



**FILED**

09/11/23

04:59 PM

**A2309015**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

Application of San Francisco for Rehearing of  
Resolution TL-19144

A.

**SAN FRANCISCO'S APPLICATION TO REHEAR RESOLUTION TL-19144  
APPROVING AUTHORIZATION FOR WAYMO AUTONOMOUS VEHICLE PASSENGER  
SERVICE PHASE 1 DRIVERLESS DEPLOYMENT PROGRAM**

JEFFREY P. TUMLIN  
Director of Transportation  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7th Floor  
San Francisco, CA 94103  
(415) 646-2522  
jeffrey.tumlin@sfmta.com

TILLY CHANG  
Executive Director  
San Francisco County Transportation Authority  
1455 Market Street, 22nd Floor  
San Francisco, CA 94103  
(415) 522-4832  
tilly.chang@sfcta.org

RICH HILLIS  
Planning Director  
San Francisco Planning  
49 South Van Ness Avenue, Suite 1400  
San Francisco, CA 94103  
(628) 652-7411  
rich.hillis@sfgov.org

Dated: September 11, 2023

## INTRODUCTION

As part of its mandate to oversee Autonomous Vehicle Passenger Services (“AVPS”) in California, the California Public Utilities Commission (“Commission” or “CPUC”) has the statutory responsibility to protect public and passenger safety.<sup>1</sup> But in the face of increased numbers of safety incidents involving driverless autonomous vehicles (“AVs”) that the Commission concedes make it “concerned about potential risks, known and unknown, to passenger and public safety as driverless AVs scale up,”<sup>2</sup> the Commission declined to impose any conditions to measure or mitigate those public and passenger safety risks. Instead, the Commission approved Resolution TL-19144 based on the minimum requirements set forth in the Deployment Decision,<sup>3</sup> without considering whether those minimum requirements were sufficient in light of growing evidence of safety hazards, and without adequate regulations or permit conditions in response to serious incidents on San Francisco’s roads.

Before approving the Resolution, the CPUC had evidence that driverless AVs drove over fire hoses, interfered with active emergency scenes, and otherwise impeded first responders more than 50 times as of August 7, 2023, and yet imposed no requirements on Waymo LLC (“Waymo”) to avoid, mitigate, or limit such incidents—or even to track or report them.<sup>4</sup> The CPUC had evidence that driverless AVs blocked public transit lines by making “unplanned stops in unsafe locations,”<sup>5</sup> yet declined to impose any requirements on Waymo to avoid, mitigate, or limit this interference or impose any benchmarks for improvement in this area. And the CPUC had evidence of almost 600 unique incidents in San Francisco of various kinds of street interference caused by driverless AVs reported by members of the public and City workers, but did not investigate these incidents or impose any limitations on service to mitigate the risks arising from these incidents.<sup>6</sup> The CPUC’s inaction cannot be squared with the evidence before it, the magnitude of the passenger and public safety risks at stake,

---

<sup>1</sup> Cal. Pub. Util. Code §§ 5351 et seq.

<sup>2</sup> Resolution Approving Waymo LLC’s Application for Phase I Driverless Autonomous Vehicle Passenger Service Deployment Program, TL-19144 (“The Resolution”) at 11.

<sup>3</sup> Decision (“D.”) 20-11-046 as modified by D.21-05-017.

<sup>4</sup> Resolution at 12.

<sup>5</sup> *Id.*

or its awareness that San Francisco lacks the enforcement tools to address California Vehicle Code (“CVC”) violations. Nor can the Commission’s failure to consider the environmental impacts of its expansion decisions be squared with its duty to conduct the appropriate review.

Under the Commission’s Rule of Practice and Procedure 16.1, the San Francisco Municipal Transportation Agency (“SFMTA”), the San Francisco County Transportation Agency (“SFCTA”), and the San Francisco Planning Department (collectively “San Francisco”) submit this Application for Rehearing (“Application”) of Resolution TL-19144 allowing Waymo to initiate commercial service under the Autonomous Vehicle Passenger Service Phase I Driverless Deployment Program in San Francisco with no limitations on geographic area, service hours, or fleet size, and no requirement that Waymo report any data or information about the large number of street interference incidents and other critical data for monitoring and evaluating AV system performance.<sup>7</sup> The Commission’s approval of the Resolution should be reheard for three reasons. First, the informal advice letter process under which the Resolution was issued was procedurally inadequate. The Commission failed to develop an adequate evidentiary record to support its decision and the Commission unlawfully ignored the public safety hazards and potential environmental impacts raised by San Francisco and other commenters in the limited record it did develop. Second, as a matter of law, the Commission failed to fulfill its duty to protect passenger and public safety, as required by the Passenger Charter-Party Carriers’ Act (Cal. Pub. Util. Code §§ 5351 et seq., “TCP Act”). Third, as indicated in the Commission’s record, a significant number of driverless AVs operating at one time without restriction in San Francisco may result in significant environmental impacts, yet the Commission unlawfully failed to comply with the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., “CEQA”).

Given the importance of these issues individually and collectively, San Francisco respectfully requests that the Commission allow oral argument as part of the Commission’s consideration of this Application. Oral argument will materially assist the Commission in resolving this Application because the decision presents legal issues of exceptional controversy, complexity, and public

---

<sup>7</sup> San Francisco is contemporaneously filing a similar application for rehearing as to the companion resolution for Cruise.

importance and raises questions of first impression that are likely to have significant precedential impact. The public importance, controversy, and complexity of these questions is evident from the multiple hours of live public comment that preceded the Commission's vote on the Resolutions. Because driverless AVs are an emerging technology whose passenger and public safety impacts in real-world circumstances are only just becoming known, this Application presents questions of first impression about how the Commission, as a regulator, must address such real-world incidents and move with care.

San Francisco also reiterates its request for a stay pending resolution of this Application, filed on August 16, 2023. The justification for a stay has only strengthened since that date. Interference with fire department operations and other emergency response poses a continuing threat to passenger and public safety.<sup>8</sup> Expansion should be paused until the Commission appropriately ensures that this interference is eliminated.

San Francisco has a long track record of encouraging technological innovation that improves residents' quality of life and continues to share the Commission's hope that automated driving will improve street safety and offer other benefits to San Francisco travelers in terms of expanding the menu of transportation choices and enhancing equitable and accessible mobility for a wide population. But AV technology has not yet proven itself to operate in a way that adequately protects passenger and public safety. While driverless AVs may avoid some dangerous human driving behaviors, early driverless operations also reveal driving errors that are both common *and uncommon* for human drivers and system limitations that may create significant dangers for the public generally. Now is the time to ensure that AVs are *in fact* superior drivers and that system operations meet high public safety and resiliency standards. Rehearing is required to ensure that driverless AV deployment in San

---

<sup>8</sup> See Declaration of Darius Luttrupp in Support of San Francisco's Motion to Stay Resolution Approving Authorization for Waymo Autonomous Vehicle Passenger Service Phase 1 Driverless Deployment Program and San Francisco's Motion to Stay Resolution Approving Authorization for Cruise LLC's Expanded Service in Autonomous Vehicle Passenger Service Phase I Driverless Deployment Program ("Luttrupp Decl.") attached as Exhibit 3 to the Declaration of Misha Tsukerman in Support of San Francisco's Application for Rehearing of Resolution Approving Authorization for Waymo Autonomous Vehicle Passenger Service Phase 1 Driverless Deployment Program and San Francisco's Application for Rehearing of Resolution Approving Authorization for Cruise LLC's Expanded Service in Autonomous Vehicle Passenger Service Phase I Driverless Deployment Program ("Tsukerman Decl.").

San Francisco is consistent with the Commission’s legal obligation to promote passenger and public safety and is subject to the appropriate environmental review.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### **A. Events and Filings Prior to Approval of the Resolution**

On December 12, 2022, Waymo filed a Tier 3 Advice Letter seeking Commission approval to offer commercial driverless AV passenger service in San Francisco with no limitations on geographic area, service hours and fleet size (“Advice Letter”). In response, San Francisco filed a protest letter in January 2023 arguing that new information about hazards and impacts caused by driverless AVs called for additional data collection and incremental, performance-based approvals—not the expansion at Waymo’s sole discretion with no limitations on geographic area, service hours, or fleet size that Waymo sought.<sup>9</sup>

For example, in its original protest to Waymo’s Advice Letter, San Francisco explained that it was concerned about potential unplanned stops by driverless AVs that could obstruct travel lanes creating hazards, such as causing rear end collisions or causing other vehicles to make dangerous abrupt lane changes, brake or accelerate rapidly, or veer into bike lanes or crosswalks.<sup>10</sup> Nonetheless—and despite acknowledging in its Draft Resolution released on May 11, 2023 that “[u]nplanned stops in unsafe locations create hazards for passengers and other road users, block the flow of traffic, and interfere with public transit” and that unsafe pick-up and drop-off practices create accessibility challenges for passengers,<sup>11</sup> the Commission’s Draft Resolution recommended approval of the Advice Letter with no changes or limitations. San Francisco submitted comments on the Draft Resolution, in which it identified even more driverless AV-related incidents impacting passenger and public safety, including eighteen (18) incidents in which SFFD staff documented in writing AVs interference with emergency response operations and putting firefighters and members of the public at

---

<sup>9</sup> San Francisco Protest of Waymo LLC Tier 3 Advice Letter (0001) (“Waymo Protest Letter”).

<sup>10</sup> Waymo Protest Letter at 6.

<sup>11</sup> Draft Resolution at 12.

greater risk. San Francisco also reported that driverless Waymo AVs had created significant risks to passenger and public safety in other ways, such as by intruding into construction zones in which city employees were working and failing to comply with directions given by human traffic control officers.<sup>12</sup> Furthermore, San Francisco noted that Waymo was not required to provide wheelchair accessible vehicle (“WAV”) service or meet any other accessibility standards, despite receiving numerous letters and public comments from the disability community expressing interest in using autonomous vehicles, concern about the lack of accessibility regulations, and safety questions regarding the ability of AVs to recognize disabled pedestrians.<sup>13</sup>

Recognizing the seriousness of the public safety ramifications of continued interference with emergency responders caused by driverless AVs, the Assigned Commissioner and Administrative Law Judge in rulemaking 12-12-011 held a Status Conference/All Party Meeting attended by at least four Commissioners to address safety issues regarding AV interactions with first responders on August 7, 2023.<sup>14</sup> San Francisco representatives presented information about the nature and volume of hazards caused by driverless AV street interference incidents, the specific hazards caused by interference with SFFD operations, the limitations driverless AVs currently display in interacting with emergency responders, the communication problems that exacerbate driverless AV interference with Fire and Police operations, the improvements driverless AV companies need to make to their vehicles and their staff operations to prevent and minimize interference with Fire and Police operations, and tools the City makes available that the industry could use to prevent and reduce this interference. At that status conference, the Commission also heard about street interference incidents with driverless AVs (e.g.,

---

<sup>12</sup> CCSF Comment on Draft Resolution at 11-15.

<sup>13</sup> Letter from Senior and Disability Action to CPUC, August 9, 2023; Letter from Disability Rights Education and Defense Fund to CPUC, August 10, 2023; Letter from California Council of the Blind to CPUC, July 10, 2023; Email from Daveed Mandell to CPUC, August 2, 2023; Email from Helen Smolinski to CPUC, July 10, 2023; Public comment from Ian Smith at CPUC Voting Meeting, August 10, 2023; Public comment from Shaya French at CPUC Voting Meeting, August 10, 2023; Public comment from Cheryl Damico at CPUC Voting Meeting, August 10, 2023; Public comment from Steffany Dignum at CPUC Voting Meeting, August 10, 2023; Public comment from Claudia Center at CPUC Voting Meeting, August 10, 2023; Public comment from Carol Brownson at CPUC Voting Meeting, August 10, 2023.

<sup>14</sup> Tsukerman Decl. Exh. 1, Reporters’ Transcript, Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, and New-Online Enabled transportation Services, Status Conference (“First Responder Status Conference Transcript”), August, 7, 2023.

unexpected stops, erratic driving, and other CVC violations) from members of the public, City employees, firefighters, transit operators, and others. Between June 2022 and June 2023, San Francisco logged almost 600 such incidents, with the number of incidents increasing dramatically since March 2023.<sup>15</sup>

San Francisco Fire Chief Jeanine Nicholson testified that as of that time, there had been 55 written reports from SFFD staff of instances of driverless AV interference with SFFD emergency response—including incidents of AVs:

- obstructing station ingress/egress, thus requiring SFFD to call other vehicles to respond to an emergency from farther away, “thus delaying [SFFD’s] response time,”
- obstructing travel to an emergency, forcing SFFD vehicles “to go all the way around the block or back out because the [AVs] are in the way,”
- contacting or nearly missing contact with SFFD personnel or equipment, including fire hoses needed to fight fires, and
- “coming into [SFFD] scenes in an unsafe and unpredictable manner”<sup>16</sup> and requiring SFFD personnel to divert their attention from the emergency at hand to prevent AVs from creating additional hazards.

Chief Nicholson and SFFD Deputy Chief of Operations Darius Luttrupp also explained that communications between driverless AVs and their remote human support staff are far too slow to be acceptable in an emergency. Deputy Chief Luttrupp testified that current Cruise and Waymo driverless operations place the onus on SFFD and the Department of Emergency Management 911 dispatchers to reach out to the companies by phone to get driverless AVs to take direction that human drivers receive and respond to immediately. In addition to distracting firefighters and paramedics from their actual emergency response responsibilities, Deputy Chief Luttrupp noted that such a requirement is problematic because most firefighters do not carry phones on emergency response

---

<sup>15</sup> First Responder Status Conference Transcript at 34; Tsukerman Decl., Exh. 2 [“CPUC Status Conference: Safety Issues Regarding Driverless AV Interactions with First Responders” Slide Presentation] at 5.

<sup>16</sup> First Responder Status Conference Transcript at 37; Tsukerman Decl. Exh. 2 at Slide 7.

calls.<sup>17</sup> At emergency scenes, the other communication approach is to try to reach Cruise and Waymo remote human advisors through an AV window. These efforts require far too much time for emergency responders and human traffic control staff from the San Francisco Police Department and/or SFMTA to be away from their core duties, jeopardizing the attention they must give to responding to the emergency at hand. As Chief Nicholson emphasized, firefighters “cannot be paying attention to an autonomous vehicle when we’ve got ladders to throw.”<sup>18</sup>

At the Status Conference, Cruise and Waymo provided—for the first time despite San Francisco’s repeated requests—information about how many vehicles they have on the road and how long it takes them on average to retrieve a vehicle after certain unexpected stops. Specifically, Waymo testified that the average response time to resolve their own count of 58 Vehicle Retrieval Events is 10 minutes.<sup>19</sup> Vehicle Retrieval Events, which the companies defined for themselves because the Commission did not provide a definition, appear to be only a small portion of the incidents where driverless AVs affect emergency response operations, transit operations, on-street workers and human traffic control because, in many cases, Waymo is able to move a driverless AV from the scene without sending out a human retrieval team. While a 10 minute delay may just be frustrating for someone driving home from work, it could have significant consequences on other systems that depend on City streets. Chief Nicholson explained that a fire can double in size in just one minute; a ten minute delay for emergency responders can have devastating effects.<sup>20</sup> Chief Nicholson also testified that some incidents last far longer than 10 minutes—noting that SFFD has had AVs

---

<sup>17</sup> First Responder Status Conference Transcript at 80 (“[W]e don’t carry phones as a rule. We may have a phone with us, but not many of you would like to get your phone wet on a regular basis or take your phone into a hazardous environment with you.”). Even if SFFD personnel did carry cell phones, the process for contacting the companies is not standardized and first responders cannot be expected to remember different protocols for different companies while responding to an emergency.

<sup>18</sup> *Id.* at 39.

<sup>19</sup> First Responder Status Conference Transcript at 27, 29. Waymo has not explained what methodology was used to determine this average response time. It is unclear if the count starts the second the unexpected stop occurs or only after it is determined that manual retrieval is necessary.

<sup>20</sup> First Responder Status Conference Transcript at 39, Tsukerman Decl. Exh. 2 at Slide 11. Similarly, “every minute is critical in responding to a medical emergency, especially when a person is experiencing cardiac arrest or heart attack, has trouble breathing, or is overdosing. . . . Even a one-minute delay can be dangerous and potentially life-threatening.” Luttrupp Decl. ¶ 17.

interfering with scene for 30 minutes at a time while “folks back at their control center . . . are making suggestions” about how to proceed.<sup>21</sup>

Further, in San Francisco, where our highest capacity public transit vehicles must operate in mixed traffic and have only limited exclusive rights of way, a single 15-minute delay for a Muni train blocked on the tracks can have a ripple effect on the system’s on-time performance for hours, affecting tens of thousands of riders. The burden from unresponsive driverless AVs is not just congestion on our streets, it is the burden of wasted time and resources on San Francisco’s most critical staff and systems and the potential for bad outcomes for the general public who depends on those systems and services. For an illustration of the communication challenges that contribute to long periods of interference with emergency response, see Slide 9 accompanying the San Francisco testimony on August 7, 2023.<sup>22</sup>

As evidenced by the Assigned Commissioner’s Ruling on Development of New Data Reporting Requirements for Autonomous Vehicles Driverless Deployment Program issued on May 25, 2023 (“New Data Ruling”), and the associated workshop on June 22, 2023, the Commission is aware that its previous decisions<sup>23</sup> have not required AV companies to provide it with sufficient data to accurately monitor and analyze the safety of driverless AV performance. The assigned Commissioner acknowledged that “operational issues” demanded development of policies to ensure that AV service is safe, equitable, and accessible to the widest range of potential riders, and meets the environmental goals of the AV program.<sup>24</sup> There, citing to San Francisco’s protests, the assigned Commissioner expressed concerns about “incidents where AVs have blocked traffic, interfered with public transit including light rail vehicles, or impeded the activities of first responders.”<sup>25</sup> The companies are not required to report—or even to track—such important incidents and interference

---

<sup>21</sup> First Responder Status Conference Transcript at 61; *see also* Luttrupp Decl. Exh. A at 47.

<sup>22</sup> Tsukerman Decl. Exh. 2, Slide 9.

<sup>23</sup> Decision (D.) 20-11-046 as modified by D.21-05-017 (“Deployment Decision”); and D.18-05-043.

<sup>24</sup> New Data Ruling at 1-2.

<sup>25</sup> *Id.* at 2.

events. As a result, San Francisco’s analysis of these incidents depends entirely on happenstance reports from members of the public and affected City employees.

On August 10, 2023, the Commission approved Waymo’s Tier 3 Advice Letter to allow Waymo to initiate commercial driverless AVPS in San Francisco throughout the entire city—including its complex downtown core, 24 hours a day, 7 days a week—including peak travel hours, with no limit on fleet size. Waymo’s Advice Letter was granted despite the Commission’s acknowledgement that the performance of Waymo’s driverless AVs, then in partial deployment and testing, have interfered with passenger and public safety, including through street interference incidents with first responder operations, public transit, street construction workers, and the flow of traffic generally.<sup>26</sup>

### **B. Events and Filings After Approval of the Resolution**

Since the Decision, street interference incidents involving driverless AVs have, as San Francisco predicted, continued. While the Commission could not have considered these specific events when it approved the Resolution, they were both foreseeable and foreseen, underscoring the magnitude of the Commission’s error. San Francisco has continued to receive reports of driverless Waymo AVs interfering with SFFD operations, having trouble navigating around construction, and blocking traffic.

### **C. Waymo’s Future Expansion**

Waymo has stated that it has a waiting list of more than 100,000 prospective users.<sup>27</sup> Although Waymo has also stated that it will expand “incrementally,” it has not defined what it means by this and has not publicly shared any of its benchmarks for expansion. The Commission’s authorization of fare service with no limitations on geographic area, service hours, and fleet size puts the pace of Waymo’s expansion at Waymo’s sole discretion. Given the parallel authority granted to its chief competitor, Cruise, it is reasonable to assume that Waymo will face increasing competitive pressure to expand rapidly. This could lead to a significant increase in the numbers of driverless AVs on San Francisco streets and could increase driverless AV incidents that interfere with passenger and public

---

<sup>26</sup> Resolution at 12-13.

<sup>27</sup> Waymo, Waymo’s next chapter in San Francisco, (updated Aug. 11, 2023), <https://waymo.com/blog/2023/08/waymos-next-chapter-in-san-francisco.html>.

safety, including through street interference incidents with San Francisco first responder operations, public transit, street construction workers, and the general flow of traffic. Given that this unlimited expansion in fleet size will also allow driverless AVs to operate fare services during peak travel and emergency response hours in the City’s most active transportation corridors, it is fair to assume that the number and impact of incidents may be disproportionate in relation to any one of these factors.

On August 16, 2023, San Francisco moved to stay the Resolution and filed a companion motion to stay the resolution permitting the expansion of commercial service for Cruise pending the disposition of this Application and the companion application for rehearing, respectively.

### **APPLICABLE LAW**

An application for rehearing must set forth specifically the grounds on which the applicant considers the Commission’s action to be unlawful or erroneous in the record or law, and the Commission must grant an application for rehearing if the decision or order of the Commission is unlawful or erroneous. Cal. Pub. Util. Code § 1732; Commission Rule 16.1(c).

### **ARGUMENT**

Rehearing is required because the Commission’s approval of the Resolution was unlawful and erroneous for three different reasons. First, the Commission approved a sweeping authorization for the deployment of technology that is still under development, aware of the potential impacts and risks, with a “quick and simplified” review and approval process leading to an inadequate evidentiary record. Second, it failed to follow the requirements of the TCP Act when it did not impose any regulations or permit conditions to promote passenger and public safety in response to serious incidents and hazards reported to the Commission. Specifically, it erred by unreasonably failing to address significant and problematic interference with first responder operations, public transit, street construction workers, and the flow of traffic generally, evidence of which was in its possession when it approved the Resolution. But the Commission—apparently thinking it only needed to check the

boxes set forth in its earlier decisions rather than addressing actual public safety impacts<sup>28</sup>—noted the public safety issues but approved the Resolution without adopting any conditions to understand or address them. Third, the Commission has unlawfully failed to comply with CEQA because it has conducted no environmental review prior to its discretionary decision to approve the Resolution.

**A. The Commission Inappropriately Used a Truncated Approval Process that Failed to Adequately Address Significant Concerns Regarding Public Safety**

The Commission approved the Resolution using a framework that was inappropriate to address the significant safety issues and potential impacts of further deployment. When the framework was created nearly three years ago, San Francisco presented arguments about potential impacts. Now many of those concerns have come to fruition and will be made worse by the Commission’s approval. This has been compounded by impacts relating to first responder interactions and unexpected stoppages.

The quick and simplified review created by the Deployment Decision three years earlier is insufficient to address the safety incidents that are now occurring or to justify the sweeping relief requested by the companies. This faulty process resulted in a Resolution that is not supported by substantial evidence. Instead of taking the time to develop an adequate factual record, the Commission did the opposite, ignoring the mounting evidence of safety risks and impacts that would result from the Commission’s action.

**1. The Use of the Advice Letter Review and the Commission’s Ad Hoc Measures Are Inconsistent with the Commission’s Rules**

The advice letter process is intended to provide a “quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions.

---

<sup>28</sup> At the hearing to approve the Resolution, Commissioner John Reynolds reasoned that approval was warranted because the CPUC had promulgated a set of rules that Waymo had met (“These carriers’ sought permits under our rules 8 months ago. These resolutions are before us because these carriers satisfy our rules.”). Similar sentiments were echoed by Commissioner Darcie Houck (“I do believe that staff have demonstrated that the companies are in compliance with the requirements that were set out by the Commission and the State and therefore will be voting to support the resolutions”); and President Alice Reynolds (“[T]he resolutions before us do meet our requirements and for that reason I will also be supporting them”). *See* CPUC, Voting Meeting At 11:00 AM, (Aug. 10, 2023), [https://adminmonitor.com/ca/cpuc/voting\\_meeting/20230810/](https://adminmonitor.com/ca/cpuc/voting_meeting/20230810/).

The advice letter process does not provide for an evidentiary hearing; a matter that requires an evidentiary hearing may be considered only in a formal proceeding.”<sup>29</sup>

The advice letter process is initiated by the company, which makes a request and sets forth the relief it seeks. The advice letter provides the bare minimum of process for parties that are affected by the requested relief, affording them the opportunity to respond to, or protest, the advice letter, and, comment on the draft resolution.<sup>30</sup>

This minimal process is, by the Commission’s own rules, inappropriate for granting the relief requested here. As demonstrated by issues raised in the protest and comments, the amount of press coverage, and the extraordinary number of commenters at public meetings, this issue both was highly controversial and raised significant policy questions. This was clear well before the Commission voted, meaning the Commission had ample time to supplement or amend the process to ensure it adequately understood and addressed public safety impacts.

Perhaps recognizing the inadequacies of the advice letter review process, the Commission reverted to ad hoc responses, outside the advice letter review, to attempt to address the issues with AV deployment in San Francisco, including a “status conference” and a request for a future staff report to the Commission requested by Commissioner Houck on the dais on August 10, 2023. While San Francisco appreciates the Commission’s recognition of these serious issues, none of the information gathered at the staff meeting or status conference was formally considered in the advice letter review, despite the information’s availability and materiality to the Commission’s action.

And none of the Commission’s ad hoc responses, nor the “quick and simplified” advice letter review, led to the development of a factual record to inform the Commission’s understanding of ongoing hazards and needed safety measures. Although the status conference provided evidence of numerous incidents from SFFD officials, the Commission failed to consider this information and failed to develop an adequate process based on this new information about safety incidents that had

---

<sup>29</sup> General Order (“GO”) 96-B Rule 5.1.

<sup>30</sup> Absent a Commission decision or order requiring otherwise, there is generally no deadline for the utility to submit an advice letter. By contrast, those seeking to respond to or protest a comment only have 30 days to do so. Similarly, there are only 30 days to submit comments on a draft resolution, and the Commission’s rules do not provide reply comments for resolutions.

been happening for months. The Commission was required to provide a process that included opportunities for parties to present comprehensive and up-to-date evidence and review, comment, and respond to what was submitted by other parties. The failure to develop a record concerning public safety is legally inadequate in approving expansion of a developing industry where the Commission itself has acknowledged the challenges with both data and measurement.<sup>31</sup>

## **2. The Commission’s Reliance on a Simplified Review Process Resulted in Resolution that is Not Supported by Substantial Evidence**

The Commission’s erroneous reliance on the advice letter process caused the Commission to reach unsupported and incorrect conclusions on several material issues, including the following: (1) that Waymo has a good driving record and that its AVs are safe; (2) that Waymo complies with GO 157-E, which requires compliance with the CVC; and (3) that the environmental impacts are speculative. Instead of collecting evidence as to each of these erroneous conclusions, through the informal advice letter process, the Commission relied on Waymo’s statements presented in their advice letter submittal. In doing so, the Commission ignored evidence of what is actually occurring and the ongoing public safety risks of the Commission’s action.

- **Inadequate Record on Public Safety Risks.** The Resolution concludes that Waymo has a good driving record. As highlighted by the comments of Commissioner Shiroma, the evidence fails to support this conclusion.<sup>32</sup>
- **Material issues regarding CVC violations.** As part of its permit application, Waymo must demonstrate compliance with General Order 157-E, which governs the

---

<sup>31</sup> See, e.g., Resolution at 13 (“We share stakeholders’ concerns that the current AV Deployment reporting requirements may not give us sufficient information to evaluate potential passenger safety issues as they emerge or change.”).

<sup>32</sup> “In response to resolutions’ claim that San Francisco’s anecdotes do not represent a sufficiently robust set of facts upon which to alter the draft resolutions’ findings or conclusions, I disagree. . . . I believe a delay in the vote is also warranted by the safety record that has been developed to date. The resolutions’ claim that available data show that Cruise and Waymo have maintained a good safety record[.] . . . I consider that conclusion to be short-sighted. . . . The Commission needs a better explanation regarding why these events occur[.]” Comments of Commissioner Shiroma at August 10, 2023 Hearing. [https://adminmonitor.com/ca/cpuc/voting\\_meeting/20230810/](https://adminmonitor.com/ca/cpuc/voting_meeting/20230810/).

Commission’s TCP carriers. The General Order requires compliance with the CVC. At the very least, there remains a material issue of fact whether Waymo AVs are in compliance with the CVC, and accordingly the General Order, due to numerous documented violations of the CVC.<sup>33</sup> Driverless AVs have unlawfully intruded on fire scenes, run over fire hoses, and failed to yield to pedestrians and fire trucks.

- **Unsupported conclusion that potential impacts are “too speculative.”** As part of its explanation for why the Commission was not required to conduct CEQA review at the time of its approval, the Commission appears to rely on its prior conclusion in the Deployment Decision that any environmental impacts were “far too speculative.”<sup>34</sup> That may have not been true then, but it is certainly not true now, and in any event, that rationale is not how CEQA works. The risks and impacts are impossible to ignore. The Commission’s mere choice to ignore evidence of impacts and fail to perform any environmental review does not make the potential impacts of its approval speculative.

### **3. The Commission is Obligated to Conduct Needed Fact Gathering to Address Known Issues**

In other cases, when confronted with similar evidentiary issues arising in the advice letter process, the Commission has elected to change course through an application proceeding rather than rely on the process used in the advice letter proceeding.<sup>35</sup> In D.17-05-034, the Commission granted

---

<sup>33</sup> San Francisco Comments on the Draft Resolution Approving Authorization for Waymo Autonomous Vehicle Passenger Service Phase 1 Driverless Deployment Program, May 31, 2023, at 4, 8-9, Exhibit A Declaration of Shawn McCormick.

<sup>34</sup> The Commission’s determination that its action was not a “project” and its decision to approve the Resolution without CEQA review is not a factual finding entitled to any judicial deference. Indeed, the Commission made *no* factual findings with regard to CEQA, only legal conclusions subject to a court’s independent review. The California Supreme Court has repeatedly recognized that “whether an activity constitutes a project under CEQA is ‘a predominantly legal question.’” (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1186 [quoting *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 945].) A claim like the one here, “that the lead agency approved a project with potentially significant environment effects before preparing and considering an EIR for the project ‘is predominantly one of improper procedure’ [citation] to be decided by the courts independently.” (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 131.)

<sup>35</sup> D.11-11-019 (using an application process for rehearing of a resolution due to inadequacy of the informal record building of advice letter process).

rehearing of a resolution disposing of an advice letter regarding the calculation of non-bypassable charges. The Commission concluded that the description of how to calculate such charges in the decision authorizing the advice letter “is not a straightforward matter.” In granting rehearing, the Commission directed that these issues be considered in a formal proceeding.

Once the Commission became aware that there were material issues not resolved by the Deployment Decision, it had an obligation to develop an adequate factual record. A similar approach to those taken in D.11-11-019 or D.17-05-034 would be appropriate here as well. Because the Commission continued to utilize the advice letter process, its approval lacked the evidentiary basis that the law requires.

#### **4. This Truncated Review Process Resulted in the Commission Failing to Appropriately Consider Evidence that Was Before It**

Not only did the Commission fail to develop an adequate record, it failed to consider evidence on a number of key issues, instead confronting only a limited set of issues and information that was available early in the review process in its consideration of the Resolution. As discussed above, the Commission took some measures to conduct additional fact finding, but failed to use that information in the Resolution. The Commission elected to grant the company’s request, despite the urging of Commissioner Shiroma to take more time to gather information.<sup>36</sup>

In addition to failing to adequately consider and address public safety risks (*see* Section B *infra*) and environmental impacts (*see* Section C *infra*), many important issues regarding the Resolution that were raised by members of the public were unaddressed. For example, the Commission knew, based on public comments, that AVs were not accessible to many wheelchair users, hearing extensive feedback from disability organizations and members of the disability community about their high hopes for AVs, and yet the Commission failed to require that AVs provide service in WAVs or meet minimum accessibility standards.

---

<sup>36</sup> Comments of Commissioner Shiroma at August 10, 2023 Hearing. [https://adminmonitor.com/ca/cpuc/voting\\_meeting/20230810/](https://adminmonitor.com/ca/cpuc/voting_meeting/20230810/).

**B. The Commission Erred by Approving the Resolution without Appropriately Considering the Public Safety Impacts**

The Commission is required to ensure the safety of the public in its regulation of commercial passenger service. It erred by doing otherwise. Accordingly, the Commission should reconsider its decision and, upon rehearing, regulate appropriately in response to the substantial evidence before it about the passenger and public safety hazards arising from driverless AV operations that have been documented on San Francisco streets.

**1. The Commission had the Obligation to Take Measures to Protect Public Safety**

The TCP Act expressly vests the Commission with jurisdiction over public safety: “It is the purpose of [the TCP Act] . . . to promote carrier and public safety through its safety enforcement regulations.” The Commission itself has acknowledged this responsibility and its broad mandate and responsibility to protect public safety.<sup>37</sup> As the Commission observed in its Phase I Decision on Transportation Network Companies, under the TCP Act the “Commission’s responsibility to public safety in the transportation industry should [not] be ignored and/or left for individual companies or the market place to control.”<sup>38</sup> This jurisdiction over public safety is concurrent with the DMV and the DMV’s recent letter to the Commission does not state otherwise.<sup>39</sup> The Commission’s mandate to protect public safety does not allow it to simply wait for another agency to impose safety requirements.

The Commission ignored evidence of ongoing hazards and failed to take actions to promote or protect public safety when it authorized the initiation of commercial service for Waymo. Although the Commission expressed “concern[.]” about the “operational issues” raised by San Francisco—including the unplanned stops in unsafe locations and “improper” interactions with first responders—it adopted no new data reporting requirements to, at the very least, monitor these issues and no new conditions that would ensure the safety of driverless AV operations. The Commission relied on the fact that the

---

<sup>37</sup> Resolution at 1, 9, 11, 12, 15, and 17.

<sup>38</sup> CPUC D. 13-09-045 at 12.

<sup>39</sup> See Letter from DMV to CPUC dated August 4, 2023 Re: Rulemaking 12-12-011.

Commission’s 2020 Deployment Decision did not include “specific criteria for operational performance” or “condition permit approval upon meeting particular thresholds for past performance.”<sup>40</sup> Instead, the Commission only assessed the completeness of Waymo’s application and passenger safety plan relative to the requirements of the Deployment Decision and whether the passenger safety plan contained reasonable strategies to protect passenger safety. This was in error. Given the Commission’s broad mandate to promote carrier *and public* safety, the Commission had an obligation to take operational issues impacting public safety into account and address known hazards before authorizing unlimited commercial driverless AVPS in San Francisco with no limitations on geographic area, service hours, and fleet size, and no conditions for avoiding first responder interference or other safety hazards.

As discussed in detail above (see pp. 4-9, *supra*), San Francisco provided the Commission with substantial evidence that driverless AV operations—even at the pre-Resolution levels—were creating significant public safety risks. City personnel testified that the City logged almost 600 incidents with driverless AVs between June 2022 and June 2023, including unexpected stops, erratic driving, CVC violations, and other interference with street and transit operations.<sup>41</sup> The Commission also heard evidence that many of these incidents involved interference with emergency response operations, such as AVs running over fire hoses, obstructing firefighter travel to active fires and other emergency sites, and intruding on active fire suppression scenes.<sup>42</sup> And the Commission heard evidence of driverless AVs making intrusions into construction zones where City employees were working, entering areas marked with caution tape due to hazards such as downed power lines, collisions between vehicles trying to pass disabled AVs, and failures to promptly comply with directions given by first responders and other human traffic control officers.<sup>43</sup>

Based on this evidence and its obligation to promote carrier and public safety through its safety enforcement regulations, the Commission erred by allowing Waymo to initiate commercial service

---

<sup>40</sup> Resolution at 13.

<sup>41</sup> First Responder Status Conference Transcript at 34; Tsukerman Decl. Exh. 2 at 5.

<sup>42</sup> *Id.* at 37-40, 45, 103-104, 168-169.

<sup>43</sup> CCSF Comment on Draft Resolution at 11-15.

with no limitations on fleet size, service area, or hours of service to protect passenger and public safety. The Commission should have rejected the Advice Letter and initiated a more robust process that addressed public safety issues by developing safety regulations and permit conditions, including data reporting and performance standards. The Commission did “encourage the industry to meet regularly and share information with first responders” to “ensure . . . effective incident review and development of corrective actions [and] . . . work towards effective standardization and training between first responders and the industry.”<sup>44</sup> Commissioner Houck also asked Commission staff to provide an update in three months, including “options to modify the permits to place limits on the number of vehicles that could be on the road or suspend the programs” if staff finds “an increase in traffic impediments, particularly as it relates to interaction with emergency responders.”<sup>45</sup> But these future contingent steps are not adequate. To meaningfully protect public safety, these steps must happen *before*, not after, the Commission approves unlimited expansion. Public safety must not be left to possible future action by the Commission or possible future voluntary actions by private companies; instead, it should be required by evidence-based regulation.<sup>46</sup>

Adequately considering this evidence, the Commission should rehear the Resolution and create a process that will “put in place policies to monitor and evaluate AV operations and the appropriateness of current policy as the AV technology continues to evolve and expand,” as directed in the Assigned Commissioner’s Ruling On Development of New Data Reporting Requirements for Autonomous Vehicles Driverless Deployment Program of May 25, 2023.

---

<sup>44</sup> Comments of Commissioner Houck at August 10, 2023 Hearing.  
[https://adminmonitor.com/ca/cpuc/voting\\_meeting/20230810/](https://adminmonitor.com/ca/cpuc/voting_meeting/20230810/).

<sup>45</sup> *Id.* Commission staff did note that while they would be able to report back to the Commission in mid-November, the Commission was still in the process of setting data and reporting requirements.  
[https://adminmonitor.com/ca/cpuc/voting\\_meeting/20230810/](https://adminmonitor.com/ca/cpuc/voting_meeting/20230810/).

<sup>46</sup> *See, e.g., Ventura Cnty. Waterworks v. Public Util. Com’n* (1964) 61 Cal.2d 462, 465 (annulling order of Commission after finding error in Commission’s deference to impacted entity’s preference in lieu of appropriate fact-finding).

Contrary to the factual error in the Draft Resolution,<sup>47</sup> San Francisco does not have its usual means to police these violations and incidents directly. San Francisco lacks the enforcement tools it would typically have to encourage compliance with the CVC<sup>48</sup> by issuing traffic citations because it generally involves the delivery and signing of a written notice to appear so the driver can be released from arrest.<sup>49</sup> Under the CVC, law enforcement officers cannot cite AVs for the numerous documented CVC violations because citing drivers for a moving violation is a type of arrest and that arrest comes with a number of procedures that assume the presence of a human driver.<sup>50</sup> While human drivers may be arrested for obstructing first responders at an emergency scene, an automated driving system can neither be arrested, sign a notice to appear, nor appear in court. Under these circumstances, it is all the more important that the CPUC heed its mandate to promote public safety by using its ability to issue safety regulations and/or impose permit conditions.

In sum, the Commission's approval of the Resolution to allow for deployment with no public safety regulations and/or permit conditions, despite evidence of numerous street interference incidents between driverless AVs and first responder operations, public transit, street construction workers, and the flow of traffic generally ignores the mandates of the TCP Act that the Commission promote passenger and public safety through its safety enforcement regulations. It is not enough for Commissioners to encourage private, for-profit companies to meet voluntarily with first responders in San Francisco. And it is not enough for the Commission to express serious concern about operational safety incidents, and suggest it might revisit that concern in the future, rather than using the Commission's power and duty now to limit public exposure to these hazards.

---

<sup>47</sup> The Draft Resolutions contain a clear error on this point: "Cities, including Los Angeles, and local law enforcement have the authority to enforce the California Vehicle Code and local ordinances." *See* Waymo Draft Resolution at 17.

<sup>48</sup> CVC compliance is required by CPUC GO 157-D. Generally, failure to comply with the terms of a permit should lead to suspension or revocation of that permit, not expansion of its terms.

<sup>49</sup> *See e.g.*, CVC Sections 40500 and 40504.

<sup>50</sup> An exception to this is a violation captured by a red-light camera pursuant to CVC 21455.5 which allows issuing a citation through the mail. Similarly, under CVC 40202, a parking citation may be served by attaching it under the windshield wiper or in another conspicuous place.

## 2. The Commission's Proffered Justification for Not Addressing Public Safety Risks is Without Merit

The Commission appeared to justify its approval of the Resolution with no new data reporting requirements or safety conditions based on the DMV's prior approvals and the company's purported compliance with the minimal requirements of the Deployment Decision. Neither of these justifications is legally sufficient.

The Commission cannot rely on the DMV's approval of Waymo's operational design domain ("ODD") to justify failure to set conditions that address evidence of public safety hazards.<sup>51</sup> The Commission has a broad mandate, both under the Constitution and by the authority provided under the TCP Act, to supervise and regulate every charter-party carrier. The Commission therefore retains the responsibility to limit the Waymo ODD when Waymo seeks to operate as a charter-party carrier. The DMV approval<sup>52</sup> of the Waymo ODD sets the outer limits of appropriate CPUC approval of Waymo driverless commercial deployment; it does not require approval of the Resolution as submitted when evidence that continues to accumulate demonstrates hazards arising from existing operations. Nor does it foreclose the CPUC from imposing additional reporting requirements or public safety measures, as may be necessary under its authority to regulate charter-party carriers and ensure the safety of passengers and the public.

Nor can the Commission use the Deployment Decision as a reason to avoid addressing public safety impacts at this time. The Deployment Decision did not create an entitlement for the companies, and such an industry-deferential approach is not appropriate where the evidence of what is occurring

---

<sup>51</sup> Resolution at 12 ("The Deployment Decision requires applicants to submit an ODD approved by the DMV which has authority over the technical ability of the vehicle to operate safely on public roads in California. Therefore, the Commission will neither modify the DMV-approved ODD submitted by Waymo, which includes all of San Francisco at all times of day, nor set limits on fleet size."); *see also* Comments of Commissioner J. Reynolds at August 7, 2023 Hearing ("[W]hat is really being debated broadly here is the interactions of AVs on the roadway, which falls within the jurisdiction of our sister agency, the California DMV. Some parties are asking us to override the judgment of the DMV, even though it is the agency tasked with this oversight.").

<sup>52</sup> Notably, the DMV approved Waymo's expanded ODD on November 9, 2022. (Waymo Advice Letter at 3). Given the numerous incidents that occurred between that date and when the Commission approved the Resolution on August 10, 2023, the Commission should not simply rely on the DMV's approval and ignore 9 months of incidents.<sup>53</sup> Resolution at 13; *see also* Comments of Commissioner Houck at August 10, 2023 Hearing ("The companies have met the requirements of decision 20-11-046 as set out in the resolutions and are in compliance with their Department of Motor Vehicle permits."). [https://adminmonitor.com/ca/cpuc/voting\\_meeting/20230810/](https://adminmonitor.com/ca/cpuc/voting_meeting/20230810/).

no longer comports with industry claims. As the Commission itself has found: “It is reasonable for AV regulation and policy at the Commission to evolve as AV technology and operations scale and change.” This is correct. *It is reasonable* for the Commission to observe new unexpected performance problems and respond to their discovery with appropriate regulations or permit conditions. It is *not reasonable* for the Commission to disregard new evidence that calls into question industry claims presented in Advice Letters. The mere fact that the Deployment Decision did not include street safety “operational issues” or performance thresholds or metrics does not mean that the Commission was barred from addressing them through additional safety regulations and/or permit conditions once new information about serious public safety issues was presented to the Commission.<sup>53</sup> The TCP Act allows the Commission to supervise and regulate every charter-party carrier . . . and do all things . . . necessary and convenient in the exercise of such power and jurisdiction.”<sup>54</sup> The Commission therefore had the authority to take any number of actions to address the significant public safety issues including by adding conditions to the Resolution. The Deployment Decision does not narrow the Commission’s broad authority and statutory duty under the TCP Act to protect public safety. The Commission acknowledges this broad authority under the TCP Act numerous times in the Resolution.<sup>55</sup> The Commission’s decision to approve the Advice Letter under the limitations of the Deployment Decision, despite its acknowledgement of this broad authority, was in error.

If the Commission believed that such regulation was truly foreclosed by the terms of the Deployment Decision (and it was not), then the TCP Act would require the Commission, before approving the Resolution to modify its Deployment Decision to allow for the addition of safety

---

<sup>53</sup> Resolution at 13; *see also* Comments of Commissioner Houck at August 10, 2023 Hearing (“The companies have met the requirements of decision 20-11-046 as set out in the resolutions and are in compliance with their Department of Motor Vehicle permits.”). [https://adminmonitor.com/ca/cpuc/voting\\_meeting/20230810/](https://adminmonitor.com/ca/cpuc/voting_meeting/20230810/).

<sup>54</sup> PUC Section 5381.

<sup>55</sup> Resolution at 1, (“Any additional regulatory policy or requirements adopted through the rulemaking process will apply to any authorizations granted through this resolution upon adoption by the Commission. The Commission has the authority to initiate investigatory and/or enforcement actions against its permittees and may modify, suspend, or revoke AV program authorizations it has granted.”); *id.* at 13, 14 (expressly citing to the Commission’s authority under PUC 5381).

regulations and/or permit conditions to promote passenger and public safety.<sup>56</sup> The Commission’s authority to regulate AVs in passenger service is derived from the TCP Act<sup>57</sup> and its decisions must be consistent with the authority granted to it by the legislature. If the Commission did not think it could adopt permit conditions to address the hazards arising from current driverless AV operations, then it should have rejected the advice letters until the Deployment Decision could be modified or new rules adopted to allow the Commission to collect the data required to effectively monitor driverless AV performance and limit Advice Letter authorizations appropriately to address actual performance. The Commission cannot shield itself behind its prior decisions if new facts demonstrate that those decisions do not fulfill the Commission’s legislative mandate under the TCP Act. At the very least, as Commissioner Shiroma observed at the Commission’s August 10, 2023 voting meeting, “Nothing in the Vehicle Code prevents the Commission, as a regulatory body that has jurisdiction over autonomous vehicles acting as permitted charter party carriers, from engaging in necessary fact gathering activities, providing prescriptive suggestions to ensure the safety of driverless autonomous vehicle operations.”<sup>58</sup>

**C. The Commission Unlawfully Approved the Resolution without the Environmental Review Required Under CEQA**

The Commission’s approval of the Resolution without completing CEQA or even considering relevant evidence of potential environmental impacts is unlawful.<sup>59</sup> The threshold for requiring CEQA review is not a high one; it is not necessary that the evidence show that impacts will result, but that they may.<sup>60</sup> This is basic, black-letter CEQA law. The Commission’s decision was clearly discretionary. And even though its own files and research in this very proceeding contain substantial

---

<sup>56</sup> The argument that the Commission’s Deployment Decision cabined the agency’s authority also ignores the “Commission’s longstanding statutory authority to regulate passenger carriers” under Article XII of the California Constitution and Section 425 of the Public Utilities Code. Deployment Decision at 9-10.

<sup>57</sup> Deployment Decision at 8-10.

<sup>58</sup> Comments of Commissioner Shiroma at August 10, 2023 Hearing. [https://adminmonitor.com/ca/cpuc/voting\\_meeting/20230810/](https://adminmonitor.com/ca/cpuc/voting_meeting/20230810/).

<sup>59</sup> CEQA, § 21065; see also, *id.* § 21080(d) (“If there is substantial evidence, in light of the whole record before the lead agency, that the project *may* have a significant effect on the environment, an environmental impact report shall be prepared.” [Emphasis added].)

<sup>60</sup> CEQA Guidelines, § 15064(f); *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988; *No Oil Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68.

evidence that driverless AV ride-hailing fleets may result in significant environmental impacts, the Commission has declined to consider this evidence and undertake environmental review before considering whether to approve the Resolution, as required under CEQA.

Substantively, the expansion of commercial driverless AV Passenger Service throughout all of San Francisco—during all hours of the day and night, including peak travel hours, with no limit on fleet size—further expands the scope of the Commission’s Phase I approval in the Deployment Decision. The Deployment Decision itself expanded on the Commission’s two pilot programs; now the Commission implements the Deployment Decision in a way that may result in significant and foreseeable environmental impacts. In its Resolution, the Commission claims that the Deployment Decision found “initial deployment measures were ‘far too speculative to undertake environmental review[.]’”<sup>61</sup> In fact, the Deployment Decision found that “the creation of a *regulatory scheme, by itself*, is far too speculative to undertake environmental review of any such resulting effects.”<sup>62</sup> In any event, the Commission’s latest Resolution is much more than an isolated regulatory scheme. Rather, the Commission has now authorized specific operators to provide wide-spread commercial passenger service in driverless AVs throughout San Francisco, and the “resulting effects” are known: Waymo intends to meet the demands of a wait list totaling more than 100,000 prospective users. Nevertheless, the Commission’s Resolution treats Waymo’s initiation as a “Phase I.A”, characterizing it as “one of the steps toward gathering the information necessary to performing CEQA review—if indeed CEQA review is needed.”<sup>63</sup>

The Commission’s approach is tantamount to permitting operation of a project to determine how the project will adversely impact the environment. This is exactly the opposite of what CEQA requires. Once environmental impacts occur, they cannot be undone. Thus, CEQA requires that agencies inform decisionmakers and the public of a project’s environmental effects *before* approval so that significant effects can be avoided or reduced when it is feasible to do so.<sup>64</sup> Indeed, had the

---

<sup>61</sup> Resolution at 19 (quoting Deployment Decision at 5).

<sup>62</sup> Deployment Decision at 5 (emphasis added).

<sup>63</sup> Resolution at 19.

<sup>64</sup> CEQA Guidelines, § 15004(a) (“Before granting any approval” each lead agency shall consider the appropriate level of CEQA review.)

Commission undertaken CEQA review of its Deployment Decision in 2020, many of the impacts we are witnessing now may have been avoided or minimized. The Commission’s wish for more information—despite the voluminous record before it—does not permit the Commission to continue to defer its legal obligation. Rather, CEQA requires a public agency to study the potential impacts of its discretionary approvals regardless of whether the passage of time would illustrate the full extent of the impacts with more precision.<sup>65</sup>

In the landmark CEQA case *Friends of Mammoth v. Board of Supervisors*, the California Supreme Court held that CEQA applies to private activities permitted by public agencies and that the impacts of such activities had to be considered *prior* to the granting the authorizing permits.<sup>66</sup> The Legislature promptly amended CEQA to codify the decision.<sup>67</sup> Here, too, the Commission’s approval action permits private activities—fared passenger rides in AVs—and therefore the Commission should have analyzed the impacts of these private activities before approving the Resolution. CEQA does not demand perfect information regarding a project’s environmental impacts, but merely adequacy, completeness, and a good-faith effort.<sup>68</sup> The Commission has failed to meet even this low bar.

Moreover, by “incrementally” expanding Phase I without ever conducting any CEQA review, the Commission has failed to consider the “whole of [its] action,” including the Commission’s iterative discretionary approvals.<sup>69</sup> CEQA “mandate[s]” that “environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.”<sup>70</sup> Here, San Francisco has identified the following potential environmental impacts of the Commission’s action that require analysis under CEQA. These include the same impacts that are discussed above as safety

---

<sup>65</sup> CEQA Guidelines § 15004.

<sup>66</sup> *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247.

<sup>67</sup> Cal. Stats. 1970, Ch. 1433.

<sup>68</sup> See *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 522.

<sup>69</sup> CEQA Guidelines, § 15378(a), (c).

<sup>70</sup> *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283–284.

and emergency access concerns; CEQA recognizes safety and emergency access as environmental impacts that need to be studied.

### 1. Emergency Access Impacts

Among the environmental impacts required to be studied under CEQA is a project’s potential to result in “inadequate emergency access” or “impair implementation of or physically interfere with an adopted emergency response plan.”<sup>71</sup> The SFFD—one of the busiest fire departments in the nation and a responsible entity for San Francisco’s Emergency Response Plan<sup>72</sup>—had already logged a significant number of written reports of driverless AV interference with fire department operations. As of the date of this filing, that number has since grown to more than 75. Multiple AV incidents may have significantly greater impacts on even routine emergency response. Unplanned stops by driverless AVs can impede ingress and egress at stations or access to the scene of an emergency. According to San Francisco’s records and corroborated by Waymo staff during the All Party Meeting, these stops take minutes and sometimes hours to clear as emergency personnel coordinate with the AV operators’ customer service, remote advisors, and field support staff. These disruptions would be exacerbated in the event of a major emergency where traffic signals, internet, or telecommunications networks throughout the City may not function while first responders are attempting to reach victims, as potentially demonstrated by the North Beach multi-Cruise AV event.<sup>73</sup> To the extent existing internet or telecommunications networks are unreliable to effectively support expanded AV deployment, including during high-usage times, this appears to be a vulnerability of this technology that requires careful study and imposition of feasible mitigation measures. If the existing communication network

---

<sup>71</sup> CEQA Guidelines, Appen. G.

<sup>72</sup> Luttrupp Decl. at ¶ 5; City & County of San Francisco. Emergency Response Plan. An Element of the CCSF Emergency Management Program. (updated May, 2017), [https://sf.gov/sites/default/files/2022-06/CCSF%20Emergency%20Response%20Plan\\_April%202008%20-%20updated%20May%202017\\_Posted.pdf](https://sf.gov/sites/default/files/2022-06/CCSF%20Emergency%20Response%20Plan_April%202008%20-%20updated%20May%202017_Posted.pdf).

<sup>73</sup> Russ Mitchell, San Francisco’s North Beach streets clogged as long line of Cruise robotaxis come to a standstill, Los Angeles Times, (Aug. 12, 2023), <https://www.latimes.com/california/story/2023-08-12/cruise-robotaxis-come-to-a-standstill>. Several Cruise AVs also stalled closer to Golden Gate Park, where the festival took place. George Kelley, Outside Lands Traffic: Cruise Blames Festival for Stalled Robotaxis, The San Francisco Standard, (updated Aug. 13, 2023), <https://sfstandard.com/2023/08/13/cruise-north-beach-stalled-robotaxis-aaron-peskin/>.

may need to be upgraded to ensure the safe operation of driverless AV fleets during a major emergency, CEQA requires the Commission to study the impacts of constructing new telecommunication facilities and energy utilities.<sup>74</sup>

There is no dispute that driverless AV street interference incidents and other improper interactions with first responders create hazards that violate the CVC—indeed, the Resolution acknowledges these conflicts in its findings.<sup>75</sup> And yet, despite this uncontested evidence, the Commission neglected to perform the legally required analysis of these impacts.

## **2. Air Quality and Transportation Impacts**

Additionally, research regarding Transportation Network Companies operating ride-hailing services similar to driverless AV passenger services indicates that these services actually induce and increase vehicle trips by 43 percent, as they shift people away from transit, bicycling, or walking, or facilitate a trip that would otherwise not be made at all.<sup>76</sup> These additional trips increase greenhouse gas emissions<sup>77</sup> and, even when they are made in zero-emission vehicles, degrade air quality by generating unregulated particulate matter, including from brake wear, tire wear, clutch wear, and road dust resuspension. These non-tailpipe emissions make up an increasingly large portion of pollutants in California and are expected to worsen with heavier electric vehicles putting more strain on tires.<sup>78</sup> Currently unregulated, non-tailpipe emissions are known to include carcinogens and metals and to exceed the legal particle limits for vehicle exhaust.<sup>79</sup> The additional driverless AV trips could also result in increased congestion that leads to transit delays, particularly when trips are concentrated in

---

<sup>74</sup> CEQA Guidelines, Appen. G., XIX, Utilities and Service Systems.

<sup>75</sup> Resolution at 21 (Finding 15).

<sup>76</sup> SFCTA, TNCs & Congestion, Final Report (updated October 2018), [https://www.sfcta.org/sites/default/files/2019-05/TNCs\\_Congestion\\_Report\\_181015\\_Finals.pdf](https://www.sfcta.org/sites/default/files/2019-05/TNCs_Congestion_Report_181015_Finals.pdf).

<sup>77</sup> San Francisco Planning Department. TNCs and Land Use Planning, (updated June 2022), [https://sfplanning.org/sites/default/files/documents/citywide/TNCs-land-use/TNC\\_Land\\_Use\\_Study\\_2022.pdf](https://sfplanning.org/sites/default/files/documents/citywide/TNCs-land-use/TNC_Land_Use_Study_2022.pdf).

<sup>78</sup> Kasha Patel, Why tires — not tailpipes — are spewing more pollution from your cars, Washington Post (July 9, 2023), <https://www.washingtonpost.com/climate-environment/2023/07/09/tire-brake-tailpipes-emissions-pollution-cars/>.

<sup>79</sup> *Id.*

areas of the City with high-frequency transit and at peak travel times, as is expected with AV passenger service.<sup>80</sup>

These potential air quality and transportation impacts are clearly environmental impacts within the scope of CEQA.<sup>81</sup> Despite the clear evidence in the record that this proposal may result in these impacts, the Commission’s Resolution authorizes additional, and unlimited, commercial driverless AV trips without having analyzed any of these associated environmental impacts. That the precise scope of these impacts may be difficult to quantify does not relieve the Commission of its legal obligation to prepare environmental review early enough in the planning process to enable environmental considerations to influence the project program and design.<sup>82</sup> The Commission’s approval without this required review, in contrast, not only forecloses alternatives and mitigation measures that could minimize impacts from AVs, but also hinders San Francisco’s ability to prepare for AVs on its streets and integrate them into its transportation network.

The record before the Commission is replete with evidence of the reasonably foreseeable physical changes in the environment that may result from the broad expansion of driverless AV operations throughout San Francisco, given the lack of limitations on geography, hours of operation, or fleet size. The Commission’s decision approving this expansion without the analysis of these impacts, as CEQA requires, is an abuse of discretion and is unlawful.

#### **D. Request for Rehearing**

Based on the foregoing, San Francisco respectfully requests that the Commission:

1. Grant the application for rehearing Resolution TL-19144;
2. Stay the authorization granted in resolution TL-19144 to Waymo to initiate commercial service in AVPS Phase I Driverless Deployment Program in San Francisco with no limitations on geographic area, service hours and fleet size until the Commission issues new Resolutions;

---

<sup>80</sup> San Francisco Planning Department. TNCs and Land Use Planning, (updated June 2022), [https://sfplanning.org/sites/default/files/documents/citywide/TNCs-land-use/TNC\\_Land\\_Use\\_Study\\_2022.pdf](https://sfplanning.org/sites/default/files/documents/citywide/TNCs-land-use/TNC_Land_Use_Study_2022.pdf).

<sup>81</sup> See CEQA Guidelines, Appen. G, Air Quality (impacts would result if the project would “expose sensitive receptors to substantial pollutant concentrations”); Transportation (a project would result in impacts if it would “conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities.”)

<sup>82</sup> CEQA Guidelines, § 15004(b).

3. Adopt new reporting requirements to require submission of monthly reports to the Commission of the following data elements, and make those reports public without redactions: monthly drivered and driverless Vehicle Miles Traveled (VMT) by county; street interference incidents (including emergency response and transit impact incidents); all crashes regardless of permit; and high risk violations of CVC (such as running red lights);
4. Study the environmental impacts of authorization TL-19144, in conjunction with those of authorization TL-19145, as required by CEQA; and
5. As part of its rehearing, consider completing its review and rulemaking for the AVPS Driverless Deployment Program to codify that initiation and expansion of driverless deployment within any given county is to be conducted in an incremental, performance-based manner, so as to ensure that driverless AV technology and permittee operations are deployed in a manner that does not generate widespread new hazards for travelers and the general public.

## **CONCLUSION**

San Francisco appreciates the promises for improvements to quality of life through advancements in AV technology as well as the challenges of regulating a new industry. We support the Commission's efforts to gather more data about this still-developing technology and hope that these technologies will realize their promise. But the Commission should not continue to rely on a wait-and-see approach when early driverless AV operations have demonstrated ongoing public and passenger safety, environmental, and other unintended negative impacts. Nothing in the history of driverless operations in San Francisco to date makes it reasonable for the Commission to simply hope that these negative public safety and other impacts will go away.

Rehearing is required because the Commission's approval of the Resolution was unlawful and erroneous for three different reasons. First, the Commission erred by approving the Resolution using a process not suited to the issues before it, leading to an inadequate evidentiary record. Second, it erred by failing to follow the requirements of the TCP Act when it did not impose any regulations or permit conditions to promote passenger and public safety in response to serious incidents and hazards reported to the Commission. Specifically, it erred by unreasonably failing to address significant and problematic interference with first responder operations, public transit, street construction workers,

and the flow of traffic generally, evidence of which was in its possession when it approved the Resolution. Third, it erred by unlawfully failing to conduct environmental review as required by CEQA.<sup>83</sup> Based on the foregoing, San Francisco respectfully requests that the Commission grant the application for rehearing on Resolution TL-19144 and correct its errors by obeying the legislative mandates of the TCP Act and CEQA.

Dated: September 11, 2023

Respectfully submitted,

DAVID CHIU  
City Attorney  
[MISHA TSUKERMAN](#)  
Deputy City Attorney  
(415) 554-4230  
[Misha.Tsukerman@sfcityatty.org](mailto:Misha.Tsukerman@sfcityatty.org)

By:   
[MISHA TSUKERMAN](#)

Attorneys for  
[SAN FRANCISCO MUNICIPAL TRANSPORTATION  
AGENCY, SAN FRANCISCO COUNTY  
TRANSPORTATION AUTHORITY, AND SAN  
FRANCISCO PLANNING](#)

---

<sup>83</sup> And, as noted above, the Commission’s “approve first and, perhaps, study later” approach to the environmental review required by CEQA is precisely backward.