

# Comment Letter O-1

## ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

### ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 589-5062

lhorton@adamsbroadwell.com

### SACRAMENTO OFFICE

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

TEL: (916) 444-6201

FAX: (916) 444-6209

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

July 6, 2016

### VIA OVERNIGHT and ELECTRONIC MAIL

Debby Fernandez  
Project Planner  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Email: [dfernandez@santacclaraca.gov](mailto:dfernandez@santacclaraca.gov)

Re: Comments on the Proposed Initial Study/Mitigated Negative Declaration for the Moonlite Lanes Apartments Project (PLN2015-11360 / CEQ2015-01198)

Dear Ms. Fernandez:

These comments are submitted on behalf of **Santa Clara Residents for Responsible Development** regarding the Initial Study/Mitigated Negative Declaration ("IS/IS/MND") prepared by the City of Santa Clara ("City") for the Moonlite Lanes Apartments Project ("Project"), proposed by Prometheus Real Estate Group, Inc. ("Applicant"). The Project involves demolishing an existing bowling alley and redeveloping the site with a new four-story apartment complex consisting of 158 residential units and a six-level parking garage with one level of parking below grade for a total of 268 parking spaces.

As explained more fully below, the IS/MND prepared for the Project is significantly flawed and does not comply with the requirements of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 *et seq.* The City may not issue permits for the Project until the City prepares an environmental impact report ("EIR") that adequately analyzes the Project's potentially significant impacts related to air quality, water resources, geology and soil, and inconsistency with the General Plan, and incorporates all feasible mitigation measures to minimize those impacts.

3597-002rc

July 6, 2016

Page 2

## I. STATEMENT OF INTEREST

Santa Clara Residents for Responsible Development ("Coalition") is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. The association includes Eulalio Soto, Matthew Hernandez, Ricci Herro, the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393 and Sheet Metal Workers Local 104, and their members and their families who live and/or work in the City of Santa Clara and Santa Clara County.

The individual members of the Coalition live, work, and raise their families in the City of Santa Clara and Santa Clara County. They would be directly affected by the Project's impacts. Individual members may also work on the Project itself. They will therefore be first in line to be exposed to any health and safety hazards that may exist on the Project site.

The organizational members of the Coalition also have an interest in enforcing the City's planning and zoning laws and the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there. Indeed, continued degradation can, and has, caused restrictions on growth that reduce future employment opportunities. Finally, the Coalition's members are concerned about projects that present environmental and land use impacts without providing countervailing economic and community benefits.

## II. SUMMARY OF COMMENTS

Based on our review of the IS/MND and its supporting documents, we have concluded that the IS/MND does not comply with the basic requirements of CEQA. The IS/MND contains many errors and fails to meet the informational and public participation requirements of CEQA because it does not provide evidence to support the City's environmental conclusions. Moreover, substantial evidence exists that the Project may result in significant impacts, and mitigation and avoidance measures that are provided do not comply with CEQA. These potentially significant impacts are related to air quality, water resources, geology and soils, and

July 6, 2016

Page 3

inconsistency with the General Plan. Therefore, the City cannot approve an IS/MND and must instead prepare an EIR. All of these issues are discussed more fully below.

We reviewed the IS/MND for the Project with the assistance of air quality and hydrological experts Matthew Hagemann and Jessie Jaeger of SWAPE.<sup>1</sup> Their attached technical comments with copies of their *curricula vitae* are submitted in addition to the comments in this letter. Accordingly, they must be addressed and responded to separately.

### III. AN EIR IS REQUIRED

CEQA requires disclosure of the scope and severity of a project's environmental impacts where such information is necessary to allow decisionmakers and the public to understand the environmental consequences of the project.<sup>2</sup> Furthermore, CEQA requires lead agencies to analyze any project with potentially significant environmental impacts in an EIR.<sup>3</sup> "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government."<sup>4</sup> The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."<sup>5</sup>

CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.<sup>6</sup> 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

---

<sup>1</sup> See Letter from Matt Hagemann and Jessie Jaeger ("Hagemann Comments"), to Laura Horton re: Comments on the Moonlight Lanes Apartments Project, July 1, 2016, **Attachment A**.

<sup>2</sup> See *Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1382; see also *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 93-94.

<sup>3</sup> See CEQA § 21000; CEQA Guidelines § 15002.

<sup>4</sup> *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).

<sup>5</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>6</sup> See CEQA § 21100.

July 6, 2016  
Page 4

supports a fair argument that a project may have a significant effect on the environment.<sup>7</sup>

In contrast, a mitigated negative declaration (“MND”) may be prepared instead of an EIR only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

(1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur*, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may have a significant effect on the environment*.<sup>8</sup>

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”<sup>9</sup> The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.<sup>10</sup> An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.<sup>11</sup>

---

<sup>7</sup> 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.

<sup>8</sup> CEQA § 21064.5 (emphasis added).

<sup>9</sup> E.g. *Communities For a Better Env’t. v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320.

<sup>10</sup> *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

<sup>11</sup> *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”).

July 6, 2016  
Page 5

According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064(f):

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”<sup>12</sup> Deferring formulation of mitigation measures to post-approval studies is generally impermissible.<sup>13</sup> Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.<sup>14</sup> If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.<sup>15</sup> The Courts have held that simply requiring a project applicant to obtain a future report and then complying with any recommendations that may be made based upon the report is insufficient to meet the standard for properly deferred mitigation.<sup>16</sup>

## O-1.1

With respect to this Project, the IS/MND fails to satisfy the basic purposes of CEQA. The IS/MND fails to adequately disclose, investigate, and analyze the Project’s potentially significant impacts, and fails to provide substantial evidence to conclude that impacts will be mitigated to a less-than-significant level. Because the IS/MND lacks basic information regarding the Project’s potentially significant

<sup>12</sup> CEQA Guidelines § 15126.4(a)(2).

<sup>13</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; CEQA § 21061.

<sup>14</sup> *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical Gardens Foundation v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604, fn. 5.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*



July 6, 2016  
Page 6

**O-1.1  
cont'd**

impacts, the IS/MND's conclusion that the Project will have a less-than-significant impact on the environment is unsupported.<sup>17</sup>

**A. General Plan Inconsistency**

As explained in the IS/MND, the Project proposes a General Plan Amendment ("GPA") to change the land use designation from "Regional Mixed Use" ("RMP") to "High Density Residential" ("HDR") as well as a rezone from "Community Commercial" to "Planned Development."<sup>18</sup> The HDR designation allows up to 50 residential dwelling units per acre (DU/acre); however, the Project proposes to construct apartments at a density of 55 DU/ac.<sup>19</sup> The IS/MND addresses this discrepancy by stating that the Applicant is requesting the use of General Plan Discretionary Policy 5.5.1-P5, which allows a 10 percent increase in residential density for projects within 0.25 mile of a transit corridor. The IS/MND points to the planned El Camino Real bus rapid transit ("BRT") service as the transit corridor, thus concluding that the Project "would be consistent with the General Plan upon approval of the GPA."<sup>20</sup>

**O-1.2**

However, this is misleading for two reasons. First, the El Camino Real BRT project has not yet been approved and the CEQA analysis has not been completed. The controversial project would not be built for many years, if at all.<sup>21</sup> The City may not rely on a nonexistent project to qualify the Applicant for a density bonus above the applicable General Plan designation. Second, the General Plan Policy actually states that "[f]or properties within one-quarter mile of a *multimodal transit stop*, allow a ten percent increase in residential density... provided that the increased density and/or intensity is compatible with planned uses on neighboring properties and consistent with other applicable General Plan policies."<sup>22</sup> The City must specify an *existing* multi-modal transit stop, rather than a nonexistent transit

<sup>17</sup> CEQA § 21064.5.

<sup>18</sup> IS/MND, p. iii.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Santa Clara Valley Transportation Authority, <http://www.vta.org/projects-and-programs/brt-el-camino-real-brt-project>; Roadshow: El Camino Real bus plan comes under scathing criticism, [http://www.mercurynews.com/mr-roadshow/ci\\_28833791/roadshow-el-camino-real-bus-plan-comes-under](http://www.mercurynews.com/mr-roadshow/ci_28833791/roadshow-el-camino-real-bus-plan-comes-under); Joe Simitian: Why VTA should abandon El Camino Bus Rapid Transit project, [http://www.mercurynews.com/opinion/ci\\_29360711/joe-simitian-why-vta-should-abandon-el-camino](http://www.mercurynews.com/opinion/ci_29360711/joe-simitian-why-vta-should-abandon-el-camino).

<sup>22</sup> General Plan Goals and Policies, <http://santaclaraca.gov/home/showdocument?id=13934> (emphasis added).

July 6, 2016  
Page 7

**O-1.2**  
**cont'd**

corridor project, within a quarter mile of the Project that would qualify it for a density increase. Otherwise the Project does not qualify under General Plan Discretionary Policy 5.5.1-P5 and would be inconsistent with the General Plan even with approval of the GPA. The City has failed to provide substantial evidence that the Project would be consistent with the General Plan as required under CEQA.

### **B. Air Quality and Public Health Impacts**

Under CEQA a project may have significant impacts if it “[v]iolate[s] any air quality standard or contributes substantially to an existing or projected air quality violation” or “[e]xpose[s] sensitive receptors to substantial pollutant concentrations.”<sup>23</sup> In order to determine the Project’s air quality impact, the IS/MND relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2013.2.2 (“CalEEMod”).<sup>24</sup> CalEEMod provides recommended default values based on site specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but CEQA requires that such changes be justified by substantial evidence.<sup>25</sup>

Once all the values are input into the model, the Project’s construction and operational emissions are calculated, and “output files” are generated. These output files, which can be found in Appendix C of the IS/MND (Air Quality and Greenhouse Gas Emissions Assessment and Addendum Memo), disclose to the reader what parameters were utilized in calculating the Project’s air pollution emissions, and make known which default values were changed as well as provide a justification for the values selected.<sup>26</sup>

SWAPE reviewed the Project’s CalEEMod output files and found that several of the values input into the model are inconsistent with information disclosed in the IS/MND and AQ/GHG Assessment.<sup>27</sup> Specifically, SWAPE found that the model is flawed for three reasons.

<sup>23</sup> Initial Study/Mitigated Negative Declaration (“IS/MND”), p. 7.

<sup>24</sup> CalEEMod website, <http://www.caleemod.com/>.

<sup>25</sup> CalEEMod User Guide, pp. 2, 9, <http://www.caleemod.com/>.

<sup>26</sup> *Id.*, at 7, 13.

<sup>27</sup> SWAPE Comments, p. 2.

July 6, 2016  
Page 8

**O-1.3**

First, the model's intensity factor value is unsubstantiated. CalEEMod assumes a default CO<sub>2</sub> intensity factor of 641.35 pounds per megawatt-hour (lb/MWhr), which is used to estimate the CO<sub>2</sub> emissions generated from electricity usage during Project operation. However, the IS/MND adjusted the intensity factor without adequate justification. SWAPE finds that the City is lacking verifiable information that would support the change from a default value, thus failing to provide substantial evidence as required under CEQA. SWAPE concludes that "by reducing the CO<sub>2</sub> intensity factor, the Project's operational GHG emissions are artificially reduced, and are thus, underestimated."<sup>28</sup>

**O-1.4**

Second, the IS/MND incorrectly reduces the construction trip length. SWAPE finds that the hauling trip length for the Paving phase of construction was reduced from the default value of 20 miles to 7.3 miles without adequate justification. The IS/MND merely states in the comments of the output files that the trip length is representative of the "vendor trip length for asphalt."<sup>29</sup> However, SWAPE concludes that this bare assertion does not constitute substantial evidence for the change from a default value, as required under CEQA.<sup>30</sup> SWAPE further concludes that "[w]ithout providing this evidence, the trip length inputted in the model cannot be verified and is therefore unreliable [and the] emissions generated by construction-related mobile sources are greatly underestimated."<sup>31</sup>

**O-1.5**

Third, the IS/MND incorrectly reduced the grading acreage. The CalEEMod output file demonstrates that emissions were modeled assuming five acres of grading. SWAPE explains that this value was reduced from the default value of 15.75 acres calculated in CalEEMod.<sup>32</sup> As with the other default changes, SWAPE concludes that without substantial evidence to support the reduction in grading acreage, the "unsubstantiated" model "cannot be verified and is unreliable."<sup>33</sup> SWAPE further concludes that "[b]y reducing the grading acreage, emissions of air pollutants that result from construction are greatly underestimated."

Therefore, that the City's air quality/GHG analysis for the Project is flawed and cannot be relied upon because it underestimates harmful emissions. SWAPE

---

<sup>28</sup> *Id.*, at 3.

<sup>29</sup> IS/MND, Appendix C, p. 94.

<sup>30</sup> SWAPE Comments, p. 3.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*, at 3 – 4.

<sup>33</sup> *Id.*, at 4.



July 6, 2016

Page 9

O-1.5  
cont'd

concludes that an updated air quality/GHG analysis should be prepared in an EIR, and if necessary, additional mitigation should be implemented to reduce the Project's air quality and GHG impacts.<sup>34</sup>

### C. Hydrological Impacts

O-1.6

Under CEQA, a project may have a significant impact if it would violate any water quality standards or waste discharge requirement, create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff, or otherwise substantially degrade water quality.<sup>35</sup> If a lead agency's mitigation for potentially significant impacts merely relies on a condition that requires compliance with other regulations, then the lead agency must provide "meaningful information reasonably justifying an expectation of mitigation of environmental effects."<sup>36</sup> Furthermore, as under CEQA and applicable case law, the City must disclose the significance of all impacts and provide separate and enforceable mitigation.<sup>37</sup> The IS/MND fails to adequately disclose, analyze, and mitigate the Project's potentially significant impacts on hydrological resources, as required by CEQA, for three reasons.

First, the IS/MND fails to adequately describe the existing setting against which potentially significant impacts are measured.<sup>38</sup> The Project proposes both above-ground and underground parking to accommodate 268 parking spaces.<sup>39</sup> However, the IS/MND fails to fully disclose the potential depth of the groundwater table at the Project site. The IS/MND does mention that groundwater was encountered during the geotechnical investigation at 14.5 feet below ground surface ("bgs"). However, as SWAPE notes,<sup>40</sup> this is misleading because the geotechnical report makes it clear that this measurement "may not represent the stabilized levels that can be higher than the initial levels encountered. Explorations performed during investigations at nearby sites encountered ground water as shallow as 9½ feet below existing grades."<sup>41</sup> Furthermore, the report states that

---

<sup>34</sup> *Id.*, at 3.

<sup>35</sup> IS/MND, p. 38.

<sup>36</sup> *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1355.

<sup>37</sup> *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645.

<sup>38</sup> CEQA Guidelines 15125.

<sup>39</sup> IS/MND, p. 1.

<sup>40</sup> SWAPE Comments, p. 4.

<sup>41</sup> IS/MND, Appendix E, p. 4.

July 6, 2016  
Page 10

“[h]istoric high ground water levels are mapped at depths ranging from about 9 to 10 feet below current grades.”<sup>42</sup> The IS/MND should acknowledge that 14.5 feet is not the most accurate bgs measurement that applies to the Project site.

**O-1.6**  
**cont'd**

Second, the IS/MND fails to sufficiently describe the Project to enable an analysis of the Project’s potentially significant impacts on hydrological resources. Specifically, the IS/MND fails to clearly describe whether the Project proposes dewatering during construction of the parking garage. The Project requires excavation for a level of underground parking to about 9 feet below surface,<sup>43</sup> which is where groundwater may be encountered, as explained above. Thus substantial evidence shows that the Project would likely require a dewatering component during both construction and operation. Indeed, the geotechnical report states that “[d]ewatering and shoring of the below-grade parking structure and utility trenches may be required.”<sup>44</sup> However, the IS/MND Project description and significance determinations are silent on this issue. Dewatering from any project in this area must be disclosed and any potentially significant impacts to hydrological resources from dewatering activities must be analyzed in an EIR. The IS/MND’s failure to describe this aspect of the Project violates CEQA’s requirement to adequately describe the Project and analyze potential impacts.

Third, the IS/MND does not sufficiently analyze and mitigate the Project’s potentially significant impacts to hydrological resources. The IS/MND acknowledges the potential for hydrological impacts, stating that “[c]onstruction activities have the potential to result in runoff that contains sediment and other pollutants that could degrade water quality if not properly controlled.” Furthermore, SWAPE states that construction dewatering specifically has the potential to introduce pollutants into the storm drain systems.<sup>45</sup> For example, groundwater from dewatering could contain sediment that, if not properly managed, could be discharged to the storm drain system. In addition, shallow soil contamination could introduce further contamination to storm drains and other water bodies. The City is required to assess both the discharge quantity and quality based on the Project, the site and groundwater characteristics. SWAPE concludes that City should disclose the necessity of dewatering, potential impacts, and any mitigation that would be required. Furthermore, the City should identify potential

---

<sup>42</sup> *Id.*

<sup>43</sup> IS/MND, p. 40.

<sup>44</sup> IS/MND, Appendix E, p. 9.

<sup>45</sup> SWAPE Comments, p. 4.

July 6, 2016

Page 11

contaminants in water generated during dewatering activities, which can be identified through groundwater sampling prior to excavation and grading according to SWAPE.<sup>46</sup>

However, rather than providing a detailed analysis of potential impacts and mitigation, the IS/MND merely concludes that “the project would adhere to the NPDES permitting [including preparing a SWPPP] and incorporate design measures to reduce pollutant discharge to the maximum extent practicable . . . . Therefore, this impact would be less than significant and no mitigation measures are required.”<sup>47</sup> Thus, the IS/MND merely assumes, without further justification, that regulations outside of the CEQA process would mitigate impacts to less than significant levels. CEQA prohibits this approach. In *Leonoff v. Monterey County Bd. of Supervisors*,<sup>48</sup> the court held that conditions requiring compliance with regulations are proper “where the public agency had meaningful information reasonably justifying an expectation of mitigation of environmental effects.” Furthermore, the IS/MND assumes that design features, without further description, would mitigate impacts. However, under CEQA and *Lotus v. Department of Transportation*,<sup>49</sup> the City must disclose the significance of all impacts and provide separate and enforceable mitigation.

## O-1.6 cont'd

In *Lotus*, an EIR approved by CalTrans contained several measures “[t]o help minimize potential stress on the redwood trees” during construction of a highway.<sup>50</sup> Although those measures were clearly separate mitigation, the project proponents considered them “part of the project,” and the EIR concluded that because of the planned implementation of those measures, similar to this Project’s planned implementation of unidentified design measures to reduce hydrological impacts, no significant impacts were expected.<sup>51</sup> However, the Appellate Court found that because the EIR had “compress[ed] the analysis of impacts and mitigation measures into a single issue, the EIR disregard[ed] the requirements of CEQA.”<sup>52</sup> The Court continued, stating “[a]bsent a determination regarding the significance of the impacts... it is impossible to determine whether mitigation measures are required

---

<sup>46</sup> *Id.*

<sup>47</sup> IS/MND, p. 40.

<sup>48</sup> *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1355.

<sup>49</sup> *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645.

<sup>50</sup> *Id.*, at 650.

<sup>51</sup> *Id.*, at 651.

<sup>52</sup> *Id.*, at 656.

July 6, 2016  
Page 12

or to evaluate whether other more effective measures than those proposed should be considered.”<sup>53</sup>

Here, the City failed to provide any information explaining how compliance with the outside regulations would reduce the Project’s potentially significant impacts on hydrological resources to less than significant. The City also failed to require separate and enforceable mitigation but instead relied on design measures that were not fully described and identified as enforceable mitigation measures through the CEQA process.<sup>54</sup>

**O-1.6**  
**cont'd**

CEQA requires the City to describe the environmental setting for hydrological resources, describe all components of the Project that may have a significant impact, and adequately analyze and require mitigation for all potentially significant impacts related to water resources. The City did none of these things. Without additional information and analysis, the Project’s impacts to workers, the public, and water resources cannot be determined. The City must describe potential dewatering activities and other potential impacts to hydrological resources so the public and decision makers can fully assess the Project’s impacts on the environment.

#### **D. Geology and Soil Impacts**

Under CEQA, a project may have a significant impact if they “[e]xpose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving... [s]eismic-related ground failure, including liquefaction” or are “located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse.”<sup>55</sup>

The IS/MND clearly states that the Project is sited in a liquefaction zone,<sup>56</sup> which is a phenomenon that is caused by earthquake shaking where wet sand can become liquid-like when strongly shaken. The liquefied sand may flow and the ground may move and crack, causing damage to surface structures and

---

<sup>53</sup> *Id.*

<sup>54</sup> IS/MND, p. 40.

<sup>55</sup> IS/MND, p. 26.

<sup>56</sup> IS/MND, p. 28.



July 6, 2016

Page 13

underground utilities.<sup>57</sup> The IS/MND recognizes the risk related to liquefaction, stating specifically that liquefaction is considered a significant hazard in the City and requires the Project to complete a site-specific geotechnical investigation and comply with applicable regulations. The City then concludes that there would be less than significant impacts related to liquefaction.<sup>58</sup> The City's conclusion in the IS/MND is unsupported and violates CEQA.

**O-1.7**

Under CEQA, deferral of the formulation of mitigation measures to post-approval studies without specific performance standards is generally impermissible.<sup>59</sup> A lead agency cannot defer to a later date its responsibility for developing feasible mitigation measures, with measurable standards for compliance. This must be done in the IS/MND itself, not after Project approval. An agency may not call for an unspecified mitigation plan to be devised based on future studies, or rely on mitigation measures of uncertain efficacy or feasibility. The proposed mitigation in the geotechnical investigation is of uncertain efficacy and feasibility, and the City cannot put off a full assessment until a later review.

Since the City clearly acknowledges that the Project may result in a potentially significant impact related to liquefaction, the City's failure to adequately mitigate that impact violates CEQA as a matter of law. The City must analyze the Project's potentially significant impacts related to liquefaction and identify feasible mitigation measures with specific performance standards to reduce those impacts in an EIR.

#### IV. CONCLUSION

The City failed to adequately describe the Project, failed to adequately describe the existing setting upon which to measure potentially significant impacts and failed to adequately evaluate and require mitigation for the Project's potentially significant impacts on air quality, hydrological resources and geology and soils. Furthermore, the City improperly concluded that the Project is consistent with the General Plan. These fatal flaws result in a violation of CEQA.

<sup>57</sup> USGS, <http://earthquake.usgs.gov/regional/nca/liquefaction/>.

<sup>58</sup> IS/MND, p. 29.

<sup>59</sup> *Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645; *Preserve Wild Santee v City of Santee* (2012) 210 CA4th 260.

July 6, 2016

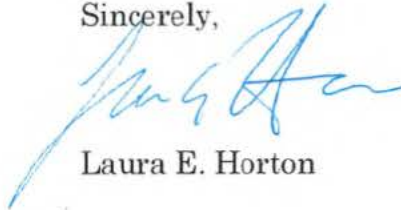
Page 14

**O-1.7**  
**cont'd**

We urge the City to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing an EIR for the Project. In this way, the City and the public can ensure that all adverse impacts of the Project are mitigated to the full extent feasible and required by law.

Thank you for your consideration of these comments.

Sincerely,



Laura E. Horton

LEH:ric

Attachments