

DANIEL L. CARDOZO
 CHRISTINA M. CARO
 THOMAS A. ENSLOW
 TANYA A. GULESSERIAN
 MARC D. JOSEPH
 RACHAEL E. KOSS
 NATALIE B. KUFFEL
 LINDA T. SOBCZYNSKI

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

nthimmayya@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

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

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

November 4, 2016

VIA OVERNIGHT AND ELECTRONIC MAIL

Debbie Chamberlain, Planning Services Manager
 Shinei Tsukamoto, Associate Planner
 City of San Ramon
 Planning/Community Development Department
 2401 Crow Canyon Road
 San Ramon, CA 94583

Email: planning@sanramon.ca.gov; stsukamoto@sanramon.ca.gov

**Re: Supplemental 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 supplemental comments are submitted on behalf of **San Ramon Residents for Responsible Development** 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. We submitted our first comments regarding the Project on July 15, 2016. We also provided a Statement of Interest in our July 15, 2016 comments, which we fully incorporate herein.

We reviewed the City’s responses to comments, which were presented at the Planning Commission hearing held on November 1, 2016, and we conclude that the

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MND still fails to comply with the California Environmental Quality Act (“CEQA”) and the San Ramon Zoning Ordinance.¹

I. AN EIR IS REQUIRED

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.² CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.³

The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁵ “Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”⁶

As explained in our previous comments and these supplemental comments, substantial evidence supports a fair argument that the Project will result in potentially significant impacts on hydrology and water quality, land use, geology,

¹ Public Resources Code (“PRC”) §§ 21000 et seq and San Ramon Zoning Ordinance, *available at* <http://www.sanramon.ca.gov/zoning/documents/cover.pdf>.

² See CEQA § 21100.

³ CEQA §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

⁴ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁵ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

⁶ CEQA Guidelines § 15384(a).

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biological resources, and noise. The City must reject the MND and may not approve the development plan and architectural review 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.

A. The Loading Zone and Drain Pipe that will be within the Creek Riparian Zone Violate the San Ramon Zoning Ordinance and the Crow Canyon Specific Plan

The Creek Riparian Zone (“CRZ”) is “an overlay district located within 100 feet of the centerline of San Ramon Creek and its tributaries” and is intended to enhance the creek as an “environmental and recreational resource within the community.”⁷ By definition, the Creek Riparian Zone “prohibits structures within the 100-foot setback zone” and limits improvements to “to open space and recreation amenities and access roads incidental to achieving effective circulation patterns.”⁸

The City’s response to comments acknowledges that a “loading zone and drain pipe are proposed to be located within 100 feet of San Ramon Creek’s centerline.”⁹ These Project features violate Crow Canyon Specific Plan (“CCSP”) Policy 6.1 and the San Ramon Zoning Ordinance. The City’s response to comments fails to rectify this fatal flaw in the Project’s CEQA analysis, and, if anything, reinforces evidence of the violation.

1) The Loading Zone and Drain Pipe Violate the San Ramon Zoning Ordinance

The San Ramon Zoning Ordinance Division D5-1 contains nine stated purposes for standards aimed at protecting hillside, creek, and ridgeline areas in San Ramon, including preservation of drainage patterns and “providing adequate buffer areas between creek corridors and adjacent development.”¹⁰ The ordinance includes a standard that meets these goals particularly as they relate to creeks, and

⁷ Crow Canyon Specific Plan (“CCSP”) “Land Use,” p. 38.

⁸ *Id.* at 38 – 39.

⁹ Response to Comments on the Draft Initial Study/Mitigated Negative Declaration, October 19, 2016, p. 36.

¹⁰ **Exhibit A:** San Ramon Zoning Ordinance: Chapter 1: D5-1.

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reflects, verbatim, language defining the CRZ and CCSP Policy 6.1. The relevant ordinance provision reads as follows:

No habitable structure shall be located within 100 feet of the centerline of a creek or stream channel identified in General Plan 2030 Figure 8-3 (Resource Management) plus any additional horizontal distance to be determined by an approved drainage report; provided that no habitable structure shall be located midslope or within the 100 year flood plain plus one foot of free board. *Improvement within the setback areas shall be limited to open space and recreation amenities and access roads incidental to achieving effective circulation patterns* [emphasis added].¹¹

The provision is accompanied by a diagram illustrating a *minimum* 100-foot setback from a creek's centerline.¹² Only general and special variance findings provide an exception to the prohibition on such improvements.¹³

The presence of the Project's loading zone and drain pipe within the 100-foot setback violate Division D5-4-A.6 ("Creek Setback") of the zoning ordinance because these improvements are neither open space and recreation amenities nor access roads incidental to effective circulation. These improvements' only purpose is to serve the Project and they do nothing to advance the purposes listed in D5-1. The City has made no general and special variance findings that excuse the violation.

2) The Loading Zone and Drain Pipe Violate CCSP Policy 6.1

The CCSP seeks to "preserve the natural resource value of San Ramon Creek and its tributary while enhancing the riparian corridor as a linear recreational and open space resource."¹⁴ To meet this goal, CCSP Policy 6.1 demands that "structures shall be prohibited within 100 feet of the centerline of San Ramon Creek."¹⁵ Also, in a restatement of the zoning ordinance, CCSP Policy 6.1 reads: "Improvement within

¹¹ **Exhibit B:** San Ramon Zoning Ordinance: Chapter 1: D5-4-A.6 ("Creek Setback"). San Ramon Creek and the required 100-foot setback is also reflected in General Plan 2035 Figure 8-3, available at <http://www.sanramon.ca.gov/gprc/documents/08OpenSpace.pdf>.

¹² See **Exhibit B:** San Ramon Zoning Ordinance: Chapter 1: Figure 5-1.

¹³ See **Exhibit B:** San Ramon Zoning Ordinance: D5-4-A.6(a)("Exception").

¹⁴ **Exhibit C:** CCSP Objective 6, p. 62.

¹⁵ *Id.* (Policy 6.1).

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the setback areas shall be limited to open space and recreation amenities and access roads incidental to achieving effective circulation patterns.”¹⁶

In contrast to claims made in the City’s response to comments, the CCSP’s prohibition on improvements within the 100-foot setback does not except areas that have been previously graded and disturbed. Also in contrast to the City’s claim, CCSP Policy 6.1 does not except improvements that are beyond the riparian vegetation corridor, which is a more narrow belt of land than the 100-foot setback. Note that CCSP Policy 6.1’s prohibition is strict, as opposed to the more aspirational language of CCSP Policy 6.6, which was the focus of the City’s response to comments in regards to the loading zone and drain pipe.¹⁷

The loading zone and drain pipe violate CCSP Policy 6.1 because they are not open space and recreational amenities and are solely meant to serve the Project. The loading zone in particular will actually degrade the open space and recreational value of the CRZ.

The violations of a zoning ordinance provision *and* a specific plan policy constitute substantial evidence supporting a fair argument that the Project may result in potentially significant impacts on land use, hydrology and water quality, and biological resources.

B. The Lack of a Hydrology Report is Fatal to the MND

As set forth in our initial comments, the City’s failure to support its findings with 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.¹⁸ In this case, the omission of a hydrology report is particularly egregious because of the adjacent and underlying protected creek, stormwater concerns, the Project’s subterranean

¹⁶ *Id.*

¹⁷ See CCSP “Land Use” Policy 6.6, p. 63. Policy 6.6 is more lenient than Policy 6.1 because Policy 6.6 merely “guides” development, while Policy 6.1 is an outright “prohibition” on the loading zone and drain pipe.

¹⁸ See 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) from Adams, Broadwell, Joseph, & Cardozo, July 15, 2016, p. 5, 20 – 21 and SWAPE Comment Letter from Matt Hagemann and Jessie Jaeger, June 30, 2016, p. 6 -7.

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garage, and the common practice to conduct such studies for projects in Contra Costa County.

The City's response to comments fails to justify the omission, and instead contains conclusory statements that repeat descriptions of regulatory programs from the MND and remain unsupported by publicly disclosed data.

The City must produce an EIR to properly assess the hydrological conditions on site and the hydrological impacts of the Project.

C. The MND Fails to Describe Installation of the Culvert Slab

The Project proposes that a slab be placed over the culvert on San Ramon Creek that will be capable of holding 40,000 pounds. The MND and response to comments, however, fail to provide any indication of impacts that may be caused by the installation necessary to place the slab over the creek. The MND describes neither the equipment, noise, and chemicals that will be involved in the installation nor the duration of the installation. Such an omission, when considering the installation will occur *on* the protected creek, constitutes substantial evidence supporting a fair argument that the Project may result in potentially significant impacts on hydrology and water quality, biological resources, and noise.

II. CONCLUSION

The City failed to adequately describe the existing setting and evaluate and require mitigation for the Project's potentially significant impacts on land use, hydrology and water quality, biological resources, geology, and noise. CEQA requires the City to prepare an EIR if there is substantial evidence that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment.¹⁹ As discussed in detail above and in our initial comments, substantial evidence supports a fair argument that the Project may result in significant adverse impacts that were not identified in the MND and that are not adequately mitigated.

¹⁹ CEQA Guidelines § 15063(b)(1).

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We urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing an EIR.

Thank you for your consideration of these comments.

Sincerely,



Ned Thimmayya



Tanya Gulesserian

NCT:TAG:ljl

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ATTACHMENT D

Public Comment from Adams Broadwell Joseph & Cardozo

on behalf of

San Ramon Residents for Responsible Development

(November 4, 2016)

San Ramon Valley Apartments

November 15, 2016