would allow for increased retail and mixed uses, creating increased employment opportunities. It would also allow ground floor residential uses." (DEIR, p. 3.3-22, policy 1-G-1)

With respect to the General Plan policy of promoting a range of land uses at densities and intensities to serve the community's needs within the Urban Growth Boundary (UGB): "The proposed Overlay would increase the maximum allowable floor area ratio (FAR), building height, and lot coverage for parcels within the Overlay Area. This increase would increase the intensity over the surrounding areas, thus promoting greater infill development that would help to serve the community's needs within the UGB." (DEIR, p. 3.3-22, policy 1-P-1)

With respect to the General Plan policy of using land efficiently by promoting infill development at equal or higher density and intensity than surrounding uses: "The purpose of the proposed Overlay is to encourage development in unutilized infill and underutilized parcels within the Overlay Area. The proposed Overlay would encourage development by increasing the maximum allowable FAR, building height, and lot coverage for parcels within the Overlay Area." (DEIR, p. 3.3-23, policy 1-P-2)

With respect to the General Plan policy of encouraging reuse of under-utilized sites along East Washington Street and Petaluma Boulevard as multi-use residential/commercial corridors, allowing ground-floor retail and residential and/or commercial/office uses on upper floors: "The proposed Overlay would allow for increased development intensity in infill and underutilized sites along Petaluma Boulevard, Washington Street, and Western Avenue. Furthermore, the proposed Overlay allows for ground-floor residential uses where they were not previously permitted." (DEIR, p. 3.3-23, policy 1-P-12)

With respect to the General Plan policy of availability of resources to serve new development in the Overlay: "As discussed in Chapter 4, Additional Effects Evaluated in the Initial Study,

although the proposed Overlay would permit greater building intensities as compared to the existing zoning allowances, there would be sufficient supplies of water and sufficient capacity at facilities for wastewater, stormwater, and solid waste. The proposed Overlay would not increase the population of the City beyond what has been planned for by the General Plan and as such would not unduly strain City services. The City would monitor water supply levels routinely to ensure water and wastewater demand does not exceed capacity. Additionally, future development would be subject to the payment of applicable water and wastewater capacity fees.” (DEIR, p. 3.3-25, policy 1-P-47)

With respect to the General Plan policy of improving air quality to meet standards and goals: “As discussed in Chapter 4, Additional Effects Evaluated in the Initial Study, all air quality impacts related to implementation of the proposed Overlay would be less than significant. The proposed Overlay does not include site-specific development; however, future development under the proposed Overlay would be required to comply with all applicable air quality standards and goals and would be evaluated on a project-by-project basis. However, the Overlay does promote infill development within the Downtown area, which encourages responsible urban growth. This approach helps reduce greenhouse gas emissions by minimizing the need for car travel, as it places amenities, workplaces, and residences in closer proximity, thus promoting walking, biking, and the use of public transit.” (DEIR, p. 3.3-30, policy 4-G-3)

In addition to the thorough analysis of General Plan policies pertaining to the Overlay’s increased FAR and height, the DEIR analyzes the impact of the Overlay on applicable zoning and other regulations pertaining to scenic quality in Section 3.1.6: “Portions of Overlay Areas A and B are located within the boundaries of the Historic Commercial District, and, as such, future projects within the Historic Commercial District would be subject to the rules and regulations within the City’s discretionary planning entitlement of an HSPAR, all applicable regulations from the Historic Commercial District Design Guidelines, and the Secretary of the Interior’s Standards for the Treatment of Historic Properties. Future projects within the Historic Commercial District would undergo a review and approval process with the City’s HCPC. While the proposed Overlay does not include any project-specific development, all projects proposed under it would be required to adhere to the standards set related to sign design and content, streetscape design, street tree placement, façade designs and materials composition. The **Standards within the Historic Commercial District Design Guidelines would ensure that all development under the proposed Overlay would be harmonious with the surrounding area, appropriately scaled, and maintains and enhances the unique cultural and historic resources of the City.**” (DEIR, p. 3.1-22, § 3.1.6 [bold & underline added])

The DEIR analyzes the impact of the Overlay increased height on cultural resources in Section 3.2.5: “The proposed Overlay applies to parcels that are already deemed developable by the City of Petaluma’s General Plan (General Plan) and Implementing Zoning Ordinance (IZO). Most of the sites within the Overlay Area have been developed. The proposed Overlay would permit certain changes pursuant to an approved Conditional Use Permit (CUP): greater floor area ratio

(FAR), building height of up to 75 feet, and lot coverage up to 100 percent. The current General Plan Environmental Impact Report (General Plan EIR) evaluated the potential for impacts related to cultural resources and found them to be less than significant with mitigation incorporated. Since the proposed project only involves additional potential height, lot coverage, and FAR, the potential impacts related to the proposed Overlay concern the net increase in intensity. Projects within the Overlay Area that seek approval for increased height above 45 feet up to a maximum of 60 feet, and/or increased lot coverage above 80 percent, would be required to undergo review for approval of a CUP. A CUP can only be granted if the height is 75-feet or below. In addition to making the findings required by Section 24.060.E, An affirmative findings for each of the following criteria, supported by substantial evidence in the record, is required for approval of a CUP application for increased height up to 60 feet or lot coverage: 1. The additional height is consistent with the applicable purposes of the proposed Overlay; 2. The additional height makes a positive contribution to the overall character of the area and the building would be compatible with its surroundings. The “positive contribution” and “compatibility” will be assessed using a combination of visual studies, line-of-sight drawings, photo simulations, 3-D modeling, and view shed analysis; 3. The additional height would not adversely affect the exterior architectural characteristics or other features of the property which is the subject of the application, nor adversely affect its relationship in terms of harmony and appropriateness with its surroundings, including neighboring structures, nor adversely affect the character, or the historical, architectural, or aesthetic interest or value of the district; The additional height would not result in unreasonable restrictions of light and air from adjacent properties or the public right-of-way, or otherwise be detrimental to the public health, safety, or welfare; and The building design expresses a relationship to an existing datum line or lines of the street wall or adjacent historic resource, if any.” (DEIR, pp. 3.2-49 through 3.2-50, § 3.2.5)

The DEIR also analyzes the impact of the Overlay increased FAR on cultural resources in Section 3.2.5: “Each future development seeking additional lot coverage above 80 percent would also require discretionary review and approval of a CUP. In approving a CUP for increased lot coverage, the Planning Commission must make one or more of the following findings: 1. The development improves the existing streetscape by providing widened sidewalks, additional street trees, new mid-block walkways/ paseos, public plazas, parks, etc.; 2. The additional lot coverage would reflect the prevailing development pattern established by the existing development within the block or abutting block; 3. The development includes adequate provision for recycling and solid waste; 4. The development includes adequate space for street trees, or 5. The development includes other measures to enhance the pedestrian environment. Additionally, each development within the proposed Overlay would require a Site Plan and Architectural Review (SPAR) permit or an Historic SPAR permit (when located within the Historic Commercial District), which necessitates findings such as compatibility with the surrounding neighborhood and no significant impacts on cultural resources. Moreover, similar to the Hotel, future discretionary actions proposed under the Overlay would undergo CEQA review during the entitlement process, which includes reviewing cultural and tribal cultural impacts based on the specifics of the project and



identifying project-specific mitigation measures where needed to reduce potential impacts.” (DEIR, pp. 3.2-50 through 3.2-51, §3.2.5)

In addition, the entirety of Chapter 4 of the DEIR is devoted to discussion of the analysis of other environmental impacts that were not considered potentially significant and the specific reasons for that analysis. Among the analysis contained in Chapter 4 is the following with respect to less than significant unplanned growth potential impact from the Overlay:

“The Overlay component of the proposed project is located within the UGB, is inclusive of two sites identified for housing opportunity in the City’s Housing Element, and is proposed on sites where housing development is currently allowed in a mixed-use building. Additionally, the City’s Density Bonus ordinance provides incentives for the production of affordable housing by permitting an increase in the number of units allowed on a site above typical density standards, reduction in onsite parking requirements, and/or flexibility from development standards for applicable housing projects meeting specified income thresholds. Aside from the proposed Hotel, the Overlay component of the proposed project would not result in direct physical development but would allow future development proposals to increase lot coverage, FAR, and height relative to what is currently allowed by the General Plan and IZO and would also allow development of exclusively residential uses (e.g., not in a mixed-use building), as well as ground floor residential uses. **However, future development would be subject to existing density requirements, including the City’s zoning regulation and Density Bonus Ordinance and the State Density Bonus Law, such that the Overlay would not result in an increase in population beyond what is already projected as part of General Plan buildout, what was already evaluated and disclosed in the General Plan EIR, and what is allowed by State regulation including the Housing Accountability Act.** However, an increased permitted intensity of development under the Overlay could result in the introduction of new employment opportunities and may increase the workforce population, meaning additional people could relocate to the City to fill these new opportunities. **While these provisions would allow for greater development intensity, as explained in Section 2.0, Project Description, actual development over the past 20 years has been less than what the City envisioned in the existing General Plan. Based on this trend, full buildout of nonresidential uses in the Overlay within a 20-year planning horizon is not expected.** As shown in 2-5 in Section 2.0, Project Description, a 25 percent buildout scenario is assumed over the 20-year planning horizon, which would result in an additional 387,444 square feet of additional buildout, resulting in an additional 628 jobs. **Any incremental increase facilitated by the Overlay would be well within the GP buildout potential, because workforce development has not occurred at the levels anticipated by the General Plan and already analyzed under buildout conditions in the General Plan EIR.** As such, impacts related to substantial unplanned growth from the proposed Overlay would be less than significant.” (DEIR, p. 4-60, § 4.1.11 Population and Housing [bold & underline added])

### **Beardsworth 3**

*Page 2 of the Beardsworth email claims that there is no need for the EKN Hotel in Petaluma, given an estimated occupancy rate of 60%.*

A 60% occupancy rate in the hotel market is generally considered to be a good rate, balancing profitability with room availability.

However, the occupancy rate is not the only consideration when determining the need for a hotel in the City. The proposed hotel will meet a broad range of community needs and will also introduce new and exciting amenities that enhance Petaluma's appeal as a destination. A standout feature of the development will be its rooftop food and beverage experience, offering panoramic views of the surrounding area. This vibrant, elevated space will serve as a dynamic social hub for both hotel guests and locals, providing a unique setting for dining, events, and casual gatherings. The rooftop venue is designed to attract both regional visitors and residents looking for an upscale, memorable experience.

The hotel will include flexible community meeting spaces for events, conferences, and gatherings, supporting local organizations and businesses by providing an ideal venue for a variety of functions. On-site retail and dining options will further enrich the local economy, offering convenient amenities for both guests and Petaluma residents, while drawing more visitors to the area.

The hotel will also generate a significant increase in transient occupancy taxes (TOT), contributing a sustainable revenue stream to the city. These funds can be reinvested in local infrastructure, public services, and community development projects, further enhancing the city's long-term growth and quality of life. In this way, the hotel will not only contribute to Petaluma's current needs but will also help drive its future economic and cultural momentum.

### **Beardsworth 4**

*Page 2 of the Beardsworth email states that no decisions should be made on the DEIR pending completion of the public comment period on October 21, 2024.*

The City agrees with that statement.

### **Beardsworth 6**

*Page 2 of the Beardsworth letter states that the Overlay was only a “ruse to obtain planning permission for the EKN Hotel and to garner support for additional housing.”*

This comment misstates the primary purpose of the Overlay. The Overlay is primarily designed to foster downtown commercial development and economic revitalization, such as the EKN Hotel. The Overlay only collaterally allows ground floor residential housing, but not in excess of already permitted density.

### **Beardsworth 7-9**

*The bottom of page 2 and top of page 3 of the Beardsworth email assert that the Density Bonus Laws and other State laws will undercut and avoid the Overlay use permit requirements for increased building height and occupancy density.*

This comment fundamentally misstates California's Density Bonus Law ("**DBL**") found in Government Code Section 65915. Height increases are generally not considered either a "concession" or an "incentive" under the DBL (see Govt. Code, § 65915(k)) but are separately allowed only in most narrow of circumstances. In order to receive a height increase under the DBL, 100% of the project, including the total units and density bonus units, must be for lower income households. (Govt. Code, §§ 65915(d)(2)(D), 65915(b)(1)(G).) The project must also be located within one-half mile of a major transit stop or in a very low vehicle travel area in a designated county. (Govt. Code, §§ 65915(d)(2)(D).)

Even if the two above criteria could be met for a height increase, an Overlay project may be denied under the DBL if it has a specific, adverse impact upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households. (Govt. Code, §65915(d)(1)(B).) Thus, under the City's discretionary CUP process, the City may deny a height increase for a project within the Overlay with an adverse impact upon the City's historical resources.

### **Beardsworth 10**

*At the top of page 3 of the Beardsworth email, it is asserted that the existing "Parking Assessment District" is without analysis of parking in the downtown area.*

This comment does not relate to an environmental impact of the Project, but instead to a pre-existing baseline condition, which is not being studied for its impacts in this EIR.

### **Beardsworth 11**

*At the middle of page 3 of the Beardsworth email, it is asserted that the DEIR is incomplete, redundant, and inaccurate.*

This comment does not contain sufficient information that would require a response. No specific information is provided to back up these assertions, which on their face seem contradictory.

### **Beardsworth 12-14**

*The bottom half of page 3 of the Beardsworth email asserts that the EKN Hotel will not be harmonious with the surrounding area, appropriately scaled and maintain and enhance the cultural and historic resources of the City.*

The DEIR Section 3.1.6 analysis of the Hotel refutes the assertion that the Hotel will be out of scale: “The proposed Hotel’s impact to visual character was evaluated through the preparation of visual simulations from nine viewpoints in the project vicinity. These visual simulations can be viewed in Exhibit 3.1-3 through Exhibit 3.1-3i. As shown in the Key Map (Exhibit 3.1-3), Viewpoint 1 (Exhibit 3.1-3a), Viewpoint 2 (Exhibit 3.1-3b), Viewpoint 4 (Exhibit 3.1-3d), Viewpoint 5 (Exhibit 3.1-3e), and Viewpoint 7 (Exhibit 3.1-3g) are the viewpoints closest to the proposed project site and combine to illustrate the potential pre- and post-construction views of the proposed Hotel. As depicted in these simulations, the proposed Hotel would be visible from and taller than the surrounding development, as permitted by the proposed Overlay. As depicted, trees and smaller planters would be placed along the project frontage along B Street and Petaluma Boulevard. **The proposed Hotel would feature similar colors and materials as the surrounding development and would be consistent with the character of the surrounding area. The proposed Hotel would be consistent with all aesthetic design regulations as included in the General Plan, Municipal Code, and Historic Commercial District Design Guidelines.** Additional visual simulations, as depicted in Viewpoint 3 (Exhibit 3.1-3c), Viewpoint 6 (Exhibit 3.1- 3f), Viewpoint 8 (Exhibit 3.1-3h), and Viewpoint 9 (Exhibit 3.1-3i), depict the pre- and post development views of the proposed Hotel from viewpoints further away from the proposed project site. **These exhibits showcase the degree to which, at an increased distance from the project site, the proposed Hotel would be largely or entirely obstructed by intervening development.** Additionally, the Hotel will be required to obtain an HSPAR permit and a CUP for its height and lot coverage, which will require findings related to compatibility with the surrounding neighborhood and that the development would not have significant environmental impacts. Appendix D summarizes the discretionary review and appeals processes related to applications for SPAR, HSPAR and CUP approvals. As such, in compliance with the City’s design standards and all applicable design regulations, construction and operation of the proposed Hotel would not have an adverse effect on the visual character of the surrounding area. Impacts would be less than significant.” (DEIR, pp. 3.1-23 through 3.1-24 [bold & underline added])

When the Hotel height of approximately 69 feet is displayed with surrounding building heights, it is clearly not “massively” out of scale. Indeed, Exhibit 3.1-1 demonstrates that just across the way from the Hotel site is the historic resource of the Great Petaluma Mill at 61 feet tall and in the other direction is the Petaluma Historic Museum and Library at 48 feet tall and Monear’s Mystic Theater at 42 feet tall, and behind the Theater are the Masonic Building at 62 feet tall and the Mutual Relief Building at 63 feet tall. (DEIR, p. 3.1-33, Exhibit 3.1-1)

Furthermore, although not required by CEQA, the DEIR includes a detailed shading and shadow analysis. As depicted in Exhibits 3.1-4a through 3.1-4l and summarized in Section 3.1.6, the Hotel would not result in a substantial new shadow over any routinely useable outdoor space, historic resource, or shadow sensitive uses. (DEIR, pp. 3.1-25 through 3.1-28)

A Historic Built Environment Impacts Assessment “determined that while the proposed Hotel building would be taller than the immediately surrounding buildings, the use of multiple stories in the Petaluma Historic Commercial District is not without precedent, **as the district nomination form prepared in 1994 stated that a variety of heights were present in the district.** In addition, the proposed building would utilize setbacks and cornice line detailing to minimize the height difference visible from the street. The Historic Built Environment Impacts Assessment thus concluded that the proposed Hotel would not introduce incompatible massing and scale, and the proposed Hotel would be in general conformance with the Petaluma Historic Commercial District Design Guidelines.” (DEIR, p. 3.2-55, § 3.2.7 [bold & underline added])

### **Bellinger**

*The Bellinger letter makes general comments about potential future City parking requirements and about potential bicycle theft.*

The comments do not address Project environmental impacts. With respect to bicycles, EKN Hotel guests and employees will have convenient access to bicycles and secure storage within the Hotel garage. Additionally, publicly accessible bike racks will be installed on B Street for community use.

### **Biaggi 1**

*The first paragraph of the Biaggi email merely states that the EKN Hotel could not be built without the Overlay.*

Because this paragraph does not raise an environmental issue, no response is required

### **Biaggi 2**

*The first bullet point of the Biaggi email claims the state mandated law allows low-income housing within ½ mile of a public transit center to be 33’ over the current zoning with no City oversight for parking, architectural review, etc.*

This comment fundamentally misstates California’s Density Bonus Law (“**DBL**”) found in Government Code Section 65915. Height increases are generally not considered either a “concession” or an “incentive” under the DBL (see Govt. Code, § 65915(k)) but are separately allowed only in most narrow of circumstances. In order to receive a height increase under the DBL, 100% of the project, including the total units and density bonus units, must be for lower income households. (Govt. Code, §§ 65915(d)(2)(D), 65915(b)(1)(G).) The project must also be located within one-half mile of a major transit stop or in a very low vehicle travel area in a designated county. (Govt. Code, §§ 65915(d)(2)(D).)

Even if the two above criteria could be met for a height increase, an Overlay project may be denied under the DBL if it has a specific, adverse impact upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there

is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households. (Govt. Code, §65915(d)(1)(B).) Thus, under the City's discretionary CUP process, the City may deny a height increase for a project within the Overlay with an adverse impact upon the City's historical resources.

### **Biaggi 3**

*The second bullet point of the Biaggi email states anticipated benefits of the Overlay, including increased City revenue, revitalized City downtown, and some additional housing.*

This comment states some but not all of the Overlay anticipated benefits.

### **Biaggi 4**

*The third through fifth bullet points of the Biaggi email states that an attached analysis by architects and economists shows that the City's economic return of the EKN Hotel (transient occupancy taxes) will only reach about \$700,000.00 instead of \$1,480,000.00, that there is a bankruptcy filing for an EKN Tahoe development, and that a four-story building would work economically.*

These comments do not address an environmental issue. EKN has significant experience in accurately projecting returns from hotel projects. The email attachment provides no foundation that it is prepared by experts in hotel projects of this type.

EKN's Tahoe project is not in bankruptcy and remains an active EKN development. The existing financing is currently being restructured to better align with the project's long-term goals and market conditions. This process is part of EKN's continued efforts to ensure the project's financial stability and successful completion.

### **Biaggi 5**

*The sixth bullet point of the Biaggi email states that the City needs low income affordable housing built 9-10 stories without oversight.*

This comment does not address an environmental issue, is without expert foundation, and contains no substantial evidence to support the statements made.

### **Biaggi 6**

*The seventh bullet point of the Biaggi email states that the Overlay is hastily put together to accommodate the EKN Hotel without public input or awareness.*

This comment lacks foundation with no substantial evidence to support the statements made. As set forth in Sections 1.2 and 2.1.2 at pages 1-2 through 1-11 and pages 2-11 through 2-12 of the DEIR, there has been substantial public input and awareness of the Overlay.

### **Biaggi 7**

*The eighth bullet point of the Biaggi email states that a full EIR report is not even required for the EKN Hotel and its significant change.*

This comment does not make any sense and seems internally contradictory. The DEIR addresses all issues required by the California Environmental Quality Act. This comment raises no specific issues regarding any of the listed impacts.

### **Biaggi 8-10**

*The ninth and tenth bullet points and final paragraph on page 2 of the Biaggi email discuss the author's personal thoughts on affordable housing and hotel location.*

These comments do not address an environmental issue. No response is required.

### **Cooper**

*This email claims that EKN's Tahoe project defaulted on its loan and left a trashed lot and boarded up historic hotel property, asserting that EKN would not be a dependable partner for Petaluma.*

EKN's Tahoe project is not in default on its loan and remains an active development. The existing financing is currently being restructured to better align with the project's long-term goals and market conditions. This process is part of EKN's continued efforts to ensure the project's financial stability and successful completion. The Tahoe lot is not trashed, the obsolete former hotel has been demolished, and development of underground utilities for a prestigious resort have been commenced.

### **Gaffey 1**

*This email portion claims that the DEIR does not take into account added traffic and parking impacts of the EKN Hotel.*

The design and operational plan for the Hotel have been carefully crafted to minimize both pedestrian and automobile traffic impacts, ensuring a seamless integration into the surrounding community. The project fully complies with the city's current parking regulations, providing adequate spaces (including 54 stacked spaces) to meet the needs of guests, employees, and visitors without burdening nearby streets. See the discussion of "Access, Circulation and Parking at DEIR Section 2.2.2, page 2-34.

### **Gaffey 2**

*This email portion claims that the EIR does not take into account the 100% lot coverage and issues created by daily delivery services such as trash pickup and tech service employees.*

The servicing of the building has been thoughtfully considered, with dedicated areas within the structure for trash management and deliveries. These designated locations will help streamline operations and mitigate potential disruptions, enhancing overall functionality while maintaining a positive relationship with the neighborhood.

### **Gaffey 3**

*This email portion claims that the DEIR should not take into account the Overlay when considering its approval because of lack of compliance with zoning regulations without the Overlay.*

Because the Project includes the Overlay and EKN Hotel and contemplates approval of both, the DEIR must take both into account when considering the environmental impacts of the Project and Hotel. This is the standard method of review for approval of projects that incorporate general plan amendments and zoning code changes, to consider the projects together with the concurrent planning and zoning changes.

### **Gaffey 4-5**

*This email portion claims that the DEIR does not take into account unidentified economic projections and impacts, downtown character destruction and citizen livability issues.*

The comment does not provide any specific information; therefore, no response is required. The issues noted are economic and personal in nature, not environmental.

### **Gavre 1**

*This email portion claims that the Overlay parcels cannot be identified.*

The Overlay parcels are identified both on maps and by listing at pages 2-5 (Exhibit 2-2), 2-9 (Exhibit 2-3) and 2-12 through 2-16 of the DEIR.

### **Gavre 2**

*This email portion claims that the Overlay was used to allow for a taller hotel located within the historic zone.*

While the Overlay allows for the EKN Hotel to be taller than the previous zoning without the Overlay, the Overlay's primary purpose is to incentivize downtown commercial development to revitalize the downtown, some of which includes the Hotel.

### **Gavre 3**

*This email portion claims that the City cannot limit height under state law under the Overlay.*



This comment fundamentally misstates California’s Density Bonus Law (“**DBL**”) found in Government Code Section 65915. Height increases are generally not considered either a “concession” or an “incentive” under the DBL (see Govt. Code, § 65915(k)) but are separately allowed only in most narrow of circumstances. In order to receive a height increase under the DBL, 100% of the project, including the total units and density bonus units, must be for lower income households. (Govt. Code, §§ 65915(d)(2)(D), 65915(b)(1)(G).) The project must also be located within one-half mile of a major transit stop or in a very low vehicle travel area in a designated county. (Govt. Code, §§ 65915(d)(2)(D).)

Even if the two above criteria could be met for a height increase, an Overlay project may be denied under the DBL if it has a specific, adverse impact upon public health and safety or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact without rendering the development unaffordable to low-income and moderate-income households. (Govt. Code, §65915(d)(1)(B).) Thus, under the City’s discretionary CUP process, the City may deny a height increase for a project within the Overlay with an adverse impact upon the City’s historical resources.

#### **Gavre 4**

*This email portion claims that there is insufficient parking and that valet parking will take away neighboring parking spaces from downtown.*

The hotel’s design and operational plan align with current city parking regulations, ensuring sufficient capacity for guests, employees, and visitors. Of the 58 parking spaces 54 are stacked parking spaces. There is no substantial evidence presented that there will be insufficient downtown parking or that essential spaces will be displaced by valet parking.

#### **Gavre 5-6**

*This email portion claims that the DEIR should not take into account the Overlay when considering its approval because of lack of compliance with historic regulations without the Overlay.*

Because the Project includes the Overlay and EKN Hotel and contemplates approval of both, the DEIR must take both into account when considering the environmental impacts of the Project and Hotel. This is the standard method of review for approval of projects that incorporate general plan amendments and zoning code changes, to consider the projects together with the concurrent planning and zoning changes.

#### **Gavre 7**

*This email portion claims that the EIR does not take into account the 100% lot coverage and issues created by daily delivery services such as trash pickup and tech service employees.*

The servicing of the building has been thoughtfully considered, with dedicated areas within the structure for trash management and deliveries. These designated locations will help streamline operations and mitigate potential disruptions, enhancing overall functionality while maintaining a positive relationship with the neighborhood.

## **Gavre 8**

*This email portion claims that the EIR does not consider impacts to water, sewage and electrical services.*

The DEIR considers the Hotel Impacts to water service as less than significant: “As described previously, as of 2020, the City’s average per capita water use rate was within the target identified in the UWMP and existing water supplies were sufficient to meet demand projected by the UWMP, including the proposed Hotel, as well as existing and planned demands through 2035. The proposed project would be subject to the latest CBC requirements, including plumbing and water efficiency standards, as well as the City’s Water Conservation Ordinance, which would further reduce water demands generated by the proposed Hotel. Therefore, existing water supplies, facilities, and infrastructure are sufficient to meet water demands of the proposed project during normal, single, and multiple dry year events and as such impacts of the proposed project to water supplies would be less than significant.” (DEIR p. 4-73)

The DEIR considers the Hotel impacts to sewage service as less than significant: “Wastewater generated by the proposed project is within the expected conveyance and treatment capacity anticipated by the General Plan and would not require expansion of treatment facilities. Applicable wastewater capacity fees would be collected from the applicant to fund the project’s fair share for use of existing facilities and planned improvements. Wastewater flows from the proposed Hotel project will be conveyed to the Ellis Creek Water Recycling Facility, which has sufficient operating capacity to treat additional flows generated by the proposed project. No new construction or expansion of wastewater facilities are needed to accommodate the proposed project. Effluent generated by the proposed Hotel would be conveyed to the existing sewer main within B Street which collects and conveys wastewater off-site through the municipal sanitary sewer system where it is ultimately conveyed to and treated at the Ellis Creek Water Recycling Facility. The proposed Hotel is not expected to exceed wastewater treatment requirements set forth by the RWQCB, nor necessitate the expansion or construction of wastewater treatment facilities. The estimated wastewater generation of the proposed Hotel falls within the capacity of the existing sanitary sewer lines and the City’s wastewater treatment plant. The proposed project would not include activities that generate wastewater requiring special treatment nor would it contain constituents exceeding applicable standards. The proposed project would not exceed wastewater treatment requirements, adequate treatment capacity is available to accommodate wastewater generated by the proposed project and impacts of the proposed project would be less than significant.” (DEIR, p. 4-73 to 4-74)

The DEIR considers the Hotel impacts to electric services as less than significant: “The proposed project would not require or result in the relocation or expansion of off-site utilities. Existing water, wastewater, electric power, and telecommunications facilities already extend to the project site, would provide opportunities for connection from B Street and Petaluma Boulevard South,

and have sufficient capacity to serve the proposed Hotel development. The proposed Hotel project would not result in significant environmental impacts due to the expansion of utilities or construction of new utilities as improvements are limited to activities on-site and along the site frontages.” (DEIR, p. 4-73)

### **Gavre 9**

*This email portion claims that the EIR does not consider impacts to noise and air pollution.*

The DEIR considers the Hotel impacts to air pollution as less than significant: “At operation, the proposed Hotel would not generate air quality emissions in quantities that would affect nearby sensitive receptors. As a hotel with a restaurant, operational activities would be similar to existing commercial uses in the immediate vicinity. Traffic generated by the proposed project would consist of mostly light-duty gasoline-powered vehicles, which are not a significant source of TAC and air pollutant emissions. Thus, the proposed project would not generate a significant amount of diesel particulate matter (DPM) or other TAC emissions during operation and impacts to sensitive receptors during project operation would be less than significant.” (DEIR, p. 4-12)

The DEIR considers the Hotel impacts to noise as less than significant: “As noted in the Assessment, a significant noise impact would occur if the proposed project would generate enough traffic to increase noise levels by 4 dBA. Existing traffic volumes on nearby roadways would have to double to result in an increase in 3 dBA. Based on the projected traffic volumes for the proposed Hotel, the Assessment concludes that the proposed project would result in less than 1 dBA Community Noise Equivalent Level (CNEL) increase because of project-generated traffic. Based on the proposed project’s anticipated operational noise, impacts resulting from a permanent noise increase in excess of established standards would be less than significant.” (DEIR, p. 4-55)

### **Gavre 10**

*This email portion pertains to the author’s opinion about the M Group.*

This comment does not raise an environmental issue. The developer has been and will continue to work closely with the community to ensure the hotel’s design complements and respects the historical significance of the downtown area. Additionally, the project incorporates sustainable practices to reduce environmental impact, including the use of low-flow fixtures to conserve water and full compliance with Title 24 standards to optimize energy efficiency. These measures reflect a commitment to creating a development that balances functionality, sustainability, and community values.

Building servicing has been carefully considered, with designated areas within the structure for trash management and deliveries to minimize disruptions and negative impacts on the surrounding community.

### **Gottschall 1-8, 12**

*These email portions pertain to a public feedback session on the City's draft General Plan Update.*

These comments do not pertain to the DEIR or the Project and no response is required.

### **Gottschall 9**

*This email portion claims the EKN Hotel should be more like smaller hotels in Sonoma and Healdsburg historic downtowns.*

The developer has undertaken extensive market research, to confirm the financial viability of an upper-upscale boutique hotel in the region. These analyses validate the strong demand for an upscale property of this caliber in Petaluma.

### **Gottschall 10**

*This email portion claims the EKN Hotel will burden surrounding neighborhood with Hotel parking.*

The hotel's design and operational plan align with current city parking regulations, ensuring sufficient capacity for guests, employees, and visitors. Of the 58 parking spaces 54 are stacked parking spaces. There is no substantial evidence presented that there will be insufficient downtown parking or that essential spaces will be displaced by valet parking.

### **Gottschall 11**

*This email portion claims the EKN Hotel is not feasible and should be a smaller boutique hotel.*

The developer has undertaken extensive market research, to confirm the financial viability of an upper-upscale boutique hotel in the region. These analyses validate the strong demand for an upscale property of this caliber in Petaluma.

The proposed hotel is uniquely positioned to attract a new customer base to the city, drawing affluent travelers who currently choose accommodations in Sonoma, Healdsburg, and Santa Rosa for their upper-upscale and luxury offerings. By capturing this market segment, the project will drive incremental spending within Petaluma, benefiting local businesses and the community at large. This economic impact underscores the hotel's potential to serve as a catalyst for regional growth while maintaining financial sustainability.

### **Jaeger 1-3**

*This email portion claims the EKN Hotel will negatively impact parking and traffic.*

The design and operational plan for the Hotel have been carefully crafted to minimize both pedestrian and automobile traffic impacts, ensuring a seamless integration into the surrounding community. The project fully complies with the city's current parking regulations, providing adequate spaces (including 54 stacked spaces) to meet the needs of guests, employees, and visitors without burdening nearby streets. See the discussion of “Access, Circulation and Parking at DEIR Section 2.2.2, page 2-34.

### **Jaeger 4-7**

*This email portion claims the EKN Hotel is not needed or feasible.*

The proposed development is strategically positioned to command an ADR premium over the existing hotel inventory in Petaluma. By offering a full-service experience, it will attract a new customer demographic, distinguishing itself from the predominantly limited-service hotels in the area, many of which are aging and in need of capital investment. Appellation Petaluma is well-positioned to capture demand from guests who currently opt for upper-upscale and luxury accommodations in neighboring Sonoma, Healdsburg, and Santa Rosa. Notably, the majority of room nights generated by the hotel will represent new, incremental business for Petaluma, further strengthening the local hospitality market

### **Kratt 1, 5**

*These email portions pertain to complaints about a separate proposed development by Kratt.*

These comments do not raise issues pertaining to environmental impacts of this Project; no response is necessary.

### **Kratt 2**

*This email portion claims that the Overlay cannot be considered when approving the Hotel*

Because the Project includes the Overlay and EKN Hotel and contemplates approval of both, the DEIR must take both into account when considering the environmental impacts of the Project and Hotel. This is the standard method of review for approval of projects that incorporate general plan amendments and zoning code changes, to consider the projects together with the concurrent planning and zoning changes.

### **Kratt 3**

*These email portion claims that Hotel traffic and parking impacts were not considered.*

The plan for the hotel meets the current city parking regulations. The design and operational plan for the Hotel have been carefully crafted to minimize both pedestrian and automobile traffic

impacts, ensuring a seamless integration into the surrounding community. The project fully complies with the city's current parking regulations, providing adequate spaces (including 54 stacked spaces) to meet the needs of guests, employees, and visitors without burdening nearby streets. See the discussion of “Access, Circulation and Parking at DEIR Section 2.2.2, page 2-34.

#### **Kratt 4**

*These email portions claim water and sewer impacts were not considered.*

The DEIR considers the Hotel Impacts to water service as less than significant: “As described previously, as of 2020, the City’s average per capita water use rate was within the target identified in the UWMP and existing water supplies were sufficient to meet demand projected by the UWMP, including the proposed Hotel, as well as existing and planned demands through 2035. The proposed project would be subject to the latest CBC requirements, including plumbing and water efficiency standards, as well as the City’s Water Conservation Ordinance, which would further reduce water demands generated by the proposed Hotel. Therefore, existing water supplies, facilities, and infrastructure are sufficient to meet water demands of the proposed project during normal, single, and multiple dry year events and as such impacts of the proposed project to water supplies would be less than significant.” (DEIR p. 4-73)

The DEIR considers the Hotel impacts to sewage service as less than significant: “Wastewater generated by the proposed project is within the expected conveyance and treatment capacity anticipated by the General Plan and would not require expansion of treatment facilities. Applicable wastewater capacity fees would be collected from the applicant to fund the project’s fair share for use of existing facilities and planned improvements. Wastewater flows from the proposed Hotel project will be conveyed to the Ellis Creek Water Recycling Facility, which has sufficient operating capacity to treat additional flows generated by the proposed project. No new construction or expansion of wastewater facilities are needed to accommodate the proposed project. Effluent generated by the proposed Hotel would be conveyed to the existing sewer main within B Street which collects and conveys wastewater off-site through the municipal sanitary sewer system where it is ultimately conveyed to and treated at the Ellis Creek Water Recycling Facility. The proposed Hotel is not expected to exceed wastewater treatment requirements set forth by the RWQCB, nor necessitate the expansion or construction of wastewater treatment facilities. The estimated wastewater generation of the proposed Hotel falls within the capacity of the existing sanitary sewer lines and the City’s wastewater treatment plant. The proposed project would not include activities that generate wastewater requiring special treatment nor would it contain constituents exceeding applicable standards. The proposed project would not exceed wastewater treatment requirements, adequate treatment capacity is available to accommodate wastewater generated by the proposed project and impacts of the proposed project would be less than significant.” (DEIR, p. 4-73 to 4-74)

Best efforts will be in place to minimize the hotel's usage of water including the use of low flow fixtures.

**Mateik 1,5**

*This portion states general opposition to the DEIR.*

This comment does not raise any environmental issue; no response is required.

**Mateik 2**

*This portion raises parking concerns.*

The plan for the hotel meets the current city parking regulations. The design and operational plan for the Hotel have been carefully crafted to minimize both pedestrian and automobile traffic impacts, ensuring a seamless integration into the surrounding community. The project fully complies with the city's current parking regulations, providing adequate spaces (including 54 stacked spaces) to meet the needs of guests, employees, and visitors without burdening nearby streets. EKN is using a very simple stacker system in its underground parking garage that doubles the parking capacity. See the discussion of "Access, Circulation and Parking at DEIR Section 2.2.2, page 2-34.

**Mateik 2**

*This portion raises water table and contamination concerns.*

EKN is using the Secant Deep Soil Mixing system and a waterproof shotcrete that will create a watertight structure or reversed bathtub that will effectively keep out water. If there were to be a leak, the pumping system would expel water. Another benefit of using the Secant Deep Soil Mixing system is that it is completed first. This creates a waterproof box which will keep all ground contaminants contained as it excavates the site to create the parking garage. The hazardous soils will be taken to a special dump that burns off the hydrocarbons safely. This procedure will be done under the watchful eye of state inspectors from the California Regional Water Quality Control Board and Environmental Health.

**Nistler 1, 28**

*This portion refers to and depicts an APS (automated parking system) for parking cars.*

EKN will not be using an APS system. No response is required.

**Nistler 2**

*This portion asks how many months for EKN Hotel soil excavation.*

Actual excavation and removal of soil will take 6 weeks.

### **Nistler 3**

*This portion asks about excavation timing and staging.*

Developer will excavate either day and/or night, depending on Building Department approval. Only one dump truck will be on site at a time, with other trucks staged outside of the downtown area.

### **Nistler 4**

*This portion asks about Petaluma Boulevard traffic during excavation.*

Petaluma Boulevard traffic will not be impaired, but parking along the Petaluma Boulevard frontage of the Hotel will be impacted during excavation..

### **Nistler 5**

*This portion asks the anticipated noise level (dB) at street level during steel pile driving operation.*

EKN will be using the Secant Deep soil Mixing system which requires little to no pile driving. The piles will be sunk into place.

### **Nistler 6**

*This portion asks what heavy equipment will be onsite and staged in public property during construction.*

Only delivery trucks, dump trucks, trash trucks, and cement trucks will visit the site, and only one at a time. Staging will take place outside of the City. A tower crane will be onsite and expedite unloading of materials.

### **Nistler 7**

*This portion asks the duration of the entire construction period.*

20 months.

### **Nistler 8**

*This portion asks the peak car retrieval rate.*

3 minutes.

### **Nistler 9**

*This portion asks if cars are retrieved early and parked outside.*

Cars are only retrieved once the guest arrives.



### **Nistler 10**

*This portion asks about how the process for the parking system maintenance and repairs would impact traffic and nearby business.*

EKN is using a simple stacker system. The plan for the hotel meets the current city parking regulations. If there is a failure, the hotel would lose only 1 parking spot.

### **Nistler 11, 14**

*These portions ask whether a prolonged or urgent parking system repair will require special consideration from the City and nearby business.*

No.

### **Nistler 12**

*This portion asks whether a backup system will provide stacker system power in a power outage.*

The co-gen system will fully support all stacker related functions in a power outage.

### **Nistler 13**

*This portion asks which streets provide parking access.*

The only parking entrance and exit is on B Street.

### **Nistler 15**

*This portion asks if EKN will provide free car rentals in case of a power outage.*

No because the system will be operational with a power outage.

### **Nistler 16**

*This portion asks about timing for and impact of stacker system replacement.*

Developer is using a simple stacker system. If there is a failure, only 1 parking spot would be affected. It will not effect traffic or businesses. If a upgrade is needed, the hotel would do one stacker at a time which would take only two parking spots off line.

### **Nistler 17**

*This portion asks if EKN will have staff perform stacker system corrective maintenance.*

No, simple repairs only.

### **Nistler 18**

*This portion asks what is the timing and process to have a qualified repairman on site.*

24 hours. This is a simple stacker system NOT puzzle or Automated robotic parking.

**Nistler 19**

*This portion asks what are flood mitigation plans for the parking system.*

The project has a redundant flood water pumping system which will operate during power outages.

**Nistler 20**

*This portion asks whether underground springs will be addressed.*

Yes. The secant system and the water proof garage shotcrete create a water tight structure or reversed bathtub that will effectively keep out water. If there were to be a leak, the pumping system would expel water.

**Nistler 21**

*This portion asks how many gallons per hour would be pumped out of the parking garage during winter rain season storms.*

Very little water if any will get into the garage. A drainage system at the garage ramp will collect all rain water and pump it out after it is purified.

**Nistler 22**

*This portion asks what security measures will be for the parking garage.*

The garage will be locked with an overhead electronic door and will be monitored 24/7.

**Nistler 23**

*This portion asks if the underground parking will be only for customers or if staff and services will be using it.*

It will be for a combination of both depending on availability.

**Nistler 24**

*This portion asks if additional earthquake mitigation is required given its height and depth.*

No additional mitigation is required.

**Nistler 25**

*This portion asks if additional Fire Department equipment and training will be needed to access underground parking in the event of an emergency.*

No.

### **Nistler 26**

*This portion asks if there will be additional impacts on City streets from customer and delivery traffic for the Hotel.*

There will not be additional impacts. There is no APS system. There are two loading zones next to the service elevator in the garage for deliveries.

### **Nistler 27**

*This portion asks if EKN has considered purchasing the adjacent Bank of the West lot for mitigation of traffic and parking impacts.*

EKN is considering various options for potential additional parking. No additional traffic mitigation is needed.

### **Sandberg**

*This email asks about the benefits of the EKN Hotel and potential losses to other businesses.*

The proposed development will command an ADR premium over the existing hotel supply and this level of full-service property would bring a new customer base to Petaluma. The current lodging supply in Petaluma largely consists of limited-service properties that require capital investment due to age. The Appellation Petaluma will attract customers that are currently staying in Sonoma, Healdsburg, and Santa Rosa due to their upper upscale and luxury offerings. The majority of the room nights that the hotel will generate will be new, incremental room nights to Petaluma.

### **Gracyk 1, 2, 4, 5**

*These portions contain opinions on City high density planning.*

These comments do not raise environmental issues. No response is required.

### **Gracyk 3**

*These portions address concerns about 100% lot fill.*

Servicing of the Hotel is anticipated & designed to limit the negative impacts. There are locations within the building designated for trash & deliveries that will not be unsightly or odorous or located adjacent to pedestrian areas.

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