

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

khartmann@adamsbroadwell.com

SACRAMENTO OFFICE

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

TEL: (916) 444-6201
FAX: (916) 444-6209

DANIEL L. CARDOZO
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
JAVIER J. CASTRO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
KYLE C. JONES
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL

MARC D. JOSEPH
Of Counsel

*Not admitted in California.
Licensed in Colorado.

June 4, 2021

Via Electronic Submission Only

Mayor Constantine and City Council Members
c/o City Clerk Michelle Bigelow, MMC, CPMC
Morgan Hill City Council
City Hall
City of Morgan Hill
17575 Peak Avenue
Morgan Hill, CA 95037
Email: Michelle.Bigelow@morganhill.ca.gov;
general@morganhill.ca.gov

Adam Paszkowski, Principal Planner
Email: Adam.Paszkowski@morganhill.ca.gov

[Joey Dinh, City Staff](#)
Email: Joey.Dinh@morganhill.ca.gov

Re: Notice of Appeal of Planning Commission Approvals for Redwood Tech at 101 Project (SR2020-0029 through SR2020-0033 and SD2020-0011)

Dear Mayor Constantine, City Council Members, Ms. Bigelow, Mr. Paszkowski, Mr. Dinh:

We are writing on behalf of **Morgan Hill Residents for Responsible Development** ("Residents")¹ to appeal the May 25, 2021 decision of the Morgan Hill Planning Commission to approve a Design Permit and Vesting Tentative Parcel Map, and all other related approvals, for the Redwood Tech at 101 Project, SR2020-

¹ Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards associated with Project development, as well as its potential environmental impacts.
5175-004acp

0029 through SR2020-0033 and SD2020-0011 (“Project”). City Staff previously determined that the Project was not required to undergo environmental review pursuant to the California Environmental Quality Act (“CEQA”) and that the only approvals required related to the Project’s design and proposed subdivision of the property’s existing 2 parcels into 4 legal lots.

This appeal is based on the City’s failure to comply with the requirements of CEQA to prepare a legally adequate Environmental Impact Report (“EIR”) for the Project, as well as violations of the Subdivision Map Act and State and local land use laws. The grounds for this appeal are set forth specifically in the attached comment letters that were submitted to the Planning Commission ahead of its hearing to consider the requested Project entitlements. Our comments were prepared with the assistance of environmental health, air quality, and GHG expert Paul E. Rosenfeld, Ph.D., and hazardous materials expert Matt Hagemann, P.G., C.Hg. of Soil Water Air Protection Enterprise (“SWAPE”), transportation expert Dan Smith, and noise expert Deborah Jue, INCE-USA (collectively, “Comment Letter”).

Residents’ Comment Letter demonstrated that the Morgan Hill 2035 General Plan EIR, which the City relied upon as a program EIR, was not intended to be used to evaluate individual future development and did not provide adequate analysis of any impacts specific to the Project. If a later project may cause significant effects on the environment that were not adequately addressed in the prior EIR, a project-level EIR must be prepared.²

Additionally, our Comment Letter established that discretionary actions such as approval of a Design Permit and Tentative Map require environmental review of Project impacts, without which the City could not make the necessary findings for those entitlements. We also established that the Project is a component of a reasonably foreseeable larger project, for which the City appears to be improperly seeking approval by breaking it up, piecemeal fashion, in order to take advantage of environmental exemptions or less rigorous CEQA review for smaller components, such as the proposed Project.

Finally, our Comment Letter provided substantial evidence that the Project may result in potentially significant, unmitigated impacts on air quality, public health, GHG emissions, noise, and transportation that must be disclosed and

² 14 C.C.R. § 15152(f).
5175-004acp


mitigated in an EIR. These unmitigated impacts also preclude the City from making the findings required to approve the Project under the Subdivision Map Act and the City land use codes.

Based on these legal deficiencies and potentially significant and unmitigated impacts, our comments concluded that the City, by failing to require preparation of an EIR, is in violation of CEQA's mandate to inform decision makers and the public about the potentially significant environmental impacts of a project before it is approved and implemented.

We request that the City Council review our Comment Letter in its entirety, vacate the Planning Commission's approvals, and require preparation of an EIR to adequately analyze and mitigate the Project's significant impacts.

We have included a credit card authorization form for \$627.60 for the appeal filing fee.³ Thank you for your attention to this important matter.

Sincerely,



Kendra Hartmann

Enclosures: Exhibit A: Comment Letters
Uniform Application
\$627.60 Credit Card Authorization for Appeal Filing Fee

KDH:acp

³ The City's appeal form, the "Uniform Application," includes an Indemnification Agreement which purports to obligate appellants to indemnify and defend the City by paying the City's costs, including City's attorney's fees and all other litigation costs and expenses, including expert witnesses, required to defend against any lawsuit brought as a result of City's approval or approvals of the Project. Residents presumes that the terms on the Indemnification Agreement are intended to apply to an applicant seeking entitlements from the City for a development project, and not to members of the public appealing a decision to approve the Project, as Residents do here. However, in the event that the City subsequently seeks to enforce the Indemnification Agreement against Residents, or to charge Residents or its representatives any of the costs described therein, Residents reserves its right to object as a violation of Residents' due process rights to petition the government, and/or to pay any subsequent fees under protest.