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Via Email and Overnight Mail

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Re: Comments on the Draft Environmental Impact Report – 777 West Middlefield Road Project (SCH #2018032072)

Dear Ms. Pancholi:

We are writing on behalf of Mountain View Residents for Responsible Development ("Mountain View Residents") to provide comments on the Draft Environmental Impact Report ("DEIR") prepared by the City of Mountain View ("City") for the 777 West Middlefield Road Project ("Project"). Fortbay Mountain View LLC ("Applicant") is proposing to demolish an existing 9.84-acre residential site containing 208 units, and construct a 716-unit apartment complex. The apartments would be distributed among three separate buildings, two of which would include subterranean parking garages containing 878 vehicle parking spaces. The total amount of new uses is approximately 782,512 square feet. The Project site is located on one parcel (APN 153-24-005) located between West Middlefield Road and North Shoreline Boulevard, at 777 West Middlefield Road.

The Applicant is requesting the following approvals for the Project: a General Plan Amendment to amend the site designation from Medium Density Residential to High Density Residential; a Zoning Map Amendment from R3-2 (Multiple-Family) to a new customized zoning designation of P (Planned Community); a Planned Community and Development Review Permit; a Heritage Tree Removal Permit for the removal of 127 Heritage Trees, a Site and Architectural Plan Review approval, a Demolition Permit, and a Subdivision Map.

Based on our review of the DEIR and related Project documents, we have determined that the DEIR does not comply with the requirements of the California Environmental Quality Act ("CEQA"). First, the City underestimates the Project's construction and operational emissions of criteria pollutants and thus lacks substantial evidence to support its conclusion that air quality impacts would be less than significant. Second, the City failed to properly disclose and analyze the Project's potential public health impacts to nearby sensitive receptors from exposure to emissions of toxic air contaminants ("TACs"), which substantial evidence shows will be significant. Third, the DEIR underestimates the Project's traffic impacts and thus lacks substantial evidence to support its conclusion that traffic impacts would be less than significant. For each of these reasons, the City may not approve the Project until a revised DEIR is prepared and re-circulated for public review and comment.

These comments were prepared with the assistance of technical experts Matt Hagemann and Kaitlyn Heck of Soil Water Air Protection Enterprise ("SWAPE"), and Daniel Smith of Smith Engineering & Management ("Smith Engineering").[1] SWAPE's comments and curriculum vitae are attached hereto as Attachment 1, and Smith Engineering's comments and curriculum vitae are attached hereto as Attachment 2. Their comments are fully incorporated in these comments and are submitted to the City in addition to the comments in this letter. Accordingly, the City must address and respond to the technical experts' comments separately.[2]

I. STATEMENT OF INTEREST

Mountain View Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public health and environmental impacts associated with the Project. Mountain View Residents includes the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483,

[1] Attachment 1: Letter from Matt Hagemann & Kaitlyn Heck, SWAPE, to Kyle Jones, Adams Broadwell Joseph & Cardozo re: Comments on the 777 West Middlefield Road Project (January 10, 2019) ("SWAPE Comments"); Attachment 2: Letter from Dan Smith, Smith Engineering & Management, to Kyle Jones, Adams Broadwell Joseph & Cardozo re: 777 West Middlefield Road DEIR (SCH # 2018032072) (January 10, 2019) ("Smith Engineering Comments").

[2] Mountain View Residents reserves the right to supplement these comments at later hearings and proceedings related to 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.

and their members and families, and other individuals that live and/or work in the City of Mountain View and Santa Clara County.

Individual members of Mountain View Residents include Jonathan R. Gonzales and Andrew R. Quiroz who work, recreate and raise their families in the City of Mountain View. They would be directly affected by the Project's adverse environmental and public health impacts. Individual members may also work on the Project itself and, therefore, will be first in line to be exposed to any health and safety hazards that exist onsite. Mountain View Residents have a strong interest in enforcing 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 City of Mountain View and Santa Clara County, and by making it less desirable for businesses to locate and people to live there.

II. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR, except in limited circumstances.[3] The EIR is the very heart of CEQA.[4] "The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[5]

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential, significant environmental effects of a project.[6][7] CEQA's purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. In this respect, an EIR "protects not only the environment but also informed self-government."[8] The EIR has been described as "an environmental 'alarm bell' whose

[3] See, e.g., Pub. Resources Code ("PRC") § 21100.
[4] *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.
[5] *Comtys. for a Better Env' v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 ("*CBE v. CRA*").
[6] 14 Cal. Code Regs. ("CEQA Guidelines"), § 15002, subd. (a)(1).
[7] See, e.g., PRC § 21100.
[8] *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[9]

In furtherance of CEQA's purpose as an informational tool, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[10] CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.[11] In addition, an adequate EIR must contain the facts and analysis necessary to support its conclusions.[12]

The second purpose of CEQA is to require public agencies to avoid or reduce environmental damage when possible by requiring appropriate mitigation measures and through the consideration of environmentally superior alternatives.[13] The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to identify ways that environmental damage can be avoided or significantly reduced. To that end, if an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize those impacts.[14] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.[15] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."[16] As the courts have explained, "a

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[9] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[10] CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[11] PRC § 21100, subd. (b)(1); CEQA Guidelines § 15126.2, subd. (a).
[12] See *Citizens of Goleta Valley* 52 Cal.3d at 568.
[13] CEQA Guidelines § 15002, subds. (a)(2)-(3); see also, *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, 400.
[14] PRC §§ 21002.1, subd. (a), 21100, subd. (b)(3).
[15] PRC §§ 21002-21002.1.
[16] *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), *quoting, Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

prejudicial abuse of discretion" occurs "if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process."[17]

III. The DEIR's Conclusion that Air Quality Impacts Would be Less Than Significant Is Not Supported by Substantial Evidence

An EIR must fully disclose all potentially significant impacts of the project under consideration. Furthermore, when making a determination as to the significance of project impacts, the lead agency's determination must be supported by accurate scientific and factual data for each impact.[18] An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[19]

A. The Input Parameters Used in the DEIR's Emissions Model Are Not Supported by Substantial Evidence

The DEIR states that the Project's construction and operational emissions were calculated using the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod").[20] When modeling a project's emissions, CalEEMod provides the user with recommended default values based on information such as land use type, meteorological data, project type, and typical equipment associated with the project type.[21] The user may then replace default values when more site-specific information is available; however, any changes to CalEEMod defaults must be supported by substantial evidence.[22] Once the model is run, CalEEMod generates "output files" for each model that reveal the parameters used in the model.

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[17] *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.
[18] CEQA Guidelines § 15064(b).
[19] *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.
[20] DEIR, p. 3.2-17 and Appendix 3.2-1.
[21] SWAPE Comments at p. 1.
[22] *Id.* (citing CalEEMod User Guide, p. 2, 9, http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4).

SWAPE reviewed the CalEEMod output files for the Project included in DEIR Appendix 3.2-1.[23] In reviewing the CalEEMod output files, SWAPE found several of the input parameters used to calculate the Project's emissions are inconsistent with information provided in the DEIR. As SWAPE's comments explain, these changes are not supported by substantial evidence and resulted in an underestimation of the Project's emissions.[24]

First, the Project's CalEEMod output files show that the number of vehicle parking spaces was underestimated in the air model.[25] The Project description states that the subterranean parking garage would have "two levels with a total of 878 parking spaces".[26] In reviewing the CalEEMod output files, however, SWAPE found that the air model was prepared assuming only 847 parking spaces would be constructed, which is less than the actual Project size.[27] This discrepancy is significant because the land use type and size are used by CalEEMod to determine emission factors that go into the model's calculations.[28] Thus, because the number of vehicle parking spaces in the air model is smaller than what is proposed for the actual Project, the construction and operational emissions are underestimated.[29]

Second, SWAPE raises substantial questions about the feasibility and enforceability of Mitigation Measure MM AQ-1, which requires that all off-road diesel-powered construction equipment shall be equipped with EPA "Tier 4 Final" engines.[30] These cleaner-burning engines were only recently phased in under EPA regulations that apply to newly manufactured construction equipment, not existing equipment. A recent study found that in the entire state of California *only 4%* of off-road diesel construction equipment is equipped with Tier 4 Final engines.[31] Almost half of all equipment in the state does not have emission-reducing engines, and the vast majority of remaining equipment has Tier 2 or Tier 3 engines.[32] It is unreasonable to assume that the Project Applicant will be able to procure an entire fleet of construction equipment with Tier 4 Final engines for this Project. Because

[23] *Id*. at pp. 2-7.
[24] *See id*. at pp. 2-6.
[25] *Id*. at p. 2.
[26] DEIR at p. 2-14.
[27] SWAPE Comments at p. 2.
[28] *Id*. at p. 2.
[29] *Id*. at p. 2.
[30] DEIR at p. 3.2-22; SWAPE Comments at pp. 3-5.
[31] *Id.* at pp. 4-5.
[32] *Id.*

the feasibility of MM AQ-1 is not supported, the DEIR cannot claim emissions reductions from this measure.

Third, SWAPE found that the number of vehicle trips made by construction workers and vendors was manually reduced in the model by a substantial amount, resulting in a significant underestimation of construction emissions without any factual justification.[33] DEIR Appendix 3.2-1 includes a table listing the estimated vendor and worker trips during construction.[34] However, SWAPE found that rather than inputting the presumed number of trips in the CalEEMod model as the CalEEMod User's Guide instructs, the Project emissions model was significantly modified to reduce those trips.[35] In the case of vendor trips, the reduction was made from 420 trips to only 5 trips, and in the case of worker trips, the reduction was made from 2,138 trips to only 575 trips.[36] The DEIR provides no justification for these reductions. SWAPE concludes that "these changes are completely unsubstantiated and significantly underestimate the Project's construction emissions."[37]

Fourth, the number of pieces of construction equipment required to build the Project, and the horsepower of that construction equipment, were manually reduced in the model by a substantial amount, resulting in a further significant underestimation of construction emissions without any justification.[38] DEIR Appendix 3.2-1 includes a table listing the estimated number and horsepower of off-road construction equipment.[39] However, SWAPE found that rather than inputting the presumed number of trips in the CalEEMod model for a project of this size, as the CalEEMod User's Guide instructs, the Project emissions model was significantly modified to reduce both the number and horsepower of equipment.[40] The number of pieces of construction equipment in the model was manually reduced by 40, and the horsepower of equipment was significantly changed.[41] The DEIR provides no justification for these reductions other than a note in Appendix 3.2-1 about a "AQ/GHG data request spreadsheet" that was not included in the DEIR appendices

[33] *Id*. at pp. 5-6.
[34] DEIR, Appendix 3.2-1, pp. 59, 92.
[35] SWAPE Comments at pp. 5-6.
[36] *Id.*
[37] *Id*. at p. 6.
[38] *Id.* at pp. 6-7.
[39] DEIR, Appendix 3.2-1, pp. 55-56, 88-89.
[40] SWAPE Comments at pp. 6-7.
[41] *Id.*

or reference documents.[42] SWAPE concludes that "these changes are unreasonable and unsubstantiated, and they should not be used to estimate Project emissions."[43]

Because the emissions calculations included in the DEIR were prepared using (1) assumptions that are inconsistent with the Project information provided in the DEIR; (2) mitigation that is not feasible or enforceable; and (3) unsubstantiated changes in the CalEEMod emissions model, the DEIR consequently underestimated Project emissions. The City may not rely on these unsupported emissions calculations to determine the significance of the Project's air quality and public health impacts. The City lacks substantial evidence for the conclusions in the DEIR that air quality and public health impacts would be less than significant. Project emissions must be recalculated using data that is consistent with the Project description, feasible and enforceable construction mitigation, and supportable estimates of construction-related equipment and vehicle trips.

B. The DEIR's Conclusion that Public Health Impacts on Nearby Receptors Would Be Less Than Significant Is Not Supported by Substantial Evidence

The City evaluated the Project's public health impacts on nearby receptors by preparing a health risk assessment ("HRA") that evaluates fine particulate matter emissions from Project construction activities.[44] Relying on that HRA, the DEIR concludes that, with implementation of Mitigation Measures MM AQ-1 and MM AQ-2, the Project's TAC emissions would result in a less than significant impact on nearby sensitive receptors.[45] The City did not prepare an HRA to evaluate the impacts of the Project's operational emissions on those sensitive receptors. Instead, the DEIR concludes that "the Project would not result in any appreciable increases in health risks" during operation because the use of diesel vehicles and equipment would be minimal.[46]

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[42] *Id.* at p. 7.
[43] *Id.*
[44] DEIR, Appendix 3.2-1, at p. 178.
[45] DEIR at p. 3.2-24.
[46] *See id.* at p. 3.2-27.

As explained more fully in the attached SWAPE comments, the City's conclusion that the Project's health risk impacts on nearby sensitive receptors would be less than significant is not supported by substantial evidence for several reasons.[47]

First, as discussed in section III(A) above, the City's HRA was prepared using a flawed CalEEMod emissions model which underestimated Project emissions.[48] Because Project construction emissions are underestimated, and those emissions numbers are used to prepare the construction HRA, the HRA also underestimates the construction-related health risk to nearby sensitive receptors.[49]

Second, SWAPE explains that the DEIR's omission of a quantified HRA for the Project's *operational* emissions is inconsistent with the most recent guidance published by the Bay Area Air Quality Management District's ("BAAQMD") and by the California Office of Environmental Health Hazard Assessment (OEHHA), and therefore the City's conclusion that public health risks to nearby receptors would be less than significant is unsupported.[50] The BAAQMD recommends that an HRA assess community risks and hazards within 1,000 feet of the Project boundaries, and there are multiple residents who live immediately adjacent to the Project site.[51] OEHHA's 2015 guidelines describe the types of projects that warrant preparation of a health risk assessment.[52] The Guidelines recommend that exposure from projects lasting more than 6 months should be evaluated for the duration of the project.[53]

Here, once the Project is operational, it will generate vehicle trips, which generate additional exhaust emissions, and will therefore continue to expose nearby receptors to emissions of TACs for the duration of the Project.[54] Exposure to traffic-related emissions has been implicated with a variety of cancer as well as non-cancer health risks including acute and chronic respiratory disease, such as reduced lung function and increased asthma hospitalizations and heart attacks, as well as

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[47] SWAPE Comments at pp. 8-10.
[48] *Id.* at pp. 8-9.
[49] *See id.*
[50] *Id.* at pp. 9-10.
[51] *Id.* at p. 9.
[52] *Id.*
[53] *Id.*
[54] *Id.*

premature death in individuals with heart disease.[55] While an expected duration was not provided in this case, it can reasonably be assumed the Project will operate for at least 30 years – much longer than the 6-month minimum in the OEHHA guidelines. For this reason, SWAPE concludes that the health risks from Project operations should have also been evaluated in the HRA.[56]

IV. Substantial Evidence Shows that the Project May Result in Significant Air Quality Impacts and a Significant Cancer Risk from the Project Exposing People to Toxic Air Contaminants

In an effort to demonstrate the impacts of the Project, SWAPE first prepared a corrected CalEEMod emissions analysis using an accurate number of vehicle parking spaces, an achievable mix of clean-burning construction equipment, and default values for worker and vendor trips and construction equipment numbers and equipment horsepower.[57] The result of this corrected modeling shows that Project construction will exceed the BAAQMD's threshold for significant emissions of NOx pollutants.[58]

Additionally, in an effort to demonstrate the potential risk posed by the Project to nearby sensitive receptors, SWAPE prepared a screening-level operational health risk assessment.[59] The results of SWAPE's HRA provide substantial evidence that the Project's operational emissions of fine particulate matter will result in a significant health risk impact that was not disclosed in the DEIR. SWAPE used the AERSCREEN model for its screening level HRA.[60] AERCREEN is a screening-level dispersion model recommended by OEHHA and the California Air Pollution Control Officers Association guidance as the appropriate dispersion model for level 2 health risk screening assessments.[61]

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[55] CARB, *Air Quality and Land Use Handbook: A Community Health Perspective* (April 2005) at pp. 8-10.
[56] SWAPE Comments at p. 10.
[57] SWAPE Comments at pp. 7-8 and Attachment A.
[58] *Id.*
[59] *Id.* at pp. 10-13 and Attachment B.
[60] *Id.* at p. 10.
[61] *Id.*

The operational emissions estimates used in SWAPE's health risk screening assessment are based on SWAPE's updated CalEEMod air model for the Project, which corrected the inaccuracies in the City's model outlined in Section III(A) above.[62] Consistent with the recommendations set forth by OEHHA, SWAPE used a residential exposure duration of 30 years.[63] SWAPE's assumptions and formulas are explained more fully in the attached letter.[64]

SWAPE's health risk analysis found that the excess cancer risk to adults, children, infants, and during the third trimester of pregnancy at a sensitive receptor located approximately 1 meter away in the adjacent residences, over the course of Project construction and operation, are approximately 7.3, 48, 66, and 2.7 in one million, respectively.[65] The total (i.e., lifetime) excess operational cancer risk over the course of Project operation (30 years) is approximately 120 in one million.[66] As SWAPE's analysis demonstrates, the infant, child, and lifetime cancer risk from Project operations alone greatly exceeds the BAAQMD threshold of 10 in one million.[67]

As SWAPE notes, screening level health risk assessments are known to be more conservative and are aimed at health protection.[68] However, the purpose of a screening-level health risk assessment is to determine whether a more refined HRA needs to be conducted.

The results of SWAPE's analyses provide substantial evidence that the Project will have significant and unmitigated emissions of NOx during construction. SWAPE provides a detailed discussion of mitigation measures that are available to reduce these construction-related Project emissions.[69] SWAPE's analyses also provide substantial evidence that the Project's operational emissions of fine particulate matter may result in a significant health risk impact that was not disclosed in the DEIR. A more refined HRA needs to be conducted in this case in order to properly disclose, analyze, and mitigate the Project's potentially significant

[62] *Id*. at pp. 7-8 and Attachment A.
[63] *Id*. at pp. 10-12.
[64] *Id*. at pp. 10-13.
[65] *Id*. at p. 12.
[66] *Id*.
[67] *Id*.
[68] *See id*. at pp. 12-13.
[69] *Id*. at pp. 13-19.

public health impacts. Accordingly, the City must revise and re-circulate the DEIR for public review and comment.

V. The DEIR Fails to Adequately Disclose, Analyze, and Mitigate Traffic Impacts

The City's traffic impact analysis in the DEIR fails to comply with CEQA in several ways.

A. The DEIR Miscalculates the Environmental Baseline by Overestimating Existing Vehicle Trips at the Project Site

Smith Engineering reviewed the DEIR and concluded that it likely underestimates the Project's traffic impacts, by deducting from the traffic analysis a credit for traffic that was not actually representative of existing conditions at the Project site when the DEIR was prepared.[70] According to the DEIR, residents who are leasing apartments on the Project site have been provided with a "notice of relocation" since 2016.[71] This indicates that many tenants were motivated to move elsewhere, resulting in a high likelihood of substantial vacancy rates when the DEIR was prepared.[72]

Rather than calculating the environmental baseline by counting the actual amount of traffic entering and leaving the Project site, or by disclosing the number of *occupied* units at the time the DEIR was prepared, the DEIR assumes that all 208 residential units were occupied and were generating traffic trips to and from the Project site at that time.[73] Smith Engineering concludes that this assumption was invalid, leading to an inaccurate baseline and an underestimation of Project impacts. As a result, the City must revise the DEIR to include documentation of the number of units that were actually occupied at the time the DEIR was prepared.[74]

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[70] Smith Engineering comments at pp. 1-2.
[71] DEIR at p. 2-18.
[72] Smith Engineering comments at p. 2.
[73] *Id.* at pp. 1-2.
[74] *Id.* at p. 2.

B. The DEIR Improperly Uses Different Trip Generation Rates for Existing and Proposed Residential Units on the Project Site

The DEIR incorrectly attempts to compare "apples to oranges" regarding the traffic that will be created by the existing and proposed residents who live on the Project site. The DEIR assumes that the existing residents create 7.32 daily vehicle trips per residential unit, and that future residents will only create 5.44 trips per unit, using estimated trip generation rates for "low-rise" and "mid-rise" apartments, respectively.[75] As a result, the predicted traffic impacts are lessened, because more trips are subtracted as part of the existing baseline and fewer trips are added as part of the expected Project traffic.

The problem with this method, Smith Environmental explains, is that the two different trip generation rates were developed from observations of low- and mid-rise apartments in their typical contexts, with higher buildings set in environments that have more transportation infrastructure and community services that can be conveniently reached by walking.[76] In the case of the Project, however, there is no difference in environmental context between the existing and proposed units. Smith Environmental concludes that "the choice to take advantage of this differential based on building heights alone unfairly favors the Project applicant and is an assumption that is not consistent with the good faith effort to disclose impacts that CEQA demands."[77] The DEIR should be revised to use consistent traffic trip-generation rates for existing and proposed apartments on the same site.

C. The DEIR Does Not Fully Disclose the Project's Traffic Impacts at Key Locations

Smith Environmental reviewed the analysis of traffic impacts at various key intersections near the Project site, and concluded that there is a repeated failure to disclose the actual extent of those impacts.[78] First, the DEIR's analysis of the intersection of North Shoreline Boulevard and the U.S. 101 northbound off-ramp, which already experiences the worst delays ("LOS F"), only considers those vehicles that make it through the intersection during peak commute hours, and not the impacts of vehicles that fail to make it through the intersection due to significant

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[75] *Id.*
[76] *Id.*
[77] *Id.* at pp. 2-3.
[78] *Id.* at pp. 3-4.

delays.[79] This leads to an improper conclusion that the Project's traffic impacts will be less than significant.

Second, the DEIR fails to explain the effects of traffic delays at the intersection of Moffett Boulevard, Central Expressway and Castro Street, caused by the regular approaches and departures of the Caltrain rail line, which blocks the intersection for about 45 seconds and causes extended traffic queues at least 12 times during the peak commute hours.[80] According to Smith Environmental, "this key intersection requires a sophisticated analysis and there is no indication that such an analysis has been done," resulting in underestimated traffic impacts.[81]

D. The DEIR Fails to Analyze the Effects of Parking Space Limitations, Unbundled Parking, and Transportation Network Company Services

The Project would provide only 1.226 parking spaces per residential unit, and parking would be "unbundled," or paid for separately from the apartment rent rather than included as part of the rent. Although this approach of providing minimal and unbundled parking might suppress car ownership at more urban projects, this Project site is not located in a "walkable" neighborhood. The site is separated by more than a half-mile distance and an at-grade crossing of a busy expressway from the Mountain View transit center and the activities and attractions of the Castro Street area, which makes it unattractive to walk or bike to transit or activities at those locations.[82]

There is also available curb parking on nearby neighborhood streets. Smith Environmental concludes that Project residents who own more than one car, or who wish to avoid paying extra for unbundled parking, will simply find ways to park in nearby neighborhoods.[83] The City has already identified neighborhood parking as a topic of significant concern among nearby residents, and yet the DEIR does not even address this controversial issue. Residents have identified environmental impacts that they already associate with increasing competition for street parking in the

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[79] *Id.* at p. 3.
[80] *Id.*
[81] *Id.* at p. 4.
[82] *Id.* at p. 4.
[83] *Id.*

vicinity of the Project site, including human safety and sanitation impacts. As one resident who lives nearby explained:

> "[I]f insufficient parking is provided onsite, public streets will inevitably be used instead. Living near San Veron Ave., we constantly see cars overflowing from the San Veron Apartments. This impacts safety (cars block visibility when exiting driveways) and sanitation (cars aren't moved on street sweeping days). I hope that the EIR will consider a realistic estimate of the number of cars which will accompany the planned expansion based on statistics for similar apartment complexes nearby."[84]

The DEIR also fails to address the predictable rise in activity of transportation network companies (TNCs), or ride sharing services, like Uber and Lyft, which will contribute to traffic impacts. A recent study found that in certain areas, travel by TNCs caused double the vehicle miles traveled (VMT) than would otherwise be present.[85] Smith Environmental concludes that "[p]articularly at a parking-starved complex that is considerably offset from transit hubs and activity centers, such as this Project, TNC usage may become prevalent and considerably add to traffic impacts, because for every passenger trip served, there is an extra trip circulating to access the next service call."[86] The DEIR must address the issue of TNC contributions to Project traffic impacts.

E. Construction Traffic Impacts Are Not Adequately Addressed

Smith Environmental concluded that the DEIR does not present reasonable estimates of the volume of construction haul traffic that will occur, and the proposed construction traffic mitigation measures are inadequate to reduce potentially significant impacts to a below-significant level.[87] The Project would involve hauling 226,220 square feet of demolition materials and 195,000 cubic feet of excavation materials (soil).[88] First, the calculation of a hauling trip rate for demolition

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[84] DEIR Appendix 1, *NOP and Scoping Comments*, at p. 15, email from Albert Jeans to Diana Pancholi dated April 6, 2018.

[85] *Id.* at pp. 4-5.
[86] *Id.* at p. 5.
[87] *Id.* at p. 5.
[88] DEIR at p. 2-19.

materials is insufficient to determine the number of truckloads that will be required, because truckloads are calculated in cubic feet or cubic yards, not by the square footage of the area to be demolished.[89] The density and thickness of the demolished materials must be considered when determining the haul rate, and not just the square footage of the demolition area. Because of this omission in the DEIR, the number of truckloads hauling demolition materials may be greatly underestimated.[90]

Second, the excavation materials (soil) will likely bulk or swell once dug out and placed in trucks, thereby increasing the amount of excavation hauling trips. Most soil, gravel and sand swells 20 to 30 percent above the volume of the excavation, while wet gravel with clay (a likely prospect given the water table levels disclosed in the DEIR) swells to 50 to 60 percent greater than the size of the excavation. Sandstone or limestone swells to 70 to 80 percent greater than the volume of excavation. The DEIR presents no evidence of reasonable estimates of the volume of construction haul traffic based on the actual materials to be excavated. Hence, the claim that filing a traffic control plan approved by the City will mitigate construction traffic impacts (Mitigation Measure TRA-8) is purely speculative and unsubstantiated.[91] This is inadequate.

Deferring the formulation of mitigation measures is generally impermissible.[92] Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.[93] It is not impractical for the Project Applicant to fully disclose and analyze the potential construction traffic impacts during construction, including a reasonable and full disclosure of construction haul traffic, as part of the DEIR, and to propose specific and enforceable mitigation measures to address those impacts. The DEIR should be revised to include this information and analysis.

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[89] *Id.*
[90] *Id.*
[91] *Id.*; DEIR at p. 3.13-39.
[92] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code § 21061.
[93] *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393.

F. Basis for Cumulative Impacts Analysis Is Uncertain

The cumulative impacts analysis in the DEIR makes an unsupported assumption that ambient traffic will grow 2 percent per year. Smith Engineering contests this assumption and questions the facts upon which it is based, especially given "the rapid growth of development in the area, both in Mountain View and in surrounding communities, and revitalization of economic activity of existing uses in recent years."[94] Under CEQA, a correct cumulative impacts analysis would examine a concurrent project development list, and/or an applicable regional traffic forecast model. Both of these options are available to the City, leading Smith Engineering to conclude that the "unsubstantiated background growth assumption" in the DEIR is inadequate and requires further justification.[95]

VI. Conclusion

For all of the forgoing reasons, the City must prepare and recirculate a revised DEIR in order to adequately disclose, analyze, and mitigate the Project's significant impacts to air quality, public health, and traffic, before considering the entitlements for the proposed Project.

Thank you for your consideration of these comments.

Sincerely,

Kyle Jones

KCJ:ljl

Attachments

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[94] *Id.* at p. 5.
[95] *Id.*