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VIA OVERNIGHT AND ELECTRONIC MAIL

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Planning/Community Development Department
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Re: Comments on the Initial Study/Mitigated Negative Declaration for the San Ramon Valley Apartments (AR 15-200-005, IS 15-250-001, DP 15-300-002)

Dear Ms. Chamberlain and Mr. Tsukamoto:

These comments are submitted on behalf of **San Ramon Residents for Responsible Development, International Brotherhood of Electrical Workers, Local 302, Plumbers & Steamfitters, Local 159, Sprinkler Fitters, Local 483, Sheet Metal Workers, Local 104**, Dino Cesaretti, and Giovanni Fissore regarding the Initial Study and Mitigated Negative Declaration (“MND”) prepared by the City of San Ramon (“City”) for the San Ramon Valley Apartments (the “Project”). The Project is proposed by the ROEM Development Corporation (the “Applicant”). The Applicant is requesting the City’s approval of a development plan, architectural review, and the MND.

Based upon our review of the MND and supporting documentation, we conclude that the MND fails to comply with the California Environmental Quality Act (“CEQA”).¹ The MND fails to provide a complete and accurate Project description and fails to set forth an accurate and documented description of the environmental setting against which to measure the Project’s potentially significant

¹ Public Resources Code (“PRC”) §§ 21000 et seq.

impacts. As a result, the MND fails to identify the Project's potentially significant environmental impacts and propose measures that can reduce those impacts to a less than significant level.

As explained in these comments, substantial evidence supports a fair argument that the Project will result in potentially significant impacts on hydrology and water quality, land use, biological resources, utilities and service systems, noise, geology, and cultural resources. The City may not approve the development plan, architectural review, and the MND until the City 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 avoid or minimize these impacts.

We prepared these comments with the assistance of hazardous materials and water quality expert Matt Hagemann of Soil/Water/Air Protection Enterprise ("SWAPE"), P.G., C.Hg., former Senior Science Policy Advisor for U.S. EPA Region 9's hazardous materials program, and air quality expert Jessie Jaeger of SWAPE. SWAPE's technical comments and curriculum vitae are attached hereto as Exhibit D. The City must address and respond to the comments of these experts separately.²

I. STATEMENT OF INTEREST

San Ramon Residents for Responsible Development ("San Ramon Residents") is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with the Project development. The association includes Dino Cesaretti, Giovanni Fissore, **International Brotherhood of Electrical Workers, Local 302, Plumbers & Steamfitters, Local 159, Sprinkler Fitters, Local 483, and Sheet Metal Workers, Local 104**, and their members and their families who live and/or work in the City of San Ramon and Contra Costa County.

Individual members of San Ramon Residents live, work, recreate and raise their families in the City of San Ramon. They would be directly affected by the Project's impacts. Individual members may also work on the Project itself.

² See 14 Cal. Code Regs. ("CCR") § 15088(a).

Accordingly, they will be first in line to be exposed to any health and safety hazards that exist on site.

The organizational members of San Ramon Residents also have an interest in enforcing the City's planning and zoning laws and the State's environmental laws that encourage sustainable development and ensure a safe working environment for their 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. Finally, San Ramon Residents' members are concerned about projects that present environmental and land use impacts without providing countervailing economic and community benefits.

II. The Project Violates the City's Stepback Requirements

A. The MND Fails to Accurately Describe the 10-foot Stepback of the Project's 4th Storey

The City Planning Commission correctly stated that the CCSP requires all portions of the building that rise above 40 feet or three stories be stepped back by 10 feet.³ The MND states that the developer provided a "continuous stepback of the 4th floor by 10 feet"⁴ and that "the 4th storey complies with the stepback requirement."⁵ However, the Project plans submitted to the City and the minutes of the June 7, 2016, Planning Commission hearing indicate that the stepback of the mixed-use building's 4th storey is not "continuous."⁶

The Project violates the City's stepback requirements. The Project plans only call for the north and southeast-facing sides of the Project to be stepped back at the 4th storey, while the west and southwest-facing sides of the Project will not be

³ **Exhibit A:** Crow Canyon Specific Plan ("CCSP") "Land Use and Urban Design," p. 48.

⁴ MND, "1. Overview and Background."

⁵ MND, p. 84.

⁶ Planning Commission Hearing, June 7, 2016, audio available at <http://sanramonca.igam2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=1444&Format=Minutes>; Project Plans A1.5 "Conceptual Floor Plan – Floor 4 Residential Plan." Available at <http://www.sanramon.ca.gov/miscagenda/documents/roemplans.pdf>

stepped back.⁷ Therefore the MND is inaccurate on three counts in respect to the 10-foot stepback: 1) it inaccurately describes the stepback as “continuous” because only two of the four sides are stepped back; 2) it inaccurately claims that the “massing is in-line with what is called for in the CCSP”⁸ because the CCSP calls for all portions of buildings over 40 feet or three stories to be stepped back, not just two of four sides; and 3) by claiming that the “continuous” stepback was implemented as a response to public comment,⁹ the MND inaccurately states that it responded to public comments because the stepback is not in fact “continuous” nor compliant with the CCSP.

The MND’s description of the Project’s 4th storey stepback, the Project’s compliance with the CCSP, and the Applicant’s responsiveness to public comments should be corrected and accurately set forth in an EIR.

III. THE MND FAILS TO ADEQUATELY DESCRIBE THE PROJECT

An accurate and complete project description is necessary for an intelligent evaluation of the potential impacts of a project.¹⁰ A negative declaration is inappropriate where the lead agency has failed to provide an accurate and complete project description.¹¹ Only through an accurate and complete view of the project may affected outsiders and public decision makers balance the proposal’s benefit against its environmental costs.¹²

The MND fails to meet CEQA’s requirements because it does not include a accurate and complete description of the Project components related to hydrology and water quality, air quality, and utilities and service systems. The failure to include an accurate and complete description of these components prevents evaluation of their impacts. Thus, the omissions render the MND’s impacts analysis inherently unreliable.

⁷ Project Plans A1.5 “Conceptual Floor Plan – Floor 4 Residential Plan.” Available at <http://www.sanramon.ca.gov/miscagenda/documents/roemplans.pdf>

⁸ MND, p. 35.

⁹ MND, “1. Overview and Background.”

¹⁰ See, e.g., *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

¹¹ See, e.g., *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 136 Cal.Rptr.3d 1156, 1171.

¹² See, e.g., *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, pp. 192 - 193.

A. Hydrology and Water Quality

1. The MND is Not Supported by a Hydrology Report

The MND fails to adequately describe the Project's proposal to build on top of and around San Ramon Creek. The Project site overlaps the Creek Riparian Zone ("CRZ"), which follows the course of San Ramon Creek and its surrounding banks.¹³ The City of San Ramon General Plan 2035 ("General Plan"), the Crow Canyon Specific Plan ("CCSP"), and the Zoning Ordinance of the City of San Ramon all recognize the special ecological and hydrological significance of the CRZ and San Ramon Creek.¹⁴ Impacts to the creek cannot be properly evaluated without an adequate description of the Project and its relation to the CRZ and creek, which would typically be provided in a hydrology report. The MND's lack of reference to a hydrology report constitutes an inadequate description of the Project and impedes an adequate analysis of the Project's impacts on stormwater flows, flooding, hazardous material dispersion, and liquefaction.

The City must prepare an EIR that is supported by a full description of the Project's proposal to build on top of and around the creek, which is typically provided in a hydrology report, so that impacts from stormwater flows, flooding, hazardous material dispersion, and liquefaction may be properly evaluated.

B. Air Quality

1. The MND Fails to Adequately Describe Emissions Impacting Air Quality

The MND fails to provide an accurate and complete description of the Project's emissions.

The MND air analysis relies on emissions calculated from the California Emissions Estimator Model Version 2013.2.2 ("CalEEMod"). CalEEMod provides recommended default values that were formulated from a survey of construction projects of various types and sizes. These default values reflect the average air

¹³ MND, Figure 2.

¹⁴ See **Exhibit B**: General Plan 2035, "Open Space and Conservation," pp. 8-15 – 8-16; **Exhibit A**: CCSP "Land Use and Urban Design," pp. 62 – 63; **Exhibit C**: Zoning Ordinance, D5-4.

pollutant emissions of constructing, for example, a mixed-use project of a certain size. If more specific project information is known, the user can change the default values and input project-specific values, but CEQA requires that such changes be justified by substantial evidence.¹⁵

CalEEMod calculates a project's air pollution by generating a report based on the project information entered into the model. These project-specific reports are sometimes referred to as "output files." The output files disclose the information that was used in calculating the project's air pollution emissions, such as the number and type of construction equipment that will be used on the site. The output files also disclose any changes made to the CalEEMod default settings "to assist reviewers of the program in determining justification for values selected."¹⁶

Mr. Hagemann and Ms. Jaeger reviewed the Project's CalEEMod output files and found that "several of the values inputted into the model are not consistent with information disclosed in the MND."¹⁷ Three of the input values are inconsistent with information disclosed in the MND: 1) parking spaces; 2) Tier 2 mitigation; and 3) trip length.

a. Parking Spaces

The MND claims that the Project will include 279 parking spaces, including "244 devoted to residents, 16 spaces for visitors and 19 spaces dedicated for commercial uses."¹⁸ However, the MND output files demonstrate that Project emissions were modeled on a total of 270 parking spaces, consisting of 234 spaces in an enclosed structure and 36 spaces in a parking lot.¹⁹ As explained by Mr. Hagemann and Ms. Jaeger, the CalEEMod output files, by underestimating the number of parking spaces, also underestimates the square footage that will be occupied by parking spaces.²⁰ Because square footage is used by CalEEMod to determine emissions resulting from parking lot striping and painting, the CalEEMod output files underestimate the Project's emissions by underestimating

¹⁵ CalEEMod User's Guide, pp. 2, 9, available at <http://www.caleemod.com/>.

¹⁶ *Id.*, p. 7.

¹⁷ **Exhibit D:** Letter from Matt Hagemann and Jessie Jaeger to Tanya Gulessarian re: Comments on San Ramon Apartments Project, June 30, 2016 ("SWAPE Comments"), p. 2.

¹⁸ MND, "Project Description."

¹⁹ See **Exhibit D:** SWAPE Comments, p. 2.

²⁰ *Id.*

the square footage of parking spaces.²¹ Either the Project description, or the modeling, must be revised to reflect a consistent Project description necessary to analyze impacts.

b. Tier 2 Mitigation

Mr. Hagemann and Ms. Jaeger found that the CalEEMod input values for construction equipment are inconsistent with the MND.²² The CalEEMod output files indicate that Tier 2 mitigation was applied to all 37 pieces of construction equipment that will be used during construction.²³ The MND, however, indicates that Tier 2 mitigation will be applied to only those pieces of equipment that have a horsepower greater than 50.²⁴ Only 35 such pieces will be involved in Project construction.²⁵ Therefore the CalEEMOD modeled emissions are based on Tier 2 mitigation being applied to 2 pieces of construction equipment that will not in fact be subject to Tier 2 mitigation. The result is that the mitigation of emissions from construction equipment is overestimated. Because less mitigation will actually be applied than the CalEEMod input files predicted, the overall constructed-related emissions and GHG emissions are underestimated by the CalEEMod output files.²⁶

c. Trip Length

Mr. Hagemann and Ms. Jaeger find that the CalEEMod's default values were replaced without an explanation provided in the MND, output files' remark section, or the Air Quality Report that was submitted in support of the MND.²⁷ The default input value for the length of worker trips is supposed to be 12.40 miles, and for the length of vendor trips, 7.30 miles.²⁸ But the CalEEMod output files indicate these defaults were switched so that worker trips were assumed to be 7.30 miles and vendor trips 12.40 miles.²⁹ Because the CalEEMod assumes the Project's construction phase will require far more worker trips than vendor trips (8,510

²¹ *Id.*

²² *See id.*, pp. 2 – 3.

²³ *Id.*, p. 3.

²⁴ MND, p. 49.

²⁵ **Exhibit D:** SWAPE Comments, p. 3.

²⁶ *Id.*, p. 3.

²⁷ *Id.*

²⁸ *Id.*, p. 4 -5.

²⁹ *Id.*

vender trips to 40,276 worker trips), switching the default lengths so that worker trips are shorter than vendor trips has the effect of dramatically decreasing the total projected vehicle miles traveled during construction.³⁰ Mr. Hagemann and Ms. Jaeger calculated that departure from the default values led the CalEEMod to produce an estimation of vehicle miles traveled that is a full *40 percent* less than output files based on default inputs.³¹ Due to such a significant underestimation of vehicle miles traveled, CalEEMod's projection of the Project's mobile air emissions and GHG emissions during the construction period are underestimated.³²

The MND and Air Quality report must provide substantial evidence to justify the departure from default input values.³³ Without more reasoning supporting the replacement of the default values, the air quality analysis cannot be verified and the MND is unreliable.³⁴

Mr. Hagemann and Ms. Jaeger recommend that new CalEEMod output files be prepared as part of an EIR, in which the proper default inputs are used or substantial evidence is provided that justifies the replacement of default values.³⁵

C. Utilities and Service Systems

1. The MND Fails to Adequately Describe the Project's Solid Waste

The MND states that the Project will result in less than significant impacts related to landfill capacity and solid waste disposal.³⁶ But the MND does not actually describe the solid waste produced during construction and operation, except for an assertion that "the project is expected to generate solid waste typical of the proposed use" and that "although the waste stream generated by the project

³⁰ *Id.*, p. 5.

³¹ *Id.*

³² *Id.*, p. 2.

³³ *Id.* at 4.

³⁴ *See id.*, p. 5.

³⁵ *Id.*

³⁶ MND, p. 118.

is expected to increase during construction, it is not expected to exceed landfill capacity and is not expected to result in violations of federal, state, or local statutes and regulations related to solid waste.”³⁷ The MND reaches this conclusion without describing the quantity or character of solid waste produced during construction and operation.

The MND’s failure to detail the solid waste that will be produced by the demolition and soil removal are emblematic of the MND’s failure to quantify and characterize waste produced by the Project as a whole. The MND describes the demolition of the Outpost Sports Bar and Grill, a 7,884 square foot building, but fails to indicate how much waste will be produced by the demolition and where the waste will be disposed.³⁸ The MND describes the removal of 17,000 cubic yards of soil from the site—soil which currently includes hazardous hydrocarbons—but does not indicate where the soil will be disposed of or the Project’s proposed hauling routes for the disposal.³⁹ Mitigation Measure GEO-3 calls for the “removal and replacement” of soil to stabilize the basement garage, but there is no indication where the Project proposes to dispose the removed soil.⁴⁰

The MND provides no approximate quantity of operational solid waste produced by the Project. The City must produce an EIR that details the quantity of waste expected to be produced during construction and operation.

2. *The MND Fails to Provide a Consistent Description of Landfills that will Serve the Project*

The MND offers an internally inconsistent description of which landfills will serve the Project. On page 113 of the MND, Vasco Road Sanitary Landfill is described as the landfill which will serve the Project’s operational waste. But on page 18, the MND indicates that “solid waste is collected and transferred to several landfill and composting sites with remaining capacity.” Thus, in contrast to the assertion on page 113, the MND on page 18 suggests that more landfills will be used than the Vasco Road Sanitary Landfill.

³⁷ *Id.*

³⁸ MND, “1.1 Project Description.”

³⁹ *Id.*; MND, p. 71.

⁴⁰ *Id.*, p. 65.

3. *The MND Fails to Adequately Describe the Utility Tie-Ins and Laterals*

The Project includes installation of 1) new sanitary sewer lines, 2) two new storm drain pipes, and 3) a new water lateral.⁴¹ The MND fails to adequately describe all three sets of utility lines.

The impacts of the tie-ins and laterals are important to assess because of the high groundwater at the site, which can be as high as 9 feet below the surface.⁴² The Geotechnical Engineering Report Study (the “Geology Report”) submitted in support of the MND assumes that the utility pipes will not be trenched more than 10 feet in depth.⁴³ Thus, the specifications of the Geology Report permit trenching below the site’s highest groundwater level which would lead to potentially significant impacts on hydrology and geology, specifically in regards to liquefaction and stability. Furthermore, interference with groundwater due to trenching may impact the San Ramon Creek and the CRZ.

The City must produce an EIR that completely and accurately depicts all utility lines’ location, depth below the surface, and connections.

a. Sewer Lines

One new sanitary sewer line will be an 8-inch wide, 250-foot long pipe that runs on the western boundary of the Project’s site.⁴⁴ However, the MND also describes proposed sanitary sewer lines that “extend from the new sanitary sewer line.”⁴⁵ The details of these sewer lines—their number, location, length, width, and depth below the surface—are not provided in the MND or the Project plans.

⁴¹ *Id.*, “1.1 Project Description.”

⁴² *Id.*, p. 76.

⁴³ Geotechnical Engineering Report Study (“Geology Report”), p. 19, available at <http://www.sanramon.ca.gov/planagenda/documents/geotech06-07-16.pdf>.

⁴⁴ MND, “1.1 Project Description.”

⁴⁵ *Id.*

The subterranean depth of the new 250-foot sewer line is not described.

b. Storm Drain Pipes

One new storm drain pipe will be 395 feet long and 12 inches wide and run along the western boundary of the Project's site.⁴⁶ The other storm drain will be 6-inches wide and run "along much of the southern portion of the site," but its length is not described in the MND.

The MND fails to describe the subterranean depth of both pipes. The lack of depth specification is particularly alarming in regards to the pipe running along the southern portion of the site because, as the Project plans depict, the pipe is deep within the CRZ. Without disclosing or determining the length and depth of the south-side pipe, impacts on the CRZ and creek cannot be properly assessed.

c. Water Line

The MND fails to describe the subterranean depth of the new water line on the eastern edge of the Project.

D. Noise

1. *The MND Fails to Adequately Describe the Project's Heating, Cooling, and Ventilation Systems*

Under CEQA, mechanical equipment associated with residential and mixed-use developments may create significant noise impacts.⁴⁷

The MND indicates that "various pieces of equipment related to heating, ventilation, and cooling," among other noise sources, will create a potentially significant ambient noise impact that necessitates mitigation measures."⁴⁸ Despite the MND's recognition that the equipment will create a potentially significant

⁴⁶ *Id.*

⁴⁷ See, e.g., *Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340.

⁴⁸ MND, p. 91.

impact,⁴⁹ the MND fails to describe this equipment in any detail, including its noise emissions.

The City must produce an EIR clarifying the Project's noise emissions so that the impacts from the Project's heating, cooling, and ventilation systems can be analyzed.

2. *The MND fails to provide a Sufficiently Detailed and Consistent Construction Schedule*

The MND fails to provide a sufficiently detailed and consistent Project construction schedule. The lack of consistency and detail undermines the public's right to full disclosure of noise impacts because the validity of the MND's noise assessment cannot be gauged without an accurate and particularized timeframe for the impacts.

The MND states that "development onsite will occur over an approximately 22-month construction period"⁵⁰ and yet the San Ramon Valley Apartments Air Quality & Greenhouse Gas Emissions Assessment ("Air Quality Report") submitted in support of the MND indicates that the Project will be built "over a period of approximately 13 months beginning in mid-2016."⁵¹ On the other hand, the Noise Impact Assessment for: San Ramon Valley Apartments ("Noise Report") submitted in support of the MND, utilizes the MND's 22-month schedule.⁵²

In addition, the MND's construction schedule fails to designate various phases of construction, including the grading and demolition phase. The Noise Report indicates that the "noisier" phases of construction will be demolition and grading, but the MND does not indicate the length of these phases.⁵³ Though the MND provides that "noisiest phases of construction shall be limited to "less than 10 days at a time," there is no indication how many 10 day periods will be required to complete the "noisiest phases."⁵⁴ The Air Quality Report sets forth a timetable for

⁴⁹ *Id.*, p. 90.

⁵⁰ *Id.*, "1.1 Project Description."

⁵¹ San Ramon Valley Apartments Air Quality & Greenhouse Gas Emissions Assessment ("Air Quality Report"), p. 7.

⁵² Noise Impact Assessment for: San Ramon Valley Apartments ("Noise Report"), p.13.

⁵³ Noise Report, p. 13.

⁵⁴ MND, p. 93.

phases of construction, but by setting forth an overall construction schedule (18 months) that is inconsistent with the MND, the Air Quality Report cannot be relied upon as an accurate projection of phase length.

The City must clarify the Project's proposed construction schedule and provide greater detail on the duration of construction phases in an EIR.

IV. THE MND FAILS TO ADEQUATELY DESCRIBE THE EXISTING ENVIRONMENTAL SETTING

An MND must include a description of a project's environmental setting.⁵⁵ The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts.⁵⁶ As a general matter, the MND must also "disclose the data or evidence upon which person(s) conducting the study relied. Mere conclusions simply provide no vehicle for judicial review."⁵⁷ The MND is inadequate because its description of the environmental setting is lacking with respect to hydrology and water quality, geology, land use, and cultural resources

A. Hydrology and Water Quality

1. The MND Fails to Provide an Adequate Description of the Culvert Facilitating the Flow of San Ramon Creek

The culvert through which San Ramon Creek flows is a particularly important aspect of the Project's environmental setting for a number of reasons.

First, the culvert permits the flow of the creek, which the General Plan and the CCSP recognize as an essential biological, hydrological, and recreational resource.⁵⁸ Second, the Project's emergency vehicle access, residential traffic, and commercial traffic for street-level retail must use a driveway above the culvert to

⁵⁵ CCR § 15063(d)(2).

⁵⁶ *Id.*, §15125(a).

⁵⁷ *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

⁵⁸ See **Exhibit B**: General Plan 2035 "Open Spaces and Conservation," p.8-15 – 8-18; **Exhibit A**: CCSP "Land Use and Urban Design," p. 62.

access the Project from San Ramon Valley Boulevard.⁵⁹ Third, customer traffic for Windmill Farms, an outdoor market on a parcel neighboring the Project site, accesses Windmill Farms using the same driveway above the culvert.⁶⁰ Fourth, the driveway over the culvert is the only access to Windmill Farms' off-street parking.

Despite the clear importance of the culvert and the Applicant's acknowledgement of its importance and vulnerability, as manifested by the Applicant proposing an engineered slab to protect the culvert,⁶¹ the MND offers wildly different measurements of the culvert's diameter. On pages 53 and 77, the culvert is described as having an 18-foot diameter, and on page 74, the culvert is described as having a 10-foot diameter. Thus the MND fails to provide a consistent description of the culvert.

In addition, the Traffic Impact Analysis Final Report ("Traffic Report") submitted in support of the Project fails to project how much vehicular traffic will use the driveway over the culvert.⁶²

Without a consistent and accurate description of the culvert, the Project's hydrology and water quality impacts, both of which are tied to maintaining the current flow of the San Ramon Creek, cannot be assessed.

The City must prepare an EIR providing a consistent and accurate description of the culvert.

B. Geology

1. The MND Fails to Accurately Describe Seismic Activity along the Calaveras Fault

The Calaveras fault is within the CCSP district.⁶³ Seismic activity along the fault has the potential to cause liquefaction, strong seismic groundshaking, and an unstable geologic unit at the Project site. The North Camino Ramon Specific Plan, the most recent specific plan implemented by the City of San Ramon, utilized a

⁵⁹ MND, "1.1 Project Description."

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Traffic Impact Analysis Final Report ("Traffic Report"), p. 28 – 29.

⁶³ **Exhibit E: CCSP DEIR**, p. E-3.

Maximum Credible Earthquake Magnitude of 7.5 to assess the Calaveras Fault's liquefaction impacts.⁶⁴

The Project's MND, however, assumed a "predominant earthquake magnitude of 7.0" in evaluating liquefaction.⁶⁵ The decision to use a magnitude less than 7.5 makes no sense considering that the North Camino Ramon Specific Plan, which covers an area farther from the Calaveras fault than the Project site, used a magnitude of 7.5.

Mr. Hagemman and Ms. Jaeger indicate that the City should have used 7.5 rather than 7.0 to accurately depict the magnitude of the largest potential earthquake.⁶⁶

By not utilizing a 7.5 magnitude earthquake, the MND fails to accurately depict the existing environmental setting. The City must prepare an EIR that accurately depicts the Project's geological setting.

C. Cultural Resources

1. *The MND Fails to Describe the Antique Water Meters*

Impacts on historical resources must be considered in CEQA review.⁶⁷ Official designation or formal listing of a building or object as "historic" is not a prerequisite for triggering an EIR.⁶⁸ Rather, the statutory language of CEQA embraces a more "expansive" classification of historical resources than whether the resource is officially designated or listed.⁶⁹

⁶⁴ **Exhibit F:** North Camino Ramon Specific Plan, p. 3.5-2. The North Camino Ramon Specific Plan was produced in 2014, eight years after the CCSP.

⁶⁵ Geology Report, p.8.

⁶⁶ **Exhibit D:** SWAPE Comments, p. 5.

⁶⁷ See PRC §21084.1; *Friends of Sierra Madre v. City of Sierra Madre*, (2001) 25 Cal.4th 165, 185.

⁶⁸ *League of Protection of Oakland's Architectural and Historic Resources v. City of Oakland*, (1997) 52 Cal. App.4th 896, 907.

⁶⁹ *Id.*; A historical resource may include: "Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record." CCR §15064.5(a)(3).

The MND states: “There is a row of antique water meters that are located adjacent to the front of the Outpost building, which will also be removed in order to accommodate new development.”⁷⁰

The “antique water meters” appear nowhere else in the MND or technical reports. Thus, the MND fails to indicate why these water meters qualify as “antique” or whether they might qualify as “historical resources.” There is no explanation as to how the City determined the water meters are “antique” and at the same time concluded that the Project site “does not contain any known historically significant resources.”

The City must clarify and detail the “antique” status of the water meters that will be removed as part of the Project.

D. Land Use

1. The MND Misrepresents the Location of the Village Center Mixed Use District

The Project is located in the Village Center Mixed Use (“VCMU”) district, an area designated and within the CCSP.⁷¹

The VCMU, however, is not as large as portrayed in Diagram 4 of the MND. Diagram 4 suggests the VCMU stretches north of Purdue Road.⁷² In fact, the VCMU ends at Purdue Road.⁷³ Diagram 4 in the MND also indicates that the VCMU stops short of San Ramon Valley Boulevard, which is not the case.⁷⁴ The result of the erroneous representation of the VCMU’s east-west orientation is that Diagram 4 actually positions the Project in the Commercial/Mixed Use (“CMU”) district of the CCSP rather than in the VCMU, the Project’s actual location.⁷⁵ The text of the MND, however, places the Project within the VCMU.⁷⁶

⁷⁰ MND, “1.1 Project Description.”

⁷¹ See **Exhibit A**: CCSP “Land Use and Urban Design,” Figure 4-1.

⁷² MND, Diagram 4.

⁷³ **Exhibit A**: CCSP “Land Use and Urban Design,” Figure 4-1.

⁷⁴ MND, Diagram 4.

⁷⁵ MND, Diagram 4.

⁷⁶ MND, “Project Description.”

The inconsistent representation of the VCMU and the Project's location has major consequences in regards to determining land use impacts of the Project. The City must provide a consistent and accurate depiction of the Project's location and its CCSP context.

V. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN POTENTIALLY SIGNIFICANT IMPACTS REQUIRING THE CITY TO PREPARE AN EIR TO COMPLY WITH CEQA

CEQA has two basic purposes, neither of which the MND satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.⁷⁷ CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.⁷⁸ The purpose of the EIR 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.”⁷⁹ 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.”⁸⁰

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.⁸¹ The EIR serves to provide public agencies and the public in general, with information about the effect that a proposed project is likely to have on the environment, and to “identify ways that environmental damage can be avoided or significantly reduced.”⁸² If a project has a significant effect on the environment, the agency may approve the project only upon a finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible,” and that any unavoidable significant effects on the environment are “acceptable due to overriding

⁷⁷ CCR § 15002(a)(1).

⁷⁸ See CCR § 15002(f)(1).

⁷⁹ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).

⁸⁰ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁸¹ CCR § 15002(a)(2)-(3); *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1354.

⁸² CCR § 15002(a)(2).

concerns” specified in CEQA section 21081.⁸³ The MND fails to satisfy the basic purposes of CEQA by failing to inform the public and decision makers of the Project’s potentially significant impacts and to propose mitigation measures that can reduce those impacts to a less-than-significant level. The City is required to evaluate the Project in an EIR.

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.⁸⁴ 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 must 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.⁸⁵ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration or notices of exemption from CEQA.⁸⁶ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁸⁷

A mitigated negative declaration 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

⁸³ CCR § 15092(b)(2)(A)-(B).

⁸⁴ See PRC § 21100.

⁸⁵ PRC § 21082.2(a); CCR § 15064(f); *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995). 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994). 29 Cal.App.4th 1597, 1601-1602.

⁸⁶ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁸⁷ *Sierra Club v. County of Sonoma*, (1992) 6 Cal.App.4th, 1307, 1318; *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 [environmental impact report] and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”].

- (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.⁸⁸

Substantial evidence can be provided by technical experts or members of the public.⁸⁹ “If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.”⁹⁰ The CEQA Guidelines provides that “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.”⁹¹

As detailed in the following sections, there is a fair argument, supported by substantial evidence, that the Project may result in significant impacts on hydrology and water quality, air quality, land use, geology, cultural resources, and biological resources. Therefore, the City is required to prepare an EIR to evaluate the Project’s impacts and propose all mitigation measures that are necessary to reduce those impacts to a less-than-significant level.

A. Substantial Evidence Supports a Fair Argument that the Project may Result in Potentially Significant, Unmitigated Impacts on Hydrology and Water Quality

The MND recognizes that the Project, without mitigation, has the potential to cause significant impacts on hydrology and water quality, including violation of water quality standards, the placing of housing in a 100-year flood hazard area, and

⁸⁸ PRC § 21064.5.

⁸⁹ See, e.g., *Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 [substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy]; *Architectural Heritage Ass’n v. County of Monterey*, 122 Cal.App.4th 1095, 1116-1118 [substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing].

⁹⁰ CCR § 15062(f)(1).

⁹¹ *Id.*, § 15062(g).

the impeding of flows in a 100-year flood hazard area.⁹² The MND proposes mitigation measures to reduce these impacts to a less than significant level.

The mitigation measures, however, are not supported by any evidence that they would actually reduce potentially significant impacts. Typically, the evidence would be provided in a hydrology report. Without support, the City has no basis for the MND's claim that the identified potential significant impacts will be reduced to a less than significant level. Therefore, admittedly potentially significant impacts to hydrology and water quality remain potentially significant and unmitigated.

First, the Project may lead to the contamination of the CRZ. Second, the Project may lead to sedimentation of San Ramon Creek. Finally, the Project may lead to the disruption of San Ramon Creek's flow. All three of these impacts are potentially significant. The City must prepare an EIR, supported by a hydrology report, or some other substantial evidence, that provides a complete and accurate analysis of potentially significant impacts on hydrology and water quality.

1. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts due to Storm Water Runoff, Flooding, and Dewatering*

a. Significant Impacts will Occur from Construction Runoff, Creek Flooding, and Dewatering

The MND indicates that the Project's construction has the potential to create runoff that will contain pollutants, such as fuel, grease, oil, sediment, concrete material, and litter.⁹³ During the Project's operation, water quality will be degraded due to non-point sources, such as oils, grease, and exhaust settling on the Project site.⁹⁴ The MND recognizes significant flooding could impact the below-grade parking structure.⁹⁵ For example, water will flow into the garage if the San Ramon Creek overtops.⁹⁶ Due to the high groundwater level on the site, which can reach as high as 9 feet below the surface, dewatering will be required.⁹⁷ The

⁹² MND, p. 73.

⁹³ *Id.*, p. 75.

⁹⁴ *Id.*, p. 76.

⁹⁵ *Id.*, p. 76.

⁹⁶ *Id.*, p. 78.

⁹⁷ *Id.*, p. 76.

discharge of construction dewatering could also lead to a significant impact on water quality.⁹⁸

b. The Mitigation Measures' Capacity to Reduce Significant Impacts to a Less than Significant Level is Not Supported by a Substantial Evidence

None of the Project's mitigation measures are supported by any evidence, such as a hydrology report.

Mr. Hagemann and Ms. Jaegar commented that the lack of a hydrology report is "highly unusual" considering the presence of San Ramon Creek flowing through the Project site, "a truly unique setting."⁹⁹ They particularly criticized the lack of engineering calculations, which are typically contained in a hydrology report, to support the MND's conclusion that there is existing capacity to facilitate the Project's future runoff and flows.¹⁰⁰ Mr. Hagemann and Ms. Jaeger concluded that because the MND lacks a hydrology report backing its claims, the Project will have a potentially significant impact on hydrology due to an exceeded storm drainage system.¹⁰¹

2. *Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Impacts on San Ramon Creek*

Expert analysis indicates that there will be significant impacts to San Ramon Creek due to construction and operation.¹⁰² The MND lacks mitigation measures capable of reducing such impacts to a less than significant level.

a. The MND Fails to Adequately Describe Construction Impacts on San Ramon Creek

Considering the sensitivity of the CRZ and the fact that San Ramon Creek flows through the Project site, construction and operation of the Project may cause

⁹⁸ *Id.*, p. 76.

⁹⁹ **Exhibit D:** SWAPE Comments, pp. 6 – 7.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *See id.*

potentially significant impacts.¹⁰³ The MND fails to describe potentially significant construction and operation impacts on San Ramon Creek or mitigation measures to reduce such impacts.

b. Rainfall and Special Construction May Result in Significant Impacts on San Ramon Creek

Mr. Hagemann and Ms. Jaeger pointed out that, during rainfall events, disturbance of soil will occur on that part of the Project that is within the San Ramon Creek channel.¹⁰⁴ The MND sets forth no specific measures for mitigating impacts to San Ramon Creek due to erosion and associated sedimentation.¹⁰⁵

c. Construction and Traffic may Destabilize the Culvert over San Ramon Creek

In order to maintain the flow of San Ramon Creek, the culvert must have the structural strength to support large emergency vehicles that it has not had to support in the past, including vehicles that weigh as much as 40,000 pounds.¹⁰⁶ The culvert will need to accommodate as many as 842 new daily traffic trips generated by the Project.¹⁰⁷ The culvert will have to withstand vibrations caused by demolition of the Outdoor Sports Bar and Grill and construction of the new mixed-use building.¹⁰⁸

The Applicant in part recognizes the culvert's vulnerability and importance by proposing a concrete slab to support up to 40,000 pounds. However, the MND provides no analysis of the culvert's capacity to withstand forces it has not been expected to withstand in the past, including its capacity to support the slab.

Without any evidence to support the proposal to build a slab over the culvert to protect the creek, it is reasonably foreseeable that the culvert could cave in, and creek flow would be interrupted with potentially catastrophic consequences for the CRZ. If the culvert collapses while vehicles are hauling hazardous materials on the

¹⁰³ *Id.* at 6.

¹⁰⁴ *Id.*, p. 7.

¹⁰⁵ *Id.*

¹⁰⁶ MND, p. 111.

¹⁰⁷ MND, p. 106.

¹⁰⁸ MND "1.1 Project Description."

driveway above it—such as soil that the MND indicates contains elevated hydrocarbon levels—these hazardous materials may enter the creek flow and spread downstream, far beyond the Project site.

The City failed to provide any evidence of measures that could mitigate these reasonably foreseeable and potentially significant construction and operation impacts on San Ramon Creek. Mr. Hagemann and Ms. Jaeger found that specific measures are especially important in this case because the Project will require construction of an emergency vehicle access (“EVA”) road that crosses San Ramon Creek.¹⁰⁹

The City must produce an EIR that fully analyzes impacts on hydrology and water quality and provides specific mitigation measures addressing construction and operation impacts on San Ramon Creek and the CRZ.

B. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Impacts on Land Use

CEQA requires an assessment of any inconsistencies between the Project and applicable land use plans.¹¹⁰ A significant impact on land use and planning would occur if the Project would “[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.”¹¹¹

Here, the Project conflicts with several goals and policies of the CCSP and the General Plan that are intended to avoid or mitigate environmental effects. Substantial evidence supports a fair argument that the Project’s failure to comply with the CCSP and General Plan may result in potentially significant impacts in four respects: 1) infringement and degradation of San Ramon Creek and the CRZ; 2) loss of open space; 3) degradation of the City’s air quality; and 4) failure to conserve water. These are potentially significant impacts that must be disclosed, analyzed, and mitigated in an EIR.

¹⁰⁹ **Exhibit D:** SWAPE Comments, p. 7 – 8.

¹¹⁰ CCR § 15063(d)(5).

¹¹¹ CCR Appendix G § IX(b).

1. *The Project Fails to Conform to the CCSP's Protection of the CRZ and San Ramon Creek*
 - a. The Project is Inconsistent with CCSP Policy 6.6.

The CCCP requires that “structures shall be prohibited within 100 feet of San Ramon Creek and its tributary” and “improvement within the setback areas shall be limited to open space and recreation amenities and access roads incidental to achieving effective circulation patterns.”¹¹² The CCSP’s objective in creating the CRZ is to preserve the “natural resource value” of San Ramon Creek and “[enhance] the riparian corridor as a linear recreational and open space resource.”¹¹³ The CCSP acknowledges that San Ramon Creek is an “important feature within the area, but that [it] is largely buried within private properties.”¹¹⁴

The Project directly violates Policy 6.6 by proposing a loading zone within the CRZ.¹¹⁵ The loading zone is not an “open space and recreation amenity,” but rather meant to serve the Project’s mixed use. The presence of the loading zone within the CRZ restricts open space without improving the recreational value of the CRZ and is precisely the sort of development that the CCSP seeks to prohibit.

Also, the Project’s “Preliminary Utility Plan” clearly shows a proposed storm drain pipe deep within the CRZ.¹¹⁶ The storm drain pipe has no relation to the CRZ’s purposes or open space and recreation amenities. The storm drain pipe only exists to serve the residential and commercial uses of the Project.

¹¹² **Exhibit A:** CCSP “Land Use and Urban Design,” p. 62.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Project Plans A1.3 “Conceptual Floor Plan – Residential Podium Level Plan” available at <http://www.sanramon.ca.gov/miscagenda/documents/roemplans.pdf>.

¹¹⁶ Project Plans C3 “Preliminary Utility Plan” available at <http://www.sanramon.ca.gov/miscagenda/documents/roemplans.pdf>.

b. The Project is Inconsistent with CCSP Policy 6.2

The CCSP requires “a minimum horizontal buffer zone of at least 25 feet from the outer edge of riparian habitat to prevent general access and active recreation, except for pedestrian paths.”¹¹⁷

The MND entirely overlooks the 25-foot buffer zone requirement, providing no evidence of the Project’s compliance with its restriction or mitigation of its violation. In fact, the Biological Resources Analysis San Ramon Valley Apartments, City of San Ramon, California (“Biology Report”) submitted in support of the MND indicates: “The project’s current plan set does not show a 25-foot buffer zone from the outer edge of riparian habitat. The project’s parking lot and driveway are within 25 feet of the outer edge of riparian habitat.”¹¹⁸

Also, the CCSP calls for “permanent fencing material (as deemed appropriate by the regulating city division)” to protect the 25-foot buffer zone stretching “from the outer edge of riparian habitat.”¹¹⁹ The purpose of the fence is to prevent “general access” to the riparian habitat.¹²⁰

The MND makes no mention of such a fence, likely because it makes no mention of the buffer zone that the fence is intended to protect. Though the Biology Report indicates that “a fence is proposed,” the character of the fence and required ability of the fence to restrict general access is not indicated.¹²¹ The Project plans indicate a “railing” rather than a “fence,” though, again, the ability of the fence to prevent general access is not indicated.¹²²

¹¹⁷ **Exhibit A:** CCSP “Land Use and Urban Design”, p. 62.

¹¹⁸ Biological Resources Analysis San Ramon Valley Apartments, City of San Ramon, California (“Biology Report”), p. 19.

¹¹⁹ **Exhibit A:** CCSP “Land Use and Urban Design,” p. 62.

¹²⁰ *Id.*

¹²¹ Biology Report, p. 21.

¹²² Project Plans L-1 “Illustrative Landscape Plan” available at <http://www.sanramon.ca.gov/miscagenda/documents/roemplans.pdf>.

c. The Project is Inconsistent with CCSP Policy 6.3

The CCSP calls for revegetation of disturbed areas with tree species native to the watershed.¹²³

The Biology Report indicates that “the landscape plan currently proposed for the project needs to incorporate more native species in order to comply with this [Policy 6.3].”¹²⁴

Though it appears the City added Mitigation Measure BIO-6, which calls for planting of 29 live oak trees, after the Biology Report was issued, there has been no determination on whether the measure cures the deficiency cited by the report.¹²⁵ Instead, the MND states that the measure is intended to address the Project’s conflict with the City’s Tree Protection Ordinance, which is separate and distinct from CCSP Policy 6.3.¹²⁶

In fact, it is unlikely that the measure cures the deficiency in complying with Policy 6.3 because the measure only includes the planting of live oak trees, while the Biology Report indicates that live oak trees are but one species that should be planted. The others include “California buckeye trees, box elder, and valley oak trees, among others.”¹²⁷ Of 53 trees to be removed from the project site, only five are protected live oaks and therefore the replacement of trees with 29 live oak trees is not equivalent to the diversity of trees actually removed from the site.¹²⁸

Also, CCSP Policy 6.3 calls for development to be confined to “previously disturbed areas.”¹²⁹ However, the Project proposes a loading dock, EVA road, and a multi-use pedestrian path with benches and trash cans to be placed in the south

¹²³ **Exhibit A:** CCSP “Land Use and Urban Design,” p. 62.

¹²⁴ Biology Report, p. 20.

¹²⁵ MND, p. 57.

¹²⁶ *Id.*, p. 55.

¹²⁷ Biology Report, p. 20.

¹²⁸ MND, p. 55.

¹²⁹ **Exhibit A:** CCSP “Land Use and Urban Design”, p. 62.

portion of the site, within the CRZ.¹³⁰ Therefore, the Project fails to restrict development to previously developed areas, as required by CCSP Policy 6.3.

2. *The MND Misrepresents the Location of the Village Center Mixed Use District*

As described in Section IV(D) above, the MND misrepresents the location of the Project in the context of the VCMU and the CCSP. Diagram 4 of the MND places the Project inside the CMU district rather than the VCMU district, while the text of the MND places the Project within the VCMU. These inconsistencies materially impact evaluation of land use impacts.

The purpose of the VCMU is to “promote the creation of a mixed-use and pedestrian-oriented village center at the heart of the Crow Canyon district.”¹³¹ To “promote a village scale,” the CCSP imposes a height restriction of 50 feet in the VCMU.¹³²

In contrast, the objective of the CMU is to “reinforce the importance of San Ramon Valley Boulevard as one of the City’s principal gateway arterials, and allow for the intensification of existing properties along the boulevard with commercial mixed-use development.”¹³³ Unlike the VCMU, the CMU does not seek to promote a village-scale, pedestrian-oriented village center.

The Project seeks a concession to exceed the VCMU’s 50-foot height limitation.¹³⁴ The MND concludes that this concession will not have a significant adverse aesthetic impact on the environment. By suggesting, however, that the Project exists in the CMU, Diagram 4 of the MND inaccurately underestimates the impact of the height exceedance because the height exceedance would not have as major an impact on the CMU as it would on the VCMU’s “village scale.”

¹³⁰ MND, pp. 53, 55; Project Plans A1.3 “Conceptual Floor Plan – Residential Podium Level Plan,” L-1, L-3 “Illustrative Landscape Plan” available at <http://www.sanramon.ca.gov/miscagenda/documents/roemplans.pdf>.

¹³¹ **Exhibit A:** CCSP “Land Use and Urban Design,” p. 35.

¹³² *Id.*, p. 48.

¹³³ *Id.*, p. 52.

¹³⁴ MND, p. 84.

The City must clarify that the Project does in fact exist in the VCMU so that the potentially significant impact of the Project's inconsistency with VCMU height limits, among other requirements and related impacts on land use, may be properly assessed.

3. *The Project Fails to Conform to the General Plan*

a. The Project is Inconsistent with General Plan Policy 8.4-1-6

The General Plan calls for the City to “use open space in new development to create buffers that delineate the edge of urban areas.”¹³⁵

The CRZ represents open space on the Project site. Rather than create a buffer between this open space and the Project, the Project instead plans to occupy the open space with an EVA road, multi-use pedestrian path, benches, trash cans, and a loading zone. Therefore, the Project is inconsistent with the General Plan policy to use open space to create buffers that delineate the edge of urban areas.

b. The Project is Inconsistent with General Plan Policy 8.6-1-1

The General Plan calls for the City to require new projects to implement indoor water conservation and demand management measures.¹³⁶

The MND presents no evidence that the City is requiring the Applicant to implement indoor water conservation or management measures concerning indoor water use.

c. The Project is Inconsistent with General Plan Policy 8.6-1-2

The General Plan calls for the City to require new projects to implement outdoor water conservation and demand management measures.¹³⁷

¹³⁵ **Exhibit B:** General Plan 2035 “Open Space and Conservation”, p. 8-18.

¹³⁶ **Exhibit B:** General Plan 2035 “Open Space and Conservation,” p.8-25.

¹³⁷ *Id.*, p. 8-25.

Aside from introducing drought-resistant plants, the MND presents no evidence that the City is requiring the Applicant to implement outdoor water conservation or management measures concerning outdoor water use.

d. The Project is Inconsistent with General Plan Policy 12.8-1-1

The General Plan encourages the City to increase energy conservation features, renewable sources of energy, and low-emission equipment in new developments.¹³⁸

The MND contains nothing to suggest that the Project, during operation, will include energy conservation features, renewable sources of energy, or low emissions equipment. If the City approves the Project, the City will fail to increase these air quality measures.

In sum, the Project conflicts with several goals and policies of the CCSP and the General Plan that are intended to avoid or mitigate environmental effects. Therefore, the Project may result in potentially significant land use impacts requiring preparation of an EIR.

C. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts on Geology and Soils

The City determined that the Project, without mitigation, could cause potentially significant impacts due to liquefaction, seismic shaking, and an unstable geologic unit.¹³⁹ Even though the MND acknowledges these potentially significant impacts, the MND actually underestimated these impacts by underestimating the magnitude of the largest potential earthquake event. Thus, substantial evidence exists to support a fair argument that the Project may result in three potentially significant impacts to geology and soil: 1) liquefaction; 2) strong seismic shaking; and 3) an unstable geologic unit.

¹³⁸ **Exhibit G:** General Plan 2035 “Air Quality and Greenhouse Gases”, p.12-19 – 12-26.

¹³⁹ MND, p. 61.

The City must produce an EIR that accurately depicts the largest potential earthquake event and the Project's potentially significant environmental impacts related to geology and soils.

1. *Substantial Evidence Supports a Fair Argument that Potentially Significant Impacts May Result from Liquefaction*

a. The Project May Lead to Liquefaction

The MND indicates that due to the Project's proximity to the Hayward, Greenville, San Andreas, and, particularly, the Calaveras fault, "seismic induced ground failure caused by liquefaction, landslides, and settlement can...result in damage, distress or displacement of buildings and infrastructure."¹⁴⁰

Considering the Project site's high groundwater, liquefaction is particularly a cause for concern. The "high moisture content and clay substrate" of the basement garage's subgrade location may contribute to significant impacts.¹⁴¹ The CCSP EIR indicates that "liquefaction potential is highest in the area in and directly adjacent to San Ramon Creek."¹⁴²

b. The Project Underestimates the Maximum Credible Earthquake Magnitude

As described in Section IV(B) and determined by Mr. Hagemann and Ms. Jaeger's examination of the MND and Geology Report, the MND should have used a magnitude 7.5 earthquake to determine liquefaction potential rather than 7.0. Mr. Hagemann and Ms. Jaeger explain that there is a significant difference between a magnitude 7.5 and a magnitude 7.0 earthquake: "The amount of energy released in a M 7.5 earthquake is 5.5 times greater than that released in a M 7.0 earthquake."¹⁴³ Therefore, the Project may result in a potentially significant, unanalyzed and unmitigated, impact from liquefaction.

¹⁴⁰ *Id.*, p. 63.

¹⁴¹ *Id.*, p. 64.

¹⁴² **Exhibit E:** CCSP DEIR Section IV(E): "Geology, Seismicity, and Soils," p. E-15.

¹⁴³ **Exhibit D:** SWAPE Comments, pp. 5 - 6.

2. *Substantial Evidence Supports a Fair Argument that Potentially Significant Impacts May Result from Strong Seismic Groundshaking*

The MND indicates that the Project has the potential to expose people or structures to potentially substantial adverse effects resulting from strong seismic groundshaking.¹⁴⁴ Strong seismic groundshaking may cause “risk of loss, injury, or death.”¹⁴⁵

As described in Section IV (B), the MND underestimates the maximum credible earthquake magnitude by using a magnitude 7.0 earthquake instead of a 7.5 earthquake. As Mr. Hagemann and Ms. Jaeger explain: “The amount of energy release in a M 7.5 earthquake is 5.5 times greater than that released in a M 7.0 earthquake.”¹⁴⁶ The MND’s underestimation of maximum credible earthquake magnitude is substantial evidence that strong seismic groundshaking may be more destructive and injurious than anticipated by the MND. Therefore, the Project may result in a potentially significant, unanalyzed and unmitigated, impact from strong seismic groundshaking.

3. *Substantial Evidence Supports a Fair Argument that Potentially Significant Impacts May Result from an Unstable Geologic Unit*

The MND indicates that the Project’s basement garage has the potential to undergo deep rutting because of the area’s high moisture content and clay substrate, and this may result in a potentially significant impact due to an unstable geologic unit.

As described in Section IV (B), the MND underestimates the maximum credible earthquake magnitude by using a magnitude 7.0 earthquake instead of a 7.5 earthquake. As Mr. Hagemann and Ms. Jaeger explain: “The amount of energy release in a M 7.5 earthquake is 5.5 times greater than that released in a M 7.0 earthquake.”¹⁴⁷ The MND’s underestimation of maximum credible earthquake magnitude is substantial evidence that the Project contains a geologic unit that is

¹⁴⁴ MND, p. 63.

¹⁴⁵ *Id.*, p. 63.

¹⁴⁶ **Exhibit D**, SWAPE Comments, pp. 5 - 6.

¹⁴⁷ *Id.*

more unstable than indicated by the MND. Therefore, the Project may result in a potentially significant, unanalyzed and unmitigated, impact from an unstable geologic unit.

D. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant, Unmitigated Impacts on Utilities and Service Systems

The MND concludes that the Project will have a less than significant impact on utilities and service systems: “Although the waste stream generated by the project is expected to increase during construction, it is not expected to exceed landfill capacity and is not expected to result in violations of federal, state, and local statutes and regulations related to solid waste.”¹⁴⁸ The MND claims that there is an “objective” to maintain operational waste levels below San Ramon’s per capita disposal rate.¹⁴⁹ However, this is merely an aspiration, unsupported by data specific to the Project.

Substantial evidence supports a fair argument that the Project may result in potentially significant impacts on utilities and service systems for four reasons. First, the MND proposes that Vasco Road Sanitary Landfill serve the Project, but the CCSP projected that this landfill would lack available capacity by 2015. Second, the MND fails to establish that landfill capacity exists to accommodate the Project. Third, the MND fails to indicate the character and quantity of the Project’s demolition, construction, and operational solid waste. Finally, the MND fails to implement mitigation required by the CCSP EIR to reduce solid waste impacts. Thus, there is substantial evidence to support a fair argument that the Project may result in significant impacts on landfill capacity.

The City must prepare an EIR that clarifies which landfills will service the Project and, if applicable, whether the Vasco Road Sanitary Landfill has capacity to receive the Project’s solid waste.

¹⁴⁸ MND, p. 118.

¹⁴⁹ MND, p. 116.

1. *The MND Fails to Indicate that there is Adequate Landfill Capacity to Serve the Project*
 - a. The MND Fails to Recognize that the CCSP Projected that Vasco Road Sanitary Landfill's Capacity for New Waste would End in 2015

The CCSP's EIR, which was released in 2004, determined that there would only be available capacity for increased waste disposal at Vasco Road Sanitary Landfill through 2015.¹⁵⁰ Increasing disposal at a landfill which was projected to only meet increased disposal through last year may result in significant waste disposal impacts. Indeed, the CCSP EIR projected that build out of the specific area would result in significant impacts due to waste disposal.¹⁵¹

The MND suggests that Vasco Road Sanitary Landfill will serve the Project and has capacity to do so, but it does not reconcile its conclusion with the CCSP EIR's projection that Vasco Sanitary Landfill only had available capacity through 2015. The MND fails to demonstrate that the CCSP EIR's projection has changed or is inaccurate. If the Vasco Road Sanitary Landfill indeed no longer has capacity or very limited capacity, as current substantial evidence from the City itself explains, disposal of Project waste at that site may result in significant impacts. In addition to sending the waste to a landfill lacking in capacity, it could also prevent other producers of solid waste in San Ramon from using that site, or result in the redirection of waste to landfills and disposal methods that are not described in the Project's MND.

- b. The MND Fails to Provide a Consistent Description of Landfills that Will Serve the Project

As described in Section III(C)(2) of these comments, the MND's description of which landfills will serve the site is inconsistent. Considering that Vasco Road Sanitary Landfill was projected to lack capacity by 2015, the MND's conclusion that landfill capacity will not be exceeded by the Project is not supported by fact because the MND suggests Vasco Road Sanitary Landfill will serve the Project.

¹⁵⁰ **Exhibit H:** CCSP DEIR Section IV (K): "Utilities and Service Systems," p. K-9.

¹⁵¹ *Id.*

c. The MND Fails to Describe or Quantify Solid Waste Produced by the Project

As described in Section III(C)(1) of these comments, the MND fails to quantify and characterize waste produced by the Project. The MND lacks these details even though the Project involves demolition of a 7,884 square foot building and removal of at least 17,000 cubic yards of soil from the site, soil which currently includes hazardous hydrocarbons. Additional soil may be removed to combat liquefaction. Operation of 169 residential units and commercial space will produce additional waste.

Nowhere in the MND does the City even offer an approximation of the Project's solid waste that will be produced by construction and operation. As a result, the MND fails to analyze potentially significant impacts from disposal.

d. The Project Fails to Specify that Contractors will Segregate Recyclable from Non-recyclable Solid Waste during Demolition and Construction

The CCSP EIR's Mitigation Measure K.4 requires that "future construction projects shall specify that during construction and demolition phase, contractors would make arrangements to segregate recyclable construction-generated solid waste from non-recyclable waste as reasonable and cost effective."¹⁵² The measure is aimed at mitigating "additional amounts of waste that will exceed disposal capacity."¹⁵³

The MND fails to specify that contractors must segregate waste during the demolition and construction phases. Rather than "specify" this requirement, the MND merely states that the Applicant will be required to comply with "all federal state, and local regulations governing the disposal of solid waste."¹⁵⁴

As a result of the MND's lack of information related to solid waste and substantial evidence of inadequate landfill capacity, there is a fair argument based

¹⁵² **Exhibit H:** CCSP DEIR Section IV(K) "Utilities and Service Systems," p. K-10.

¹⁵³ *Id.*

¹⁵⁴ MND, p. 118.

on substantial evidence that the Project may result in potentially significant impacts related to its solid waste.

E. Substantial Evidence Supports a Fair Argument That the Project May Result in Potentially Significant, Unmitigated Noise Impacts

The MND determined that the Project, without mitigation, may result in potentially significant noise impacts due to persons being exposed to noise levels in excess of local ordinances, a substantial increase of noise levels within the Project's vicinity above levels without the Project, and a substantial or periodic increase in ambient levels in the Project vicinity above levels without the Project.¹⁵⁵

Also, the CCSP EIR determined that development in the CCSP will result in significant noise impacts related to construction activities.¹⁵⁶ In order to reduce such impacts to a less than significant level, the CCSP EIR mandates certain mitigation measures be implemented during construction.

The Project, despite its own findings of potentially significant impacts and the CCSP EIR's findings, neglects to implement several of these measures. Thus, there are two reasons that substantial evidence supports a fair argument that the Project may result in potentially significant noise impacts already identified, but unmitigated, in the MND and noise impacts yet to be identified in the MND: 1) mitigation measures fail to address noise generated by the Project's mechanical equipment; and 2) the Project fails to implement the CCSP EIR's mitigation measures.

The City must prepare an EIR that fully describes noise impacts, mechanical equipment that emits noise, and implements CCSP mitigation measures.

1. The Project May Result in Potentially Significant, Unmitigated Noise Impacts

The MND indicates that Project occupants will be subject to ambient noise levels that exceed "normally acceptable" compatibility criteria and perhaps violate

¹⁵⁵ *Id.*, p. 87.

¹⁵⁶ **Exhibit I:** CCSP DEIR Section VI (D) "Noise," p. D-9.

California Noise Insulation Standards.¹⁵⁷ The MND indicates that ambient noise will be increased due to on-site mechanical equipment and vehicles on the Project's area roadways.¹⁵⁸ Finally, demolition, grading and construction will contribute to periodic and temporary intrusive ambient noise increases.¹⁵⁹

a. No Evidence That Noise Mitigation Measures Would Be Effective

The MND's Mitigation Measure NOI-2 states that the Project's "mechanical equipment shall be positioned away from the west and south limits of the building and shielded with parapet walls, mufflers, dampeners and/or rooftop barriers such that the combined noise level from the equipment achieves LdN of 59 dBA at western property line (existing churches and Pre-School) [and] LdN of 62 dBA at the produce market to the east (existing Windmill Farms)."¹⁶⁰

As described in Section III(D)(1) of these comments, the Project's heating, cooling, and ventilation systems are inadequately described. It is impossible to assess the adequacy of the mitigation measure without a description of the mechanical equipment. The MND fails to offer even an approximation of the mechanical equipment's ambient noise emissions, let alone a precise measurement. Therefore, it is impossible to discern whether the assorted components of the mitigation measure will be adequate to limit the equipment's ambient noise to 59 dBA at the western property line and 62 dBA at Windmill Farms.

b. The MND Fails to Reflect the Findings of the Noise Report

The Project's Noise Report describes the equipment in the exact same manner as the MND without further detail. In fact, the report admits that "since detailed information on project mechanical equipment and associated noise levels was not available, it is not possible to calculate future noise level increases due to the project's mechanical equipment."¹⁶¹

¹⁵⁷ MND, p. 89.

¹⁵⁸ *Id.*, p. 90.

¹⁵⁹ *Id.*, p. 91.

¹⁶⁰ *Id.*, p. 92.

¹⁶¹ Noise Report, p. 12.

The Noise Report recommends a mitigation measure that requires a future report, prepared by an acoustical expert or engineer, that takes into account the hours of operations as well as the location and noise emission level for each piece of equipment.”¹⁶²

The MND includes no such provision in its mitigation measures. The MND provides for no present or future disclosure of details concerning the Project’s heating, cooling, and ventilation equipment, the most crucial of which is the equipment’s hours of operation and noise emissions of each piece.¹⁶³

Therefore, the Project may result in significant, unmitigated noise impacts.

2. *The Project Fails to Mitigate its Noise Impacts because it Fails to Implement the CCSP EIR’s Mitigation Measures*

While the MND identifies the Project’s potentially significant impacts, it fails to adequately mitigate such impacts according to the measures set forth by the CCSP EIR, which govern mitigation measures in the CCSP area.

a. The Project Fails to Shield Truck/Loading Zones as Required by CCSP EIR Mitigation Measure D.3.d.

CCSP EIR Mitigation Measure D.3.d requires that developers who expose “noise-sensitive uses” to greater than ‘normally acceptable’ noise levels shall...screen and control noise sources, such as parking and loading facilities.”¹⁶⁴

The Project calls for a loading facility at the southeastern part of the Project site that will be a “1,300 square foot trash, recycling, and utility area.”¹⁶⁵

Project plans show that there are nine one-bedroom units located on the three floors directly above the loading area.¹⁶⁶ The occupants of these rooms will be

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ **Exhibit I:** CCSP DEIR Section IV (D) “Noise,” p. D-16.

¹⁶⁵ MND, p. 116.

¹⁶⁶ *See* Project Plans A1.3 “Conceptual Floor Plan – Residential Podium Level Plan,” A1.4 “Conceptual Floor Plan – Floors 2 & 3 Residential Level Plan,” A1.5 “Conceptual Floor Plan – Floor 4

subject to truck noise associated with recycling, trash, and utility services, and yet there is no provision in the MND for screening the loading zone. In fact, there is no mitigation provided for the impact of the loading zone on the occupants of the apartment complex.

Though the Project's mitigation measures propose controlling noise source impacts on residents through special window fittings, it is clear that the CCSP EIR demands screening loading areas *and* controlling noise sources.¹⁶⁷

Furthermore, window fittings do not influence the loading zone's noise impacts on the CRZ and pedestrian easement which is adjacent to the loading zone's south boundary.¹⁶⁸ The loading zone actually sits within the CRZ. Thus, there is more than substantial evidence that noise impacts from the loading zone could result in significant impacts on the recreational and biological resources of the CRZ, especially without the mitigation called for by the CCSP EIR.

b. The Project Fails to Use the Most Recent Noise Contour Lines for I-680 as Required by CCSP EIR Mitigation Measure D.3.c

CCSP EIR Mitigation Measure D.3.c requires that “the City shall ensure that the most recent noise contours available for I-680 are used during subsequent project-specific environmental review for individual projects proposed under the Crow Canyon Specific Plan.”¹⁶⁹

I-680 is located a mere 350 feet east of the Project site.¹⁷⁰ The MND identifies vehicular traffic on I-680 as a “primary noise source” that contributes to ambient noise at the Project site.¹⁷¹ The MND indicates that on-site noise measures from vehicular traffic on San Ramon Valley Boulevard and I-680 range from 59 DNL to 65 DNL.¹⁷² The MND claims that Project residents will be subject to no

Residential Level Plan” available at <http://www.sanramon.ca.gov/miscagenda/documents/roemplans.pdf>.

¹⁶⁷ **Exhibit I:** CCSP DEIR Section IV (D) “Noise,” p. D-16.

¹⁶⁸ See Project Plans A1.3 “Conceptual Floor Plan – Residential Podium Level Plan Project.”

¹⁶⁹ **Exhibit I:** CCSP DEIR Section IV (D) “Noise,” p. D-16.

¹⁷⁰ MND, p. 47.

¹⁷¹ *Id.*, p. 89.

¹⁷² *Id.*

more than 70 dBA and thus ambient noise will be “conditionally acceptable” under the City of San Ramon Land Use Compatibility Guidelines.¹⁷³

The Project, however, fails to indicate whether the latest I-680 noise contours were used to make such a determination. In fact, the lack of a map depicting noise contour lines in the MND and in the Noise Report suggests that the Project does not include the latest I-680 noise contours in its noise assessment. Instead, the MND relies on the CCSP EIR’s projections of future noise levels in the Project vicinity.¹⁷⁴ But the CCSP EIR was produced in 2004 and there is no indication that its noise assessment includes the “latest” I-680 noise contours that are demanded by Mitigation Measure D.3.c.

Considering that the MND states that the on-site ambient noise is a mere 5 dBA below the threshold for a “conditionally acceptable” rather than “normally acceptable” rating, the failure to use up-to-date I-680 noise contours could make a significant difference in determining the accurate classification of noise impacts. Thus, lack of the latest I-680 noise contours could lead to significant, unmitigated impacts.

c. The Project Fails to Control Hours of Operation, including Deliveries and Trash Pickup, to Minimize Noise Levels as required by CCSP EIR Mitigation Measure D.3.d

CCSP EIR Mitigation Measure D.3.d requires that developers “control hours of operation, including deliveries and trash pickup, to minimize noise impacts.”¹⁷⁵

The MND provides no control of hours related to delivery and trash service. The MND provides for hours of operation controls only in regards to construction. Without implementing Mitigation Measure D.3.d, operational noise from truck ingress, egress, and taxiing at the Project site would result in significant, unmitigated impacts.

¹⁷³ *Id.*

¹⁷⁴ *Id.*, p. 89.

¹⁷⁵ **Exhibit I:** CCSP DEIR Section IV (D) “Noise,” p. D-16.

d. The Project Fails to Provide for Distribution of Information to Affected Areas Prior to Construction as Required by CCSP EIR Mitigation Measure D.1.a.

The CCSP EIR Mitigation Measure D.1a requires that “information concerning construction related activities and construction hours shall be distributed throughout the affected area prior to the commencement of construction activities.”¹⁷⁶

The Project fails to adhere to this mitigation measure. The MND prescribes “notification” within 30 days of “extreme noise generating activities” to “neighbors and occupants within 300 feet of the project construction area.”¹⁷⁷ However, this measure is an overly narrow response to the CCSP EIR requirements. The CCSP EIR mitigation measure does not limit the “affected area” to within “300 feet” as proposed by the MND. The CCSP EIR mitigation measure is triggered by “construction activities,” a much broader trigger than the MND’s “extreme noise generating activities.” Finally, the MND provides only for “notification” rather than the CCSP EIR’s more expansive “information.”

In sum, the Project fails to implement the CCSP EIR’s required measures to mitigate the Project’s potentially significant impacts.

F. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant, Unmitigated Impacts On Biological Resources

The MND recognizes that the Project, without mitigation, may lead to potentially significant impacts on biological resources. The MND’s mitigation measures fail to reduce such impacts to a less than significant level for two reasons. First, the MND’s mitigation fails to comply with the CCSP EIR’s mitigation measures governing such impacts in the CCSP. Second, the Project’s mitigation measures fail to mitigate actual loss of special-status species habitat. Thus, substantial evidence supports a fair argument that the Project may result in potentially significant impacts on special-status species, riparian habitat,

¹⁷⁶ *Id.*, p. D-11.

¹⁷⁷ MND, p. 93.

movement of native wildlife species, and conflicts with local ordinances protecting biological resources.

The City must prepare an EIR that adopts the CCSP EIR's mitigation measures, mitigates loss of habitat for special-status species, and fully discloses the Project's potentially significant impacts on biological resources within the CRZ.

1. *The Project's Mitigation Measures Fail to Reduce Potentially Significant Impacts on Biological Resources to a Less than Significant Level*
 - a. The MND and CCSP EIR Identify Potentially Significant Impacts to Special Status Species and the San Ramon Creek Riparian Corridor

The Project site contains bat roosting and bird nesting habitat for special status species, including the Pallid bat (*Antrozous pallidus*), a Species of Concern in California, and the red shouldered hawk (*Buteo lineatus*), protected by the Migratory Bird Treaty.¹⁷⁸ The Outpost Sports Bar and Grill and trees on the Project site provide habitat for these special-status species.¹⁷⁹

The Outpost Sports Bar and Grill will be demolished as part of the Project and thus the habitat will be destroyed. Trees containing special-status species habitat will also be removed as part of the Project.¹⁸⁰ The MND identifies this destruction of habitat as potentially significant and requiring mitigation.¹⁸¹ The MND also identifies potentially significant impacts that may occur to the riparian corridor of San Ramon Creek and the CRZ due to construction of the multi-use pedestrian path.¹⁸²

The CCSP EIR identified that increased "human activity and development within the [CRZ]" may lead to potentially significant impacts on biological resources.¹⁸³ The CCSP EIR concluded that development within the CCSP area

¹⁷⁸ MND, p. 52 – 53.

¹⁷⁹ *Id.*, p. 52.

¹⁸⁰ *Id.*, p. 54.

¹⁸¹ *Id.*, p. 52.

¹⁸² *Id.*, p. 53 - 54.

¹⁸³ **Exhibit J:** CCSP DEIR Section IV (G) "Biological Resources", p. G-14.

may result in potential significant impacts to special status wildlife species that breed within the CRE.¹⁸⁴ The CCSP particularly identified potential adverse impacts on the California red-legged Frog (*Rana draytonii*) and the Western Pond Turtle (*Actinemys marmorata*).¹⁸⁵

b. The Project Fails to Provide Impact Analysis of Construction Within the CRZ

Although the Project plans indicate that a multi-use path, EVA road, and loading dock will be constructed within the CRZ, the MND provides no analysis of impacts on biological resources within the CRZ, aside from those caused by the multi-use pedestrian path. Considering the high biological and recreational value of the CRZ, as recognized in the General Plan, the CCSP, and the MND itself, an EIR must be prepared to disclose and analyze the potentially significant impacts on the CRZ from Project construction.

c. The Project's Mitigation Measures Fail to Replace or Reduce Significant Impacts from Destroyed Habitat

Under CEQA, mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact, or to rectify or compensate for that impact.¹⁸⁶ CEQA requires that mitigation measures be “roughly proportional” to the impacts of the project under review.¹⁸⁷

As described above, it is an indisputable fact that special-status species bat and bird habitat will be destroyed by the Project. The City determined that there is a potential significant impact on biological resources because the Outpost Sports Bar and Grill and on site trees represent potential protected species habitat and this habitat will be destroyed.

Yet the Project's mitigation measures inadequately mitigate the potentially significant loss of potential habitat. Though the MND includes a mitigation measure to replace trees that will be removed by the Project (Mitigation Measure

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *See* CCR § 15370

¹⁸⁷ CCR § 15126.4(a)(4)(B)

BIO-6), the MND lacks a determination that the proposed replacement trees will proportionately compensate for the habitat lost by removing trees *and* demolishing the Outpost Sports Bar and Grill. Furthermore, the MND suggests this mitigation measure is aimed at compliance with the Tree Preservation and Protection Ordinance rather than mitigation of habitat loss specific to the Project site.¹⁸⁸ The Biology Report identifies loss of potential bird and bat habitat due to tree removal and the demolition of the Outpost Sports Bar and Grill, but makes no mention of Mitigation Measure BIO-6, because the measure is unrelated to mitigating habitat loss.¹⁸⁹ Mitigation Measure BIO-6 only calls for mitigation of the “removal of 5 protected oak trees,” with no mention of the Outpost Sports Bar and Grill.¹⁹⁰

Thus, the Project’s mitigation measures fail to demonstrate mitigation of a potentially significant impact identified in the MND. The City must prepare an EIR that demonstrates mitigation measures will proportionately replace habitat that will be lost due to the removal of trees and demolition of the Outpost Sports Bar and Grill.

d. The Project’s Mitigation Measures Fail to Comply with the CCSP EIR’s Mitigation Measures Aimed at Protecting Special-Status Species and the San Ramon Creek Riparian Corridor

To mitigate impacts on the California red-legged frog and Western pond turtle, the CCSP EIR Mitigation Measures G.2a and G.2b require that a developer must, prior to construction in the CRZ above the high water mark, “install and maintain fencing around the active work areas.”¹⁹¹ The CCSP EIR provides specific dimensional requirements for this fencing and also requires that a qualified biologist be designated to monitor construction/restoration during ground disturbing activities on site.¹⁹²

Though the MND’s Biological Resources section only discusses a multi-use pedestrian path, the Project proposes numerous improvements in the CRZ, including a loading zone, an EVA road, and a multi-use pedestrian path with

¹⁸⁸ MND, p. 55, (“In accordance with the Tree Preservation and Protection Ordinance, Mitigation Measure BIO-6 requires the replacement of the 5 protected trees oak trees proposed for removal.”)

¹⁸⁹ Biology Report, p. 39.

¹⁹⁰ MND, p. 55.

¹⁹¹ **Exhibit J:** CCSP DEIR Section IV (G) “Biological Resources”, p. G-16, G-18.

¹⁹² *Id.*

benches and trash cans. The Project fails to include fencing around these improvements during the construction stage as required by G.2a and G.2b. Furthermore, the MND makes no mention of providing a qualified biologist to monitor construction and restoration in the CRZ.

Also, the CCSP EIR identified potential significant impacts due to the loss of riparian habitat in the CRZ.¹⁹³ In order to reduce such impacts to a less than significant level, Mitigation Measures G.3 and G.5 call for new development in the CRZ to be limited to “previously disturbed areas.”¹⁹⁴

The Project fails to comply with this mitigation measure because it calls for a new loading zone, an EVA road, and a multi-use pedestrian path with benches and trash cans to be built within the CRZ. The MND fails to demonstrate that these areas have in fact been previously disturbed.

G. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant, Unmitigated Impacts On Cultural Resources

The MND concludes that, without mitigation measures, the Project may result in potentially significant impacts on archeological resources and paleontological or unique geological resources.¹⁹⁵ Therefore, the MND proposes mitigation measures to reduce this potentially significant impact to a less than significant a level.

The mitigation measures, however, are inadequate because they are deferred to after construction begins and fail to comply with the Northwest Information Center Report (“NWIC Report”) submitted in support of the MND.

Also, the MND fails to describe the status of “antique” water meters that the Applicant will remove from the site and dispose of in an undisclosed location.

¹⁹³ **Exhibit J:** CCSP DEIR Section IV (G) “Biological Resources”, p. G-19 – 21.

¹⁹⁴ *Id.*, p. G-20, G-22.

¹⁹⁵ MND, p.58.

The City must produce an EIR that effectively addresses the identified potential significant impacts on cultural resources and clarifies the status of the antique water meters.

1. *The Project Impermissibly Defers Mitigation of Potentially Significant Impacts*
 - a. The Project May Result in Potentially Significant Impacts on Archaeological Resources and Paleontological and Unique Geological Resources

The MND indicates that a potential significant impact on archaeological resources may occur during site disturbance, during which obsidian, chert flakes, bone and shell fragments, and chipped stone tools may be unearthed.¹⁹⁶ The MND also indicates a potentially significant impact may occur if excavations lead to encounters with paleontological and unique geologic resources.¹⁹⁷

- b. The Project Impermissibly Defers Mitigation Measures CUL-1 and CUL-2

Deferral of environmental assessment to a future date “runs counter to that policy of CEQA which requires environmental review at the earliest feasible stage of the planning process.”¹⁹⁸ Early consideration allows for flexibility in the planning process and avoids the potential for post hoc rationalization that might thwart the purposes of CEQA.¹⁹⁹ Deferral also robs the agencies and the public of the opportunity to review a project’s environmental assessment.²⁰⁰ This scrutiny has been called the “strongest assurance of the adequacy of an EIR.”²⁰¹

The Project defers the implementation of Mitigation Measure CUL-1, meant to address impacts on archaeological resources, to the start of “ground disturbing activities, including, but not limited to, grading, excavation, and trenching.”²⁰²

¹⁹⁶ *Id.*, p.59.

¹⁹⁷ *Id.*

¹⁹⁸ *Sundstrom v. County of Mendocino*, (2011) 202 Cal.App.3d 296, 307.

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

Mitigation Measure CUL-2, meant to address impacts to paleontological and unique geologic resources, is deferred to a time when “paleontological resources are encountered.”²⁰³ CEQA does not allow potentially significant impacts to be mitigated by deferred mitigation like the Project seeks to implement here.

Deferral of mitigation until after the start of grading, excavation, and trenching leads to all the dangers that CEQA seeks to avoid. Deferral denies the public and government agencies the opportunity to evaluate impacts *before* deciding whether to approve a project. With the Project underway, any decision based on further surveys or discoveries lacks flexibility due to site alteration and resource damage that has already occurred.

The City must prepare an EIR that provides mitigation measures to address the identified impacts on cultural resources and doesn’t defer these measures until after construction begins.

2. *The Project Fails to Adopt the Recommendations of its Own Technical Report by Deferring Surveys of Cultural Resources*

The NWIC Report’s analysis of on-site historical resources was based on studies conducted in 1977 and 1990.²⁰⁴ The MND acknowledges reliance on these two studies for its conclusion that there are no significant historical resources on site.²⁰⁵

The NWIC Report, however, recommended *against* relying on these two studies.²⁰⁶

The NWIC Report states:

“Due to the passage of time since the previous surveys (Banks and Fredrickson 1977: S-423 and Laffey 1990: S-12573) and the changes in archaeological theory and method since that time, we recommend a qualified

²⁰³ *Id.*

²⁰⁴ Northwest Information Center Cultural Report (“NWIC Report”) “Recommendations.”

²⁰⁵ MND, p. 57.

²⁰⁶ NWIC Report “Recommendations.”

archaeologist conduct further archival and field study for the entire project area to identify cultural resources.²⁰⁷

The MND fails to mention, much less adopt, NWIC's recommendation to conduct a new survey of the entire site. The surveys proposed by the MND would only occur after construction begins and, if cultural resources are encountered, during construction.²⁰⁸ Therefore, there will be no pre-construction, site-wide surveys as per the NWIC recommendation. As a result, impacts remain potentially significant.

3. *The Project Calls for Removal of the Antique Water Meters*

As described in Section IV(C)(1) of these comments, the MND reveals that "antique" water meters will be removed as part of the Project, but doesn't describe the destination of the meters, why the MND considers them "antique," or the meter's potential historical significance.

The NWIC Report is unreliable as grounds for the dismissive treatment of the water meters. If, for instance, the water meters were relocated to the Project site from an off-site location after 1990, then the surveys upon which the MND relies could not have identified them as historical resources because the surveys only address resources present on the site in 1990. CEQA does not preclude assessment of historical resources that have been relocated to the Project site.

By removing the water meters and transferring or disposing of them in an undisclosed location, the Applicant may be causing a potentially significant impact to a historical resource.

The City must produce an EIR that includes a more detailed description of the antique water meters and where they will be relocated or disposed.

VI. CONCLUSION

The MND is inadequate because it fails to include a complete and accurate Project description, set forth the existing environmental setting, and identify and

²⁰⁷ *Id.*

²⁰⁸ MND, p. 59.

mitigate the Project's potentially significant impacts on hydrology, land use, geology, biological resources, and cultural resources. Due to these significant deficiencies, the City cannot conclude that the Project's potentially significant impacts have been mitigated to a less than significant level.

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.²⁰⁹ As discussed in detail above, there is substantial evidence that the Project may result in significant adverse and unmitigated impacts that were not identified in the MND.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing an EIR to address the issues raised in this comment letter. By complying with State law, the City and the public can ensure that the Project's significant environmental impacts are mitigated to a less than significant level.

Sincerely,



Ned Thimmayya

NCT:ljl

Enclosures: (CD-Rom of Exhibits A through J)

²⁰⁹ CCR § 15063(b)(1).