

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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

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

kjones@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

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

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

DANIEL L. CARDOZO
CHRISTINA M. CARO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
KYLE C. JONES
MARC D. JOSEPH
RACHAEL E. KOSS
NIRIT LOTAN
MILES F. MAURINO
COLLIN S. MCCARTHY

LAURA DEL CASTILLO
Of Counsel

December 7, 2018

Via Email and U.S. Mail

Leslie D. Jensen
Senior Deputy City Attorney
Mountain View City Attorney's Office
500 Castro Street
Mountain View, CA 94041
Email: Leslie.Jensen@mountainview.gov

Via Email Only

Diana Pancholi, Senior Planner
Email: Diana.Pancholi@mountainview.gov

Lisa Natusch, City Clerk
Email: Lisa.Natusch@mountainview.gov

Randal Tsuda, Community Development Director
Email: Randal.tsuda@mountainview.gov

Re: Request to Extend Public Review Period and to Provide All Documents Referenced in the Draft Environmental Impact Report – 777 West Middlefield Road, SCH #2018032072

Dear Ms. Jensen, Ms. Pancholi, Ms. Natusch, and Mr. Tsuda:

We are writing on behalf of Mountain View Residents for Responsible Development (“Mountain View Residents”) to respectfully request that the City of Mountain View (“City”) extend the public review and comment period for the Draft Environmental Impact Report (“DEIR”) prepared for the 777 West Middlefield Road Project (“Project), SCH #2018032072, proposed by FortBay, LLC by at least 30 days

due to the City's failure to provide timely access to all documents referenced in the DEIR.

This request is made pursuant to the California Environmental Quality Act,¹ Public Resources Code section 21092(b)(1), which requires that all documents referenced in an environmental review document be made available to the public for the entire comment period.²

On November 16, 2018, our office submitted a request on behalf of Mountain View Residents for immediate access to any and all documents referenced or relied upon in the DEIR, as well as all documents referring or related to the Project.³ As the City knows, public records related to the Project include all documents in actual or constructive possession of the City, which includes the City's consultants' files.⁴

In response, on November 26, 2018 the City provided electronic access to the DEIR Appendices and five planning file documents pertaining to the Project.⁵ The City noted that copies of other documents referenced or relied upon in the DEIR would be made available upon request, and suggested that additional responsive files may exist and would be provided on a "rolling basis."

¹ Pub. Resources Code §§ 21000 et seq.

² Pub. Resources Code § 21092(b)(1).

³ Letter from Janet Laurain, Adams Broadwell Joseph & Cardozo to Lisa Natusch, Randal Tsuda, and Diana Pancholi re: Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – 777 West Middlefield Road, SCH #2018032072 (Nov. 16, 2018).

⁴ *Consolidated Irrigation District v. Superior Court* (2012), 205 Cal.App.4th 697, 710.

⁵ Email from Leslie Jensen, City Attorney's Office to Alisha Pember, Lynette King, Lisa Natusch, Margarita Herrera, and Diana Pancholi re: Request for Immediate Access to Public Records - 777 West Middlefield Road Project, SCH #2018032072 (Nov. 26, 2018); Email from Leslie Jensen, City Attorney's Office to Alisha Pember, Lynette King, Lisa Natusch, and Margarita Herrera re: PRR 2018-224 Pember/Laurain (due 11/26/18) EIR (Nov. 26, 2018).

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In a follow-up email on December 5, 2018, Janet Laurain of our office requested that the City provide the 21 documents referenced in the DEIR that are not otherwise available online, and specifically requested prompt access to the Phase I and Phase II Environmental Site Assessments for the Project.⁶

We have not yet received a definitive answer from the City regarding our request for these DEIR reference documents. Without access to all documents underlying the DEIR's analysis, Mountain View Residents' members and other members of the public are unable to fully evaluate and comment on the accuracy of the City's analysis and conclusions regarding the Project's impacts. We expect that several of these reference documents will be voluminous and will require adequate time to review and analyze.

The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.⁷ It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.⁸ By failing to make all documents referenced in the DEIR "readily available" during the current comment period, the City is violating the procedural mandates of CEQA.

Accordingly, we request that:

- 1) The City immediately provide us with access to the missing documents requested in this letter.
- 2) The City extend the public review and comment period on the DEIR for at least 30 days from the date on which the County releases all the referenced documents for public review.

⁶ Email from Janet Laurain to Leslie Jensen re: 777 West Middlefield Road Project - PRR 2018-224 (Dec. 5, 2018).

⁷ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

⁸ *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").

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Given the short time before the current comment deadline, please contact me as soon as possible with your response to this request, but no later than **Tuesday, December 11, 2018.**

Thank you for your prompt attention and response to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'K. Jones', with a long horizontal flourish extending to the right.

Kyle C. Jones

KCJ:ljl

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