

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

ewehr@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
LAURA E. HORTON
MARC D. JOSEPH
RACHAEL E. KOSS
JAMIE L. MAULDIN
ELLEN L. WEHR

January 19, 2016

VIA U.S. MAIL AND E-MAIL

Stephen Kowalski, Associate Planner
City of Fremont
Community Development Department
39550 Liberty Street, 1st Floor
E-mail: skowalski@fremont.gov

**Re: Request for extension of public comment period and continuance of
Planning Commission hearing — Initial Study/Mitigated Negative
Declaration for Parc 55 Project (PLN2014-00045)**

Dear Mr. Kowalski:

We are writing on behalf of **Fremont Residents for Responsible Development** (“Residents”)¹ to request a 30-day extension of the public comment period for the Initial Study/Mitigated Negative Declaration (“IS/MND”) on the Parc 55 Project proposed by East Warren Park LLC (“Project”). The Planning Division’s current comment deadline for the IS/MND is January 22, 2016. The Planning Commission has scheduled a hearing on the IS/MND on January 28, 2016. Accordingly, we also request a 30-day continuance of the Planning Commission hearing.

This request for extension and continuance is warranted for the following three reasons. First, the City’s draft of the IS/MND is dated December 23, 2015, and was apparently issued by the City Planning Division immediately prior to several major holidays. However, the City did not notify interested parties or the

¹ Fremont Residents for Responsible Development includes the **International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 342, and Sheet Metal Workers Local 104**, and their members and their families and other individuals who live and/or work in the City of Fremont and surrounding area.

January 19, 2016

Page 2

public about the IS/MND until *January 5, 2016*. The Planning Division's standard practice is to send a timely e-mail message to alert its planning "list serve" subscribers of the availability of newly issued CEQA documents. For example, on December 23, 2015, the same day that the comment period for this Project began, the Planning Division sent an e-mail alert to its list serve subscribers regarding an IS/MND for the Springhill Suites project, which had a public comment period that began on December 24th.

For this Project, City staff did not send a similar e-mail alert until January 5th, almost two weeks after the date of the IS/MND and the start of the public comment period. It was therefore nearly impossible for interested parties and the public to know that the IS/MND for the Project had been released. This prevented Fremont Residents for Responsible Development from having adequate time to review the IS/MND, and also prevented us from making timely requests for reference documents and other project-related documents, as discussed below. The City's failure to provide timely notice of the availability of the IS/MND is grounds for extending the public comment period.

Second, on January 13, 2016, Fremont Residents for Responsible Development submitted a letter to the City requesting immediate access to all documents referenced in the IS/MND, pursuant to the California Environmental Quality Act ("CEQA"). CEQA Section 21092(b)(1) and CEQA Guidelines Sections 15072(g)(4) and 15087(c)(5) require that all such documents must be made "available for review" and "readily accessible" during the entire public comment period. The next day, the City provided on its website six of the nine Project-specific IS/MND reference documents listed on page 49 of the Project's Initial Study, and the following day it sent one of those nine reference documents in hard copy. The City has not yet provided the Project plans dated January 2015, which are listed as the first reference document on page 49 of the Initial Study, nor has it provided notes, memos, or any other documents related to the second listed reference, "Site reconnaissance visit by the City Planning Division," dated February 19, 2015. The City has not yet indicated whether those two reference documents are immediately available.

Extending the existing comment period by 30 days should ensure that the City is able to make all referenced documents available during the entire required comment period. As noted by leading CEQA commentators:

January 19, 2016

Page 3

[CEQA] appears to compel agencies to make available for public review all documents on which agency staff or consultants expressly rely in preparing a negative declaration. In light of case law emphasizing the importance of ensuring that the public can obtain and review documents on which agencies rely for the environmental conclusions (see, e.g., *Emmington v. Solano County Redevelopment Agency* (1st Dist. 1987) 195 Cal.App.3d 491, 502-503), agencies should ensure that they comply literally with this requirement.²

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.³ Unless the comment period is extended, it is unlikely that Fremont Residents for Responsible Development will have the opportunity to review all of the IS/MND reference documents prior to the January 22nd comment deadline, much less the full comment period required by statute. This is insufficient for purposes of providing public comments on the IS/MND.

Third, on January 13, 2016, Fremont Residents for Responsible Development sent a Public Records Act request to the City seeking public records related to the Project. The City indicated that it expected to have a response to the Public Records Act completed by approximately January 14th, but as of the date of this letter the City has not provided a response.

Because Fremont Residents for Responsible Development did not receive sufficient notice of the availability of the IS/MND, has not had access to all documents referenced in the IS/MND, as required by CEQA, and has not had the opportunity to review other Project-related documents, its effort to fully understand the Project's environmental impacts and the City's analysis and mitigation of those impacts has been hindered.

Therefore, again, we request that the comment period for this Project be extended by 30 days until February 22, 2016, and that the Planning Commission hearing be continued accordingly. Given the shortness of time before the current comment deadline, please contact me with your response as soon as possible,

² Remy, Thomas, Moose and Manley, *Guide to the California Environmental Quality Act*, p. 300 (Solano Press, 2007).

³ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689.

January 19, 2016

Page 4

preferably no later than Thursday, January 21st. As you know, the currently noticed deadline for submitting comments on the Project IS/MND is January 22nd. Therefore time is of the essence.

By this letter, we also request written notification of any and all public hearings related to the Project, including CEQA-related hearings. With such notification, please include the time, date and location of the public hearing along with the decisionmaking body that will be presiding over the hearing. We make this request for notice under California Public Resources Code Section 21092(b)(1).

I can be reached at (916) 444-6201 if you have any questions regarding this request. Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Ellen Wehr". The signature is written in a cursive, flowing style.

Ellen L. Wehr

ELW:ljl

cc (via e-mail):

Kristie Wheeler, Planning Manager (kwheeler@fremont.gov)

Wayne Morris, Principal Planner (wmorris@fremont.gov)

City Clerk (cclerk@fremont.gov)

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

ewehr@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
LAURA E. HORTON
MARC D. JOSEPH
RACHAEL E. KOSS
JAMIE L. MAULDIN
ELLEN L. WEHR

January 21, 2016

VIA U.S. MAIL AND E-MAIL

Stephen Kowalski, Associate Planner
City of Fremont
Community Development Department
39550 Liberty Street, 1st Floor
Fremont, CA 94538
E-mail: skowalski@fremont.gov

**Re: Withdrawal of Request for Extension – All Documents Referenced in
Initial Study/Mitigated Negative Declaration Have Now Been Received
(Parc 55 Project: PLN2014-00045)**

Dear Mr. Kowalski:

We are writing on behalf of Fremont Residents for Responsible Development (“Residents”)¹ to thank the City of Fremont for providing the remaining reference documents that served as the basis for the City’s findings in the Initial Study/Mitigated Negative Declaration (“IS/MND”) for the Parc 55 Project. We now have a copy of all studies and reports that are referenced in the IS/MND. For this reason, we hereby withdraw our outstanding request for an extension of the IS/MND comment period and Planning Commission hearing schedule.

We appreciate the City’s prompt response to our request for the reference documents.

¹ Fremont Residents for Responsible Development includes the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 342, and Sheet Metal Workers Local 104, and their members and their families and other individuals who live and/or work in the City of Fremont and surrounding area.

January 21, 2016

Page 2

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Ellen Wehr". The signature is written in a cursive style with a long horizontal flourish at the end.

Ellen L. Wehr

ELW:ljl

cc (via e-mail):

Kristie Wheeler, Planning Manager (kwheeler@fremont.gov)

Wayne Morris, Principal Planner (wmorris@fremont.gov)

City Clerk (cclerk@fremont.gov)