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January 16, 2019

*Via Hand Delivery*

*Agenda Item 5.a*

City of San Jose Planning Commission  
City Hall  
200 E. Santa Clara St.  
San José, CA 95111

Re: **Comments on the Final Environmental Impact Report for the 4300 Stevens Creek Boulevard Mixed-Use Project by Fortbay, LLC (PDC#16-036 PD17-014, PT17-23)**

Dear Honorable Planning Commission Members:

We are writing on behalf of **San Jose Residents for Responsible Development** regarding the City of San Jose's ("City") January 2019 Final Environmental Impact Report ("FEIR") prepared for the 4300 Stevens Creek Boulevard Mixed-Use Project ("Project") proposed by Fortbay, LLC ("Applicant").<sup>1</sup>

San Jose Residents for Responsible Development ("San Jose Residents") is an unincorporated association of individuals and labor unions that may be adversely affected by the potential public and worker health and safety hazards, and environmental and public service impacts of the Project. The association includes local resident Nancy Colleen Ferguson, as well as **International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104 and Sprinkler Fitters Local 483**, their members, their families and other individuals that live and/or work in the City of San Jose and Santa Clara County.

On October 15, 2018, we submitted comments on the Project's Draft EIR ("DEIR Comments"). The FEIR contains the City's responses to our DEIR

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<sup>1</sup> First Amendment to the Draft Environmental Impact Report 4300 Stevens Creek Boulevard Mixed-Use Project, File No. PDC16-036, PD17-014, PT17-23  
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Comments. However, the City's responses and the FEIR fail to resolve all the issues we raised, as detailed below, and our comments still stand.<sup>2</sup>

In short, the FEIR's conclusions regarding impacts on greenhouse gas ("GHG") emissions, transportation, vibration, hazards and public health are not supported by substantial evidence and fail to comply with the law. The City must revise the EIR to include legally appropriate analyses, supported by substantial evidence, and feasible mitigation for these impacts.

We prepared these comments with the assistance of air quality experts Matt Hagemann, P.G., C.Hg. and Kaitlyn Heck of Soil / Water / Air Protection Enterprise ("SWAPE") and of hazards expert James J.J. Clark of Clark & Associates. Their technical comments are attached hereto as Exhibit A and B respectively and are fully incorporated herein. We reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.<sup>3</sup>

#### **A. The EIR Fails to Adequately Disclose, Analyze, and Mitigate Significant Traffic Impacts**

As explained in our DEIR Comments, the DEIR identifies significant impacts related to an increase in traffic caused by the Project, including a significant impact on the San Tomas Expressway and Saratoga Avenue intersection during the AM Peak Hour (TRAN-1).<sup>4</sup>

To mitigate the impacts, the DEIR proposes MM-TRAN-1.1, which requires the applicant to pay fair share fees to the County of Santa Clara for the widening of San Tomas Expressway to eight lanes between Homestead Road and Stevens Creek Boulevard. The DEIR concludes that payment of the fee would reduce the impact to a less than significant level.

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<sup>2</sup> We incorporate our October 15, 2018 comments, along with their attachments and exhibit, herein by reference. ("DEIR Comments")

<sup>3</sup> Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* ("Bakersfield") (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

<sup>4</sup> DEIR, p. 158.

As we explained in our comments, this mitigation violates CEQA, as it fails to comply with the CEQA requirement that mitigation must be fully enforceable,<sup>6</sup> and with the California courts consistent finding that "...a commitment to pay fees without any evidence that mitigation will actually occur is inadequate."<sup>6</sup> The DEIR provided no evidence that the County of Santa Clara's plan to widen the San Tomas Expressway, as discussed in MM TRAN-1.1, has been sufficiently analyzed and funded, and is certain to occur.

Moreover, as was shown in our DEIR Comments, the Traffic Impact Analysis ("TIA") for the Project clearly states "payment of a fair-share toward improvement costs alone would not guarantee the timely construction of the identified improvement to mitigate the project impact." Therefore, the TIA concludes that "in the event that the developer makes a fair-share contribution rather than constructing the improvement, this impact would be considered significant and unavoidable."<sup>7</sup>

In its response, the City merely states the following:

**Response J7:** As discussed in the DEIR and the TIA, the 2008 update of the Comprehensive County Expressway Planning Study identifies 1) the widening of San Tomas Expressway to eight lanes (by adding a fourth through lane in each direction) between El Camino Real and Williams Road, and 2) regional Expressway Category projects in Measure B which identifies the widening of San Tomas Expressway to eight lanes between Homestead Road and Stevens Creek Boulevard as a Tier 1 project. This includes the impacted intersection of San Tomas Expressway and Saratoga Avenue.

Resolution No. 2016.06.17 adopted by the Board of Directors of the Santa Clara Valley Transportation Authority in June 2016 established improvements to be funded by Measure B, which was approved by the voters in November 2016. This resolution included the San Tomas Widening from Cupertino to San Jose as a Tier 1 transportation project.<sup>8</sup>

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<sup>6</sup> 14 CCR §15126.4.

<sup>6</sup> *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 140 (quoting *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692).

<sup>7</sup> 4300 Stevens Creek Boulevard Mixed-Use Development, Traffic Impact Analysis, Hexagon Transportation Consultants, Inc., August 17, 2018 (hereinafter, "TIA"), p. 36.

<sup>8</sup> FEIR, p. 32.

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This response fails to rectify the flaws described in our DEIR Comments, as again it includes no evidence that the widening Project is actually going to be fully executed, when it is going to be built, and if there are approved plans and funding for it. The only additional piece of information provided in the City's response is the (already known) fact that the Board of Directors of the Santa Clara Valley Transportation Authority resolution regarding Measure B included the San Tomas Widening from Cupertino to San Jose as a Tier 1 transportation project. This fact, however, does not say anything about the Project's actual prospects, timeline and funding.

Resolution No. 2016.06.17 is a resolution to propose to the voters a new tax measure for transportation improvement that was approved by the voters in 2016. The resolution includes four attachments with "candidate projects lists." Attachment C is called "Santa Clara County Expressway Improvements (Tier 1)" and includes, among 19 other projects, the "San Tomas Expressway Widening and Trail between Homestead and Stevens Creek".<sup>9</sup> The fact that the Project is included in a list of candidate projects for an approved tax measure does not provide any guarantee that the project is actually going to be executed, or when.

Measure B is a tax measure that will be collected over the next 30 years. The VTA Board of Directors will allocate the funds collected based on guidelines the Board adopted. The Guidelines for the County Expressway program, which includes the San Tomas widening project, explain that VTA Board of Directors will allocate funding on a 2-year cycle and that as candidate projects move forward in readiness the County of Santa Clara will submit request for funding. It also authorizes the County Expressway Policy Advisory Board (PAB) to recommend the prioritization of projects and sets criteria for project's prioritization.<sup>10</sup> It is obviously a long and complicated process which involves a lot of discretion until a project that is included in attachment C of the resolution will be constructed. The City failed to provide *any* evidence that the widening project is making any such progress, let alone is guaranteed to be constructed.

Moreover, a lawsuit challenging the validity of Measure B was filed and, as a result, the Measure funds are being held back. The lawsuit is currently waiting

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<sup>9</sup> <http://yesmeasureb.com/uploads/articles/VTA.pdf> (accesses January 11, 2019).

<sup>10</sup> <http://www.vta.org/measure-b-2016> (accesses January 11, 2019).

Supreme Court review, and should the Supreme Court decide to hear the case, the implementation of Measure B may be delayed even further.<sup>11</sup>

As explained in our DEIR comments, the CEQA Guidelines generally allow the payment of fees to mitigate impacts such as cumulative impacts,<sup>12</sup> but the courts have consistently required evidence that the mitigation based on those fees will actually occur.<sup>13</sup> Furthermore, courts have held that in order for a project to rely on a fee program for mitigation of impacts, the fee program itself also had to be analyzed in an EIR.<sup>14</sup>

The City failed to explain in the DEIR and in the FEIR why it ignored the TIA conclusion that payment of fees will not mitigate the impacts. The City also failed to explain why it ignored the TIA's recommendation for an alternative mitigation measure: a TDM program to reduce the vehicle trips by 20 percent.<sup>15</sup> By ignoring the TIA proposed alternative mitigation measure, the City again violated CEQA. Under CEQA, "[w]here several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified."<sup>16</sup> The City completely ignored the alternative mitigation proposed by its transportation expert in its transportation analysis, despite the fact the expert concluded this measure can mitigate the impact.

The City must therefore discuss both mitigation measures proposed in the TIA and provide substantial evidence to show that the San Tomas widening Project is a guaranteed and feasible alternative. Only after doing so can the City reach a conclusion, supported by substantial evidence, regarding the mitigation of the significant transportation impact caused by the Project.

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<sup>11</sup> <http://www.vta.org/News-and-Media/Connect-with-VTA/Update-on-Measure-B-Lawsuit#.XDkVp1xKiUk> (accesses January 11, 2019).

<sup>12</sup> 14 CCR § 15130(a)(3).

<sup>13</sup> *Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 140 (quoting *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692).

<sup>14</sup> *California Native Plant Society v. County of El Dorado* (2009) 170 Cal.App.4th 1026).

<sup>15</sup> 4300 Stevens Creek Boulevard Mixed-Use Development, Traffic Impact Analysis, Hexagon Transportation Consultants, Inc., August 17, 2018 (hereinafter, "TIA"), p.38.

<sup>16</sup> 14 CCR § 15126.4(a)(1)(B).

## **B. The EIR Fails to Adequately Mitigate Significant Greenhouse Gas Emissions**

The City's analysis of the GHG impacts in the DEIR concluded that the Project will result in a significant impact from operational GHG emissions. It should be noted that the City also argues that if the Project is fully constructed and operational by January 1, 2021, it would have a less than significant impact. As explained in our DEIR Comments, this conclusion is not supported by substantial evidence. The City admits that it is likely the Project will not be operational by January 2021, and its analysis relies on the 2030 substantial progress threshold.

Under the substantial progress threshold analysis, the City concluded that the Project will result in a significant unavoidable impact from operational emissions. In our DEIR Comments, we explained that this conclusion is not supported by the evidence: to make such a finding, an EIR must include all feasible mitigation. The City failed to include all feasible mitigation.<sup>17</sup> SWAPE also proposed a list of feasible mitigation measures the City can implement to reduce the Project's impact from GHGs, including limiting parking supply, pricing parking, providing bike lanes and more.

In response, the City argued:

The project already accounts for these measures to the extent feasible with implementation of the TDM program for residents and employers outlined in mitigation measure MM GHG-1.1 of the DEIR. The ultimate measures included in the Office/Retail TDM Plan would be dependent on the end users as the buildings are not be constructed for a specific user, but the plan must include three or more of the measures outlined in the mitigation. The residential component would also have its own TDM plan specifically tailored to residential development.<sup>18</sup>

This response is not supported by the evidence and violates CEQA. The City argues that because "end users" of the Project are still unknown it is impossible to require more robust mitigation measure in the form of a TDM program. But the end

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<sup>17</sup> 14 CCR § 15091.

<sup>18</sup> FEIR, p. 51.

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users' specific identity has nothing to do with the reduction goals of the TDM program. The City may, as it does, leave the specific means by which the reduction goals will be achieved to the discretion of the end users. It must, however, set the performance standards (i.e., reduction goals) and the monitoring and enforcement mechanism to ensure that mitigation is effective and enforceable. Only then can the City argue the project accounts for all potential mitigation "to the extent feasible." What the City does is improperly defer the formulation of its mitigation to a later time, in violation of CEQA.<sup>19</sup>

Moreover, as SWAPE explains, the various measures suggested in the EIR for the TDM program may have very different reduction outcomes.<sup>20</sup> Providing unbundled parking may achieve significantly more GHG reduction than providing free Wi-Fi (assuming this measure will even have any reduction effect). The City, however, fails to calculate the potential reduction emissions of each proposed measure, or require that the most effective ones will be implemented. In addition, SWAPE shows that the City fails to require that each measure *on its own* will achieve GHG reductions "to the extent feasible." For example, SWAPE points out that the reduction impact of providing electric vehicle charging stations may vary greatly depending on the number of charging stations provided, but no quantitative requirements are attached to this measure or to others measures.<sup>21</sup> Thus, the City fails to require mitigating the impact "to the extent feasible."

The City must set performance standards (i.e, reduction targets) for its TDM program and analyze the potential reductions from such a program. Only if the City finds that implementation of such a plan cannot reduce the impact below the threshold of significance may it find the impact is significant and unavoidable.

The same is true for measures related to building designs. The City argues that:

Because final plans for building permits are completed after approval of Planning entitlements and would not be complete at the time the DEIR was prepared, the City based the analysis on the most conservative emission rates

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<sup>19</sup> 14 CCR §15126.4(a)(1)(B).

<sup>20</sup> Exhibit A: SWAPE comments, p. 4.

<sup>21</sup> Exhibit A: SWAPE comments, p. 4.

and did not assume what level of reduction would be possible with the mitigation and building code requirements.<sup>22</sup>

According to the DEIR, the Project “would be required to build to the California Green Building Code (CALGreen) which includes design provisions intended to minimize wasteful energy consumption. In addition, the proposed development would be designed to achieve minimum LEED certification consistent with San José Council Policy 6-32 (...)”<sup>23</sup> However, at the same time the City admits that “no specific building measures have been identified at this time”.<sup>24</sup> As SWAPE explains, it is therefore unclear if the Project is actually implementing mitigation to the extent feasible or simply meeting the minimum requirements in order to be consistent with San Jose City Council Policy 6-32.<sup>25</sup> The City cannot make a “significant and unavoidable” determination prior to showing the Project is required to employ the best available and feasible building design to mitigate its significant GHG impact.

Finally, it should be noted that, in its response, the City also mentions that “the project was found to have a significant and unavoidable GHG emissions impact for which the City has already adopted overriding considerations.”<sup>26</sup> To the extent the City argues that an overriding consideration previously adopted means the City is not required to fully mitigate the GHG impact of the Project, this argument is entirely wrong and violates CEQA. The City adopted overriding considerations for its General Plan EIR, where it found that full buildout of the General Plan would result in a significant impact from GHG emissions. The General Plan EIR was a program-level EIR, and this is a project-level EIR, and the City must analyze the Project’s impacts separately and mitigate them to the extent feasible.<sup>27</sup>

Finally, the General Plan EIR itself states that “[a]dditional strategies, policies and programs, to supplement those currently identified, will ultimately be required to meet the 2035 reduction target”.<sup>28</sup> The Project EIR must therefore identify all potential mitigation for the Project’s specific GHG impacts.

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<sup>22</sup> FEIR, p. 51.

<sup>23</sup> DEIR, p. 84.

<sup>24</sup> DEIR, p. 8.

<sup>25</sup> Exhibit A: SWAPE comments, p. 4-5.

<sup>26</sup> FEIR, p. 51.

<sup>27</sup> 14 CCR § 15093(c).

<sup>28</sup> General Plan EIR, pp. 37, <http://www.sanjoseca.gov/DocumentCenter/View/46542-4343-010acp>

### **C. The EIR Fails to Adequately Disclose, Analyze, and Mitigate Significant Vibration Impacts**

The DEIR identifies significant impacts related to vibrations caused during Project construction. Specifically, the DEIR identifies a significant impact to the adjacent automotive dealership from vibration levels in excess of City standards.<sup>29</sup> To mitigate the impact, the DEIR proposes two mitigation measures: first, a “Construction Vibration Monitoring Plan” that “shall be implemented to document conditions prior to, during, and after vibration generating construction activities.”<sup>30</sup> This plan will include a list of all heavy construction equipment to be used for the Project and the “avoidance methodology.”

The Second measure requires the Applicant to include four measures as part of the approved construction plans prior to the issuance of any demolition or grading permits: ensure that construction crews shall avoid dropping heavy objects or equipment within 30 feet of any adjacent structure, ensure that all contractors follow the “prescribed vibration mitigation measures,” designate a specific person in charge of excessive vibration claims and a requirement to make necessary repairs should vibration cause damages.<sup>31</sup>

As explained in our DEIR comments, these measures are in fact an impermissible deferral of mitigation, in which an agency “simply requires a project applicant to obtain a ... report and then comply with any recommendations that may be made in the report.”<sup>32</sup> Mitigation is deferred to future “Construction Vibration Monitoring Plan,” “approved construction plans” and “avoidance methodology.” In fact, the only actual measure is the prohibition on dropping heavy objects or equipment within 30 feet of any adjacent structure. However, the Noise and Vibration Assessment prepared by the City’s consultants recommended a more specific measure: that the City “[p]rohibit the use of heavy vibration-generating construction equipment, such as vibratory rollers or excavation using clam shell or chisel drops, within 30 feet of any adjacent building.”<sup>33</sup> The DEIR provides no explanation as to why it did not include these specific limitations or, at the very

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<sup>29</sup> Impact NOI-1, DEIR, p. 127.

<sup>30</sup> MM NOI-1.1, DEIR, p. 128.

<sup>31</sup> MM NOI-1.2, DEIR, p. 128.

<sup>32</sup> *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.

<sup>33</sup> Noise and Vibration Assessment, p. 27.

least, performance standards to include in a mitigation plan, as required under CEQA.

In its response, the City argues that “[p]rior to completion and approval of full building plans by the City, it would be speculative to assume the specific type of equipment that would be used on-site, the duration, and the location. Without this information, only broad-based restrictions can be applied to the project.” This explanation, however, fails to explain why the City did not include more specific mitigation measures, as recommended by its consultant, and performance standards.

The City moves on to argue that:

The commercial building in question is approximately 25 feet from the property line of the project site (...) vibration levels due to construction activities would be up to 0.21 in/sec Peak Particle Velocity (PPV) at the nearest off-site commercial building, which is just over the threshold of 0.20 PPV for structures of conventional construction established as a threshold in General Plan Policy EC-2.3. The mitigation recommendations from the noise consultant is based on assumed construction equipment that could be utilized on-site. As shown on the site plan (Figure 2.2-4 of the DEIR) the nearest hardscape to the shared property line is set back 11 feet. The nearest building, including the below-grade parking level, is approximately 14 feet from the shared property line. As a result, the City concluded that the prohibition of construction equipment outlined in Mitigation Measure 2 of the Noise and Vibration Study was not warranted.<sup>34</sup>

These statements do not explain why the City chose to depart from its own consultant recommendation. Obviously, the consultant was aware of the distance of the nearest building and hardscape as they are reflected in the site plan. The City fails to explain why it did not include the expert’s recommendation on how to avoid vibration damage. The City therefore impermissibly deferred its mitigation in violation of CEQA.

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<sup>34</sup> FEIR, p. 34.  
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#### **D. The EIR Fails to Adequately Disclose, Analyze, and Mitigate Significant Air Quality and Health Risks**

The DEIR includes a Health Risk Assessment (“HRA”) to evaluate the Project’s health risk impact from diesel particulate matter (“DPM”) emissions from the Project’s construction. However, as explained by SWAPE in our DEIR Comments, the City failed to conduct an *operational* HRA to evaluate the health risk posed to existing sensitive receptors near the Project site from additional emissions generated during operation. This lack of operational HRA is inconsistent with the Guidelines published by The Office of Environmental Health Hazard Assessment (“OEHHA”), the organization responsible for providing recommendations for health risk assessments in California. SWAPE also conducted a screening-level HRA and found the infantile, child, and lifetime cancer risks created by Project’s operations all greatly exceed the BAAQMD’s threshold of 10 in one million.

In its response, the City argued that the OEHHA Guidelines are not applicable to this Project and that it has no duty to conduct an operational HRA. In addition, it argued that SWAPE overstated the number of car-trips generated by the Project.<sup>35</sup> This response fails to remedy the flaws in the City’s analysis.

SWAPE maintains that the omission of an operational HRA is not consistent with OEHHA most recent guidelines (March 2015). Indeed, CEQA requires the City to analyze potentially significant impacts from a Project’s operational emissions. SWAPE shows that the Project is expected to generate approximately 307 truck trips per day, generating exhaust emissions and continuing to expose nearby sensitive receptors to emissions. The OEHHA document recommends that exposure from projects lasting more than 6 months should be evaluated for the duration of the project, and this Project will last longer than that.<sup>36</sup> SWAPE explains that while their analysis is a screening-level HRA, which tends to be more conservative, it nevertheless provides substantial evidence that the Project may result in a significant operational health risk. The City has a duty to perform an assessment of the Project’s operational emissions’ impacts and to mitigate any impacts that are found.

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<sup>35</sup> FEIR, p. 45.

<sup>36</sup> Exhibit A: SWAPE comments, p. 2-3.  
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### **E. The EIR Fails to Adequately Disclose, Analyze, and Mitigate Significant Impacts Related to Hazardous Site Conditions**

The DEIR acknowledges that “possible historic pesticide use on-site could have resulted in the accumulation of residual pesticides (e.g., DDT compounds, arsenic, and lead) in the shallow soil on-site.”<sup>37</sup> In addition, the DEIR states that there are likely asbestos containing materials and lead-based paint in the building materials of the buildings to be demolished.<sup>38</sup>

In our DEIR Comments, we showed that the City failed to properly mitigate the potential impacts from the hazards on the site, because the mitigation measures proposed in the DEIR only require analytical testing of soils to be performed after demolition of the buildings. We explained that this is an improper deferral of mitigation.

In its response, the City argue that “[g]iven the length of time since agricultural activities have occurred on-site and the development of the site since cessation of the agricultural use more than 45 years ago, the likelihood of surface soils having residual agricultural contamination is negligible.”<sup>39</sup> The City then argues that despite that, the Applicant would be required to implement standard dust control measures during all phases of construction “which would abate any dust generated during demolition.”<sup>40</sup> The City also points out that it has been cautious in choosing to employ these mitigation measures despite the fact the Phase I Environmental Impact Assessment for the proposed project found the presence of potential residual agricultural chemicals in the soil to be a “de minimis” condition.

As Dr. Clack explains, this response fails to address the flaws pointed out in our DEIR Comments. First, for DDT, the half-lives in slow degrading soils and sediments are known to be much higher than what is indicated by the City, which means the potential concentration of DDT remaining in soils could be more than twice higher than the City’s response indicates could be present.<sup>41</sup>

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<sup>37</sup> DEIR p. 88.

<sup>38</sup> *Id.*, at 89.

<sup>39</sup> FEIR, p. 39.

<sup>40</sup> FEIR, p. 39.

<sup>41</sup> Exhibit B: Clark Comments, p. 3.

Second, Dr. Clark explains that given the potential for persistent organic pollutants (POPs) to exist in the soil, the measures proposed by the City would not be enough to mitigate the impact. This is because mitigation measures that are generally proposed for demolition activities and earth moving activities on site are not 100% effective at preventing exposure: the U.S. EPA found the control efficiency for respirable particles generated during storage and handling activities (demolition or soil movements) is generally between 56 percent and 81 percent using water spray alone. Dr. Clark explains that between approximately 20 percent to 50 percent of the toxic materials in the construction debris that is generated as respirable dust could therefore be released to the community. This, he explains, is true for both Asbestos and uncharacterized POP impacted soils on the Project site that will be disturbed during the demolition process or the clean-up of the debris.<sup>42</sup>

Dr. Clark therefore concludes that “[t]he approach to sample after materials have been disturbed lends itself to creating a larger potential problem for the community. The mitigation measure is equivalent to closing the barn door after the horse has escaped.”<sup>43</sup> The City should require sampling of the soil prior to demolition in order to properly mitigate the potentially significant impacts from soil contamination.

## F. CONCLUSION

The FEIR is inadequate as an environmental document because the City fails to properly analyze and mitigate the Project’s impacts. The Project will result in significant impacts in a number of areas, including GHGs, public health, traffic, hazards and from vibration. However, the City fails to properly mitigate those impacts, and many of the mitigation measures relied upon by the DEIR are improperly deferred or their effectiveness is not supported by the evidence.

The City cannot approve the Project until it revises the EIR to comply with CEQA and recirculates the revised EIR for public review.

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<sup>42</sup> Exhibit B: Clark Comments, p. 3-4.

<sup>43</sup> Exhibit B: Clark Comments, p. 4.

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Thank you for your consideration of these comments.

Sincerely,



Nirit Lotan

cc: [tracy.tam@sanjoseca.gov](mailto:tracy.tam@sanjoseca.gov);  
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Attachments

NL:acp

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**From:** Alisha C. Pember [<mailto:apember@adamsbroadwell.com>]  
**Sent:** Wednesday, January 16, 2019 5:03 PM  
**To:** Tam, Tracy <[tracy.tam@sanjoseca.gov](mailto:tracy.tam@sanjoseca.gov)>; Keyon, David <[david.keyon@sanjoseca.gov](mailto:david.keyon@sanjoseca.gov)>; Buscher, Danielle <[Danielle.Buscher@sanjoseca.gov](mailto:Danielle.Buscher@sanjoseca.gov)>  
**Cc:** Nirit Lotan <[nlotan@adamsbroadwell.com](mailto:nlotan@adamsbroadwell.com)>  
**Subject:** Comments on the Final Environmental Impact Report for the 4300 Stevens Creek Boulevard Mixed-Use Project by Fortbay, LLC (PDC#16-036 PD17-014, PT17-23)

Good afternoon,

Please see the attached Comments on the Final Environmental Impact Report for the 4300 Stevens Creek Boulevard Mixed-Use Project by Fortbay, LLC (PDC#16-036 PD17-014, PT17-23) and Attachments A and B.

Hard copies will be hand delivered at tonight's hearing.

If you have any questions, please contact Nirit Lotan.

Thank you.

Alisha Pember

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