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From: Alisha C. Pember <apember@adamsbroadwell.com>
Sent: Wednesday, October 18, 2017 3:58 PM
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Cc: Christina Caro
Subject: Public Hearing Agenda Item No. 6: Oak Knoll Mixed Use Community Plan Project (Email 1 of 2)
Attachments: 3426-025acp - 2017 10 17 ORRD Comments to PC _Oak Knoll.pdf

Good afternoon,

Please see the attached Comments regarding Oak Knoll Mixed Use Community Plan Project, Exhibits A-C will follow in a second email.

A hard copy of our Comments will be hand delivered at this evening's hearing.

If you have any questions, please contact Christina Caro.

Thank you.

Alisha Pember

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October 18, 2017

Via Email and Hand Delivery

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**Re: Public Hearing Agenda Item No. 6: Oak Knoll Mixed Use
Community Plan Project**

Dear Chairperson Nagraj and Honorable Members of the Planning Commission:

We are writing on behalf of **Oakland Residents for Responsible Development** ("Oakland Residents") regarding Oak Knoll Mixed Use Community Plan Project ("Project").¹

Oakland Residents and its technical consultants have reviewed the Planning Commission Staff Report for the Project ("Staff Report"), and find it deficient in

¹ Oakland Residents submitted comments on the Draft Supplemental Environmental Impact Report ("DSEIR") for the Project in October 2016, comments to the Landmarks Preservation Advisory Board ("LPAB") on May 8, 2017, and comments to the Planning Commission on June 21, 2017. All prior comments are incorporated by reference. Oakland Residents reserves the right to supplement these comments at later hearings and proceedings on this Project. Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.
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several ways. The Staff Report explains that the Applicant is no longer pursuing a Development Agreement for the Project, but that the City has nevertheless adopted some of the deal terms that had been proposed for the Development Agreement into revised Conditions of Approval ("Conditions"), such as flexible Project phasing. By so doing, the City is effectively proposing to provide concessions to the Applicant in the form of Conditions that would otherwise require the Applicant to provide reciprocal community benefits to the City if those same terms were contained in a Development Agreement. Oakland Residents submits that this use of conditions of approval undermines the City's ability to negotiate for additional community benefits from the Project.

Revisions to the Project identified in the Staff Report also result in new and potentially significant impacts that were not analyzed in the FSEIR. For example, revised Conditions 23 and 24, which address Project phasing, would allow the Applicant to simultaneously construct several components of Phase 1 (Village Center, residential development) concurrently with Phases 2 and 3 of the Project. Our experts conclude that simultaneous construction of Project phases would significantly increase the Project's construction impacts, including impacts on air quality and traffic impacts. Removal of the City-owned Barcelona Parcel from the Project is similarly likely to have significant impacts from eliminating a planting area that is slated for use as on-site mitigation to help satisfy the Applicant's on-site mitigation requirements under Mitigation Measure BIO-2. These impacts were not analyzed in the FSEIR, and are not addressed by the FSEIR's existing mitigation measures.

Finally, the Staff Report fails to respond to our June 21, 2017 comments on the FSEIR, and fails to remedy any of the errors and omissions identified in those comments. In particular, the Staff Report fails to remedy inadequacies in the FSEIR related to traffic and biological resources issues, still fails to adequately mitigate several potentially significant Project impacts, and fails to correct errors in the FSEIR which impermissibly defer analysis and mitigation of potentially significant impacts. The Commission may not recommend certification of the FSEIR until it fully complies with CEQA, and may not recommend approval of the Project until these defects are remedied.

The Commission lacks adequate information and the requisite substantial evidence to make the necessary recommendations to the City Council to approve the Project at this time. The Commission should continue its hearing on the Project to

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a future date after the City corrects the errors and omissions in the FSEIR and other proposed Project approvals.

We prepared these comments with the assistance of air quality expert Jessie Jaeger of SWAPE;² expert traffic engineer Daniel Smith;³ and conservation biologist and wildlife ecologist Scott Cashen.⁴ Their comment letters and all attachments thereto are incorporated by reference as if fully set forth herein.

I. CHANGES IN THE PROJECT ARE LIKELY TO RESULT IN POTENTIALLY SIGNIFICANT IMPACTS THAT WERE NOT ANALYZED IN THE FSEIR

A. Project Phasing

Revised Conditions of Approval No. 23 and 24 provide that “the Developer shall have the right to develop the Project at such time as the Developer deems appropriate” provided that all public improvements for Phase 1 are complete. These Conditions would allow the Developer to front-end construction of the public improvements for Phase 1, then to construct the building developments of Phase 1 together with the building developments for Phases 2 and 3. This could result in simultaneous construction of all three Project phases. Conditions of Approval No. 23 and 24 therefore present a significant change in the Project Description and impact analysis included in the FSEIR, because the FSEIR analyzed the Project’s construction impacts based on the sequential staging of construction of Phases 1, 2, and 3. This violates CEQA’s requirement that an EIR consider the “whole of an action,”⁵ and results in a failure to disclose potentially significant impacts.

1. Concurrent Construction of Project Phases is Likely to Result in Significant, Unmitigated Air Quality Impacts from Construction Emissions.

The FSEIR analyzed construction emissions separately for each phase of the Project, and did not analyze emissions for overlapping or concurrently constructed

² SWAPE’s technical comments and curriculum vitae are attached hereto as Exhibit A.

³ Mr. Smith’s technical comments and curriculum vitae are attached hereto as Exhibit B.

⁴ Mr. Cashen’s technical comments and curriculum vitae are attached hereto as Exhibit C.

⁵ 14 CCR § 15378; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.

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Project phases.⁶ The Staff Report also fails to quantify this potentially significant impact.

SWAPE previously commented on a nearly identical term that was proposed for the Development Agreement, which would have allowed construction of two or more Project phases to overlap, potentially allowing all three phases of the Project to be constructed at the same time. SWAPE conducted a quantitative analysis of the construction emissions associated with overlapping construction of the Project's three phases, similar to the scenario contemplated under revised Conditions 23 and 24. SWAPE's analysis demonstrated that, if the three Project phases were constructed concurrently, the Project would result in significant, unmitigated air quality impacts with respect to ROG and NOx emissions, as follows (ROGs = 57.1 lbs/day, NOx = 120 lbs/day)⁷:

Maximum Daily Construction Emissions (lbs/day)					
Activity	ROG	CO	NO_x	PM10	PM2.5
Phase I, Phase II, Phase III	57.1	190.7	120	29.1	11.5
BAAQMD Regional Threshold (lbs/day)	54	-	54	82	54
Threshold Exceeded?	<u>Yes</u>	No	<u>Yes</u>	No	No

SWAPE concluded that these emissions would exceed the 54 pounds per day (lb/day) significance thresholds set by BAAQMD, resulting in significant air quality impacts.⁸ The City failed to respond to these comments, and has not disputed SWAPE's conclusion regarding the significant air quality impacts that would result from concurrent construction of the Project phases.

Conditions 23 and 24 would create an almost identical result, allowing the Developer to begin development of Phase 2 and Phase 3 at any time, provided the prerequisite public improvements required for Phase 1 have been completed.

Each of the three Project phases involves substantial construction activities. The FSEIR explains that Phase 1 of the Project "would include removal of existing

⁶ DSEIR, p. 4.2-23 ("Emissions were estimated separately for each of the construction phases of the Project, and for both on-site crushing and off-site hauling scenarios under Phase I.")

⁷ See SWAPE June 21, 2017 Comments re Oak Knoll, p. 3.

⁸ *Id.*

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on site concrete pads and pipelines, creek improvements, grading and construction of roadways in the Village Center area of the site, development of the Village Center and construction of 232 townhomes and 100 single family homes as part of the residential development in the south and west portions of the site”⁹ Phase 2 involves the development of most of the Uplands neighborhoods, and Phase 3 involves development of the North Creekside neighborhood.¹⁰ Phase 2 and 3 would involve grading and construction for 263 homes and 340 homes, respectively, as well as roadway development in the east, west, and north areas of the site. The earthwork volume for cut and fill is anticipated to be approximately 1 million cubic yards in Phase 2 and approximately 430,000 cubic yards in Phase 3.¹¹

SWAPE explains that, if Conditions 23 and 24 were approved, it would effectively allow the Developer to concurrently develop Phase 2 and Phase 3 during construction of the 232 townhomes and 100 single family homes proposed in Phase 1, resulting in potentially significant construction emissions:¹²

As currently proposed, Conditions of Approval No. 23 and 24 would allow the same development schedule, save for the public improvements required for Phase 1, which would have to be constructed before any work is initiated on the other phases. Thus, construction emissions associated with concurrent Project phase construction under Conditions 23 and 24 would be equal to amounts we identified in our June 2017 comments (57.1 lbs/day of ROG, 190.7 lbs/day of CO, 120 lbs/day of NOx, 29.1 lbs/day of PM10, and 11.5 lbs/day of PM2.5), minus the emissions associated with those public improvements...It is likely that any reductions in construction emissions associated with separating out the construction of public improvements of Phase 1 may not reduce the Project’s ROG or NOx emissions to less than significant levels.

The FSEIR fails to separately quantify the construction emissions related to the public improvement portions of Phase 1 from the construction emissions associated with remaining portions of Phase 1 (construction of the townhomes and single family homes). The Staff Report similarly contains no such analysis. Thus,

⁹ FSEIR, p. 4.2-23.

¹⁰ FSEIR, p. 3-44.

¹¹ FSEIR, p. 4.2-23.

¹² Exhibit A, pp. 3-4.

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the City has failed to demonstrate that the air quality impacts that may occur if Conditions of Approval No. 23 and 24 are approved would be any less than the emissions identified in SWAPE's June 2017 comments. Moreover, the air quality mitigation measures currently proposed in the FSEIR do not address the increased emissions from overlapping construction phases. Therefore, the City has no evidence on which to conclude that the Project's construction air quality emissions would be mitigated to less than significant levels with the existing mitigation measures described in the FSEIR if Conditions of Approval No. 23 and 24 are approved.

This analysis must be performed in a revised FSEIR, and any significant construction air quality impacts must be mitigated to less than significant levels, before the Project can be approved.

2. Concurrent Construction of Project Phases is Likely to Result in Significant, Unmitigated Traffic Impacts.

Traffic engineer Daniel Smith similarly concludes that proposed Conditions of Approval No. 23 and 24 are likely to cause more severe construction-related traffic impacts than disclosed in the FSEIR.

Mr. Smith explains that, if Conditions 23 and 24 are approved, the Applicant may choose to front-end construction of the public improvements for Phase 1, and then simultaneously construct the remainder of Phase 1 together with Phases 2 and 3, resulting in considerably more severe construction traffic impacts than the impacts that were disclosed in the FSEIR.¹³ Mr. Smith explains that the FSEIR's traffic study analyzed a straight line growth in non-Project background traffic from the existing conditions to the Year 2040 projection. The traffic study then projected the growth of Project traffic related to the sequential time schedule for completion of the three phases of the Project, with Phase 1, Phase 2, and Phase 3 being completed at different times. Finally, the FSEIR selected the timing of the Project's required off-site traffic improvements based on the Project's projected contribution of traffic at each intersection during and following each Project construction phase, resulting in MMRP requirements that presently allow off-site traffic improvements to occur at later stages in the Project.¹⁴

¹³ Exhibit B, p. 2.

¹⁴ *Id.*

The FSEIR does not currently require the Project's off-site traffic mitigation measures to be constructed as part of the Project's Phase 1 public improvements. Hence, Conditions of Approval No. 23 and 24 would give the Applicant the right to develop the Project well in advance of the timeline for traffic mitigation measures that is currently defined in the FSEIR. Mr. Smith concludes that this revised phasing is likely to cause the public to experience significant traffic impacts that go unmitigated for years. Mr. Smith recommends that FSEIR be amended to require acceleration of traffic mitigation implementation to address the accelerated traffic impacts that are likely to occur under revised Conditions 23 and 24.

B. Barcelona Parcel

The Staff Report explains that Applicant is no longer pursuing purchase of the Barcelona Parcel. Barcelona Parcel is a 5.4 acre, City-owned parcel located in the southwest corner of the site near Barcelona Street and St. Andrews Road. It was formerly part of the Oakland Navy Medical Center, and had been considered for sale to Oak Knoll Acquisition LLC as part of an Exclusive Negotiating Agreement.¹⁵ Biologist Scott Cashen concludes that removal of the Barcelona Parcel requires additional revisions to the Projects Tree Removal Permit and the FSEIR.

1. Tree Removal.

The PUD, PDP, and VTTM have been revised to remove the 17 single-family residential units previously proposed on the Barcelona parcel from the Project's development program.¹⁶ However, the City failed to amend the Project's Tree Removal Permit Package to reflect this change. This is a critical flaw in the Project's proposed permits, for several reasons.

First, the Applicant's Tree Removal Plan identifies multiple "protected" trees that would be removed from the Barcelona parcel. Because the Staff Report fails to include an updated Tree Removal Plan, it is unclear how many trees the Applicant

¹⁵ Staff report, p. 3.

¹⁶ Staff Report, pp. 3, 4 ("The revised VTTM now shows the Barcelona parcel as remaining "Lands of the City of Oakland" and not a part of the Project.").

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intends to remove from the Barcelona parcel, and similarly, how many trees the City is permitting the Applicant to remove from the Barcelona parcel.¹⁷

Second, the City has agreed to designate a 50-foot-wide easement within the Barcelona parcel for public street purposes. According to Standard Condition of Approval #67: "the Applicant shall improve the 'Barcelona Road Reservation' as a public street across APN 048-6870-002...The improvements shall include tree removal, foundation removal, etc., to prepare the area for grading to create the roadbed, installation of utilities that are appurtenant to a public street, and installation of an appropriate emergency vehicle access gate or bollards." However, because the Barcelona parcel "has been removed from the Applicant's Project," it is unclear if the mitigation measures that are required for the Project (i.e., in the SEIR) would, or can, be implemented for construction of the road.

Finally, the map provided with the Staff Report suggests construction of the road through the Barcelona parcel would impact numerous protected trees. The Staff Report, however, provides no discussion of how impacts to those trees would be mitigated, especially given the inability to plant replacement trees within the Barcelona parcel.

These issues must be addressed, and the Tree Removal Permit Package revised to reflect these changes, before the Commission may consider recommending approval of the Project.

2. On-Site Mitigation.

The Applicant's Tree Removal Impact Mitigation Plan identifies a relatively large planting area within the Barcelona parcel that is intended as mitigation for the Project's impacts to biological resources. Because the Barcelona parcel is no longer a part of the Project, the Applicant can no longer use that planting area to help satisfy its on-site mitigation requirement under Mitigation Measure BIO-2. The Staff Report fails to address this issue, and fails to propose any replacement mitigation for the lost planting acreage. The FSEIR must be amended to require replacement mitigation that will assure full compliance with Mitigation Measure BIO-2.

¹⁷ Exhibit C, p. 2.
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II. THE FSEIR AND STAFF REPORT FAIL TO INCLUDE A FIRE SAFETY PLAN OR WILDFIRE PLAN

The Project's Standard Condition of Approval ("SCA") HAZ-4 defers the creation of a Fire Safety Plan and Wildfire Plan until after Project approval. Oakland Residents previously commented that this improperly defers development and disclosure of critical fire safety response plans based on a subsequent analysis of the severity of potential fire impacts. SCA HAZ-4 therefore relegates critical analysis of fire impacts a post-approval stage, out of sight of public input. This deferred analysis is prohibited by CEQA. The Staff Report fails to correct this omission.

The City must not allow any development Project in the Oakland Hills to be approved without comprehensive fire safety and response plans already in place. The current North Coast wildfires are a chilling reminder of the need for comprehensive fire preparation. The lack of proposed Fire Safety and Wildfire Plans for the Project jeopardizes not only the safety of the Project's future residents, but of all surrounding Oakland Hills communities that would be adversely impacted by fires in the vicinity of the Project site.

Oakland Residents are not the only commenters to raise this issue. The International Association of Firefighters, Local 55, filed comments on September 7, 2017 criticizing the City's reliance on deferred creation of the Fire and Wildfire Plans. The City's own Fire Prevention Bureau submitted a memo on September 29, 2017, listing over a dozen conditions which the Bureau recommends be required for the Project in order to ensure adequate site access and firefighting capability for fire personnel in the event of a fire emergency at the Project site. While proposed Condition 43 would require the Applicant to comply with the conditions identified in the Fire Prevention Bureau memo, these conditions do not represent the comprehensive Fire Safety and Wildfire Plans that are required to be prepared for the Project. Indeed, the fact that the Fire Prevention Bureau is continuing to add conditions to the Project's design to facilitate better fire response at this stage of the Project indicates that the City has not adequately addressed the need for the Fire Safety and Wildfire Plans required by SCA HAZ-4.

It would be irresponsible for the City to allow the Project to be approved without requiring the Applicant to first demonstrate that it has developed legally and functionally adequate fire safety plans. Oakland Residents urges the

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Commission to remand the Project to Staff to prepare comprehensive and legally adequate Fire Safety and Wildfire Plans before the Project can be recommended for approval.

III. THE VESTING TENTATIVE TRACT MAP FAILS TO COMPLY WITH CITY MUNICIPAL CODES

Oakland Municipal Code Title 16 (Subdivisions) designates the Planning Commission as the "Advisory Agency" for the City with regard to all subdivision approvals.¹⁸ Under the Subdivision Code, the Planning Commission must deny a proposed tentative map if it makes any one of the following findings, including, inter alia:

- A. That the proposed map is not consistent with applicable general and specific plans;
- B. That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans;...
- E. That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;
- F. That the design of the subdivision or the type of improvements is likely to cause serious public health or safety problems.¹⁹

The Project's proposed Vesting Tentative Tract Map ("VTTM") violates the Subdivision Code because it is inconsistent with the General Plan, and because the Project, as currently proposed to be implemented under the VTTM, is likely to cause unmitigated environmental damage and serious public health and safety problems.²⁰

The Project described in the VTTM is likely to result in violations of the several General Plan policies, notwithstanding the proposed zoning amendments. First, the Project's increased density will create incompatibility with some

¹⁸ Oak. Muni. Code § 16.04.050.

¹⁹ Oak. Muni Code Sec. 16.08.030.

²⁰ Oak. Muni Code Sec. 16.08.030(A), (B), (E), (F).

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neighboring residential density (which remains at 1 unit per 8000 sf). This would violate GP LU Policy 7.1 (Ensuring Compatible Development). Second, the Applicant's plan to buy affordable housing "credits" in another area of the City rather than include on-site affordable housing is inconsistent with GP LU Policy 6.1, which encourages development that provides housing to households with "a range of incomes." Third, the VTTM (and the Project generally) fails to comply with GP LU Policy 7.6, which requires subdivided parcels to minimize environmental impacts. Our FSEIR comments provided evidence documenting that Project has significant and inadequately mitigated environmental impacts. Additionally, GP HPE Policy 3.1 requires projects to "make all reasonable efforts to avoid or minimize adverse effects" on landmarked historic properties. The proposed VTTM would require relocation of Club Knoll in order to place it in the new "commercial zone." The proposed relocation will have significant adverse impacts on Club Knoll that the City has failed to mitigate. Thus, the VTTM is inconsistent with this policy. Finally, the Project's lack of fire safety plans, and the resulting lack of adequate fire safety measures being identified in the VTTM may cause serious public health and safety problems.

The Commission must require these issues to be corrected in a revised VTTM before it can recommend approval of the Project.

IV. CONCLUSION

For the reasons discussed herein, Oakland Residents respectfully requests that the Commission continue this hearing to a later date after the City has made all necessary revisions to, and recirculation of, the FSEIR and related Project permits.

Thank you for your consideration of these comments. Please place them in the record of proceedings for the Project.

Sincerely,



Christina M. Caro

CMC:acp

3426-025acp

Klein, Heather

From: Alisha C. Pember <apember@adamsbroadwell.com>
Sent: Wednesday, October 18, 2017 4:00 PM
To: nagrajplanning@gmail.com; EW.Oakland@gmail.com; jfearnopc@gmail.com; tlimon.opc@gmail.com; cmanusopc@gmail.com; amandamonchamp@gmail.com; jkmyres@gmail.com; Klein, Heather; sgregory@lamphier-gregory.com
Cc: Christina Caro
Subject: RE: Public Hearing Agenda Item No. 6: Oak Knoll Mixed Use Community Plan Project (Email 2 of 2)
Attachments: Exhibit A - SWAPE 10 17 Oak Knoll Supplemental Comments - clean.pdf; Exhibit B - D Smith SEM Oak Knoll comments 10-18-17 - clean.pdf; Exhibit C - Cashen comments Oak Knoll Staff Report - final.pdf

Good afternoon,

Please see the attached Exhibits A- C in support of Comments regarding Oak Knoll Mixed Use Community Plan Project.

A hard copy of our Comments will be hand delivered at this evening's hearing.

If you have any questions, please contact Christina Caro.

Thank you.

Alisha Pember

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EXHIBIT A



Technical Consultation, Data Analysis and
Litigation Support for the Environment

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October 17, 2017

Christina Caro
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South San Francisco, CA 94080

Subject: Comments on the Oak Knoll Mixed-Use Community Plan Project

Dear Ms. Caro:

We originally reviewed the Draft Supplemental Environmental Impact Report ("FSEIR") for the proposed Oak Knoll Mixed-Use Community Plan Project ("Project") and submitted an October 12, 2016 letter addressing the deficiencies in the SEIR's impact analyses. On June 18, 2017 the Oakland Planning Commission ("Commission") released a Staff Report for a June 21, 2017 hearing which included the Final SEIR ("FSEIR") and described several land use entitlements that the Project Applicant was seeking City approval for, including a Development Agreement ("DA"). On June 21, 2017, we submitted a comment letter in response to the June 21 Staff report demonstrating that the proposed DA would result in potentially significant air quality impacts that were not evaluated or addressed in the FSEIR.

The Commission has now released a supplemental Staff Report for its October 18, 2017 hearing ("Staff Report"), which states that the City and Project Applicant have mutually agreed to withdraw from further consideration of the DA, but that the City has incorporated several of the same topics into the Project's proposed Conditions of Approval. Our review of the Staff Report and proposed Conditions of Approval demonstrates that, although the Project Applicant is no longer proposing to enter into the DA with the City, the proposed Project phasing provisions included in the Project's revised Conditions of Approval are likely to result in almost identical significant air quality impacts as those identified in our June 21 letter. As such, an updated SEIR must be prepared in order to adequately evaluate the potentially significant air quality impacts resulting from the revised Conditions of Approval presented in the Staff Report.

Air Quality

Failure to Assess Air Quality Impacts from Overlapping Construction Phases

Our review of the key deal terms originally proposed for the DA in the June 2017 Staff Report demonstrated that approval of the DA would not only allow the Project Developer to develop any of the three phases of Project construction at any time, but it would also allow the Developer to potentially pursue all three phases of construction concurrently. The June 2017 Staff Report failed to include an air quality analysis that evaluated the Project's potential air quality impacts under these simultaneous construction scenarios – i.e. if construction of two or more Project phases were to overlap, or the worst-case scenario, in which construction of all three phases of the Project were to occur at the same time. We conducted a quantitative analysis of the construction emissions associated with overlapping construction of the Project's three phases. Our analysis demonstrated that, if the three Project phases were constructed concurrently, the Project would result in a significant, unmitigated air quality impacts with respect to ROG and NO_x emissions, as follows¹:

Maximum Daily Construction Emissions (lbs/day)					
Activity	ROG	CO	NO _x	PM10	PM2.5
Phase I, Phase II, Phase III	57.1	190.7	120	29.1	11.5
BAAQMD Regional Threshold (lbs/day)	54	-	54	82	54
Threshold Exceeded?	Yes	No	Yes	No	No

Our analysis demonstrated that the Project's daily emissions of ROG's would be 57.1 lbs/day, and daily emission of NO_x would be 120 lbs/day during simultaneous Project phase construction. These emissions would exceed the 54 pounds per day (lb/day) significance thresholds set by BAAQMD, resulting in significant air quality impacts.² The City failed to respond to these comments, and has not disputed our conclusion regarding the Project's significant impacts from concurrent phase construction.

¹ See SWAPE June 21, 2017 Comments re Oak Knoll, p. 3.

² *Id.*

The October 2017 Staff Report replaces the Project phasing term that had originally been proposed for the DA with similar Project phasing provisions in proposed Conditions of Approval 23 and 24. Conditions 23 and 24 provide that “the Developer shall have the right to develop the Project at such time as Developer deems appropriate” provided that the public improvements required in Phase I are complete.³ Phase I “public improvements” include roads, parks, bridges, trails, and Rifle Range Creek improvements.⁴ Although the Staff Report explains that “public improvements in subsequent phases are tied to certificates of occupancy for new residential development that is proximate to these public improvements,”⁵ that factor would not prevent the Developer from constructing Phases 2 and 3 concurrently with the remaining building developments of Phase 1 under the proposed Conditions of Approval. Rather, as worded, Conditions 23 and 24 would allow the Developer to begin development of Phase 2 and Phase 3 at any time, as long as the prerequisite public improvements required by the Conditions are complete. This could result in simultaneous construction of all three Project phases in almost the same manner as had been proposed for the DA. As we previously commented, this scenario that was not analyzed in the FSEIR and represents a significant departure from the FSEIR’s original Project Description, which explained that Phases 1, 2, and 3 would be constructed sequentially.

Each of the three Project phases involves substantial construction activities. The FSEIR explains that Phase 1 of the Project “would include removal of existing on site concrete pads and pipelines, creek improvements, grading and construction of roadways in the Village Center area of the site, development of the Village Center and construction of 232 townhomes and 100 single family homes as part of the residential development in the south and west portions of the site” (FSEIR, p. 4.2-23). Phase 2 involves the development of most of the Uplands neighborhoods, and Phase 3 involves development of the North Creekside neighborhood. (FSEIR, p. 3-44). Phase 2 and 3 would involve grading and construction for 263 homes and 340 homes, respectively, as well as roadway development in the east, west, and north areas of the site. The earthwork volume for cut and fill is anticipated to be approximately 1 million cubic yards in Phase 2 and approximately 430,000 cubic yards in Phase 3. (FSEIR, p. 4.2-23).

If Conditions 23 and 24 were approved, they would effectively allow the Developer to concurrently develop Phase 2 and Phase 3 during construction of the 232 townhomes and 100 single family homes proposed in Phase 1. In order to provide an analysis of the air quality impacts that may occur under the provisions of the Conditions of Approval, as is required by the California Environmental Quality Act (“CEQA”), the City should have prepared an updated air quality analysis for the FSEIR that models the Project’s construction-related emissions assuming that Phase 2 and Phase 3 of construction will occur at the same time as construction of the townhomes and single-family homes proposed in Phase 1. Neither the FSEIR nor the Staff Report include any such analysis.

³ Proposed Condition of Approval No. 23 and 24.

⁴ See Staff Report, p. 7.

⁵ *Id.*

Our June 20, 2017 air quality analysis addressed a substantially similar construction scenario, in which all three Project phases would be constructed at the same time. As currently proposed, Conditions of Approval No. 23 and 24 would allow the same development schedule, save for the public improvements required for Phase 1, which would have to be constructed before any work is initiated on the other phases. Thus, construction emissions associated with concurrent Project phase construction under Conditions 23 and 24 would be equal to amounts we identified in our June 2017 comments (57.1 lbs/day of ROG, 190.7 lbs/day of CO, 120 lbs/day of NOx, 29.1 lbs/day of PM10, and 11.5 lbs/day of PM2.5), minus the emissions associated with those public improvements.

The FSEIR fails to separately quantify the construction emissions related to the public improvement portions of Phase 1 from the construction emissions associated with remaining portions of Phase 1 (construction of the townhomes and single family homes). The Staff Report similarly contains no such analysis. Therefore, we are unable to determine the amount of the Phase 1 emissions identified in the FSEIR that are attributable to the public improvements alone. It is likely that any reductions in construction emissions associated with separating out the construction of public improvements of Phase 1 may not reduce the Project's ROG or NOx emissions to less than significant levels.

The City has failed to demonstrate that the air quality impacts that may occur if Conditions of Approval No. 23 and 24 are approved would be any less than the emissions we identified in our June 2017 comments. Moreover, the air quality mitigation measures currently proposed in the FSEIR do not address the increased emissions from overlapping construction phases. Therefore, the City has no evidence on which to conclude that the Project's construction air quality emissions would be mitigated to less than significant levels with the existing mitigation measures described in the FSEIR if Conditions of Approval No. 23 and 24 are approved. This analysis must be performed in a revised FSEIR, and any significant construction air quality impacts must be mitigated to less than significant levels, before the Project can be approved.

Failure to Prepare Updated Health Risk Assessment

Construction will also generate substantial toxic air contaminant ("TAC") emissions, such as diesel particulate matter ("DPM"), throughout the three phases of construction. It is indisputable that overlapping or concurrent construction of the Project's different phases would also increase the Project's TAC emissions, potentially above applicable thresholds of significance. This would result in a significant health risk to the public. The FSEIR and Staff Report fail to include an updated health risk assessment which analyzes TAC emissions from overlapping or concurrently constructed Project phases. This analysis is necessary to accurately determine the worst-case health risk impact from Project construction, and to ascertain whether additional mitigation measures are necessary to reduce the Project's health impacts to less than significant levels. This analysis must be conducted before the Project can be approved.

By failing to conduct a proper analysis of the Project's construction-related air quality impacts under the provisions of Conditions of Approval No. 23 and 24, the Project's impacts on local and regional air

quality are greatly underestimated. A revised FSEIR should be prepared with an updated air quality analysis that accurately describes the Project's air quality impacts.

Failure to Implement All Feasible Mitigation Measures to Reduce Emissions

The FSEIR finds that the Project's operational VOC emissions will exceed applicable thresholds and concludes that the Project will result in a significant and unavoidable operational air quality impact (p. Exhibit Q, p. 35). The FSEIR identifies several mitigation measures that the Project proposes to implement into the Project design in order to reduce this impact to a less than significant level. The FSEIR nevertheless concludes that

implementation of New Mitigation Measures AIR-2.1 and AIR 2.2 could reduce level of ROG emissions by the Project, but not to levels required to be below the significance criterion (54 pounds per day). Therefore, this impact would remain significant and unavoidable" (FSEIR, p. 4.2-28).

The FSEIR's conclusion that the Project's operational VOC emissions would be significant and unavoidable even after implementation of Mitigation Measure AIR-2.1 and AIR-2.2, however, is incorrect, because the FSEIR fails to require all feasible mitigation measures to reduce VOC impacts below a level of significance.⁶

Additional mitigation measures that could be implemented to reduce operational VOC emissions include, but are not limited to, the following:

- Use material that does not require paint;
 - Using materials that do not require painting is a common mitigation measure where VOC emissions are a concern. Interior and exterior surfaces, such as concrete, can be left unpainted.
- Use spray equipment with greater transfer efficiencies;
 - Various coatings and adhesives are required to be applied by specified methods such as electrostatic spray, high-volume, low-pressure (HVLP) spray, roll coater, flow coater, dip coater, etc. in order to maximize the transfer efficiency. Transfer efficiency is typically defined as the ratio of the weight of coating solids adhering to an object to the total weight of coating solids used in the application process, expressed as a percentage. When it comes to spray applications, the rules typically require the use of either electrostatic spray equipment or HVLP spray equipment. The SCAQMD is now able to certify HVLP spray applicators and other application technologies at efficiency rates of 65 percent or greater.⁷

⁶ http://www.valleyair.org/transportation/GAMAQI_3-19-15.pdf, p. 115 of 125

⁷ <http://www.aqmd.gov/home/permits/spray-equipment-transfer-efficiency>

When combined together, these measures offer a feasible way to effectively reduce the Project's operational VOC emissions, potentially to a less than significant level. As such, these mitigation measures should be considered in an updated SEIR to reduce these emissions to a less than significant level.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Hadley Nolan