



TO: Planning Commission **DATE:** January 26, 2016
FROM: Vin Smith, Director of Planning and Building
SUBJECT: Agenda Item No. 2: Staff Response to Letter from Edward Yates

Planning Department Staff and the City Attorney have reviewed and evaluated the comments provided by Mr. Yates in his undated letter addressing, in part, Agenda Item No. 2, Amendment to the Land Use Element and Land Use Plan. Mr. Yates' comments also address an item to be considered on the Planning Commission's February 9, 2016 agenda. The attached memorandum from Greg Stepanicich, City Attorney, concludes that the Initial Study/Negative Declaration provided in the Staff Report is accurate and appropriately concludes that no adverse environmental impacts will occur as a result of this project.

The following provides responses to Mr. Yates comments pertaining to the item on the January 26th agenda. Staff will provide additional responses related to the action scheduled for February 9th prior to the hearing on February 9th.

1. In his letter, Mr. Yates states that the Initial Study/Negative Declaration (Neg-Dec) is insufficient and does not satisfy CEQA. He references Section 15378(a)(1) which is the definition of "Project" provided by CEQA. Specifically, this section provides:

(a) "Project" means the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

(1) An activity directly undertaken by any public agency including but not limited to...enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof..."

Staff Response: Staff agrees that the proposed General Plan Amendments qualify as a project under CEQA. The Neg-Dec was prepared with this understanding. The whole of the action described and discussed in the Neg-Dec is clear: an Amendment to the General Plan (text and map) to create the Downtown Residential Land Use Designation (see staff report and attachments for more details).

2. Mr. Yates asserts that that the new Land Use Designation will "...provide for possibilities of increase in FAR and decreases in setbacks, increases in both density and impermeable surfaces are certainly possible, if not probable". He further states "...The Initial Studies, however, do not include impact assessment of land use changes on circulation and transportation (including parking) due to more potential traffic, increase in polluted runoff to waterbodies, including the San Francisco Bay, and increase in flooding due to a potential increases in impermeable surfaces and changes to existing building footprints in several areas within FEMA identified floodplains".

Staff Response: In my conversations with Mr. Yates, I explained that the proposal Land Use Change to create the Downtown Residential General Plan Designation was a mutually agreed upon solution to recognize this unique residential neighborhood around the downtown commercial core. The City Council, Planning Commission and neighborhood groups support the General Plan Amendments, especially the adjustments in minimum density and recognition that Single Family Residential Units are permitted within the new Land Use Designation. The Initial Study assesses all of the areas listed in Mr. Yates letter (and all of the required sections of an Initial Study) and concludes that: the change in name, the reduction in minimum density and the absence of any increase to the density currently authorized by the existing Land Use densities do not create potentially significant adverse environmental impacts. Additionally, the lack of additional development potential resulting from the proposed Land Use changes results in no new adverse impacts to circulation, transportation, traffic, increased runoff or increased impacts to flood zones (as listed in Mr. Yates' letter).

3. In several sections of the Initial Study, Staff references that future development applications will require specific analysis under the requirements of CEQA (see above discussion about "projects" as defined by CEQA). Said differently, if a proposal is a "project" as defined by CEQA, environmental review is required; no project can be approved without a finding of compliance with CEQA. CEQA analysis may include determining that a Categorical Exemption applies to the project, preparation of an Initial Study and either recommending a Negative Declaration or an Environmental Impact Report.

As stated in the attached City Attorney's memo, I add that CEQA Guidelines Section 15384 requires that when evaluating potential impacts of a project, Substantial Evidence must support the conclusion that a potential significant impact could result from the project. As stated by this section "Substantial Evidence means 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". The test of whether a fair argument can be made that the project may have a significant effect on the environment is done by evaluating all information before the lead agency (City). Section 15384 goes on to state that "...argument, speculation, unsubstantiated opinion or narrative....does not constitute substantial evidence". Simply stating that more analysis is necessary, without any specific reasoning or justification for the analysis based on the project as a whole, does not satisfy the "substantial evidence" requirement of CEQA.

Based on the project as described in the Staff Report and the Initial Study/Negative Declaration, and considering the comments received by Mr. Yates, Staff sees no new information or Substantial Evidence, that would alter the conclusions reached in the Initial Study/Negative Declaration.

enc: Memorandum from Greg Stepanicich, City Attorney, dated January 26, 2016