



**Final Environmental Impact Report, Volume 2  
Downtown Housing and Economic Opportunity  
Overlay and EKN Appellation Hotel Project  
Petaluma, Sonoma County, California**

**State Clearinghouse Number 2024040565**

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## **SECTION 1: INTRODUCTION**

In accordance with California Environmental Quality Act (CEQA) Guidelines Section 15088, the City of Petaluma (Lead Agency) has evaluated the comments received on the Downtown Housing and Economic Opportunity Overlay and EKN Appellation Hotel Project Draft Environmental Impact Report (EIR). Pursuant to CEQA Guidelines Section 15132, this Final EIR includes a list of persons, organizations, and agencies that provided comments on the Draft EIR; responses to the comments received regarding the Draft EIR. A Mitigation and Monitoring and Reporting Program will be provided under a separate cover.

This document is organized into two sections:

- **Section 1—Introduction.** Provides an introduction to the Final EIR.
- **Section 2—Master Responses and Responses to Written Comments.** Provides a single comprehensive response to similar comments about a particular topic. Additionally provides a list of the agencies, organizations, and individuals who commented on the Draft EIR. Copies of all of the letters received regarding the Draft EIR and responses thereto are included in this section.

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## SECTION 2: MASTER RESPONSES

This section includes master responses as well as individual responses to public comments submitted during the Draft EIR 60-day public review period that ran from August 23, 2024, through October 21, 2024. The City also elected to accept a handful of letters received just after the close of the comment period,<sup>1</sup> and the responses herein address all substantive comments received.

### 2.1 - Master Responses

Master responses address similar comments made by multiple public agencies, businesses, organizations, or individuals through written comments submitted to the City.

#### 2.1.1 - List of Master Responses

- Master Response 1—General Opposition Comments
- Master Response 2—Recirculation Not Required
- Master Response 3—Alternatives
- Master Response 4—Comments Asserting that the Draft EIR Defers Analysis and/or Mitigation
- Master Response 5—Noticing and the Public Involvement Process
- Master Response 6— Hotel and Overlay Impacts on Aesthetics and City’s Design Review and Conditional Use Permit Review Process
- Master Response 7—Density Bonus and Building Height
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- Master Response 9—Historic Built Environment Impacts Assessment and Hotel Impacts on Visual Character
- Master Response 10—Construction and Staging
- Master Response 11—Traffic-Related Noise and Air Pollution
- Master Response 12—Relation Between the Proposed Overlay and Upcoming General Plan Update
- Master Response 13—Valet Parking
- Master Response 14—Hotel and Overlay Impacts on Parking
- Master Response 15—Traffic Congestion
- Master Response 16—Effects of Street Closures and Special Events
- Master Response 17—Hazardous Materials

<sup>1</sup> The California Environmental Quality Act (CEQA) does not require responses to late comments. (Public Resources Code § 21091(d)(1)). As there is no legal duty to respond to late comments, the alleged inadequacy of responses to late comments cannot be a basis for challenging the adequacy of an EIR. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1111).

## 2.1.2 - Master Responses

### Master Response 1—General Opposition Comments

#### *Summary of Relevant Comments*

Several commenters expressed general opposition to the proposed project but did not raise any significant environmental issues related to the adequacy of the environmental impact analysis; and/or objected generally regarding the adequacy of the environmental impact analysis but did not provide a specific basis to support the asserted inadequacy. The City reviewed all general comments and developed this Master Response to address recurring comments and common themes. Comments that were more specific in nature and provided supporting information are addressed in the individual unique responses.

The general comments addressed in this Master Response fall into one of several categories:

- The comment generally objects to either the entire project, or a portion of the proposed project, but did not raise any specific environmental issues related to the adequacy of the environmental impact analysis.
- The comment alleges that the analysis in the Draft EIR is not supported by substantial evidence.
- The comment broadly identifies environmental topics and requests additional evaluation but did not provide supporting information.
- The comment asks for additional studies, mitigation, or alternatives without explanation, supporting information, or rationale.
- The comment presents generalized claims challenging the adequacy of the analysis in the Draft EIR, which are not supported by data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts.
- The comment does not pertain to adverse impacts of the proposed project on the physical environment under the purview of CEQA, but instead raises political, social, economic, or financial questions or issues.
- The comment states an opinion, speculation or conclusion regarding the merits of the proposed project but did not (1) provide any rationale, or (2) raise any issues related to the adequacy of the environmental impact analysis.
- The comment questions the City's use of planning and environmental consultants, their professional qualifications, and ability to remain objective.
- The comment questions the City's use of public funds on the proposed project.
- The comment presents generalized claims regarding the City's planning process, including development review and approval and/or the requirements and benefits of the proposed Overlay.
- The comment does not raise concerns with respect to the disposition of environmental impacts or issues evaluated in the Draft EIR.



- The comment generally objects to the issuance of a Conditional Use Permit (CUP), states that the findings for a CUP cannot be made, or otherwise questions the City's ability to issue a CUP for the proposed project.

The foregoing types of comments received in response to the Draft EIR, are referred to collectively as "general opposition" and are the focus of this Master Response.

## Response

### Standard of Review

CEQA Guidelines Section 15384(a)) defines "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, **even though other conclusions might also be reached.**" (Emphasis added). "Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence. (b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

Further, the term "substantial evidence" is defined by case law as evidence that is of ponderable legal significance, reasonable in nature, credible, and of solid value. (*See Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 CA4th 144; *Lucas Valley Homeowners Ass'n v. County of Marin* (1991) 233 CA3d 130, 142).

Under Public Resources Code Sections 21080(e) and 21082.2(c), and CEQA Guidelines Sections 15064(f)(5) and 15384, the following constitute substantial evidence:

- Facts;
- Reasonable assumptions predicated on facts; and
- Expert opinions supported by facts.

When applying the substantial evidence standard, a reviewing court does not reconsider or reweigh the evidence that was before the agency. As the court explained in *Laurel Heights*, "in applying the substantial evidence standard, the reviewing court must resolve reasonable doubts in favor of the administrative finding and decision." (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 C3d 376, 393). Further, when reviewing an EIR's analysis under the substantial evidence test, a court resolves all disputed questions of fact relating to technical methodology in favor of the lead agency. (*South of Mkt. Community Action Network v. City & County of San Francisco* (2019) 33 CA5th 321, 339; *see also, National Parks & Conserv. Ass'n v. County of Riverside* (1999) 71 CA4th 1341, 1364 (EIR's methodology for analyzing environmental impact must be upheld if supported by substantial evidence in the record even though difference of opinion among experts exists); *South of Mkt. Community Action Network v. City & County of San Francisco* (2019) 33 CA5th 321, 339; *Town of Atherton v. California High-Speed Rail Auth.* (2014) 228 CA4th 314, 349).

Therefore, under the deferential substantial evidence standard, the City may accept the conclusions in the Draft EIR and certify the Final EIR so long as any substantial evidence supports the conclusions, even if there is conflicting evidence. To effectively challenge the conclusions in the Draft EIR, commenters have the burden of demonstrating that no substantial evidence supports the conclusions. The general allegations addressed by this Master Response allege that there is no substantial evidence, but they do not rise to the level of proving that no evidence supports the conclusions in the Draft EIR.

#### *Level of Specificity Required in Comments*

Comments on an EIR should focus on the sufficiency of the document's identification and analysis of significant environmental impacts, and the adequacy of measures designed to avoid or mitigate those impacts (CEQA Guidelines § 15204(a)). Reviewers should explain the basis for their comments and provide data, references, or other evidence to support their comments (CEQA Guidelines § 15204(c)).

CEQA requires that the Final Environmental Impact Report (Final EIR) address comments submitted during the public comment period that raise significant environmental issues on the adequacy of the Draft EIR (Public Resources Code [PRC] § 21091(d)(2)(B); CEQA Guidelines § 15088(c)). CEQA considerations are limited to significant issues as these relate to potential adverse physical impacts of the project on the environment. Comments that do not raise a significant environmental question need not be responded to (*Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549).

The purpose of the public review and comment process on a Draft EIR and the related responses is intended to share expertise, disclose the basis for and methodologies used to complete the Draft EIR's analyses, check for accuracy, detect and correct omissions, discover public concerns, and solicit counter proposals for mitigation and/or alternatives. CEQA Guidelines Section 15204, in part states:

- In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and the ways in which the significant effects of the project might be avoided or mitigated . . . CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commenters. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.
- Reviewers should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. Pursuant to Section 15064, an effect shall not be considered significant in the absence of substantial evidence.
- This section shall not be used to restrict the ability of reviewers to comment on the general adequacy of a document or of the lead agency to reject comments not focused as recommended by this section.

CEQA does not require that the City respond to all comments on a Draft EIR, but only to the significant environmental issues presented. (CEQA Guidelines §§ 15088(c), 15132(d), 15204(a).) Moreover, the City is not required to conduct every test or perform all research, studies, or experimentation at the commenter's request. (PRC § 21091(d)(2)(B); CEQA Guidelines § 15204(a).) An EIR need not provide all information reviewers request, as long as the report, when looked at as a whole, reflects a good faith effort at full disclosure. (CEQA Guidelines § 15204(a)). As the court stated in *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 CA4th 889, 901, “The level of detail required in a response to a comment depends on factors such as the significance of the issues raised, the level of detail of the proposed project, the level of detail of the comment, and the extent to which the matter is already addressed in the Draft EIR or responses to other comments.” Accordingly, a general response to a general comment is sufficient. (CEQA Guidelines § 15088(c).)

Similarly, an EIR need not consider every potential alternative to a project. Instead, the CEQA Guidelines and case law are clear that an EIR need only discuss a “reasonable range” of alternatives (CEQA Guidelines § 15126.6(a)). Where an EIR evaluates a reasonable range of alternatives, it is not required to study additional alternatives suggested during the public comment period. (*South of Market Community Action Network v. City and County of San Francisco* (2019) 33 CA5th 321, 345; *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 CA4th 214, 256; *City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 CA4th 362, 420; see also *Save Our Capitol! v. Department of Gen. Servs.* (2023) 87 CA5th 655, 703). Commenters have the burden of demonstrating that the range of alternatives considered is manifestly unreasonable in the absence of other feasible alternatives it claims should have been included. (See *South of Market Community Action Network v. City & County of San Francisco* (2019) 33 CA5th 321, 345). Also see Master Response 3—Alternatives, for additional information regarding the Alternatives Analysis.

Pursuant to CEQA, all comments received during the public comment period, including personal opinions expressing general support for, or opposition to, the proposed project are noted and included in this Final EIR for consideration by the City, but do not require a specific written response if they do not relate to a significant environmental issue that is addressed within the Draft EIR and/or otherwise within the purview of CEQA. For example, comments objecting to the design of the Hotel component that do not identify specific adverse impacts to the environment will be shared with the decision-makers, but do not raise environmental issues that require a specific response. Similarly, comments generally objecting to the issuance of a CUP, or questioning the City’s planning process, do not raise issues related to the proposed project’s impact on the physical environment that require a specific response pursuant to CEQA. Likewise, opinions about the general desirability, merits, and/or purely economic, social, or political considerations of the proposed project are not within the purview of CEQA and do not require a specific written response in this Final EIR. In cases where the commenter provides an opinion and/or generalized concerns about the merits of the proposed project but does not identify any particular issue concerning the sufficiency of the Draft EIR, the City notes the opinion in this Final EIR for informational purposes and for consideration by the decision-makers, who will consider all comments.

Where a commenter offers unsubstantiated assertions about a significant environmental issue or the adequacy of the Draft EIR, the City notes the assertion in this Final EIR for informational purposes

and consideration by the decision-makers but does not alter or augment the analysis in the Draft EIR, pursuant to CEQA Guidelines Section 15204.

The general response reflected in this Master Response is appropriate when a comment falls into one of the above-referenced categories. While the City does not provide individual responses to each of these general comments in this Final EIR, as noted above, each comment is part of the administrative record on the proposed project and will be forwarded to City decision-makers for consideration as part of the public hearing process on the proposed project. In this regard, the City will review, evaluate, and consider, as determined appropriate, all comments received as part of the decision-making process.

Further, it should be noted that certification of a Final EIR by the lead agency as having been prepared in compliance with CEQA does not grant any approvals or entitlements for a project. Accordingly, approval of the proposed project will be considered by the City as a separate action(s) following certification of the Final EIR.

## **Master Response 2—Recirculation Not Required**

### ***Summary of Relevant Comments***

The City received several comments stating that it should revise and recirculate the Draft EIR to incorporate additional information or because a commenter disagreed with a significance conclusion in the Draft EIR; claimed that the EIR was generally inadequate or insufficient as a whole; or generally opposed the proposed project. This Master Response discusses the standards generally applicable to this issue and applies those standards to the comments requesting recirculation.

### ***Response***

Although a number of commentors stated that the Draft EIR should be recirculated, the conditions established in the CEQA Guidelines under which the Draft EIR must be recirculated have not been met. As a result, it is not necessary to recirculate the Draft EIR.

The Draft EIR does not have to be recirculated at the request of a commenter. Rather, under CEQA, recirculation is only required when the lead agency adds “significant new information” to an EIR after the public comment period and prior to certification of the EIR (*Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1128). “Information” can include changes in the project or environmental setting, as well as additional data or other information (CEQA Guidelines § 15088.5(a)).

CEQA Guidelines Section 15088.5(a) further provides: New information added to an EIR is not “significant” unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement. “Significant new information” requiring recirculation includes, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

In *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, the California Supreme Court interpreted this “significant new information” standard and rejected the proposition that “any new information” triggers recirculation; recirculation is intended to be an exception, not the general rule. Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an otherwise adequate EIR. In response to certain comments, information was added to the EIR to clarify an issue or expand on a topic. Those revisions are detailed in Volume 1 of the Final EIR. CEQA Guidelines Section 15088 also recommends that where a response to comments results in revisions to the Draft EIR, those revisions be incorporated into the EIR. Accordingly, in instances when a response includes revision to the Draft EIR, the related text changes are shown in redline/strikeout format in Volume 1 of the Final EIR whereby new text is shown with underlined (new text) and deleted text is shown as strikeout (deleted text). None of these revisions require recirculation of the Draft EIR.

Recirculation is required only if the changes go beyond clarification or amplification and rise to the level of significant new information as outlined above. No new significant impacts have been identified in the Final EIR. As shown in Volume 1 of the Final EIR, Mitigation Measure (MM) Overlay CUL-1e, MM Overlay CUL-2, MM EKN CUL-2a, MM EKN CUL-2b, MM EKN CUL2c, and MM EKN TRA-1 have been revised with clarifying text edits and MM EKN BIO-1 has been renamed to MM Overlay BIO-1, without any edits to its text or application. Accordingly, these changes merely clarify measures to address potentially significant impacts that were already identified in the Draft EIR, and no new or more severe significant impact would result from implementing the clarifying text changes to the mitigation measures. In the case *South County Citizens for Smart Growth v. County of Nevada*, recirculation of a new mitigation measure or alternative is only required when that new mitigation measure or alternative:

- Is feasible;
- It is considerably different from the alternatives or mitigation measures already evaluated in the Draft EIR;
- It would clearly lessen the project's significant environmental impacts; and
- It is not adopted.

Recirculation is required only if each of the above tests are met (*South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 330).

Additionally, the process of responding to comments has not resulted in the determination that an environmental impact identified in the Draft EIR has a substantially greater impact than that described in the Draft EIR.

No new feasible alternatives have been suggested or added to the EIR that would significantly reduce impacts compared to what has already been disclosed in the Draft EIR. The inclusion of additional information related to the proposed project is provided for informational purposes only, and does not trigger recirculation of the Draft EIR because it does not constitute a significantly different new alternative nor does it include any “significant new information” that would require recirculation under CEQA Guidelines Section 15088.5. This additional information merely summarizes already available information in the Draft EIR. It is important to note that while the EIR must analyze all potential approvals that are reasonably foreseeable aspects of a proposed project, the City is not obligated to grant all approvals and an EIR need not treat each individual approval as a separate potential alternative.

The proposed project includes two components: the proposed Overlay and the proposed Hotel. These two components were reviewed at several study sessions. The analysis in the Draft EIR consistently describes the proposed project as including two separate components and delineates potential impacts associated with the proposed Overlay distinct from those associated with implementation of the proposed Hotel. This allows the reader to identify impacts and mitigation measures that are specific to each component. Accordingly, the information provided in the Final EIR related to approval of the proposed Hotel or the proposed Overlay separately, or any alternative, does not introduce any new information. Rather, it merely summarizes the already available information. Likewise, the No Project Alternative already discloses the potential impacts associated with not moving forward with the proposed Overlay.

Moreover, although existing mitigation measures were refined in Volume 1 of the Final EIR, the lead agency has incorporated them into the Mitigation Monitoring and Reporting Plan, and none of the requirements for recirculation are triggered. Finally, the City of Petaluma, as the Lead Agency, believes that the Draft EIR is adequate under CEQA. None of the revisions included in the Final EIR rise to level of significant new information, and therefore, recirculation of the Draft EIR is not required.

## **Master Response 3—Alternatives**

### ***3a) Hotel-Only Overlay Alternative***

#### *Summary of Relevant Comments*

Several comments suggested the City consider approving the proposed Hotel only. These comments further suggest that approval of a Hotel-Only Overlay Alternative be considered as a project alternative and that the Draft EIR be recirculated for public review of this alternative. The City also received comments claiming that the purpose of the Overlay is to allow spot zoning for the proposed Hotel.

### Response

As an initial matter, an EIR that discusses a reasonable range of alternatives is not deficient simply because it excludes other potential alternatives from its analysis (CEQA Guidelines § 15126.6(a); *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.4th 362). The Draft EIR discusses a reasonable range of alternatives and therefore does not need to include a separate Hotel-Only Overlay Alternative.

Moreover, a Hotel-Only Overlay Alternative would not include housing and, as such, it would not meet several of the City's project objectives. Specifically, because such an alternative would only develop a hotel, it would not promote a diversity of housing products by allowing for residential uses in ground floor spaces and flexibility in building forms for the parcels within the Overlay Area. Additionally, if the Overlay is limited to the Hotel site only, the parcels within the broader proposed Overlay would not benefit from the Ordinance's amendments, which aim to encourage flexible standards that support a variety of housing types and commercial uses. Without these amendments, these parcels would lack the intended regulatory flexibility to promote development that supports Downtown businesses and enhances local commerce. The proposed Overlay would advance both of these objectives. One of the City's objectives is to improve the function and design of the downtown core by establishing Overlay sites to promote development that would strengthen the attractiveness and the connectivity of residential, mixed use and commercial areas to amenities and services in the Downtown area. A Hotel-Only Overlay Alternative would not achieve this objective. Additionally, a Hotel-Only Overlay Alternative would not advance any of the remaining objectives because it would be limited to only hotel uses and would not provide any flexibility in building form or floor area ratio (FAR). A lead agency is not required to consider alternatives that do not advance the fundamental purpose of the proposed project (*Sequoia Hills Homeowners Ass'n v. City of Oakland* (1993) 23 CA4th 704, 715 [agency was not required to consider lower density alternative that would be inconsistent with project's primary goal of providing affordable housing]). Accordingly, a Hotel-Only Overlay Alternative does not meet CEQA's requirements for separate evaluation as it does not meet many of the project objectives.

Nonetheless, as the proposed Overlay and Hotel are two separate components of the proposed project, consideration of a Hotel-Only Overlay Alternative does not disclose any new or significantly different environmental impacts than those evaluated in the Draft EIR. 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. (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957). It is important to note that a Hotel-Only Overlay Alternative would include a revised, and significantly truncated, version of the Overlay that would be applicable to only the Hotel site, consistent with the analysis in the Draft EIR. All of the requirements currently detailed in the proposed Overlay would still apply to the Hotel site; however, the remainder of the parcels in the proposed Overlay would no longer receive the benefits of the Overlay.

The purpose of the alternatives section is to review a range of alternatives. There is no requirement to review every possible alternative. Additionally, an EIR need not include multiple variations on the alternatives that it does consider. (*Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022). Similarly, "not every proposed alternative to a project that might

emerge during the decision-making process triggers recirculation, particularly where, as here, the proposed alternative is substantially similar to the alternatives already evaluated in the EIR.” (*Southwest Regional Council of Carpenters v. City of Los Angeles* (2022) 76 Cal.App.5th 1154, 1185; see also *Western Placer Citizens for an Agricultural & Rural Environment v. County of Placer* (2006) 144 Cal.App.4th 890, 895–89) An evaluation of a Hotel-Only Overlay Alternative would not result in significantly different information from that already presented in the Draft EIR because the Draft EIR already distinguishes between the proposed Hotel and the proposed Overlay in each topical section. Similarly to the Reduced Overlay Area C Alternative, a Hotel-Only Overlay Alternative would simply reduce the potential impacts of the proposed Overlay by reducing the Overlay Area. Note, the thresholds contain separate discussions for the “Downtown Housing and Economic Opportunity Overlay” followed by a discussion of the “EKN Appellation Hotel.” See e.g., Draft EIR, p. 3.1-17 (discussing aesthetic impacts related to the proposed Overlay) and p. 3.1-18 (discussing aesthetic impacts related to the proposed Hotel).

In addition, neighborhood and community meetings were also held by the applicant specifically regarding the proposed Hotel, which provided additional opportunities for public input. Table 2-1 in the Draft EIR outlines these meetings and identifies when the proposed Hotel was addressed. The distinct analyses in each section of the Draft EIR provide the decision-makers and the public with sufficient information to determine the potential impacts of approving a Hotel-Only Overlay Alternative.

While the Hotel would not result in significant effects to historical resources as explained in Section 3.2 of the Final EIR, as the Hotel is within the Overlay, relevant Mitigation Measures identified for the proposed Overlay would also be imposed on a Hotel-Only Overlay Alternative. In some instances, Overlay mitigation measures either would not apply or have already been satisfied. For example, MM Overlay CUL-1a (perform an historic resources evaluation) has already been satisfied for the Hotel site, as documented in the Draft EIR. MM Overlay CUL 1b, MM Overlay CUL-1c, and MM Overlay CUL-1d apply to existing historic resources and proposed alterations to such resources; because the Hotel site is vacant, these measures would not be applicable. Implementation of the mitigation measures already evaluated in the Draft EIR would be sufficient to reduce potential impacts under a Hotel-Only Overlay Alternative consistent with the analysis presented in the Draft EIR. No new or more severe impacts are anticipated and there is no need for additional or significantly different mitigation.

Nor have any of the comments suggested significantly different mitigation for inclusion in a Hotel-Only Overlay Alternative. Moreover, the No Project Alternative discusses the potential impact of not approving either the proposed Overlay or Hotel. Accordingly, between the distinct analysis related to the different project components and the No Project Alternative, analysis of a Hotel-Only Overlay Alternative would not disclose substantially different information than already found in the Draft EIR. All of the potential physical impacts to the environment associated with developing a Hotel-Only Overlay Alternative are already disclosed in the Draft EIR, while impacts related to not advancing the proposed Overlay are already addressed in the No Project Alternative.



Moreover, CEQA recognizes that a lead agency has the discretion to approve a portion of a proposed project. When considering project approval, the lead agency has “the flexibility to implement that portion of a project that satisfies their environmental concerns.” (*Sierra Club v. City of Orange* (2008) 163 CA4th 523, 533). A lead agency also has discretion to approve a revised version of the project which was not considered in the EIR if it is similar in scope, size, and use as the alternatives evaluated in the EIR and would not have new environmental impacts. (See *Southwest Reg'l Council of Carpenters v. City of Los Angeles* (2022) 76 CA5th 1154, 1181–82). Accordingly, nothing in the Draft EIR analysis prevents the City from considering approval of the Hotel component only. Similarly, an EIR is not required to consider alternatives to a component of a project and should instead focus on alternatives to a project as a whole. (*California Native Plant Society v. City of Santa Cruz* (2009) 177 CA4th 957, 993; *Big Rock Mesas Property Owners Association v. Board of Supervisors* (1977) 73 Cal3d 218, 227). Again, the Hotel is only a component of the overall project, and CEQA does not mandate that it be treated as a stand-alone alternative.

### Spot Zoning

Commenters allege that the Draft EIR needs to evaluate a Hotel-Only Alternative, in part to evaluate the impacts of spot zoning. However, commenters have not explained how spot zoning results in an impact to the physical environment. The impacts analyzed in the EIR must be “related to a physical change.” (CEQA Guidelines Section 15358(b); see also *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538 (where designation of land surrounding project as wilderness park did not change physical character of area or project’s impacts)). Spot zoning in and of itself is not a physical impact on the environment and is therefore not subject to review under CEQA.

Additionally, it is important to recognize that spot zoning itself is not illegal, nor is it categorically prohibited by case law. Spot zoning is permissible, and has been upheld by California courts. The California Supreme Court has held that spot zoning by definition only occurs when a property is singled out and subjected to more restrictive standards than surrounding properties, effectively diminishing the property’s rights. (*Wilkins v. City of San Bernardino* (1946) 29 Cal.3d 332, 340). In contrast, the proposed project is providing these property owners with additional development rights, such as increased height limits, rather than imposing greater restrictions. Additionally, the parcels within the Overlay have not been singled out arbitrarily; rather, they are identified as underutilized parcels within the City’s downtown and the specific parcels to include in the Overlay have been discussed at numerous study sessions. Therefore, this would not be considered spot zoning.

Moreover, in *Foothill Communities Coalition v. County of Orange*, the Fourth District Court of Appeal upheld the spot zoning of a housing project despite opposition. In that decision, the court cited *Avenida San Juan Partnership v. City of San Clemente* (2011) 201 Cal.App.4th 1256, finding that so long as the agency’s action is not “arbitrary or capricious, or totally lacking in evidentiary support,” and if the agency “made requisite findings to support its decision,” spot zoning is permissible.

As such, determinations about whether a rezoning of a particular parcel or area is “permissible” is based on the facts and circumstances and whether the approving agency (the City) makes “findings” to establish that the rezoning provided a “public benefit” and is in the “public interest.” For instance,

the proposed project would help achieve the goals and policies of the General Plan that promote a public benefit. Accordingly, there is no spot zoning here as a Hotel Only Overlay Alternative would provide more flexibility and rights to the property owners within the Overlay and would be achieved for a legitimate purpose, as stated in the project objectives. For all of the above reasons, the City finds that the potential impacts associated with an alternative that considers the Hotel only, or Subarea A only are fully addressed in the Draft EIR and does not find it necessary to include a separate analysis of a Hotel-Only Overlay Alternative, or a Subarea A Only Alternative as both such alternatives are inherently included in the analysis.

### **3b) Alternative Sites Alternative**

#### *Summary of Relevant Comments*

Several commenters suggested that other alternative sites should be considered for the proposed Hotel. Some comments suggested including an alternative site as an additional alternative in the Draft EIR's alternatives analysis. Several comments disagree with the reasoning for not including a thorough alternative site analysis in the Draft EIR.

#### *Response*

An EIR need not present alternatives that are incompatible with fundamental project objectives. (CEQA Guidelines § 15126.6(a); *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 CA4th 1143, 1157, 1164). For example, one of the City's Project Objectives is to "Support Downtown business and commerce by providing a diversity of accommodations, a range of housing types, and variety of commercial services," which is best accomplished on an unoccupied infill site within the downtown core, as proposed by the Hotel.

Moreover, under CEQA, an EIR is not required to evaluate alternative sites when such alternatives are not feasible for the project proponent to obtain. The case law recognizes that the feasibility of alternative sites is often contingent upon the developer's ability to own, control, or reasonably acquire such locations. For example, in *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 751, the court required an EIR to discuss alternative sites only where there was a realistic possibility of a land trade. Similarly, in *Methow Valley Citizens Council v. Regional Forester* (9th Cir. 1987) 833 F.2d 810, 815–816, an environmental review was required to evaluate alternative sites only because the private developer's project was located on public land, making alternative sites within the same area accessible.

Here, no such feasibility exists. The project proponent does not own, control, or have reasonable access to the suggested alternative sites, nor is there any evidence that acquiring them would be viable, including publicly owned sites due to the Surplus Land Act. Without feasible alternative sites, CEQA does not require an EIR to engage in speculative or impractical analysis. Consequently, the omission of alternative site discussion in the EIR is appropriate and consistent with the legal standards articulated in these cases. Furthermore, Section 6.7 of the Draft EIR includes a discussion of Alternatives Rejected From Further Consideration, including Alternative Locations for the Hotel. Also, as explained above, an EIR that discusses a reasonable range of alternatives is not deficient simply because it excludes other potential alternatives from its analysis. (CEQA Guidelines §

15126.6(a); *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.4th 362). Here the Draft EIR already discussed a reasonable range of alternatives.

### **3c) Commercial Only Alternative**

#### *Summary of Relevant Comments*

A suggestion was made to consider a Commercial Only Alternative.

#### *Response*

The proposed Overlay would support housing and mixed-use development in the Downtown area. Under a Commercial Only Alternative, it is anticipated that the development process and design controls for properties would be largely the same as the proposed project, with increased limitations on type of use. Accordingly, the FAR, building heights, and lot coverage maximums would not change under a Commercial Only Alternative. Amendments to the General Plan, Zoning Map and Implementing Zoning Ordinance (IZO) would still be required. Because design specifications would not change, potential impacts related to aesthetics and historic buildings would be similar to the proposed project. Accordingly, the potential impacts associated with this alternative are fully accounted for in the discussion of the proposed project. A Commercial Only Alternative would not substantially reduce any of the already less than significant impacts of the proposed project and, therefore does not represent a considerably different alternative from those evaluated in the Draft EIR. However, because this alternative would not facilitate increased residential uses, there may be an increased impact related to Vehicle Miles Traveled (VMT) due to increased commercial uses, compared to the proposed project. Ultimately, further consideration of this alternative was not pursued because it would not avoid or reduce any potentially significant environmental impacts as compared to the proposed project or the analyzed alternatives. Further, it would not meet the stated project objectives to promote a diversity of housing and the properties within the Overlay would not realize the benefits related to development flexibility provided in the proposed Overlay. Lastly, a Commercial Only Alternative would be a component of the existing project as the proposed Overlay allows both residential and commercial property. 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. (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957). Because this alternative does not meet the standards outlined in CEQA Guidelines Section 15126.6(a) with regard to the selection of alternatives, it was properly rejected from further consideration.

## **Master Response 4—Comments Asserting that the Draft EIR Defers Analysis and/or Mitigation**

### **4a) Comments Asserting that the Draft EIR Defers Analysis**

#### *Summary of Relevant Comments*

Several comments argue that the Draft EIR should analyze future development of all properties in the Overlay Area.

The general comments addressed in this Master Response fall into one of several categories:

- Allegations that the Draft EIR does not fully evaluate the impacts of the proposed Overlay because development on all properties in the Overlay is not analyzed, but no specific evidence of potential impacts is included in the comment.
- Allegations that the Draft EIR does not analyze future impacts associated with buildout of the Overlay, specifically with respect to aesthetic impacts such as scenic views, scenic vistas, and light and glare; historic resources; public services; transportation impacts; and cumulative impacts.
- Allegations that the Overlay will result in potential impacts related to FAR and height increases, which the Draft EIR does not fully evaluate.
- Allegations that the Draft EIR avoids analyzing impacts associated with the Overlay because it relies on projects' future compliance with regulations and lacks substantial evidence for its conclusions.
- Allegations that the Draft EIR only provides an analysis of the proposed Hotel and does not analyze the Overlay, or only provides a vague analysis of the Overlay.
- Allegations that the Draft EIR defers analysis of cumulative impacts associated with the Overlay.
- Claims that the Draft EIR must forecast reasonably foreseeable development and the likely maximum impacts of development in the Overlay; requests for analysis of the potential impacts of future development; or requests for visual simulations representing future buildout of the Overlay.
- Claims that the Draft EIR defers the consistency analysis of the General Plan.
- Claims that conducting subsequent CEQA analyses when a specific project is proposed is "piecemealing."
- General objections to the City's planning process. These comments allege that the Draft EIR does not provide a sufficient direct, indirect and/or cumulative analysis because the Draft EIR defers evaluation of potential impacts to future project-level review and relies on compliance with the City's Site Plan and Architectural Review/Historic Site Plan and Architectural Review (SPAR/HSPAR) and CUP processes.
- General comments that CEQA prohibits relying on future discretionary review to reduce impacts, without evidence of specific potential adverse impacts. These comments raise concerns regarding the Draft EIR's analysis related to aesthetics, air quality, historic resources, land use, traffic and transportation, public services, recreation, and utilities and consistency with planning documents, but do not identify specific potential adverse impacts.

### Response

The Draft EIR provides a program level of analysis for purposes of evaluating potential impacts associated with the proposed Overlay. A Program EIR is not expected to analyze site-specific or project-specific environmental impacts, nor provide the level of detail found in a project EIR. Where a Program EIR, or another type of first-tier EIR is prepared for a plan or program, with later

environmental documents to be prepared for projects that would 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 would be provided when specific second-tier projects are proposed. It is appropriate to focus the first-tier EIR on the plan or program, so that project-level details may be deferred for review in subsequent environmental documents that can assess the project-specific impacts at a time when the severity of the impacts and their likelihood of occurrence would be known more specifically. (*In re Bay-Delta Programmatic Env't Impact Report Coordinated Proceedings* (2008) 43 C4th 1143, 1172, 1174; *Al Larson Boat Shop, Inc. v. Board of Harbor Comm'rs* (1993) 18 CA4th 729; *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). See also, CEQA Guidelines Section 15152(c), which provides:

Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand. (Emphasis added).

For example, in *Atherton v. Board of Supervisors* (1983) 146 CA3d 346, the court held that amending the county's general plan to designate a transportation corridor represented a conceptual project that did not require a high level of specificity in the EIR. Subsequent EIRs would be required, the court noted, for changes to the general plan's transportation element once a route had been selected for further study and the mode of transportation chosen.

A Program EIR is appropriate to evaluate environmental effects "at a broad level," so long as to the extent a subsequent project is not covered, additional environmental review occurs. (*See Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 45). A programmatic-level document is designed to provide a level of detail for the public to be informed and decision-makers to make decisions that intelligently take into account environmental consequences consistent with CEQA. Program EIRs "[a]llow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts" (CEQA Guidelines §§ 15168(a), 15168(b)(4)). Many site-specific details may be properly deferred to a later environmental review document. (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1173). Unlike a project EIR, which addresses the environmental impacts of a specific development project, a Program EIR addresses the potential impacts of a series of actions that can be characterized as one large project. Therefore, the use of a program level of analysis in an EIR is appropriate in evaluating project-related environmental impacts resulting from implementation of a comprehensive planning program like the proposed Overlay.

The proposed Overlay would enhance existing development opportunities in the City, but does not propose or approve any specific development. Although the general location and type of development can be anticipated based on the guidance in the proposed Overlay, until the City receives a development application, the exact location, type of development, and potential direct, indirect and cumulative impacts are too speculative to be determined. Accordingly, within the context of Section 15146 of the CEQA Guidelines, analysis of speculative development that may potentially be proposed and considered for discretionary approval by decision-makers is neither feasible nor required. Thus, future development that may ultimately be proposed under the proposed Overlay (if approved) is appropriately considered programmatically in the project EIR.

Other than the Hotel component of the proposed project, there is no specific development project being proposed at this time, and a project-level analysis cannot be prepared for the Overlay. Additionally, because unidentified future development within the Overlay is too speculative to analyze on a project-level basis at this time, addressing project-specific impacts at the time specific projects are proposed does not constitute impermissible piecemealing. Accordingly, it is appropriate for the Draft EIR to conclude that specific impacts, like impacts to aesthetics or cultural resources, will be addressed subsequently under CEQA when a specific project is proposed. (See CEQA Guidelines §§ 15146, 15168(d)(2),(3)). If the Draft EIR is certified and the proposed Overlay approved, future discretionary projects would be further evaluated in light of the EIR to determine whether or not an additional environmental document must be prepared. As appropriate, future construction and development plans would be subject to project-level CEQA analysis and potentially additional feasible mitigation, if necessary. As individual projects within the proposed Overlay are submitted to the City for review, the City would evaluate each project in light of the information in the Programmatic EIR. (See PRC §§ 21083.3, 21093, and 21094 and CEQA Guidelines §§ 15152, 15164, 15168, and 15183.)

Because there are no specific development projects being proposed within the proposed Overlay at this time apart from the proposed Hotel, no specific project-level details are available and project-level CEQA analysis is infeasible. The analysis in the Draft EIR outlines procedures for future development under the proposed Overlay. Therefore, the City would determine whether future projects require no new analysis, or require the preparation of a new Initial Study, Mitigated Negative Declaration, or new EIR. Future development in the Overlay Area may rely on the information in this Final EIR, including mitigation measures that establish performance standards. (See, e.g., CEQA Guidelines § 15168(c)(3) (“An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into later activities in the program.”)).

The Draft EIR provides the appropriate programmatic-level environmental analysis necessary to allow the decision-makers to evaluate the Overlay as a comprehensive guide for making future decisions about land use, community character, economic development, environmental preservation, open space, and public health and safety. In the absence of specific development proposals, project-level analysis is not appropriate, feasible or pragmatic at this stage. However, as shown in Table 2-5 in Draft EIR 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. This buildout scenario is utilized for

additional analysis in Chapter 4, Additional Effects Evaluated in the Initial Study, Section 4.2.11, Population and Housing, and Section 4.2.14, Transportation.

#### **4b) Comments Asserting that the Draft EIR Defers Mitigation**

##### *Summary of Relevant Comments*

- Allegations that mitigation measures inappropriately rely on the City's SPAR and CUP review processes.
- General comments that characterize the City's SPAR and CUP process as deferred mitigation and object to the process. Concerns that the mitigation measures included in the Draft EIR are not sufficient.
- Concerns that it is not efficient to include mitigation measures as part of a subsequent CEQA analysis when a specific project is proposed.

##### *Response*

Compliance with relevant regulatory standards can provide a basis for determining that a 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. "[A] condition requiring compliance with regulations is a common and reasonable mitigation measure and may be proper where it is reasonable to expect compliance." (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 906). As the court explained in *Gentry v. City of Murrieta* (1995) 36 CA4th 1359, 1395-1396, there is no improper deferral of mitigation where a condition required an applicant to submit improvement plans, grading plans, and a final map for approval, plans that would be "subject to a host of specific performance criteria imposed by various ordinances, codes, and standards, as well as other mitigation conditions."

Deferred mitigation refers to a situation where a lead agency postpones the development of mitigation measures to a future date. As stated in CEQA Guidelines Section 15126.4(a)(1)(B), "formulation of mitigation measures shall not be deferred until some future time". (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306-307). The City's CUP process functions as a mitigation measure aimed at reducing potential impacts of a future project within the Overlay, including those related to aesthetics and historical resources. Therefore, the CUP process does not constitute deferred mitigation, as it establishes the necessary measures upfront to address potential impacts, unlike deferred mitigation, which would involve developing those measures at a later date.

Even if the CUP process were to be considered "deferred mitigation," the lead agency may defer committing to specific measures if the subsequent considerations are clearly described and accompanied by established performance criteria (see *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011). CEQA Guidelines Section 15126.4(a)(1)(B) allows an agency to delay the specifics of a mitigation measure only if it adopts specific performance standards that the measure will achieve. In this case, the CUP findings, which are part of the legislative actions before the Council in considering project approval, serve as those specific performance standards that will reduce the potential impacts below significant. Because the Overlay does not propose any specific

development (aside from the Hotel considered as part of this proposed project), it would be entirely speculative and therefore outside the requirements of CEQA to analyze unknown impacts associated with an unknown design of future development. The mandatory subsequent discretionary permitting process required by the SPAR and CUP processes and accompanying environmental review is appropriate.

Additionally, none of the comments on the Draft EIR propose mitigation measures for reducing the alleged potential impacts of the proposed project on aesthetics or historical resources upon either project implementation or in the future.

## Master Response 5—Noticing and the Public Involvement Process

### Summary of Relevant Comments

The general comments addressed in this Master Response fall into one of the following categories:

- Comments regarding adequacy of public noticing and public review process.
- Allegations that the City did not provide opportunities for public input or public awareness as part of CEQA review.
- Concerns that on-site signage for noticing is missing or inadequate.
- Claims that the public noticing materials were unclear and failed to inform the public.
- Claims that the proposed project has had overwhelming public opposition and should not have been considered.
- Claims that the planning process favors developers and disadvantages the public.
- Requests for a revised and recirculated Draft EIR due to the alleged inadequacy of public noticing.
- Requests for documentation regarding public input received, public outreach efforts, public meetings, website content, or summaries of public comments.
- Requests for a ballot initiative to approve the proposed project.

### Response

The proposed project has fully complied with the procedural requirements of CEQA and local regulations with regard to noticing, publication, and opportunity for public input. The following summarizes the various meetings that occurred in 2023 regarding the proposed project.

**Table 2-1: Summary of Meetings**

| Date             | Meeting Type  | Meeting Body | Project Component Discussed  |
|------------------|---------------|--------------|--|
| January 10, 2023 | Study Session | HCPC         | Hotel  |
| June 13, 2023    | Study Session | PC and HCPC  | Hotel, Overlay Boundaries as shown in Exhibit 2-2 and Potential Overlay Development Standard |



| Date  | Meeting Type         | Meeting Body                               | Project Component Discussed   |
|---|----------------------|--|---|
| July 12, 2023   | Neighborhood Meeting | Know Before You Grow <sup>1</sup>          | Overlay presentation by City Staff  |
| August 3, 2023  | Neighborhood Meeting | Petaluma Downtown Association <sup>2</sup> | Discussion between Petaluma Downtown Association and City Staff.  |
| August 8, 2023  | Study Session        | PC   | Overlay reduced to focus on under-utilized parcels, reduce overlap with the Petaluma Historic Commercial District (Exhibit 2-4), and avoid overlapping with residential areas. Overlay revised to require discretionary approval of a Conditional Use Permit (CUP) for any building above 45 feet.  |
| October 3, 2023   | Study Session        | HCPC                                       | Overlay revised to: <ul style="list-style-type: none"> <li>• Expand the boundary of Area B to include the parcel occupied by the Wells Fargo Bank at 125 Western Avenue.</li> <li>• Depict/describe pedestrian/façade activation zones.</li> <li>• Allow for ground floor residential uses.</li> </ul>  |
| November 6, 2023  | Public Hearing       | City Council                               | Consider Directing Installation of Story Pole to Evaluate Visual Effects of proposed EKN Hotel: <ul style="list-style-type: none"> <li>• 5-2 vote to not install story poles.</li> </ul>  |
| November 14, 2023   | Public Hearing       | PC and HCPC                                | Overlay revised to: <ul style="list-style-type: none"> <li>• Update the review criteria for buildings above 45 feet.</li> <li>• Simplify the setback and stepback tables.</li> <li>• Include a requirement of a CUP to increase lot coverage above 80 percent.</li> <li>• Refine development standards for Pedestrian/Façade Activation Zones and Ground Floor Residential Uses.</li> </ul> |
| <p>Notes:</p> <p>HCPC = Historic and Cultural Preservation Committee</p> <p>PC = Planning Commission</p> <p><sup>1</sup> Know Before You Grow is a nonprofit organization with the stated mission “to educate the public on four key elements of city planning and to advocate for the best solutions to each.”</p> <p><sup>2</sup> The Petaluma Downtown Association is a 501 C(6) nonprofit membership-based organization that works in partnership with its members, the City, and the business community to protect Petaluma’s historic character, sustain economic vitality, and promote a dynamic and welcoming Downtown.</p> |                      |  |   |

The November 6, 2023 City Council public hearing included consideration to direct installation of story poles in order to evaluate potential visual effects of the proposed EKN Hotel. The City Council voted 5-2 in opposition to the use of story poles to evaluate visual impacts. It should be noted that the Draft EIR relies upon visual simulation and shade shadow studies; see Master Response 9-Historic Built Environment. Also, the City is not required to conduct every test or perform all

research, studies, or experimentation at the commenter's request. (PRC § 21091(d)(2)(B); CEQA Guidelines § 15204(a).)

The November 14, 2023 public hearing included consideration of a Draft Mitigated Negative Declaration, which was published on October 13, 2023 for a 30-day comment period extending to November 13, 2023, and duly noticed. Following the November 14, 2023 public hearing, it was decided that an EIR would be prepared, which resulted in additional public input and noticing. The following summarizes the various notices and public hearings that occurred as part of the EIR:

- A notice of preparation of an EIR and notice of public scoping meeting was published in the Argus-Courier on April 12, 2024, mailed to all property owners and occupants within 1,000 feet of the Overlay study area, and posted to the California State Clearinghouse (SCH). A public scoping meeting was held on May 1, 2024, which provided an opportunity for members of the public to learn about the proposed project, the results of the Initial Study and proposed scope of the EIR, and to provide feedback on the scope of the EIR.
- The public notice of completion/availability (NOC/NOA) of the Draft EIR was published in the Argus-Courier on August 23, 2024, and mailed to all property owners and occupants within 1,000 feet of the Overlay Study area, which includes the site of the Hotel.
- Publication in the paper as well as direct mailing occurred on September 13, 2024, to notify the community of the joint HCPC/PC September 24, 2024 public hearing on the Draft EIR.
- On September 27, 2024, a notice for the October 7, 2024 City Council public hearing on the Draft EIR was published in the Argus-Courier and mailed to all property owners and occupants within 1,000 feet of the Overlay study area, which includes the site of the Hotel.
- Additionally, two public notice signs were installed at 2 Petaluma Boulevard South to provide notice of the joint PC/HCPC and Council hearings on the Draft EIR. All notices, environmental documents, and technical appendices were posted to the proposed project webpage on the City's website and published on CEQA.net (the Office of Planning and Research's State Clearinghouse portal) in conformance with California Code of Regulations Section 15201.

At the October 7, 2024 public hearing on the Draft EIR, the City Council requested that the proposed Overlay Ordinance come before the Council for a workshop prior to considering the Final EIR. On November 18, 2024, the Council considered the proposed Overlay Ordinance at a public hearing, which was noticed via publication in the Argus-Courier and direct mailings to all property owners and occupants within 1,000 feet of the study area, as well as interested parties.

At the time the Final EIR is available for review, it will be made publicly available at least 10 days prior to taking any action on the proposed project. Notices of public hearings on the proposed project will continue to be provided in accordance with local and State requirements.

As such, the City has met and exceeded the local and State noticing requirements for CEQA and public hearings, and the public has been provided with multiple opportunities for participation

throughout the City's review process of the proposed project and through the environmental review process. Recirculation of the Draft EIR is not required.

Additionally, comments regarding noticing do not address specific environmental impacts of the proposed project. Comments that do not raise a significant environmental question need not be responded to (*Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549).

## **Master Response 6—Hotel and Overlay Impacts on Aesthetics and City's Design Review and Conditional Use Permit Review Process**

### ***Summary of Relevant Comments***

- Concerns that the proposed project will have a significant impact on aesthetics.
- Allegations that the CUP process, incorporated as Mitigation Measure (MM) Overlay CUL-1e is deferred mitigation and would not prevent significant impacts resulting from the proposed Hotel and the proposed Overlay.
- Commenters assert that a thorough analysis of visual impacts has not been conducted.
- Concerns that the Draft EIR concludes that the Overlay will have less than significant impacts on the visual character.
- Disagreement with findings of the Draft EIR that the proposed Hotel demonstrates exceptional architecture/design.
- Assertions that the Hotel would impact the Historic District's ability to convey significance.

### ***Response***

The following outlines key sections of the IZO that would be applicable to future development within the proposed Overlay District:

#### ***IZO Section 24.050***

When outside of a historic district, development applications submitted, including those within the Overlay Area, would be reviewed by the City for consistency with the design review procedures in Section 24.050 of the IZO.

The purpose of site plan and architectural review process is to ensure compliance with the Zoning Ordinance and to promote orderly and harmonious development within the City. It is the intent of this IZO section to achieve a satisfactory quality of design in individual buildings and sites and ensure appropriateness of buildings to their intended use, to mitigate the environmental impacts of buildings and sites, and to facilitate harmony between developments and their surroundings.

The Planning Commission (PC) has the authority to approve, approve with modifications, or disapprove Site Plan and Architectural Review (SPAR) applications for construction, alteration, demolition, and repair or maintenance work on structures, as provided in Section 24.050 through 24.070 of the IZO. SPAR decisions may be appealed to the City Council. To issue a SPAR permit, affirmative findings need to address aesthetic and other impacts, including "overall design is

harmonious and in proportion in itself and in relation to the adjacent development,” and determine that the application is either exempt from the California Environmental Quality Act (CEQA) or that the environmental impacts of the project would be sufficiently mitigated. These findings may be appealed to the City Council.

*IZO Chapter 15, Preservation of the Cultural and Historic Environment*

When within a historic district, development applications submitted, including those within the Overlay Area, would be reviewed by the City for consistency with the design review procedures in Chapter 15 of the IZO.

This Chapter provides guidelines for Historic Site Plan and Architectural Review (HSPAR) by the City, and specifically by the Historic and Cultural Preservation Committee (HCPC), to ensure the City's development standards are being followed and to promote orderly development.

No person shall do any work to a designated landmark site or structure, or structure and sites within a historic district, without first obtaining review and permit approval from the HCPC.

The HCPC has the authority to approve, approve with modifications, or disapprove HSPAR applications for construction, alteration, demolition, and repair or maintenance work on structures or sites within historic districts, as provided in Sections 15.050 and 15.070 of the IZO. HSPAR decisions may be appealed to the City Council. All future individual development projects within the Overlay that are located within the Petaluma Historic Commercial District would be required to obtain an HSPAR Permit, and the HCPC would review the project's compatibility with the existing historic context, preservation goals, Historic Commercial District Guidelines, and the Secretary of the Interior's Standards for the Treatment of Historic Properties. Specific regulations and Guidelines pertaining to the review of HSPAR include the following:

- CEQA
- IZO Chapter 15: Preservation of the Cultural Environment
- General Plan 2025 Chapter 3: Historic Preservation
- Historic District Design Guidelines
- Secretary of the Interior Standards for the Treatment of Historic Properties

Pursuant to Public Resources Code Section 21099(d)(1), “aesthetic and parking impacts of residential, mixed-use residential, or employment center projects on an infill site within a transit priority area shall not be considered significant impacts on the environment.” The proposed Hotel project, along with most parcels within the Overlay, qualifies under this provision.

Nonetheless, the Draft EIR assessed the impacts of the proposed project on aesthetics, concluding that these impacts would be less than significant with mitigation incorporated. This determination is supported by the requirements that any construction within the Overlay will require a SPAR/HSPAR permit. The SPAR/HSPAR permit also requires affirmative findings based on substantial evidence that:

- The design is of high quality and has been developed by a qualified professional, such as an Architect, Landscape Architect, or other skilled urban designer.
- The project utilizes quality materials and features an overall design that is harmonious and proportionate both internally and in relation to adjacent developments.
- The architectural style is appropriate for the project and compatible with the character of the neighborhood.
- The siting of the structures on the property is well-suited to the site and consistent with the positioning of other structures in the area.
- The size, location, design, color, lighting, and materials of all signs and outdoor advertising comply with applicable zoning requirements and are compatible with the neighborhood's character.
- The bulk, height, and color of any proposed structure are suitable for the site and in relation to the bulk, height, and color of neighboring buildings.

Accordingly, pursuant to Public Resources Code Section 21099(d)(1) and the existing SPAR/HSPAR process, the impact on aesthetics is less than significant.

1. Moreover, the proposed Overlay Ordinance also imposes a CUP process, included as MM Overlay CUL-1e, which further addresses aesthetics and cultural resources.<sup>2</sup> Under the CUP, the Planning Commission must make affirmative findings during a duly noticed public hearing: That the additional height is consistent with the applicable purposes of the Overlay;
2. That the additional height makes a positive contribution to the overall character of the area and that the building will 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. That 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. That the additional height will not result in unreasonable restrictions of light and air to adjacent properties or the public right-of-way, or otherwise be detrimental to the public health, safety, or welfare;
5. That the building design expresses a relationship to an existing datum line or lines of the street wall or adjacent historic resource, if any; and

<sup>2</sup> As explained in greater detail in Section 3.1 of the Final EIR, Overlay MM CUL-1e is not needed to mitigate impacts of the Hotel below the significance threshold, because, as explained above in detail, the Hotel does not have a significant impact on scenic views or scenic resources and as explained in Section 3.2, does not have an impact on historical resources.

6. That the overall building design and the use of the site demonstrates exceptional architecture/design. “Exceptional” architecture/design may be demonstrated by any of the following:
  - a. The use of innovative, creative or original architectural concepts, materials, or building techniques;
  - b. The use of visual elements that contribute positively to the built environment, such as well-proportioned facades, pleasing materials, and unique features;
  - c. The use of innovative building systems or forms, and/or the use of creative design, to increase building efficiency and to reduce energy consumption;
  - d. The use of low impact development and green infrastructure features in sustainable design and landscaping; or
  - e. The use of high-quality building materials that contribute to long-term durability and visual quality.

The determination of exceptional architecture/design shall be guided by the input of a qualified professional chosen by the City.

Additional findings must be made for buildings that are between 60 and 75 feet. A proposed project must include at least one of the community benefits described in 1 and 2, and one of the community benefits described in 3, 4, or 5, below:

1. Improves the existing streetscape by providing widened sidewalks, additional street trees, new mid-block walkways/paseos, public plazas, parks, etc. For a project that would widen the sidewalk by increasing the ground floor building setback, a public outdoor amenity space shall be included in the design, and this space shall be designed and configured to provide adequate space for pedestrian movement and activity; or
2. Provides publicly accessible private open space, such as a street-level park or rooftop open space that is open to the public at least 8 hours per day and at least 120 days per year;
3. and Respects and/or preserve cultural, historical, or archaeological resources that exist or occur on-site or within the Overlay; or
4. Exceeds the minimum number of Inclusionary Dwelling units required by Section 3.040; or
5. Provides all required parking below grade.

The Planning Commission may approve a CUP to allow for additional lot coverage of up to 100 percent pursuant to the review criteria set forth in Section 24.060.E if any one or more of the following are true for a project:

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.

The new CUP requirements would be in addition to the already existing CUP requirements found in Section 24.060 of the Petaluma IZO. Therefore, the Planning Commission would also be required to make the following affirmative findings regarding “compatibility of the proposed buildings and use with its environment”:

- The proposed building(s) and use will protect the outlook, light, air, and peace and quiet of any adjoining buildings and uses.
- The location and character of any display of goods and services and the size, nature, and lighting of any signs will satisfy all applicable requirements of this Zoning Ordinance and will be compatible with adjoining buildings and uses.
- The proposed structure and use, subject to any conditions which may apply, conforms with the applicable requirements of this Zoning Ordinance and applicable policies and programs of the City’s General Plan and any applicable specific plan, and the proposed use will not, under the circumstances of the conditional use application, constitute a nuisance or be detrimental to the public welfare of the community.
- The intensity of proposed activity will be compatible with adjoining buildings and uses.
- Provisions for the control of any off-site effects such as noise, dust, odors and other emissions, light, or glare, etc., are adequate to protect adjoining uses.

Given the requirement that all of the above findings must be made in order to issue a SPAR/HSPAR permit and CUP for future individual development projects under the proposed Overlay, and that future individual development projects could not be constructed without these permits, the Draft EIR concludes that the proposed Overlay would have a less than significant impacts with mitigation. Moreover, based upon a project-specific analysis of the Hotel, the Draft EIR demonstrated that it will not result in a significant aesthetic impact in light of the City’s existing SPAR/HSPAR permit process.

## **Master Response 7—Density Bonus and Building Height**

### ***Summary of Relevant Comments***

The general comments addressed in this Master Response fall into one of the following categories:

- Comments regarding effect of Density Bonus Law, including allegations that the Draft EIR does not consider potential impacts related to future projects that could utilize a density bonus to increase building height.
- General concerns regarding the impact of building height.
- Concerns that the Overlay would allow additional building heights over 65 feet or eliminate the existing height limitations.

Responses to Written Comments

- Concerns that the Density Bonus Law could invalidate discretionary review of future projects within the Overlay Area.
- Concerns that additional height is not consistent with the surroundings.
- Concerns that the height of the proposed Hotel would encourage future developers to seek approval for structures taller than 45 feet.
- Concerns that City assurances that future projects within the Overlay will be subject to discretionary review is inconsistent with State Density Bonus Law and that the City will not be able to apply development standards that would preclude development, even if much taller than the surrounding area.

**Response**

The State Density Bonus Law has been in effect since 1979, and the proposed Overlay would not change the City's review of density bonus applications. Unless ministerial, the State Density Bonus law does not preclude environmental review. Moreover, CEQA does not mandate that a Draft EIR evaluate the potential application of State housing laws that a developer may or may not choose to invoke. CEQA requires analysis of reasonably foreseeable impacts rather than speculative scenarios (CEQA Guidelines § 15145). Since the Overlay itself would not directly result in development, and there is no evidence to suggest that any future developer within the Overlay would apply State housing laws, the Draft EIR is not required to analyze this possibility. Additionally, the height of a building is not an environmental impact under CEQA. Rather, the potential height of a building could have secondary impacts related to aesthetics, view, and shadows, which the Draft EIR adequately addresses at a programmatic level in Section 3.1, Aesthetics. However, project level effects of future development within the proposed Overlay cannot be reasonably assessed at this time without specific development proposals. CEQA requires the evaluation of reasonably foreseeable impacts, and absent a proposed project, these secondary effects remain speculative (CEQA Guidelines § 15145). Furthermore, all future discretionary applications for development within the Overlay would undergo project-specific CEQA analysis, at which time potential secondary impacts related to height would be appropriately assessed.

While the Overlay Ordinance could potentially allow housing up to 108 feet (45 feet by right + 30 feet maximum with a CUP under the proposed Overlay + 33 feet under Density Bonus Law), this scenario is highly unlikely. It is important to recognize that California's Density Bonus Law (California Government Code § 65915), enacted in 1979, already permits developers to exceed the current 45-foot height limit for qualifying affordable housing projects, even without the proposed Overlay Ordinance. This means that if a developer under the City's current Zoning Ordinance wanted to build above the permissible 45-foot height limit, they could potentially build up to 78 feet under the Density Bonus Law; however, no developer has taken advantage of this option to date, which suggests that there are other limiting factors in utilizing the density bonus provisions.

The 108-foot building scenario is unlikely for several reasons. First, the proposed Overlay requires any building exceeding 45 feet up to 75 feet to obtain a CUP, which is issued by the Planning Commission following a public hearing. To grant this permit, the Commission must make affirmative findings based on substantial evidence, including findings that the additional height:



1. Enhances the area's character and is compatible with its surroundings, as assessed through visual tools.
2. Does not harm property features or disrupt the harmony with neighboring structures or the district's aesthetics.
3. Does not unreasonably restrict light, air, or negatively impact public health, safety, or welfare.

Any housing project within the Overlay seeking both a CUP and a density bonus to build above the permissible 45-foot limit would need to disclose this as part of its application. As a result, the Planning Commission would be fully aware that the applicant is requesting an additional 33 feet through the Density Bonus Law before deciding on the CUP for building above the 45-foot limit. While the Commission may still make the subjective findings to approve the permit, the fact that the developer is seeking a significant height increase would be factored into their decision to approve or deny the permit. The issuance of a CUP can also be appealed to City Council.

Additionally, any development proposing a 108-foot building must comply with CEQA, which evaluates impacts on aesthetics and historical resources. It should be noted that all discretionary developments within the proposed Overlay would require their own independent analysis for compliance with CEQA. Similarly, under the Density Bonus Law, the City can also deny a height increase if it causes a specific, adverse impact on public health, safety, the physical environment, or any property listed in the California Register of Historical Resources. (Govt. Code Section 65915(d)(1)). Therefore, if the proposed height increase adversely affects a listed historical resource, the City has grounds to deny it. In short, any height increase to 108 feet would require full compliance with CEQA, which assesses impacts on historical resources, and the assurance that the increase would not have a significant adverse effect on these resources.

Under the proposed Overlay Ordinance, any development seeking to build a 108-foot building would be required to designate 100 percent of its units as affordable housing. Typically, the cost of constructing affordable units is higher for developers compared to market-rate units, as they generate lower returns from rent or sale, which can make developers less inclined to pursue affordable projects. Indeed, the increased construction costs of building more than three stories generally precludes 100 percent affordable housing projects as a practical matter, thus further rendering the possibility of a 108-foot building unlikely and speculative. However, if 100 percent affordable units were to be built, Petaluma's Downtown, with its proximity to the Sonoma-Marín Area Rail Transit (SMART) station and walkable commercial properties, presents an ideal location for housing, particularly in terms of reducing VMT.

## **Master Response 8—CEQA in Reverse**

### ***Summary of Relevant Comments***

The general comments addressed in this Master Response fall into one of the following categories:

- Comments regarding effect of limited parking on hotel visitors.

- General concerns regarding the impact of sea level rise on future development under the Overlay and within the City generally.
- Concerns that existing traffic congestion and limited parking availability downtown is problematic.

### **Response**

Under CEQA, lead agencies generally are not required to analyze the impact of existing environmental conditions on a project's future residents or users (i.e., "CEQA-in-reverse") but instead are legally required to focus on potential adverse impacts the project may have on the environment. This requirement was upheld in *Ballona Wetlands Land Trust et al. v. City of Los Angeles* (2001) 201 Cal.App.4th 455, which holds that CEQA is concerned with the impact of the project on the environment, not vice-versa.

Public Resources Code Sections 21100 and 21151 require an EIR for projects that "may have a significant effect on the environment." The statute and case law clearly define "significant effect on the environment" as limited to substantial, or potentially substantial, adverse changes in physical conditions. (PRC § 21060.5.) In Public Resources Code Section 21060.5, "environment" is defined as the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. See also CEQA Guidelines Section 15360.

As a result of these statutory definitions limiting review to the effects a proposed project may have on the physical environment, the analysis of impacts in an EIR must be related to a change to the physical environment. (CEQA Guidelines Section 15358(b)). Only changes to the physical environment that result from the proposed project require evaluation; social or economic impacts alone will not do so because they are not changes in physical conditions. This principle is reflected in CEQA Guidelines Sections 15064(e) and 15382, which provide that economic and social changes may not be treated as significant effects on the environment. It is also reflected in Public Resources Code Section 21080(e) and CEQA Guidelines Section 15064(f)(6), which provide that evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment is not substantial evidence of a significant effect on the environment. See also Public Resources Code Section 21082.2(c). Similarly, the environment's impact on the proposed project ("CEQA in reverse") is not appropriately analyzed in an environmental document under CEQA.

Therefore, the impacts of sea level rise or parking availability on the proposed project are outside the requirements of CEQA. Accordingly, the Draft EIR appropriately evaluates the impacts associated with the proposed Overlay and the proposed Hotel on the environment, but not the impacts of the environment on the project.

### **Master Response 9—Historic Built Environment Impacts Assessment and Hotel Impacts on Visual Character**

The general comments addressed in this Master Response fall into one of several categories:

- Comments generally stating opinions regarding the effect of the proposed Hotel on the Historic District and surrounding buildings. Many of these comments state that the scale/size of the proposed Hotel is incompatible with the surrounding buildings, namely, the Rex Ace Hardware building as one frequently cited example.
- Comments stating that the proposed Hotel changes the feel of the area or does not fit with the existing visual character of City. Among other general observations objecting to the Hotel design, many of these comments state that the proposed Hotel's size makes the area feel crowded and dense. Other opinions state that the proposed Hotel is too modern, not attractive and/or does not represent a positive contribution to the overall character of the area. These comments do not include evidence of specific adverse impacts to the physical environment related to the Hotel.
- Comments requesting additional analysis, alternatives and/or mitigation measures, such as requests for additional viewpoints for visual simulations; however, no specific environmental impacts are identified and no specific alternatives or mitigation measures are suggested.
- Requests for visual simulations representing future buildout of the Overlay.
- Arguments that substantial evidence does not support the conclusions in the Draft EIR regarding historic resources.

### **Response**

Under CEQA Guidelines Section 15064.5(b)(1), a significant impact to a historical resource is defined as the "physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of an historical resource would be materially impaired." Neither the Hotel nor the Overlay involves the demolition, destruction, or relocation of any historical resources. However, as the Hotel and portions of the Overlay are situated within the Historic District and near historical resources, the Draft EIR acknowledges the potential for a significant impact if the "significance of a historical resource would be materially impaired."

A project that materially impacts a historical resource can be mitigated to below a level of significance. According to CEQA Guidelines Section 15064.5(b)(3), "Generally, a project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings or the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (1995), Weeks and Grimmer, shall be considered as mitigated to a level of less than a significant impact on the historical resource."

Therefore, compliance with the Secretary of the Interior's Standards generally ensures that a project would not result in a significant impact on historical resources. This principle underpins the development approach within the Overlay. Mitigation Measures CUL-1a through CUL-1d apply to all projects within the Overlay, including the Hotel as explained in Footnote 12 on Section 3.2 of Volume 1 of the Final EIR, ensuring that development adheres to these standards and mitigates any potential impacts to historical resources.

As explained in Master Response 1, when applying the substantial evidence standard, a reviewing court does not reconsider or reweigh the evidence that was before the agency. Therefore, under the deferential substantial evidence standard, the City may accept the conclusions in the Draft EIR and certify the Final EIR so long as any substantial evidence supports the conclusions. To effectively challenge the conclusions in the Draft EIR, commenters have the burden of demonstrating that no substantial evidence supports the conclusions. The general allegations addressed by this Master Response allege that there is no substantial evidence, but they do not rise to the level of proving that no evidence supports the conclusions in the Draft EIR.

The conclusion that the proposed Hotel would have a less than significant impact on historical resources and visual character was based on substantial evidence, including visual simulations, archival research, survey, and impacts analysis completed by a qualified architectural historian. The adjacent buildings to the Hotel were evaluated by Sarah Corder, MFA, Vice President and Principal Architectural Historian at South Environmental, and were found not eligible for federal, State, or local designation as historic resources and none of the properties within the neighborhood block containing the proposed Hotel are considered historical resources under CEQA. The presence of contributing buildings in the vicinity does not indicate construction of the Hotel would be a significant impact.

#### *Hotel Impact on Visual Character*

Visual character is addressed in Impact AES-3 in terms of the proposed project's consistency with the General Plan, Zoning Ordinance, and Historic Commercial District, as is appropriate in an urban area such as Downtown. In addition, visual character is considered as part of the Historic Built Environment Assessment (HBEA). Potential impacts were found to be less than significant with respect to AES-3.

#### *Hotel Impact on Rex Ace Hardware Building*

The HBEA (which can be found in Appendix B of the Draft EIR) provides substantial evidence that due to a near total loss of its original design, setting, materials, and workmanship, the Rex Hardware building no longer appears eligible, neither as an individual resource for listing in the National Register of Historic Places (NRHP) or the California Register of Historical Resources (CRHR), nor as a contributor to the Petaluma Historic Commercial District. As stated in the HBEA, the building is not of historic age because it was reconstructed in 2007 in a manner inconsistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (the Standards). The Standards used in the HBEA are industry standards set by the National Park Service and used by the California Office of Historic Preservation (OHP) and all reputable professionals in the field for assessing historical resources. Under the Standards, reconstruction is used for "replicating its appearance at a specific period of time and in its historic location" (Weeks and Grimmer 1995, revised 2017).

The reconstruction of the Rex Hardware building following the fire did not follow Secretary of the Interior Standards. For instance, vanished and non-surviving portions of the Rex Hardware property were not used to depict the original building following the fire. Based on archival research, photographs taken during the fire, and aerial photographs, there were significant changes made to the fenestration of the building, its original design and layout, and the roofline. While the Rex

Hardware construction project did an admirable job matching the siding to the original, there were also significant changes made to the property's windows and roofing materials which is not an accurate duplication of historic features on the property. The original Rex Hardware property was a collection of multiple buildings with a variety of rooflines and plans that merged together over the years to eventually function as the hardware store. The concept of everything being clearly laid out and connected seamlessly in plan under a continuous roofline with modern materials is in direct opposition to the historical design of the property.

While it is understood that there are official processes for removing a resource from the NRHP (36 Code of Federal Regulations [CFR] 60.15) and from the City's Historic Register (Municipal Code § 7.10.030(D)), this does not preclude a qualified architectural historian from reassessing the eligibility of a resource as part of a professional survey and providing recommendations based on its current integrity and existing conditions. A building's historic integrity can change over time (e.g., a fire that destroys nearly all of the original historic fabric), and as noted in 36 Code of Federal Regulations 60.15, when "The property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed." There is substantial physical evidence that 313 B Street no longer retains requisite integrity, despite attempts to reconstruct a similar looking building. Section 106 of the National Historic Preservation Act states the following: "The evaluation of integrity is sometimes a subjective judgment, but is must always be grounded in an understanding of a property's physical features and how they relate to its significance." Locally, there is nothing to preclude the City from continuing to treat 313 B Street as an eligible resource if the City chooses to do so; however, it is the professional opinion of the City's contracted cultural historian for this project that the building lacks integrity from its period of significance such that it can no longer convey the reasons for its eligibility.

The mere presence of differing opinions arising from the same pool of information is not a basis for finding the EIR to be inadequate; the City has discretion to resolve a dispute among experts about the accuracy of the EIR's environmental analysis. (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397 ("the decision-maker is `permitted to give more weight to some of the evidence and to favor the opinions and estimates of some of the experts over the others'"). The City's determination whether an impact is significant is ultimately a policy question that calls for the exercise of judgment based on scientific information and other relevant data. (CEQA Guidelines §15064(b)(1)). Accordingly, the City may reject an expert's opinion on the ultimate question of what constitutes significance for a given impact. (*See Citizen Action to Serve All Students v. Thornley* (1990) 222 CA3d 748, 755). The Rex Ace Hardware building was determined to not meet the criteria to be considered eligible as a historic resource; this precludes the proposed project from having an adverse historical impact on the building.

Accordingly, because the Draft EIR appropriately and thoroughly demonstrates that the immediately adjacent properties are not eligible for federal, State, or local designation as historic resources, the conclusion that impacts would be less than significant is appropriate and supported by substantial evidence. Moreover, it is important to note that the Hotel would be required to be developed according to the Petaluma Historic Commercial District Design Guidelines for new construction projects. (Draft EIR, pp. 3.2-54 through 3.2-55).

### *Hotel Design and Impact on Historic District*

The HBEA found no architectural or design cohesion in the northeastern most portion of the Historic District. While it is understood the buildings within the current historic district are between one and three stories, the Petaluma Historic Commercial District Design Guidelines (Design Guidelines) for new construction do not limit the number of stories that are possible within the historic district. The design guidelines do state that new development should be encouraged on vacant lots within the historic district. The HBEA did not fail to analyze the height; it clearly analyzed the plans for the proposed project which included all heights and specifications. Although historic buildings have been one to three stories, the Design Guidelines do not preclude the proposed Hotel from being six stories in height or greater. It is also located on the edge of the historic district in a block without historic buildings, so it is inaccurate to say that building would tower over the Historic District buildings. The design also incorporates setbacks in conformance with the Standards to visually minimize the height differential, as stated in the report.

The Design Guidelines do allow for new construction within the Historic District. Similarly, the National Park Service guidelines acknowledge that new construction may occur within the vicinity of historic districts and buildings. The National Park Service Guidelines recommend that locations be carefully selected to minimize impacts to existing historic properties.

The Hotel site follows these National Park Service guidelines<sup>3</sup> as summarized here:

- It is a site that does not obstruct, damage or destroy views of historic buildings. While it is across the street from a historic building (5-25 Petaluma Boulevard South), it does not obstruct it or damage it by being constructed.
- The location of the Hotel site on a block at the edge of the Historic District removes it from collections of historic buildings, so that it cannot interrupt the flow of the Historic Commercial Downtown streetscape seen through most of Petaluma Boulevard.
- The location of the Hotel site is as isolated as possible in a dense urban environment by being on the edge of the Historic District, on a vacant lot in a block without historical buildings. By choosing this location, the National Park Service guidelines for new construction state that “the limitations on the size, scale, and design of new construction may be less critical the farther it is located from historic buildings.”

As explained in the Draft EIR, the portion of the Historic District surrounding the proposed project site consists of buildings from a variety of styles and periods outside the Historic District’s period of significance, such that, while the development of the Hotel would change the existing setting, it is disingenuous/inaccurate to assert that the proposed Hotel is introducing construction that is impactful to the larger Historic District. Further, there is no evidence that any significant viewsheds of the Historic District or other historical resources will be impacted by the proposed Hotel. As such, additional visual simulations would not provide new or different information. None of the comments received regarding historical resources or visual character demonstrate that the conclusions in the

<sup>3</sup> National Park Service. 2022. New Construction within the Boundaries of Historic Properties. October 25. Website: <https://www.nps.gov/subjects/taxincentives/new-construction-in-historic-properties.htm>. Accessed January 11, 2025.

Draft EIR are unsupported by substantial evidence. General objections to the design of the proposed project are addressed in Master Response 1. Furthermore, these are also the professional conclusions of Isabel Castellano, Historic Preservation Specialist, M-Group Consulting Planner serving the City of Petaluma Community Development Department. Ms. Castellano meets the Secretary of the Interior Standards Professional Qualifications for Architectural Historian, Architecture, and Historic Architecture. As the Hotel is within the Overlay, it is required to comply with Overlay MM CUL-1e. The Draft EIR thus explained that fact, but its determination that the Hotel project will not have any potentially significant historical impact was not based on, nor did it rely upon, the application of that mitigation measure. Rather, it is based upon the opinion of the City's experts, the analysis set forth in the Draft EIR, and other substantial evidence, including the additional analysis included in the Final EIR.

### **Master Response 10—Construction and Staging**

The general comments addressed in this Master Response fall into one of several categories:

- Concerns about how construction staging would occur and where materials would be placed while the parking garage is being excavated;
- Concerns about the effects of construction on residents visiting the Downtown area (circulation, shopping, outdoor dining, etc.)

#### ***Response***

The Hotel applicant has provided clarifying information regarding construction means and methods that would be implemented to facilitate circulation and ensure safety during construction. See Exhibit 2-1, which depicts many of the items discussed below. The City Building Department has reviewed the plan and generally agrees with the proposed methods.

Prior to the issuance of any permit that is required to implement the approved project (such as a grading, utility, staging, or building permit), a Construction Management Plan (CMP) shall be prepared and presented to the City for review concurrent with the review of any grading, utility, staging, or building permit. The CMP shall describe how construction impacts will be minimized, and how construction will be managed to comply with all construction-related Conditions of Approval (and mitigation measures if applicable). The City may modify the CMP or temporarily stop work for any violation of the CMP.

The CMP shall provide project-specific information including descriptive procedures, approval documentation, and drawings or exhibits.

The following measures or similar methods/measures will be required as part of the CMP condition of approval of the proposed Hotel to ensure enforceability and will be reviewed and verified by the City prior to the issuance of any permit that is required to implement the approved project:

### *Pedestrian and Traffic Control*

- The B Street sidewalk would be temporarily closed to all pedestrian traffic from the Hotel site southern property line to the corner of B Street and Petaluma Boulevard, with a lease fee paid to the City of Petaluma. This area would serve as the construction staging zone.
- Street parking on B Street and Petaluma Boulevard would be closed to traffic at designated sections for the duration of construction, functioning as construction loading zones. These temporary closures would ensure safe and efficient movement of construction materials and equipment, with the lease fees paid to the City.
- A temporary sidewalk on Petaluma Boulevard would be constructed in the existing parking lane, covered as per Occupational Safety and Health Administration (OSHA) requirements, to ensure pedestrian safety. This would extend from the Hotel site to the signalized intersection of B Street and Petaluma Boulevard. .
- The middle-of-the-block B Street crosswalk would be eliminated to enhance traffic flow and ensure safety.
- Construction worker parking would be designated within close proximity to the site, keeping local streets free of construction vehicles and reducing disruption to local traffic.
- A nearby lot would be leased for material storage. This strategic off-site storage would prevent congestion caused by multiple deliveries arriving simultaneously at the Hotel site.

### *Construction Methods*

#### **Secant Deep Soil Mixed Shoring System**

- This method would be used to create a waterproof box around the excavation site, effectively trapping contaminated soil and preventing seepage into the surrounding groundwater.
- The system allows for the safe excavation and disposal of soil, which is transported to specialized facilities for hydrocarbon treatment.
- By avoiding traditional pile driving, this method reduces both noise pollution and ground vibrations, mitigating disruption to nearby residents and businesses.

#### **Secant Deep Soil Mixed Shoring System Panelization Framing System**

- Cold-forged steel framing panels would be prefabricated off-site, significantly accelerating the construction process and minimizing on-site noise and emissions.
- Using this method eliminates the need for large volumes of concrete and traditional post-tension systems, which are typically noisy and polluting. This method shortens the construction timeline, reducing the overall impact on the surrounding community.

### *Efficient Use of Underground Parking Garage*

- During construction, the future underground parking garage would be utilized for on-site material storage and limited parking, which would streamline construction traffic and reduce the need for additional off-site storage during construction phases.



*Site Crane Utilization*

A crane would be used to lift materials, including wall panels, onto the site, allowing for faster construction with fewer disruptions. This method reduces the noise typically associated with on-site heavy construction equipment, while speeding up the build. This information is provided to clarify the construction and staging information for the Hotel and is not significant new information as explained in Master Response 2, above.

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Source: Bing Aerial Imagery. City of Petaluma.

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## Exhibit 2-1 Site Logistics Plan

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CITY OF PETALUMA  
DOWNTOWN HOUSING AND ECONOMIC OPPORTUNITY  
OVERLAY AND EKN APPELLATION HOTEL PROJECT  
ENVIRONMENTAL IMPACT REPORT

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## Master Response 11—Traffic-Related Noise and Air Pollution

### ***Summary of Relevant Comments***

Several comments claim that traffic generated by the proposed Overlay and proposed Hotel would result in noise and air pollution impacts, including impacts to human health.

### ***Response***

The proposed Hotel's traffic-related noise and air quality impacts are addressed in Chapter 4, Additional Effects Evaluated in the Initial Study, and Appendix A of the Draft EIR and determined to result in less than significant impacts. The comments do not contain substantial evidence demonstrating that the proposed project's traffic would result in exceedances of relevant thresholds of significance, let alone health impacts. Also, see Master Response 14, below regarding secondary effects related to alleged parking scarcity and Master Response 15, below regarding traffic congestion.

Lastly, see Master Response 4, Comments Asserting that the Draft EIR Defers Analysis and/or Mitigation, for an explanation of why it would be too speculative at this time to include a quantitative air quality or noise impact analysis for the proposed Overlay.

## Master Response 12—Relation Between the Proposed Overlay and Upcoming General Plan Update

Several comments express questions regarding the timing of consideration of the proposed Overlay with respect to the General Plan Update process. Additional comments allege that separating the consideration of the proposed Overlay from the General Plan Update is impermissible project segmenting. Other comments allege that the Draft EIR fails to analyze consistency with the General Plan Update.

### ***Response***

The question whether the City wants to proceed now with the present project, or to instead wait to incorporate it into the General Plan Update process, presents a pure question of policy that is well within the legislative discretion of the City Council to decide. It is likewise fine for members of the public to advocate for a different policy decision, but there is no merit to any suggestion that proceeding separately somehow constitutes impermissible project segmenting.

The City of Petaluma is still in the early stages of updating the General Plan; however, the consideration of a General Plan amendment to allow the proposed Overlay is informed by the City's work to date on the General Plan Update. Given the concern regarding the timing or potential consistency, the proposed Overlay includes a sunset clause which provides that the Overlay will expire upon adoption of the City's General Plan Update.

The consideration of the proposed Overlay and the General Plan Update are two separate and independent projects. Neither is dependent on the other to move forward. *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* ["Laurel Heights"] (1988) 47 Cal.3d. 376, 396 sets out

the general standard for determining the scope of what constitutes the whole of the project that must be reviewed in a CEQA document. 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.).

Courts have found that agencies improperly segment environmental review of projects resulting in piecemealed review 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 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). Therefore, activities that would operate independently of one another and can be implemented separately may be treated as separate projects under CEQA if one activity is not a foreseeable consequence of the other. Here, the proposed project does not legally mandate any specific General Plan update, nor does it practically rely on the completion of the General Plan update. Each operates independently as a stand-alone project.

In *Aptos Council*, 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.*).

The City is not required to combine its General Plan Update with the proposed Overlay. As the California Court of Appeal in *Aptos Council*, stated: "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).

Under the test outlined by the California Supreme Court in *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1988) 47 C3d 376, 396, an EIR must analyze possible future expansion or other action related to a project that is a “reasonably foreseeable consequence” of the project. Possible future expansion or other action related to a project that is not a reasonably foreseeable consequence of the project need not be included in an EIR’s project description. The General Plan Update is a planning process and is not a reasonably foreseeable consequence of the proposed Overlay. As such, the proposed Overlay and the General Plan Update can be properly reviewed by the City as separate actions.

Additionally, the specific provisions of the future General Plan are not set in stone. Requiring the City and the applicant to wait another year, or longer, for the General Plan Update would unnecessarily restrict the City’s planning and zoning functions under its authority and would subvert the policies behind the time limits in both CEQA and the Permit Streamlining Act.

It should also be noted that comments related to the timing of the General Plan do not address specific environmental impacts or the adequacy of the Draft EIR. Comments that do not raise a significant environmental question need not be responded to (*Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549).

### **Master Response 13—Valet Parking**

Several commenters questioned the effectiveness of the valet parking system. The following text and accompanying exhibit clarify the location of the valet pick-up and drop-off as well as the proposed circulation and operation of the valet parking system.

As an initial matter, these general comments express opposition to the use of a valet system, but fail to identify any specific potential adverse impacts to the physical environment associated with the use of valet parking. As such, these comments lack the specificity necessary for meaningful responses.

Moreover, it should be noted that, under CEQA and its implementing guidelines, neither traffic congestion nor parking impacts are considered to be significant impacts under CEQA. Nothing in CEQA requires any parking or valet plan to be included for public review in the first place. (See Master Response 14 about CEQA and parking.) Nonetheless, the City provides the following additional information in response to these comments.

### **Overview**

The proposed Hotel would provide professional and qualified valets to oversee and manage all aspects of the valet operations at 2 Petaluma Boulevard South, providing efficient pick-up and drop-off services, and ensuring successful safety policies. In addition to qualified valets, the on-site subterranean parking garage would utilize a stackable parking system to maximize the garage’s

capacity. The proposed Hotel, during operations, would maintain hourly records of car counts to better understand peak-hours and trends in order to improve efficiency.

The following information clarifies the parking information for the Hotel and is not significant new information as explained in Master Response 2, above.

### **Staffing**

The proposed Hotel parking and valet services would operate to always maintain guest satisfaction and offer the best service possible. In order to operate the 24/7 valet service, the proposed Hotel would have staff allocated to valet guest vehicles during off-hours. During peak hours, the proposed Hotel would have three to four dedicated valets to handle both pick-up and drop-off services. One supervisor would oversee the operations during peak hours to ensure efficient operations and guest satisfaction.

### **On-site Parking**

Hotel and restaurant guests would drop off and pick up vehicles in front of the hotel entrance of Petaluma Boulevard South (see Exhibit 2-2). To minimize curbside and public right-of-way congestion, valets would receive vehicles at the drop-off location and immediately drive the prescribed route to the subterranean parking garage. The estimated travel time for vehicle drop off is 2 minutes spanning less than 0.25 mile, and the estimated travel time for pick-up is 1 minute spanning 900 feet. During peak drop-off and pick-up periods, valets would utilize all available on-site garage capacity for parking vehicles. Valets would prioritize short-stay-guest vehicles in easily accessible parking stalls and would utilize the upper lifts for long-stay-guest vehicles.

The proposed Hotel parking, which includes 58 parking stalls, would utilize a stackable parking system to maximize the amount of parking the proposed project can incorporate. The planned stackable parking system utilizes a lift mechanism allowing for two cars to be parked in the area of one typical parking stall. With the use of the stackable parking system, the parking garage shall be a valet-only operation. The stackable parking system allows for seamless parking for all vehicle types. The lower level of the lift is accessible to SUV type vehicles (half of the available parking spaces), and all available parking spaces are accessible by sedan type vehicles.

MM TRA-1 Provides Appropriate Mitigation Some comments allege that MM EKN TRA-1 improperly defers development of a Valet Plan. These comments misinterpret CEQA's requirements. To ensure that potential conflicts from the valet activity are avoided, MM EKN TRA-1 requires that: "Upon submittal of plans for building permit, the applicant shall submit a Valet Service Plan prepared by a licensed traffic engineer. T The Plan shall be subject to review and approval by the City of Petaluma prior to issuance of building permits, and on an annual basis after the start of operation. The Plan shall, at a minimum, ensure the three-vehicle capacity is not exceeded.

The Plan may include any combination of the following measures, or other similarly effective measures, in order to prevent employee use of the valet parking spaces:



- All employees of the Hotel who drive their own vehicle to work or who carpool to work with other employees must register their primary vehicle with the hotel operator. Employee vehicles will include a decal. A reporting form shall be maintained by hotel and be updated monthly to reflect any new hires or employee departures. At hiring/orientation, all employees will be informed of all hotel and local parking policies.
- Employees will be instructed to park on the hotel grounds and will be prohibited from parking in public spaces/streets.
- The parking plan and policies will be included in all employee training manuals and handbooks to be developed prior to occupancy and utilized for all employee training sessions pre-opening and through ongoing operations.
- Starting at 12 to 18 months after initial occupancy, and annually thereafter, until no longer deemed necessary by the City, the hotel management team shall prepare and submit a parking compliance report to the City's Planning Department. The report shall list the number of employees traveling to work by vehicle, the number of reported and observed infractions in a given year, and the success of participation in ride sharing, carpool, vanpool, and public transit incentive programs.
- All employees, upon training and employee initiation, shall be informed that local transit passes are available to all employees free of charge. Employees will receive information on alternative transportation options. Employees who utilize vanpools, carpools, ride sharing, or public transit must also be informed that if their regular means of transportation to/from work is somehow compromised, that hotel management is obligated to provide the employee with a "free ride" home via taxi, Uber, Lyft, or other method with no cost to the employee. The number of employees utilizing transit passes and the "free ride" home program will be documented in the annual compliance report.
- In the employee dining area, all transit-related information will be posted. This information will include but is not limited to: ride sharing boards, and information regarding local mass transit routes, and free public transit passes must be posted at all times. Verification by the Planning Department prior to issuance of a Certificate of Occupancy shall be made available upon inspection by the Planning Department on an ongoing basis.
- Employees shall have access to locker rooms with showers (both male and female) at all times during their employment. This facility is a part of the project plans and shall be verified by the Planning Department staff prior to certificate of occupancy. These facilities shall be inspected to ensure they are in clean and working order on an ongoing basis by the Planning Department, upon request.
- Employees wishing to bike to work shall have access to secure bike storage facilities. Those employees who bike to work shall register with human resources and shall inform human resources in the event that they are unable to bike to work for a particular reason including inclement weather. Human resources will work to either provide temporary parking passes to employees who will need to drive to work for a limited period of time, or assist in finding carpools, vanpools, or ride sharing services or public transit services for these employees.

The Plan may include the following measures, or other similarly effective measures, for Hotel guest valet parking:

- Starting with reservations, prospective and confirmed hotel guests will be made aware of the multiple transportation offers available to them including complimentary transfers upon request.
- On the Hotel website, information will be made available to guests and prospective guests.
- Upon requests, all guest wishing to travel to/from the hotel to local destinations will be provided with complimentary transit in a hotel-owned or leased vehicle.
- Guests will be notified at the time of reservation, confirmation, and check-in that parking is valet only.
- At check in, the valet will take the guest's name with the make, model, name, color, and license plate number of the guest's vehicle. Hotel management will respond to complaints if they notice a resort guest utilizing public streets. The hotel will have a guest's vehicle information on file and will immediately contact the guest to have the vehicle moved to the hotel parking lot.

The Valet Plan may include any combination of the following measures, or other similarly effective measures, for special events and valet parking:

- Hotel events shall be valet only. All events shall feature a form of validation for guest valet parking such that staff can monitor the number of guest's valet parking vehicles on-site for a given event.
- Hotel management shall produce event-related compliance reports starting 12-18 months after occupancy, and then every year thereafter until no longer deemed necessary by the Planning Department. The report shall be generated for events exceeding 50 people in size, or when the cumulative number of outside event guests on-site at a given time is 100 or more. The reports shall list the type of event, the number of patrons at the event, the time of the event, the number of employees staffing the event, and the number of valet tickets utilized for a particular event.



Source: Bing Aerial Imagery.

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## Exhibit 2-2 Circulation Plan Detailing Vehicular Pick-Up and Drop-Off

CITY OF PETALUMA  
DOWNTOWN HOUSING AND ECONOMIC OPPORTUNITY  
OVERLAY AND EKN APPELLATION HOTEL PROJECT  
ENVIRONMENTAL IMPACT REPORT

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Please see Master Response 4, regarding deferred mitigation. Reliance on compliance with a mandatory regulatory permit or other similar process may be identified as appropriate and sufficient mitigation if compliance would result in implementation of measures that would reasonably be expected to reduce impacts to the specified performance standards. (CEQA Guidelines § 15126.4(a)(1)(B); *see Oakland Heritage Alliance v. City of Oakland* (2011) 195 CA4th 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”]; *Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655, 687-688, 699.)

MM EKN TRA-1 expressly requires that the Valet Plan be submitted by a licensed traffic engineer and that, “at a minimum” the Plan “ensure the three-vehicle capacity is not exceeded.” Thus, the Valet Plan establishes a clear performance standard and steps to ensure the performance standard is achieved. The mitigation measure also requires that the Valet Plan be subject to review and approval by the City prior to approval of building permits. Thus, the mitigation measure fully complies with CEQA’s requirements for effective and enforceable mitigation and does not represent improper deferral.

## **Master Response 14—Hotel and Overlay Impacts on Parking**

### **Summary of Comments**

- Concerns that the proposed Hotel’s parking demand would adversely affect parking availability and traffic congestion in Downtown Petaluma.
- Concerns about air quality and greenhouse gas (GHG) emissions associated with parking shortages.
- Concerns about the proposed project’s compliance with City parking requirements.

### **14a) Parking and CEQA**

Numerous comments were submitted relative to concerns about the EKN Appellation Hotel’s parking supply and potential effects on parking in Downtown Petaluma. With respect to the CEQA analysis contained in the Draft EIR, it is important to note that potential parking shortages are considered a social impact, not an environmental impact, under CEQA. (*San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 CA4th 656, 697; *see also* PRC § 21099(b)(3), (the “adequacy of parking for a project shall not support a finding of significance pursuant to this section”). Accordingly, the impact formerly in CEQA Guidelines Appendix G about the adequacy of parking for the proposed project was deleted in response to that decision.

The City’s thresholds of significance, which are derived, in part, from the questions in the most recent version of Appendix G, are consistent with CEQA case law and do not identify parking availability as an environmental impact. Further, specific to the proposed project’s location within a designated Transit Priority Area<sup>4</sup>, Public Resources Code Section 21099(d)(1) states, “aesthetic and parking impacts of residential, mixed-use residential, or employment center projects on an infill site

<sup>4</sup> Metropolitan Transportation Commission (MTC). 2023. Open Data Catalog. Website: <https://opendata.mtc.ca.gov/datasets/MTC::transit-priority-areas-2021-1/explore>. Accessed January 11, 2025.

within a transit priority area shall not be considered significant impacts on the environment.” Accordingly, consistent with State law, the Draft EIR does not assess potential environmental impacts associated with parking availability.

The proposed Hotel project, along with most parcels within the Overlay, qualifies under this provision. Therefore, concerns regarding parking are not deemed significant impacts under CEQA.

However, courts have established that significant secondary effects stemming from parking scarcity, such as impacts on air quality, can be considered under CEQA (*Save Our Access–San Gabriel Mountains v. Watershed Conservation Authority*, (2021) 68 Cal.App.5th 8). That said, the parking situation has been thoroughly analyzed in the *Traffic Impact Study for the Petaluma Appellation Hotel Project*, which concluded that the proposed parking supply would be adequate to meet City requirements. As such, the Hotel will not experience parking scarcity, and therefore would not result in any significant secondary environmental impacts due to lack of parking. Furthermore, potential impacts on air quality based on unsubstantiated claims about traffic congestion lack merit. As highlighted in *Upland Community First v. City of Upland*, (2024) 105 Cal.App.5th 1, claims suggesting that a project might have significant impacts on air quality and GHG emissions due to traffic-related parking scarcity are unfounded.

#### **14b) Effect of Parking on VMT**

As indicated above, parking availability is not a CEQA impact. Parking availability does, however, influence VMT, which is a key metric used in transportation and GHG CEQA analyses. One of the more effective VMT reduction strategies at both a project and areawide level is to reduce the supply of parking. This tends to discourage travel by private vehicle, incentivizing VMT-beneficial effects including carpooling, use of transit, and use of active transportation. The City of Petaluma has recognized the beneficial effects of parking management and limiting parking supply in reducing VMT in its 2021 *Senate Bill 743 Vehicle Miles Traveled Implementation Guidelines* and *Final Citywide TDM Requirements*.

Several commenters expressed concern that a lack of parking at the EKN Appellation Hotel could lead to adverse VMT impacts associated with drivers circulating on surrounding streets in search of parking. However, efforts to increase parking supply could actually result in the unintended opposite effect of *increasing* VMT levels based on available research.

The effects of parking on VMT and GHG emissions are less than significant because:

- The proposed project is not expected to result in parking shortages that would lead to drivers circulating on surrounding streets in search of parking.
- Reduced parking promotes public transit and other environmentally friendly modes of transportation like walking and biking, which may decrease the number of vehicles on the road and the secondary effects to traffic and air quality.
- All sites within the Overlay are already developable and while the proposed Overlay Ordinance allows these parcels to increase their height, FAR, and lot coverage, the proposed

Ordinance does not increase density. Therefore, any increase in the number of vehicles due to the Overlay Ordinance will be negligible.

- As the Overlay is within 0.5 mile of transit and urban infill, any increase of VMT will be less than compared to development in other parts of the City.
- As the VMT was found to be less than significant, so too will the secondary impacts on air quality and GHG emissions.

Even if there were secondary effects related to parking scarcity within the Overlay Ordinance—which, as previously discussed, there are not—Assembly Bill (AB) 2097 prohibits the City from imposing parking requirements to mitigate these effects. Specifically, AB 2097 prohibits the imposition of minimum parking requirements on residential, commercial, or other development projects located within 0.5 mile of a “major transit stop.” The SMART station qualifies as a “major transit stop” under AB 2097, and most parcels within the Overlay fall within this 0.5-mile radius. Consequently, the City is not permitted to impose minimum parking requirements on the majority of parcels in the Overlay.

#### **14c) Parking Requirements**

While no adverse environmental impacts have been identified related to the proposed project’s parking, the following discussion provides additional information about the potential parking conditions associated with the proposed EKN Appellation Hotel. A parking assessment for the proposed project is included in the *Traffic Impact Study for the Petaluma Appellation Hotel Project*, W-Trans, 2023. As explained in the study, the proposed project site is complex in that a portion of the site (roughly two-thirds) is with the Downtown parking assessment district and required to provide no parking. For the remaining portion of the site (approximately one-third) that is outside of the district, the parking requirements specified in the IZO, Chapter 11; Parking and Facilities, Off-Street, were applied, resulting in a total parking requirement of 48 spaces. The 58 on-site parking spaces included as part of the proposed project satisfy the parking requirements specified by the City’s zoning code. The parking assessment includes no deductions for travel by SMART or other non-auto modes.

The Hotel complies with the City's parking requirements, which went through its own CEQA analysis, and the Traffic Impact Study (Appendix A of the Draft EIR) concluded that there is sufficient parking available for the proposed project. This finding provides substantial evidence supporting the Hotel's compliance. Additionally, no substantial evidence has been presented to demonstrate that the proposed Overlay would result in parking shortages.

However, future development within the Overlay will undergo its own independent CEQA analysis. Consequently, specific projects may encounter parking issues that could also raise concerns related to air quality, noise, and traffic, potentially requiring mitigation under CEQA. Additionally, all developments within the Overlay will need to obtain a SPAR permit. To secure a SPAR permit, the reviewing body must find that “ingress, egress, internal circulation for bicycles and automobiles, off-street automobile and bicycle parking facilities, and pedestrian ways are designed to promote safety and convenience and conform to applicable City standards” (Petaluma IZO Section 24.050(E)(3)).

Additionally, any development in the Overlay seeking to build above 45 feet would be required to obtain a CUP, pursuant to Section 24.060 of the Petaluma IZO. To obtain a CUP, the Planning Commission would need to make the following findings related to parking and circulation:

- The type of street serving the proposed building(s) and use is adequate for the amount of traffic expected to be generated.
- The adequacy, convenience, and safety of vehicular access and parking, including the location of driveway entrances and exits is adequate for the amount of traffic expected to be generated, and will be compatible with adjoining buildings and uses.
- The amount, timing, and nature of any truck traffic associated with the proposed building(s) and use will be compatible with adjoining buildings and uses.

Thus, if there is substantial evidence that a development's design leads to parking issues, the reviewing body has the authority to deny the SPAR/HSPAR permit or CUP.

#### **14d) City Parking Study**

As a distinct and separate matter from the proposed Project, the City is pursuing a Downtown Area Parking Management Plan, which is currently under development. The following summary of the City's ongoing parking study is provided for informational purposes only and does not constitute new information or inform the City's findings on the subject EIR. The Downtown Area Parking Management Plan is an independent project that is proceeding pursuant to a separate City planning process and is not part of the proposed project or necessary for the City to make decisions regarding the proposed project.

The intent of the Parking Management Plan is to produce a clear understanding of existing on-street and off-street parking utilization, as well as other curb uses, engage the community, and identify strategies to optimize parking and curb utilization in support of a thriving downtown. As an initial step in the development of the Plan, City staff presented an update on data collection efforts and requested feedback on parking and curb management strategies during the January 27, 2025 City Council public meeting (see workshop agenda item #7).

As presented in the staff report, industry best practices indicate that 85 percent is the ideal parking occupancy as it represents optimal parking utilization by demonstrating economic activity while ensuring an appropriate number of parking spaces are available (e.g. ~ three out of every 20 spaces, or at least one space on every block). The preliminary data collected indicates the following:

- Existing parking utilization in downtown rarely exceeds the industry recommended 85 percent occupancy
- On-street parking demand is higher in the downtown core relative to the perimeter
- Public and private off-street parking facilities and streets spaces have capacity, even during peak times



The results indicate that opportunities exist to optimize parking and curb use rather than expanding parking capacity through new lots or garages. Parking use strategies identified through review of parking data collected and community outreach include improving turnover, encouraging the use of off-street and long-term parking, and enhancing mobility options. The potential strategies and action items to be considered as part of the Downtown Area Parking Management Plan include the following:

- Improve Transportation Options
- Create More Frequent Turnover
- Promote Long Term Parking Options
- Improve Loading Access and Safety
- Expand Parking Supply

The City Council provided feedback at the January 27, 2025 public meeting, which will inform the development of the Downtown Area Parking Management Plan strategies and specific actions. The Plan will be brought back to Council later in 2025 to review the draft Plan, receive additional feedback, and consider adoption of the Plan.

### **Parking Conclusions**

In summary, while parking is a social issue and not directly related to an adverse physical impact on the environment, the proposed EKN Appellation Hotel project would comply with the City's zoning requirements pertaining to provision of parking. The proposed project is also anticipated to accommodate its parking demand during most periods; during Saturday evenings during 8:00 p.m. to 10:00 p.m. some use of public spaces may be needed, though this is anticipated to cause little inconvenience to other users since demand generated by other Downtown uses typically subsides by this time. Use of shared public facilities is also expected within the Downtown parking assessment district. From an environmental perspective, provision of additional on-site parking at the proposed project site has the potential to increase, rather than reduce, VMT.

### **Master Response 15—Traffic Congestion**

#### ***Summary of Comments***

The general comments addressed in this Master Response fall into one of several categories:

- Concerns that the proposed project would increase traffic congestion.
- Allegations that the Level of Service (LOS) analysis inaccurately states that the proposed Hotel would not result in an exceedance of the City's LOS standards.
- Concerns that the VMT CEQA screening that is applied to the proposed Hotel because it is within 0.5 miles of the SMART train is inaccurately applied because Hotel guests are not likely to use the SMART train.

#### *Applicability of Traffic Congestion and LOS in CEQA*

Several commenters criticized that the traffic analysis contained in the Draft EIR is inadequate, or that the Draft EIR fails to identify significant impacts associated with traffic congestion. Historically, the transportation impacts of land development projects were evaluated based on a congestion-focused metric referred to as LOS, which is generally tied to the average delays that drivers experience. In 2013, Governor Brown signed Senate Bill (SB) 743, requiring amendments to the CEQA Guidelines for analyzing transportation impacts. Through this action, Public Resources Code Section 21099 (b)(1) directed the California Governor's Office of Planning and Research (OPR) to prepare updated CEQA Guidelines for adoption by the Natural Resources Agency, including revised transportation significance criteria. Public Resources Code Section 21099 (b)(2) specifies that "automobile delay, as described solely by LOS or similar measures of vehicular capacity or traffic congestion, shall not be considered a significant impact on the environment." (See also, CEQA Guidelines § 15064.3(b)(2)).

The use of VMT as the appropriate metric for evaluating traffic impacts under CEQA became mandatory on July 1, 2020. Accordingly, consistent with the requirements set forth in SB 743 and current CEQA Guidelines, the transportation analysis performed in the Draft EIR focuses on the analysis of VMT rather than LOS. The Draft EIR does include a LOS analysis for informational purposes, summarizing the results of the Hotel project's Traffic Impact Study, but consistent with State law does not identify environmental impacts related to traffic congestion and LOS.

#### *Findings in the Hotel Traffic Impact Study*

As required by the City of Petaluma, the *Traffic Impact Study for the Petaluma Appellation Hotel Project*, W-Trans, 2023 (Hotel TIS), was prepared to assess the potential transportation-related effects of the Hotel project. As noted above, the congestion-based traffic analysis contained in the study is not used in the Draft EIR. It is, however, used by the City to determine the need for infrastructure modifications, as well as to determine consistency with the LOS standards contained in the City's current General Plan. The Hotel TIS also includes assessment of VMT, potential impacts on non-auto modes, and access that are referred to and used in the Draft EIR.

The Hotel TIS uses industry-standard trip generation rates published in the *Trip Generation Manual*, 10th Edition, Institute of Transportation Engineers (ITE), 2017. The proposed Hotel has no unusual characteristics that would lead to it having significantly higher employment levels than other hotels, so the use of industry-standard ITE rates is appropriate. The ITE land use description for hotels states, "A hotel is a place of lodging that provides sleeping accommodations and supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or other retail and service shops." This description is well-suited to the proposed Hotel. However, the TIS took a conservative approach in that it added restaurant trips on top of the Hotel trips, even though the ITE trip rate for a Hotel already includes restaurant trips. The conservative approach taken in the Draft EIR recognizes that the proposed restaurant could draw from a broader clientele, leading to the conservative inclusion of additional restaurant-specific rates and trips. Using this conservative approach nearly doubled the proposed project's estimated trip generation (from 511 to 1,174).

The applied trip generation estimates for the proposed Hotel development also include an additional factor to account for valet parking activity. Combined, the various components of the proposed project are anticipated to generate 1,174 daily trips including 99 during the PM peak-hour, which is typically the most congested condition of the day in the study area. The traffic congestion (LOS) analysis contained in the Traffic Impact Study is based on these conservative estimates.

Several commenters indicated that the Hotel's traffic analysis assumes that many of the proposed project's trips would be made by walking, biking, or taking SMART. This is incorrect; the Hotel TIS trip generation estimates include no such deductions for non-auto trips. The Hotel TIS does assess the proposed project's influences on pedestrian, bicycle, and transit modes, but again, does not reduce the projected levels of automobile and truck traffic generated by the proposed project in the analysis of congestion and LOS.

Additionally, the Hotel and any development within the Overlay exceeding 45 feet in height will be required to obtain a SPAR permit and a CUP. To secure a Site Plan and Architectural Review permit, the reviewing body must determine that "ingress, egress, internal circulation for bicycles and automobiles, off-street automobile and bicycle parking facilities, and pedestrian pathways are designed to promote safety and convenience and conform to applicable City standards" (Petaluma IZO Section 24.050(E)(3)). Similarly, developments within the Overlay proposing to exceed 45 feet in height must obtain a CUP in accordance with Section 24.060 of the Petaluma IZO.

To approve a CUP, the Planning Commission must make the following findings related to traffic congestion:

- The type of street serving the proposed building(s) and use is adequate for the amount of traffic expected to be generated.
- The adequacy, convenience, and safety of vehicular access and parking, including the location of driveway entrances and exits, is sufficient for the anticipated traffic volume and will be compatible with adjacent buildings and uses.
- The amount, timing, and nature of any truck traffic associated with the proposed building(s) and use will be compatible with adjoining buildings and uses.

These findings are critical for addressing traffic congestion. If the findings cannot be made, the development will not be granted a SPAR permit or CUP.

Furthermore, future developments within the Overlay will undergo their own independent analysis under CEQA. As a result, specific projects may encounter traffic congestion impacts that could necessitate mitigation under CEQA. Lastly, as updated on page 4-69 in Volume 1 of the Final EIR, a Transportation Demand Management Plan (TDM) was prepared per *Senate Bill 743 Vehicle Miles Traveled Implementation Guidelines* and *Final Citywide TDM Requirements*.

## Master Response 16—Effects of Street Closures and Special Events

### Summary of Comments

The general comments addressed in this Master Response fall into one of several categories:

- Concerns about guests accessing the Hotel during community events (e.g. Butter and Egg Day).
- Concern that event(s) at the proposed Hotel will adversely impact downtown parking and traffic.

Several commenters asked how Hotel patrons will travel to the Hotel when streets are closed for events and parades, as well as how access to the Hotel would in turn affect these events. Specific events identified in the comments include the Butter and Egg Days and Veteran’s Day parades and Salute to American Graffiti event. Consistent with standard practice and initial scoping of the study in collaboration with City staff, the Hotel TIS analyzes typical traffic and parking conditions rather than those occurring under unusual circumstances such as special events with street closures.

Maintaining access and parking supplies during such events is addressed as part of broader operational planning overseen by the City for the events themselves, and in the case of the proposed Hotel will need to be addressed by Hotel management in collaboration with the City, similar to how other Downtown business owners and operators currently function during events and parades. It is likely that the Hotel operator will need to notify guests, employees, and delivery providers of closure periods when access is unavailable. While such occurrences are likely to cause temporary inconveniences, they would not lead to transportation-related environmental impacts or the need for CEQA-based mitigation measures.

Additionally, the City has the ability to condition any special event permit within the public right-of-way (Petaluma Municipal Code Section 13.32.090). While Section 13.32.090 allows reasonable conditions, they explicitly include the following conditions related to traffic:

- Conditions concerning accommodation of pedestrian or vehicular traffic, including restricting the event to only a portion of a street transversed;
- Requirements for the use of traffic cones or barricades

Accordingly, any specific impacts due to the special event like traffic and safety can be conditioned by the Petaluma Police Department in issuing the special event permit. Similarly, each special event permit will undergo its own CEQA analysis and impacts can be addressed through CEQA.

While special events are not typically addressed in environmental traffic analyses, street closures associated with these events inevitably leads to increased traffic congestion and parking demand. The Hotel project may incrementally increase these effects, though likely not to a discernible or measurable degree since Hotel traffic and parking demand tends to be distributed throughout the day rather than concentrated during peak periods that coincide with special events. As previously discussed, Hotel parking demand also tends to peak during the evenings and overnight when most

events have concluded. However, during peak hours, the proposed Hotel would have three to four dedicated valets to handle both pick-up and drop-off services.

Special events affecting Hotel access also occur only a few days per year; traffic and parking assessments generally focus on typical operational conditions rather than designing facilities such as roadways and parking lots to accommodate the annual highest hours of demand. With respect to VMT, access restrictions affecting visitors and deliveries would not be expected to materially influence vehicular travel over the course of a day; rather, travel would likely be shifted to different times of day. Employees would be aware of access restrictions in advance and make accommodations to travel at different times of day or use alternate modes of travel, just as employees of current Downtown Petaluma businesses do on event days and periods with planned street closures.

Commenters also raise concern regarding the adverse effects of events occurring at the Hotel itself and assert that the downtown would be adversely impacted, including multiple events held at the Hotel simultaneously. Consistent with best practice, the Hotel TIS analysis relied upon industry standard trip generation figures (ITE rates) for Hotel uses. The ITE land use description for hotels states, *“A hotel is a place of lodging that provides sleeping accommodations and supporting facilities such as restaurants, cocktail lounges, meeting and banquet rooms or convention facilities, limited recreational facilities (pool, fitness room), and/or other retail and service shops.”* As such, the analysis does capture the potential trip generation and corresponding transportation effects associated with the proposed Hotel including the use of event space (e.g. banquet rooms or convention facilities). Special events at the Hotel will need to comply with its own occupancy requirements and are therefore captured within the Hotel traffic study. As described in Master Response 15—Traffic Congestion, the Hotel TIS found that at operation the proposed Hotel use, which is inclusive of internal event spaces, would result in less than significant environmental impacts.

## **Master Response 17—Hazardous Materials**

### ***Summary of Comments***

The general comments addressed in this Master Response fall into one of several categories:

- Concerns regarding hazardous waste and contaminated soil.
- Concerns regarding groundwater intrusion.

The EKN Hotel property has undergone several rounds of remedial action under the oversight of the California State Water Resources Control Board (State Water Board) and the Sonoma County Department of Health Services (SCDEH), as described in Chapter 4 of the Draft EIR (Additional Effects Evaluated in the Initial Study). As discussed therein, the State Water Board recorded a Covenant and Environmental Restriction (Covenant) against the property as part of the remediation and closure of the site. The Covenant limits future uses to industrial, commercial, and mixed-use, and office; uses which include development of a hotel. The Covenant also sets forth regulations for activities related to ground disturbance, groundwater extraction, construction dewatering, soil or groundwater sampling, and soil reuse or disposal. As of February 2020, the Leaking Underground Storage Tank

(LUST) cleanup case was closed and a letter confirming the completion of site investigation and remedial action for the LUSTs was issued to the property owner.

The Covenant requires the EKN Hotel applicant to perform specific actions and to report the results to the State Water Board and SCDEH prior to occupancy of the site. The actions include collection of soil confirmation samples following excavation of the proposed 7,140 cubic yards of soil, groundwater samples from the resulting excavation pit, and paired subslab and indoor air samples following completion of the proposed Hotel and prior to occupation to ensure effectiveness of the required vapor barriers and venting systems. The requirements are incorporated into MM EKN HAZ-2, which spells out the specific steps, timing, and subsequent testing, if needed, to demonstrate the readiness of the site for occupation. The steps also provide for annual summary reports to be prepared summarizing any plans for ground disturbance, along with proposed remedial measures and monitoring to be implemented.

Additional information on remedial activities completed at the site is available from the State Water Board.<sup>5</sup>

Finally, the Draft EIR identifies MM EKN HAZ-1, which requires preparation of a site-specific Health and Safety Plan (HASP) and a Soils Management Plan (SMP).

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<sup>5</sup> California State Water Resources Control Board (State Water Board). Geotracker. 2025. Website: [https://geotracker.waterboards.ca.gov/profile\\_report.asp?global\\_id=T0609700800](https://geotracker.waterboards.ca.gov/profile_report.asp?global_id=T0609700800). Accessed January 11, 2025.