

**FINAL INITIAL STUDY/
MITIGATED NEGATIVE DECLARATION**

NEVIN HOMES RESIDENTIAL PROJECT

CITY OF RICHMOND FILE NO. PLN-14-115

PLANNING AND BUILDING SERVICES DEPARTMENT
CITY OF RICHMOND
450 CIVIC CENTER PLAZA
RICHMOND, CA 94804

FEBRUARY 11, 2015

SECTION 2

RESPONSES TO COMMENT LETTERS

Section 2 includes responses to the comment letters received during the public review period that commenced on September 23, 2014 and ended on November 10, 2014. The following organizations, individuals, and state, local, and regional agencies provided written comments during the comment period.

- A. Contra Costa Environmental Health Division (CCEHD) of Contra Costa Health Services
- B. East Bay Municipal Utility District (EBMUD)
- C. Adams Broadwell Joseph & Cardozo



ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

etrescott@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080

TEL: (650) 589-1660
FAX: (650) 589-5062

DANIEL L. CARDOZO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
LAURA E. HORTON
MARC D. JOSEPH
RACHAEL E. KOSS
JAMIE L. MAULDIN
MEGHAN A. QUINN
ADAM J. REGELE
ELLEN L. TRESKOTT

November 10, 2014

VIA OVERNIGHT MAIL AND E-MAIL

Jonelyn Whales, Senior Planner
City of Richmond Planning Division
450 Civic Center Plaza, 2nd Floor
Richmond, CA 94804
Jonelyn_Whales@ci.richmond.ca.us

**Re: Comments on the Proposed Nevin Homes Residential Project
(File No. PLN14-115)**

Dear Ms. Whales:

We are writing on behalf of **Richmond Residents for Responsible Development** to submit comments on the Initial Study and Mitigated Negative Declaration (“IS/MND”) prepared by the City of Richmond (“City”) for the proposed Nevin Homes Residential Project (“Project”) proposed by AMG & Associates, LLC (“Applicant”). These comments also address the Applicant’s requested density bonus and related deviances from the City’s development standards. The proposed Project requires a Conditional Use Permit and Design Review for the demolition of an office building and construction of two six-story apartment buildings, totaling 289 residential units, located on two parcels in downtown Richmond. The parcels are located to the south of Nevin Avenue between 21st and 23rd Streets, separated by 22nd Street.

As explained more fully below, the IS/MND prepared for the proposed Project is significantly flawed and does not comply with the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 *et seq.* Furthermore, the City may not approve a Conditional Use Permit and Design Review until it prepares an Environmental Impact Report (“EIR”) that adequately

analyzes the Project’s potentially significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to minimize these impacts. Finally, the proposed density bonus and exemptions from the City’s development standards violate the letter and spirit of the City’s Municipal Code.

I. INTRODUCTION

A. Interest of Commenters

Richmond Residents for Responsible Development (“Residents”) is an unincorporated association of individuals and labor unions that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The coalition includes Timothy Doyle, Donald Drown, Fynrare Fletcher, Andrew Harris, the International Brotherhood of Electrical Workers Local 302, Plumbers and Steamfitters Local 159, Sheet Metal Workers Local 104, and their members and their families and other individuals who live and/or work in the City of Richmond and Contra Costa County.

Residents’ individual members live, work, and raise their families in Contra Costa County, including in and around the City of Richmond. They would be directly affected by the Project’s impacts. Individual members may also work on the Project itself. They will therefore be first in line to be exposed to any health and safety hazards that exist onsite. In addition, Residents has an interest in enforcing environmental and planning laws and ordinances that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there. Indeed, continued degradation can, and has, caused restrictions on growth that reduce future employment opportunities.

B. Summary of Comments

Based on our review of the IS/MND and its supporting documents, we have concluded that the IS/MND does not comply with the basic requirements of CEQA. The IS/MND fails to meet the informational and public participation requirements of CEQA, because it does not adequately describe the existing environmental setting or the evidence to support the City’s environmental conclusions. Moreover,

1

2

we have concluded that substantial evidence exists that the proposed Project may result in significant impacts, even with the mitigation imposed. These impacts include, but are not limited to traffic impacts, hazardous materials impacts, construction impacts on surrounding buildings, stormwater, and wastewater impacts. Because there is substantial evidence supporting a fair argument that the proposed Project may have one or more significant effects on the environment, the City cannot approve an IS/MND and must instead prepare an EIR.

2
(cont.)

Moreover, the IS/MND miscalculates the allowable density bonus and available concessions for the Project, and is therefore not in accordance with the standards of the Municipal Code. All of these issues are discussed more fully below.

3

We have reviewed the IS/MND and its technical reference documents with assistance from technical consultants Thomas Brohard and Matthew Hagemann, whose comments and qualifications are attached as Attachments A and B, respectively.

II. AN EIR IS REQUIRED

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.¹ “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government.”² The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”³

4

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.⁴

¹ See CEQA § 21000; CEQA “Guidelines,” 14 Cal. Code Regs. § 15002.

² *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564.

³ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁴ CEQA §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1) and (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of*

In contrast, a IS/MND may be prepared instead of an EIR only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

- (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur,*
- and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may have a significant effect on the environment.*⁵

Courts have held that “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”⁶ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through the issuance of a negative declaration.⁷ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁸

“Substantial evidence” required to support a fair argument is defined 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.”⁹ Substantial evidence can be provided by technical experts or members of the public.¹⁰

Stanislaus (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

⁵ CEQA § 21064.5 (emphasis added).

⁶ *Communities For a Better Env't. v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320.

⁷ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁸ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

⁹ CEQA Guidelines § 15384(a).

¹⁰ *E.g. Citizens for Responsible and Open Gov't. v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 (substantial evidence regarding noise impacts included public comments at hearings);

According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064(f):

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

With respect to this Project, the IS/MND fails to satisfy the basic purposes of CEQA. The IS/MND fails to adequately describe the existing environmental conditions, adequately investigate and analyze the Project's potentially significant impacts, and provide substantial evidence to conclude that impacts will be mitigated to a less-than-significant level. Because the IS/MND lacks basic information regarding the Project's potentially significant impacts, the IS/MND's implicit conclusion that the Project will "clearly" have a less-than-significant impact on the environment is unsupported.¹¹ Because the City failed to gather the relevant data to support its finding of no significant impacts, and substantial evidence (summarized below) shows that the Project may result in potentially significant impacts, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

A. Traffic Impacts Are Not Adequately Analyzed or Mitigated

The IS/MND and the Traffic Impact Study prepared for the Project both fail to properly identify and analyze the significant traffic impacts that will be created by the proposed Project, particularly at the intersection of 22nd Street and Nevin Avenue. Moreover, the IS/MND fails to develop appropriate and enforceable mitigation measures for this significant traffic impact. Finally, the Traffic Impact Study omits any analysis of a key Project intersection, at 22nd and Macdonald

Architectural Heritage Assn. v. County of Monterey (2004) 122 Cal.App.4th 1095, 1117 (substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at public hearing); *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

¹¹ CEQA § 21064.5.

Avenue, which is the only direct route that Project residents would use to access Interstate 580 and Carlson Boulevard to the South.

5
(cont.)

1. Significant traffic impacts at 22nd Street and Nevin Avenue

The IS/MND contains only a cursory overview of the Project’s potential traffic impacts, summarizing the analysis contained in the Traffic Impact Study (“TIS”) prepared for the proposed Project.¹² The TIS lists the criteria used to determine if a traffic impact is significant. First, a significant traffic impact would occur if “the operations of a non-signalized study intersection is projected to decline with the addition of Project traffic, and if the installation of a traffic signal based on the Manual on Uniform Traffic Control Devices (MUTCD) Peak Hour Warrant (Warrant 3) would be warranted.”¹³ The intersection of 22nd Street and Nevin Avenue currently operates as a non-signalized intersection, because the existing traffic signal is used only for side-street stop control (a flashing red vehicle indication is displayed on Nevin Avenue, and a flashing yellow vehicle indication is displayed on 22nd Street).¹⁴

As explained by Mr. Brohard, the fact that a traffic signal exists at this intersection makes it “apparent that traffic signals were warranted in the past.”¹⁵ In Mr. Brohard’s expert opinion, the increased vehicle, bicycle, and pedestrian traffic generated by the Project “will likely satisfy Warrant 3 and other accepted traffic engineering criteria for traffic signals.”¹⁶ Accordingly, there is a fair argument that this criterion for a significant traffic impact is met.

Second, the TIS states that a significant traffic impact would occur if traffic conditions decline from an acceptable “LOS D” operation without Project traffic, to an unacceptable “LOS E” operation with Project traffic.¹⁷ The TIS states that under the 2040 cumulative traffic scenario, “the side street traffic movements for the intersection of 22nd Street and Nevin Avenue is projected to operate at Los E in the

6

¹² IS/MND p. 81.

¹³ PHA Transportation Consultants, Richmond Nevins Apartment Traffic Impact Study For City of Richmond, July 2014 (“Traffic Impact Study” or “TIS”), p. 13.

¹⁴ Comments of Thomas Brohard, **Attachment A**, pp. 1-2; Traffic Impact Study, pp. 3, 14 (Table 3), 19 (Table 5), 22 (Table 6); IS/MND p. 84.

¹⁵ Brohard Comments, p. 2.

¹⁶ *Ibid.*

¹⁷ *Ibid.* p. 3; TIS p. 13.

morning peak hour.”¹⁸ Table 6 in the TIS also clearly shows that this decline in traffic conditions is attributable to Project traffic.¹⁹ The TIS later concludes that “the LOS with added project traffic would be the same,” but this statement directly contradicts what is shown in Table 6.²⁰

Under both criteria set forth in the TIS, the Project will create a significant traffic impact at the intersection of 22nd and Nevin Avenue. The conclusion in the TIS and the IS/MND that the Project would not create a significant traffic impact is incorrect and is not supported by substantial evidence.²¹

2. Failure to adopt mitigation

The IS/MND and the TIS conclude that no mitigation is needed for the Project’s traffic impacts.²² This is an incorrect conclusion, as Project-related impacts at the intersection of 22nd Street and Nevin Avenue will be significant. According to Mr. Brohard, available mitigation measures would include changing the traffic signal operation at this intersection. “Work to be done involves upgrading the traffic signal as needed to comply with current design practices, including restoration of the pedestrian crossing facilities including push buttons and pedestrian signal indications.”²³

The IS/MND recommends that the City “investigate the problem with the pedestrian push buttons for the 22nd Street and Nevin Avenue intersection.”²⁴ However, restoring the pedestrian crossing facilities alone would not be feasible. According to Mr. Brohard, the push buttons were probably disconnected on purpose, because this type of pedestrian crossing device is inappropriate for intersections where the traffic signal is operating in yellow/red flashing operation.²⁵ Mr. Brohard indicates that it would “contradict accepted traffic engineering and transportation

6
(cont.)

¹⁸ TIS p. 27.

¹⁹ Brohard Comments, p. 3; TIS p. 22 (Table 6) (cumulative traffic conditions without the Project would operate at LOS D for this intersection, but with the Project would operate at LOS E).

²⁰ Brohard Comments, p. 3; TIS p. 27.

²¹ TIS p. 27; IS/MND p. 84.

²² *Ibid.*

²³ Brohard Comments, p. 3.

²⁴ IS/MND pp. 27, 83; TIS p. 8.

²⁵ Brohard Comments p. 3.

planning principles” to reactivate the pedestrian crossing devices without also upgrading and reoperating the traffic signal.²⁶

The City should prepare an EIR that properly analyzes the potentially significant traffic impacts at the intersection of 22nd Street and Nevin Avenue, and describes available mitigation measures. The City is currently in the process of designing and implementing the Nevin Avenue Pedestrian Improvement Project, at a cost of approximately \$1 million per block.²⁷ The Project will contribute to potentially significant traffic impacts at the intersection of Nevin Avenue and 22nd Street, which is within the boundaries of the Pedestrian Improvement Project. The Project will introduce new vehicle driveways on Nevin Avenue to access two new parking garages.²⁸ In addition to requiring the Applicant to upgrade the traffic signal operation and pedestrian crossing facilities at this intersection, an EIR should examine the Project’s potential impacts on achieving the goals of the Nevin Avenue Pedestrian Improvement Project, and the appropriateness of requiring the Project to contribute to the cost of these improvements.

3. Traffic Impact Study excludes key Project intersection at 22nd and Macdonald

The traffic study for the IS/MND analyzes 10 nearby intersections, but does not analyze what appears to be a very important intersection: 22nd Street and Macdonald Avenue. Due to the one-way streets that surround the Project site, 22nd Street would be the only immediately accessible route for Project residents to access Carlson Boulevard and Interstate 580, both major thoroughfares located to the south of the Project site. The intersection at 22nd and Macdonald is also the only intersection near the Project site with a noticeable amount of traffic.²⁹

The Project would include two parking garages. The larger garage would exit onto 22nd Street just north of Macdonald Avenue, and the smaller garage would

²⁶ *Ibid.*

²⁷ **Attachment C**, <http://richmondconfidential.org/2014/10/16/urban-streetscape-improvements-to-connect-civic-center-to-bart/>.

²⁸ IS/MND p. 5.

²⁹ **Attachment D**, Google map view and street view snapshots at 22nd and Macdonald, *available at* <https://maps.google.com/maps?newwindow=1&um=1&ie=UTF-8&fb=1&gl=us&q=Richmond,+CA&sa=X&ei=M61aVPilBIGvogTbooLgDA&ved=0CCEQ8gEwAA&output=classic&dg=brw>

6
(cont.)

7

exit onto Nevin Avenue, where residents would turn onto 22nd Street just north of Macdonald Street in order to go south.³⁰ There is a high likelihood that the Project would affect traffic congestion and safety at the intersection of 22nd Street and Macdonald Avenue. The IS/MND provides no explanation for why this key intersection was excluded from the Traffic Impact Study. The City should prepare a revised TIS that analyzes this intersection, and include the revised TIS in an EIR that is circulated for public review.

7
(cont.)

B. Hazardous materials impacts are not properly mitigated

A number of properties near the Project site have a history of soil and groundwater contamination.³¹ As part of the Phase I Environmental Site Assessment (“ESA”) conducted for the Project, a Vapor Encroachment Screening (“VES”) was performed, to determine if nearby properties may be a source of encroaching contamination through soil vapor. As a result of the VES, the current Foreign Auto Repair property at 401 23rd Street could not be ruled out as a potential source of subsurface vapor contamination.³²

The IS/MND recommends Mitigation Measure VII-1, which states:

“The site shall be periodically evaluated for potential vapor encroachment. If encroachment is identified, then recommendations of the REA shall be implemented.”³³

8

This mitigation measure is vague and unenforceable. As explained by Matthew Hagemann, there is no indication in the language of either the mitigation measure, the IS/MND, or the Phase I ESA regarding who would conduct the periodic evaluations, in what location(s), using what technique(s), and with what frequency.³⁴ There is no standard set forth to identify when encroachment has occurred. Moreover, the reference to an “REA” or “Registered Environmental Assessor” is outdated. The REA program was previously overseen by the California

³⁰ IS/MND p. 5.

³¹ IS/MND p. 47; KCE Matrix, Phase I Environmental Assessment for the Project (June 11, 2014), pp. 9-12 (this report mistakenly identifies the Pacific Bell property at 2105 Macdonald as being located 230 feet from the Project site, when in fact it is directly adjacent to the Project site).

³² IS/MND p. 48; Phase I Environmental Assessment, p. 1.

³³ IS/MND p. 48.

³⁴ **Attachment B**, Comments of Matthew Hagemann, p. 1.

Department of Toxic Substances Control, and has been discontinued.³⁵ Also, there is no oversight by the City to ensure that the mitigation is performed.

The City may not rely on vague and uncertain mitigation measures.³⁶ Vague mitigation measures are prohibited under CEQA because “vagueness makes it difficult to identify the who-what-when essential to enforcement” of a mitigation measure.³⁷ CEQA also requires that mitigation measures be fully enforceable through permit conditions, agreements, or other legally binding instruments.³⁸ The City is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved. This approach helps “insure the integrity of the process.”³⁹

Finally, deferral of the formulation of mitigation measures to post-approval studies is generally impermissible.⁴⁰ An agency may only defer the formulation of mitigation measures when it “recognizes the significance of the potential environmental effect, commits itself to mitigating the impact, and articulates specific performance criteria for the future mitigation.”⁴¹ The City’s proposed mitigation measure has no specific performance criteria. A mitigation scheme is improper if it proposes to allow the Applicant to conduct the analysis and formulate the mitigation measures.⁴² Deferral of mitigation is impermissible, in other words, if it removes the agency from its role as the decision maker.

In Mr. Hagemann’s expert opinion, the proposed mitigation measure is inadequate to ensure the protection of public health.⁴³ A fair argument exists that potentially significant impacts may occur, requiring the preparation of an EIR.

³⁵ *Ibid.*, p. 1; **Attachment E**, copy of DTSC website on REA Program, available at: <http://www.dtsc.ca.gov/rea/> (accessed Nov. 7, 2014).

³⁶ *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-728.

³⁷ *Sierra Club v. Cnty. of Fresno* (2014) 226 Cal.App.4th 704, 172 (currently pending review in the California Supreme Court, 334 P.3d 686 (Cal. 2014).)

³⁸ CEQA Guidelines § 15126.4(a)(2).

³⁹ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) Cal.3d 929, 935.

⁴⁰ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; see also CEQA Guidelines § 15126.4(a)(1)(B).

⁴¹ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1411 (citing *Sacramento Old County Assn. v. County Council* (1991) 229 Cal.App.3d 1011, 1028-1029).

⁴² *Id.* at 302-308.

⁴³ Hagemann Comments, p. 2.

C. Construction Vibration Impacts on Older Buildings are Not Properly Analyzed or Mitigated

The IS/MND acknowledges that “groundborne vibration or groundborne noise levels can be an impact when there is major construction within 25 feet of any building or 100 feet of a historic building.”⁴⁴ However, the IS/MND incorrectly concludes that “there are no historic buildings around the Project site” and therefore impacts would be less than significant.⁴⁵

Although Project construction is not expected to include pile driving, it may potentially occur, and the IS/MND recommends Mitigation Measure XII-2, which would require the performance of a “crack survey” before and after pile driving activities, for any building within 50 feet of the pile driving location or any historic building or building in poor condition within 100 feet.⁴⁶

The IS/MND’s analysis of potential noise and vibration impacts on nearby buildings, and the suggested mitigation measure, are inadequate to reduce or avoid potentially significant impacts that may occur on older buildings near the Project site.

1. The IS/MND fails to adequately describe the existing setting

The IS/MND must demonstrate a good faith effort at full disclosure, which permits the Project’s effects “to be considered in the full environmental context.”⁴⁷ The IS/MND must also include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.⁴⁸ A prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the CEQA process.⁴⁹

⁴⁴ IS/MND p. 72.

⁴⁵ *Ibid.* p. 73.

⁴⁶ *Ibid.*

⁴⁷ CEQA Guidelines § 15125(c); *Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390.

⁴⁸ *Association of Irrigated Residents, id.* at 1390.

⁴⁹ *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 748.

CEQA requires that a lead agency include a description of the physical environmental conditions in the vicinity of the Project, as they exist at the time environmental review commences.⁵⁰ The Courts have consistently held that the impacts of a project must be measured against the “real conditions on the ground.”⁵¹ The description of the environmental setting constitutes the baseline physical conditions by which a lead agency must measure the significance of a project’s impacts.⁵²

9
(cont.)

The description of the environmental setting in the IS/MND is inadequate because it omits accurate information regarding the age and condition of the buildings that surround the Project site. The IS/MND states that there are “no historic buildings around the Project site.”⁵³ However, according to a real estate database, at least eight residences immediately surrounding the Project site were constructed between 1908 and 1925.⁵⁴ Most of these residences are approximately 50-60 feet from the Project site, and the residence at 320 22nd Street is immediately adjacent to the Project site. Furthermore, there is a recorded historic building, the Pacific Bell building, adjacent to and within 50 feet of the Project site.⁵⁵ The IS/MND is inadequate because it omits this highly relevant information about surrounding structures when analyzing the potential impacts to those structures from Project construction.

10

2. Vibration exposure thresholds in the IS/MND are too high

The IS/MND uses vibration exposure thresholds for “modern buildings” and “newer residential structures,” as set forth in the Construction-Induced Vibration

11

⁵⁰ CEQA Guidelines § 15125(a); *Communities For A Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 321.

⁵¹ *Save Our Peninsula Com. v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 246.

⁵² CEQA Guidelines § 15125(a).

⁵³ IS/MND p. 73.

⁵⁴ **Attachment F**, print-outs from the “Zillow” online database, accessed November 5, 2014, indicate that the homes surrounding the Project site were constructed in 1908 (2215 Nevin Ave.), 1910 (327 21st St.), 1911 (331 and 400 21st St.), 1913 (2217 Nevin Ave.), 1918 (2111 Nevin Ave.), and 1925 (320 22nd St. and 335 21st St.). Available at: [http://www.zillow.com/homes/richmond,-ca_rb/#/homes/for_sale/Richmond-CA/18535548_zpid/26751_rid/days_sort/37.937343,-122.347131,37.935674,-122.350618_rect/18_zm/1_fr/?view=map](http://www.zillow.com/homes/richmond,-ca_rb/#/homes/for_sale/Richmond-CA/18535548_zpid/26751_rid/days_sort/37.937343,-122.347131,37.935674,-122.350618_rect/18_zm/1_fr/?view=map;);

⁵⁵ *Ibid.* p. 31.

Guidance Manual of the California Department of Transportation (“Caltrans”).⁵⁶ These threshold criteria, however, are on the high end of the spectrum. The vibration exposure thresholds for “older residential structures” and “historic buildings,” not disclosed in the IS/MND, are twice as protective as the criteria for newer structures.⁵⁷ The potential for Project construction to have potentially significant impacts on older buildings is unrelated to any official designation as “historic,” but is related to the buildings’ age and condition.⁵⁸ For example, construction-related impacts are far more likely for buildings constructed with plaster-on-lath interiors than those constructed with modern drywall.⁵⁹

The structural damage thresholds used in the IS/MND for evaluating impacts from construction-related noise and vibration are not supported by substantial evidence. Most of the buildings and residential structures that surround the Project site are not modern or newer, but are older and may be in poor condition. The City must use thresholds that are relevant to the numerous sensitive buildings surrounding the Project site. As set forth in the Caltrans Guidance Manual, the structural damage thresholds for older buildings should be 0.25 to 0.3 “PPV” for continuous noise sources (rather than the 0.5 used in the IS/MND), and 0.5 PPV for transient sources (rather than 1.0) at a distance of 25 feet.⁶⁰ The threshold should be even lower for the residence at 320 22nd Street, which is directly adjacent to the Project site.

3. Impacts may occur not just from pile driving but from other construction activities

As explained in the Caltrans Guidance Manual, problematic sources of “continuous” vibration can include excavation equipment and soil compaction equipment, while problematic sources of transient vibration can include pile drivers,

⁵⁶ IS/MND p. 72 (Table XII-9); **Attachment G**, Excerpt from most recent version of the Caltrans Guidance Manual (2013). A full copy of the Guidance Manual is *available at*: http://www.dot.ca.gov/hq/env/noise/pub/TCVGM_Sep13_FINAL.pdf

⁵⁷ **Attachment G**, p. 38 (Table 19) (the maximum threshold for older residential structures is 0.3 for continuous sources [and even lower for historic buildings], and 0.5 for transient sources). The Guidance Manual suggests that homes built in the 1940’s would qualify as “older.” *Ibid.*, p. 39.

⁵⁸ *Ibid.*, see p. 23.

⁵⁹ *Ibid.*, see p. 25 (Table 15), and pdf. page 107 of 190 (Figure 8).

⁶⁰ *Ibid.*, p. 38 (Table 19).

jackhammers, and pavement breakers.⁶¹ For this Project, not only is there a possibility that pile driving activities may occur, but pavement will also need to be broken, while some soil or gravel will need to be excavated and some will need to be compacted.⁶² The Project therefore has the potential to use not only pile driving equipment, but also pavement breaking equipment, excavators, and compactors. All of this equipment has the potential to cause groundborne vibration impacts to adjacent and nearby structures, especially older structures. The IS/MND fails to assess these potentially significant impacts.

4. Mitigation is inadequate

The IS/MND proposes Mitigation Measure XII-2, which requires the Applicant to conduct a crack survey of surrounding buildings prior to any pile driving activities, and states that the Applicant shall be responsible to repair any damage identified after the conclusion of construction.⁶³ This proposed mitigation measure is inadequate for a number of reasons. First, the measure is only triggered by pile driving, and not by the use of other potentially damaging equipment. Second, although the measure requires a crack survey of “historic” buildings, the IS/MND itself states that there are no such buildings near the Project site.⁶⁴ Thus, it is very unlikely that the Applicant would survey the century-old residences and the historic Pacific Bell building, or other older buildings near the Project site.

Third, there is no requirement to notify homeowners and business owners of the risks that Project construction may cause to nearby structures, and thus the surrounding landowners will have little incentive to allow interior inspections of their structures. Fourth, there is no requirement to conduct post-construction inspections, nor is there any enforceable mechanism for the City to require the Applicant to repair any damage that is caused. The mitigation is inadequate and unenforceable, and thus a fair argument exists that impacts may be significant, requiring the preparation of an EIR.

⁶¹ *Ibid.*, pp. 9-10.

⁶² IS/MND p. 5 (describing demolition); p. 51 (describing on-site pavement); PRA Group Geotechnical Study for the Project (July 14, 2014), p. 13 and Appendix A, p. 4 (describing compaction necessary).

⁶³ IS/MND p. 73.

⁶⁴ *Ibid.*

D. Stormwater Impacts are Not Adequately Analyzed or Mitigated

The IS/MND concludes that although the City's Municipal Stormwater Permit ("MSP") requires the Project to use "low impact development" (LID) features to control and reduce stormwater runoff, the Project qualifies as a "Special Project" under the MSP, and is therefore 100% exempt from using LID features.⁶⁵ The IS/MND further concludes that LID features are "not considered practical" for the Project, and thus the Project will not incorporate any LID techniques.⁶⁶ These conclusions are inadequate and are not based on substantial evidence. There is a fair argument that the Project will have potentially significant stormwater impacts.

Moreover, the IS/MND fails to disclose the analysis and information contained in the Stormwater Management Plan that was prepared for the Project, which was not included as a technical appendix. Under CEQA, whatever is required to be considered in a CEQA document must be in the document itself.⁶⁷ While data that is key to an analysis may be placed in an appendix, the data must be summarized in the CEQA document to ensure that the information is presented in a manner that will adequately inform the public and decision-makers. Readers cannot be required to sift through reference documents to uncover information that is fundamental to the IS/MND's environmental analysis.⁶⁸ The IS/MND failed to adequately summarize the information and the rationale contained in the Stormwater Management Plan.

1. The Project is not exempt from using low impact development techniques to control stormwater

The City's MSP covers more than 70 cities and towns in the San Francisco Bay Area. The MSP was issued by the San Francisco Bay Regional Water Quality Control Board in 2009 and revised in 2011.⁶⁹ Provision C.3 of the MSP requires the

⁶⁵ IS/MND p. 52.

⁶⁶ *Ibid.*

⁶⁷ See *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 727.

⁶⁸ *Id.* at 659; see also *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239 (information buried in an appendix cannot substitute for a reasoned analysis).

⁶⁹ **Attachment H**, relevant excerpt from the City's MSP. A full copy of the MSP is available at: http://cleanwaterprogram.org/uploads/R2-2009-0074_Revised.pdf

City to place conditions on development projects to incorporate site design measures, source controls, and stormwater treatment measures. These measures are intended to address stormwater runoff pollutant discharges and prevent increases in runoff flows from new development projects. The C.3 goal is to be accomplished primarily through the implementation of LID techniques.

The proposed Project is a “Regulated Project” under Provision C.3, because it creates and/or replaces more than 10,000 square feet of impervious surface area on a site where some past development has occurred.⁷⁰ The Stormwater Control Plan prepared for the Project concludes, however, that the Project qualifies as a “Special Project” under Provision C.3, eligible for a 100% reduction in the LID treatment requirement. Provision C.3 has three categories of Special Projects that are eligible for various levels of LID reduction credits, Categories A, B, and C. The Stormwater Control Plan prepared for the Project concludes that the Project meets the criteria for 100% non-LID techniques under Categories B and C.

A. *The Project is not a Category B Special Project*

To qualify for a Category B exemption from the MSP’s stormwater requirements, the Project must meet five criteria:

1. Be built as part of the City’s stated objective to preserve or enhance a pedestrian-oriented type of urban design;
2. Be located within the City’s designated central business district, downtown core area or downtown core zoning district, neighborhood business district or comparable pedestrian-oriented commercial district, or historic preservation district;
3. Create or replace more than ½ acre but no more than 2 acres of impervious surface area;
4. Include no surface parking; and

⁷⁰ See IS/MND pp. 51-52; MSP p. 21.

5. Have at least 85% coverage for the entire project site by permanent structures.⁷¹

The Project meets the third, fourth, and fifth criteria because it spans 1.7 acres, includes no surface parking, and covers at least 85% of the site. The Project's Stormwater Management Plan does not explain why the proposed Project meets the first criteria, by identifying how the Project would be built as part of a City-stated objective to enhance pedestrian-oriented urban design.

The Project also fails to meet the second criteria because it is not located in one of the listed business, commercial, or historic districts. The Project is instead located in a high-density *residential* zoning district. The City's Central Business zoning district and Downtown Business Improvement District are both located blocks away from the Project site.⁷² The Project's Stormwater Management Plan simply notes that the Project is "between" the Central Business District and the General Commercial District.⁷³ The Project does not meet the criteria for a Category B Special Project.

B. The Project may qualify as a Category C Special Project, but not for a 100% LID reduction

To qualify for Category C credits under the MSP's stormwater requirements, the Project must be a transit-oriented development. Projects located near transit hubs can receive LID reduction credits for their location, density, and minimized surface parking.⁷⁴ The Project's Stormwater Management Plan concludes that the Project is eligible for a 50% LID reduction credit for the Project's location within ¼ mile of the Richmond BART station, plus a 30% credit for having a density greater than 100 units per acre, and a 20% credit for having zero surface parking.⁷⁵

⁷¹ Attachment H, MSP pp. 34-35.

⁷² Attachment I, City of Richmond Zoning Map, available at : <http://www.ci.richmond.ca.us/DocumentCenter/Home/View/3624>; Attachment J, City of Richmond Map of Downtown Property and Business Improvement District, available at: <http://richmondmainstreet.org/drpbid>.

⁷³ Bellecci & Associates, Stormwater Control Plan prepared for the Project (June 2014), p. 3.

⁷⁴ Attachment H, MSP pp. 36-38.

⁷⁵ Stormwater Control Plan prepared for the Project, pp. 3-4.

The Project is not eligible for a 50% location credit. The MSP states that in order to qualify for a 50% location credit, at least 50% of the Project site must be “located within a ¼ mile radius of an existing or planned transit hub.”⁷⁶ The Project’s Stormwater Management Plan does not use a radius calculation to determine the Project’s distance from the Richmond BART station, but instead provides an estimate, stating that the “farthest site (Site A) is located three blocks (≈ 0.2 mi) from the Richmond BART station entrance.”⁷⁷ Even using the closest BART station entrance, the larger of the two Project parcels, Site A, is not within a ¼ mile radius of the station.⁷⁸ This measurement is generous, considering that the MSP states that 50% of a project site must be within “the” ¼ mile radius of a transit station, suggesting that there is only one applicable radius beginning at the center of the station.⁷⁹ Thus, more than 50% of the Project site is not within the required radius.

At the most, the Project is eligible for a 30% density credit, a 20% credit for minimized surface parking, and only a 25% location credit (not a 50% location credit), based on the fact that the Project site is located within a ½ mile radius (not ¼ mile radius) of the Richmond BART station. The Project only qualifies for a maximum 75% non-LID stormwater credit, and therefore it must treat at least 25% of stormwater runoff using low impact development techniques.

2. Low impact development techniques are not infeasible

Exemptions for Special Projects still require a showing that non-LID treatments are “infeasible.”⁸⁰ If the City approves up to the maximum of 75% non-LID treatment credits for the proposed Project, the City will be required to submit a report to the Regional Water Quality Control Board, explaining why the Project qualifies as a Special Project, and “the feasibility or infeasibility of 100% LID treatment, onsite and offsite.”⁸¹ The City’s determination of infeasibility must include “both technical and economic feasibility or infeasibility,” and must “contain enough technical and/or economic detail to document the basis of infeasibility

⁷⁶ Attachment H, MSP p. 36.

⁷⁷ Stormwater Control Plan prepared for the Project, p. 4 (Table 2).

⁷⁸ Attachment K, Google Earth map showing 0.25 mile radius from Richmond BART station eastern entrance.

⁷⁹ Attachment H, MSP p. 37.

⁸⁰ *Ibid.*, MSP pp. 33-34.

⁸¹ *Ibid.* p. 39.

used.”⁸² The Project’s Stormwater Control Plan does not adequately show that it would be infeasible for the proposed Project to incorporate LID techniques into the design of the Project.

As explained by Mr. Hagemann, there are four types of LID treatment measures set forth in the MSP: stormwater harvesting and re-use, infiltration, evapotranspiration, and biotreatment.⁸³ Biotreatment may only be considered “if it is infeasible to implement harvesting and re-use, infiltration, or evapotranspiration at a project site.”⁸⁴ Conditions that would make these three methods infeasible include projects where the density and nature of the project make it difficult to harvest or retain stormwater onsite for re-use or evapotranspiration, or where clay soils limit the amount of infiltration.⁸⁵ Nowhere in the MSP is it suggested that biotreatment, the least preferred method of LID treatment, should ever be deemed infeasible. As explained in the MSP:

A properly engineered and maintained biotreatment system may be considered only if it is infeasible to implement harvesting and re-use, infiltration, or evapotranspiration at a project site. . . . This Provision recognizes the benefits of harvesting and reuse, infiltration and evapotranspiration and establishes these methods at the top of the LID treatment hierarchy. This Provision also acknowledges the challenges, both institutional and technical, to providing these LID methods at all Regulated Projects. There are certainly situations where biotreatment is a valid LID treatment measure and this Provision allows Permittees the flexibility to make this determination so that Regulated Projects are not forced to include measures inappropriate or impracticable to the project sites.⁸⁶

The Stormwater Management Plan prepared for the Project explains that infiltration is considered infeasible on the Project site, due to clay soils beneath the site, and the potential for damage, should permeable pavers be used for stormwater

⁸² *Ibid.* pp. 33-34.

⁸³ **Attachment B**, Hagemann Comments, p. 2.

⁸⁴ *Ibid.* p. 28.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*, Appendix I (“Fact Sheet”), p. 30.

collection in the interior courtyards.⁸⁷ The Stormwater Management Plan also suggests, but does not necessarily conclude, that stormwater re-use or evapotranspiration would also be infeasible due to space concerns. Mr. Hagemann concludes that despite the presence of clay soils, stormwater infiltration may be feasible through the use of infiltration chambers, the feasibility of which should be discussed in an EIR.⁸⁸

Even if the three preferred methods of LID stormwater treatment are infeasible, however, the Stormwater Management Plan and the IS/MND do not adequately explain why biotreatment would be infeasible. The reasons given are a “lack of open space” for bioretention facilities and flow-through planters, and the “height of the buildings and difficulty of care” for a green roof.⁸⁹ These reasons are insufficient. First, as discussed above, the MSP does not contemplate that bioretention facilities should ever be deemed infeasible. Second, the Project will include two large interior courtyards totaling 13,730 square feet in size, and two large rooftops.⁹⁰ In Mr. Hagemann’s expert opinion, it is eminently reasonable to incorporate flow-through planters or similar biotreatment techniques within the courtyards and/or on the roof.⁹¹ The Project certainly has enough open space to accommodate this stormwater treatment technique.

The justification that biotreatment facilities are “difficult to care for” is completely inadequate. Biotreatment has been successfully incorporated into hundreds of infill development projects throughout the San Francisco Bay Area. As stated in the Contra Costa Clean Water Program’s Stormwater C.3 Guidebook, which applies to the Project, “LID has been found to be feasible for nearly all development sites.”⁹² For example, flow-through planters can be used on top of structures, “can be any shape,” and are “low maintenance.”⁹³ “Flow-through planters have been successfully incorporated into podium-style developments, with

⁸⁷ Stormwater Control Plan prepared for the Project, pp. 4-5.

⁸⁸ Hagemann Comments, p. 2.

⁸⁹ *Ibid.* p. 3; IS/MND p. 52.

⁹⁰ Stormwater Control Plan prepared for the Project, pp. 7-8 and Exhibit (describing and depicting courtyard areas DMA-2A and DMA-2B).

⁹¹ Hagemann Comments, p. 2.

⁹² **Attachment L**, excerpts from the Contra Costa Clean Water Program, Stormwater C.3 Guidebook (Feb. 15, 2012), p. 58. The full Guidebook is *available at*:

[http://www.cccleanwater.org/Publications/Guidebook/Stormwater C3 Guidebook 6th Edition.pdf](http://www.cccleanwater.org/Publications/Guidebook/Stormwater_C3_Guidebook_6th_Edition.pdf)

⁹³ *Ibid.* p. 79.

the planters placed on the plaza level and receiving runoff from the tower roofs above.”⁹⁴ There is a fair argument that the Project will create potentially significant and unmitigated stormwater impacts.

E. Wastewater Impacts are Not Adequately Analyzed or Mitigated

The IS/MND acknowledges that the City’s wastewater treatment capacity is inadequate by approximately 40% during periods of wet weather flows, when sanitary sewer overflows routinely occur.⁹⁵ Sewage overflows into the Richmond Inner Harbor are caused by water entering the City’s sewer lines during rainfall events “through cracks and joints in the sewer pipes.”⁹⁶ The proposed Project could worsen these existing deficiencies in the City’s sewer system, which is a potentially significant environmental impact.⁹⁷

Proposed Mitigation Measure XVI-1 would require the Applicant to prepare and submit a study to analyze whether there is sufficient capacity in the local sewer lines to accommodate flows from the Project. The study would also be required to determine the Project’s effects on the City’s overall wastewater treatment capacity, “taking into account the planned Wet Weather Storage Project,” and to identify measures to prevent the Project from contributing to the City’s sewer overflow problem.⁹⁸

Once again, the IS/MND has improperly deferred the formulation of mitigation measures to post-approval studies.⁹⁹ The proposed mitigation measure has no specific performance criteria, and would allow the Applicant to conduct the analysis itself and formulate its own mitigation measures.¹⁰⁰ Where a mitigated negative declaration is proposed, CEQA requires that a lead agency set forth mitigation measures for all potentially significant impacts in the negative declaration itself. Project modifications necessary to avoid significant impacts must be made *before* the lead agency issues a proposed negative declaration for public

⁹⁴ *Ibid.* p. 81.

⁹⁵ IS/MND p. 88.

⁹⁶ **Attachment M**, website for the City’s Wet Weather Storage Basin Project, accessed November 5, 2014, available at: <http://www.richmond-wwstorage.org/about-the-project.html>.

⁹⁷ *Ibid.* p. 89.

⁹⁸ *Ibid.*

⁹⁹ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; see also CEQA Guidelines § 15126.4(a)(1)(B).

¹⁰⁰ *Sundstrom, id.* at 302-308; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1411.

review.¹⁰¹ Mitigation measures adopted *after* project approval cannot validate the issuance of a negative declaration because this deferral denies the public the opportunity to comment on the project as modified to mitigate impacts.¹⁰² “A study conducted after approval of a project will inevitably have a diminished influence on decision making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA.”¹⁰³

Moreover, if the local network of sewer lines is found to be inadequate to serve the Project, then the implementation of remedial measures may have associated environmental impacts, which must be analyzed and mitigated as part of the CEQA document for the proposed Project. For example, if the Project requires upgraded local sewer lines, the associated construction activities could encounter hazardous materials in the soil, or create other impacts. Because the City has refused to conduct this analysis at the outset, there is a fair argument that potentially significant impacts could occur, and that the City has improperly deferred the disclosure and mitigation of those impacts. The City must prepare an EIR that discloses potential sewer impacts and the environmental effects associated with any needed sewer upgrades to accommodate Project flows.

III. DENSITY BONUS

The Applicant has requested a 35% density bonus, which is the maximum possible density bonus under both state law and the City’s Municipal Code, because the Applicant will provide 20% of the Project’s apartments as low-income units. The Applicant has also asked the City to grant numerous special concessions pursuant to the City’s density bonus ordinance: (1) modify the 35-foot height limit on part of the site (up to 67 feet); (2) reduce the parking requirement from 413 to 194 parking spaces; (3) waive the setback requirements; and (4) reduce the Project’s open space requirements.¹⁰⁴ The requested density bonus and related concessions do not comport with the requirements of the City Municipal Code, and would also therefore create significant land use impacts under CEQA.

¹⁰¹ CEQA, Pub. Resources Code § 21064.5.
¹⁰² *Gentry v. County of Murrieta* (1995) 36 Cal.App.4th 1359, 1393.
¹⁰³ *Sundstrom, supra*, 202 Cal.App.3d at 307.
¹⁰⁴ IS/MND pp. 58-60.

First, the City should not grant a 35% density bonus for the Project. The Municipal Code states that a density bonus must be based on the “maximum units allowed in the underlying zoning district of the project site.”¹⁰⁵ Thus, the density bonus ordinance contemplates that a density bonus must be calculated based on the specific development limitations set forth in the City’s Zoning Code. The Zoning Code requires 800 to 1,250 square feet of lot area per unit constructed on the Project site.¹⁰⁶ However, the Applicant proposes to construct 289 units on 1.66 acres, which equals only 259 square feet of lot area per unit.¹⁰⁷ This is *well above* a 35% increase in the number of units allowed in the underlying zoning districts on the Project site.

The Applicant does not calculate the allowable density bonus by relying on the Zoning Code. Instead, it relies on a statement in a table in the City’s General Plan that densities in high-intensity mixed-use land use designations are “up to 125 units per acre.”¹⁰⁸ This statement is not intended to mean that all parcels within all zoning districts in this land use designation are entitled to build 125 units per acre. Indeed, the table in the General Plan simply acknowledges that this land use designation includes “mid and high-rise mixed-use development.” The specific statement that the Applicant relies on regarding 125 units per acre reads as follows:

Ranges:

Density: Up to 125 du/ac

Intensity: 1.0 to 5.0 FAR

Height: 15 to 135 feet¹⁰⁹

This is not intended to mean that every zoning district within the high-intensity mixed-use land use designation is entitled to build up to 125 dwelling units, with a floor-area ration of 5.0 and a height of 135 feet. The General Plan merely provides ranges that may be seen within this land use designation. The General Plan specifies that the City Zoning Code, and not the General Plan, regulates building

¹⁰⁵ Municipal Code § 15.04.810.053.D(4).

¹⁰⁶ *Id.* §§ 15.04.160.050 (minimum lot area in MFR-3 zone is 800 square feet); 15.04.220.050 (MFR-2 requirements apply to residential units in a C-2 zone), and 15.04.150.050 (minimum lot area in MFR-2 zone is 1,250 square feet).

¹⁰⁷ IS/MND p. 59.

¹⁰⁸ **Attachment N**, City’s General Plan 2030, Land Use and Urban Design Element, p. 3.17 (Table 3.3), available at: <http://www.ci.richmond.ca.us/DocumentCenter/Home/View/8809>; IS/MND p. 58.

¹⁰⁹ *Ibid.*

density.¹¹⁰ Contrary to the density bonus ordinance, the requested density bonus is based on the maximum units allowed in the underlying zoning district of the Project site.

Second, the Applicant has asked for four concessions, which is also inconsistent with the density bonus ordinance. The Municipal Code states that in addition to a density bonus, the City may grant only “two incentives or concessions for projects that include at least 20 percent of the total units for lower-income households.”¹¹¹ The IS/MND’s conclusion that the Project is entitled to four deviations from the City’s development standards (parking, open space, setbacks, and height) “as part of the incentives or concessions that the City of Richmond may grant to affordable housing projects,” is incorrect.¹¹²

IX. CONCLUSION

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment.¹¹³ As discussed in detail above, there is substantial evidence that the Project would result in significant adverse impacts that were not identified in the IS/MND and that are not adequately mitigated.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing an EIR for the Project. In this way, the City and the public can ensure that all adverse impacts of the Project are mitigated to the full extent feasible and required by law. We also urge the City to recalculate the allowable density bonus and available concessions for the Project, under the standards of the Municipal Code.

¹¹⁰ *Ibid.*, p. 3.11.

¹¹¹ Municipal Code § 15.04.810.053.C.

¹¹² IS/MND pp. 58-60.

¹¹³ CEQA Guidelines § 15063(b)(1).

November 10, 2014
Page 25

Thank you for your consideration of these comments. If you require further information or have any questions, please call us.

Sincerely,

A handwritten signature in black ink that reads "Ellen Trescott". The signature is written in a cursive, slightly slanted style.

Daniel L. Cardozo
Ellen L. Trescott

Attachments:

- Attachment A: Comments of Thomas Brohard
- Attachment B: Comments of Matthew Hagemann
- Attachment C: Richmond Confidential, Article dated Sept. 16, 2104, entitled "Urban streetscape improvements to connect Civic Center to BART"
- Attachment D: Google map view and street view snapshots at 22nd Street and Macdonald Avenue
- Attachment E: Department of Toxics Substances Control website regarding Registered Environmental Assessor (REA) Program
- Attachment F: Snapshots from the Zillow online database
- Attachment G: Excerpts from Caltrans' Construction-Induced Vibration Guidance Manual (2013)

- Attachment H: Excerpt from San Francisco Regional Water Quality Control Board's Municipal Stormwater Permit No. CAS612008
- Attachment I: City of Richmond Zoning Map
- Attachment J: City of Richmond Map of Downtown Property and Business Improvement District
- Attachment K: Google Earth map showing 0.25 mile radius from Richmond BART station eastern entrance
- Attachment L: Excerpts from the Contra Costa Clean Water Program, Stormwater C.3 Guidebook (2012)
- Attachment M: Website for the City's Wet Weather Storage Basin Project
- Attachment N: Excerpt from City's General Plan 2030, Land Use and Urban Design Element

* Internet links to all other references are provided herein, and a compact disc with referenced documents is provided herewith. Paper copies of these documents will be promptly provided to the County upon request.

ELT:ljl