Cambrian Village

Rebecca Haggerty <[redacted]
Mon 8/8/2022 10:24 PM
To: City Clerk <[redacted]
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I am in favor of Item 10.4 re Cambrian Village. The project will bring a positive impact to our community. Please provide my message to the Council.
Rebecca Haggerty

Sent from my iPad

Comments to City Council on Agenda Item No. 10.4: Cambrian Park Mixed-Village Project (File Nos. PDC17-040, PD20-007) (SCH No. 2018022034)

Alisha C. Pember <[redacted]>

Tue 8/9/2022 10:06 AM

To: City Clerk <[redacted]> The Office of Mayor Sam Liccardo <[redacted]> District1 <[redacted]> District2 <[redacted]> District3 <[redacted]> District4 <[redacted]> District5 <[redacted]> District 6 <[redacted]> District7 <[redacted]> District8 <[redacted]> District9 <[redacted]> District 10 <[redacted]>

Cc: Hawkins, Kara <[redacted]> Tara C. Rengifo <[redacted]>

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Good morning,

Please find attached **Comments to City Council on Agenda Item No. 10.4: Cambrian Park Mixed-Village Project (File Nos. PDC17-040, PD20-007) (SCH No. 2018022034)** and **Exhibit A**.

If you have any questions, please contact Tara Rengifo.

Thank you.

Alisha Pember

Alisha C. Pember
Adams Broadwell Joseph & Cardozo
[redacted]

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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
trengifo@adamsbroadwell.com

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

August 9, 2022

Via Email
Mayor Liccardo and City Council
City of San Jose
200 E. Santa Clara St.
San José, CA 95113
Email: [redacted]

Kara Hawkins, Environmental Project Manager: [redacted]

Re: Comments to City Council on Agenda Item No. 10.4: Cambrian Park Mixed-Village Project (File Nos. PDC17-040, PD20-007) (SCH No. 2018022034)

Dear Mayor Liccardo and Councilmembers, Ms. Hawkins:

We are writing on behalf of Silicon Valley Residents for Responsible Development ("Silicon Valley Residents") in response to the Planning Commission Report dated July 19, 2022 submitted to the City Council ("Staff Report") concerning the Cambrian Park Mixed-Use Village Project (File No. PDC17-040, PD20-007, CAMBRIAN 37, and SCH No. 2018022034) ("Project"), proposed by Kimo Realty ("Applicant"). The Project site is located at 14200 and 14420 Union Avenue (Assessor's Parcel Numbers ("APNs") 419-08-012 and -013) ("Site"). The Staff Report also includes a new memorandum, which adds conditions, but none of which address the unresolved issues concerning the inadequacies in the FEIR.

The City Council cannot approve the Project at this time because the City has not complied with the California Environmental Quality Act ("CEQA"). The Final Environmental Impact Report ("FEIR") prepared by the City lacks substantial evidence to support its conclusions that impacts will be less than significant and

that the mitigation measures adequately reduce impacts.[1] Instead, substantial evidence shows that the Project would have significant impacts on noise, transportation, and public health that are not adequately disclosed or mitigated in the FEIR.[2] The FEIR also fails to sufficiently analyze the significance of energy use impacts and water supply impacts, as required by the City Code and State law, respectively.[3] The City's Responses to Comments ("RTC") in the FEIR also fails to meaningfully respond to many of the technical comments addressing the adequacy of the City's environmental analysis and fails to resolve many of the legal and evidentiary deficiencies we previously identified in the Draft Environmental Impact Report ("DEIR").[4]

On July 13, 2022, Silicon Valley Residents submitted written and oral comments urging the Planning Commission to direct Staff to prepare and circulate a revised EIR that adequately analyzes the environmental impacts of the pre-zone, annexation, and other entitlements for the Project.[5] The basis for Silicon Valley Residents' comments included evidence from multiple experts demonstrating that the FEIR's public health, noise, and transportation impacts analysis lacked substantial evidence to support the FEIR's conclusions that impacts would be less than significant.[6] Our health expert determined that the FEIR failed to adequately evaluate the significant health risk impacts associated with Project construction and operation because the analysis relied on an underestimated Diesel Particulate Matter ("DPM") concentration. Our noise expert determined that, by employing a representative existing ambient noise level, nearly the entire site would exceed the threshold of significance for *mitigated* construction noise impacts. Finally, our transportation expert concluded that the FEIR's conclusion that the Project would not result in new net VMT is unsupported and the FEIR improperly ignored the reasonably foreseeable cumulative transportation impacts from other large, nearby development projects.

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[1] Comments to the City of San Jose Planning Commission on the Final Environmental Impact Report and Staff Report for the Cambrian Park Mixed-Use Village Project (July 13, 2022)("Exhibit A"); *See also* Comments on the Draft Environmental Impact Report ("DEIR") for the Cambrian Park Mixed-Use Village Project (January 3, 2022).
[2] *Id.*
[3] *Id.*
[4] Comments to the City of San Jose Planning Commission on the Final Environmental Impact Report and Staff Report for the Cambrian Park Mixed-Use Village Project (July 13, 2022)("Exhibit A").
[5] *Id.*
[6] *Id.* We prepared our comments with the assistance of technical experts, including air quality, GHG emissions, and health risk assessment experts Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., at Soil / Water / Air Protection Enterprise ("SWAPE"); traffic and transportation expert Daniel T. Smith Jr., P.E.; and noise expert Derek Watry.

Silicon Valley Residents' comments also explained that the City failed to proceed in the manner required by law with regard to the FEIR's analysis of energy and water supply impacts. Despite these defects and the lack of substantial evidence in the record, the Planning Commission recommended that the City Council certify the FEIR, approve an ordinance to pre-zone the site, and adopt a resolution initiating annexation proceedings.[7] The Planning Commission's recommendation was made in error and was not supported by substantial evidence.

Silicon Valley Residents urges the City Council to rectify these errors and direct Staff to prepare a revised draft EIR for the reasons set forth below. The Project must not be approved and should not be rescheduled for a further public hearing until the issues raised in these comments, and in the comments of other members of the public and responsible agencies, have been addressed in a revised EIR.

I. STATEMENT OF INTEREST

Silicon Valley Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. Residents includes San Jose residents Christopher Valverde, Jonathan R. Baker, and Christopher Reed, the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, along with their members, their families, and other individuals who live and work in the City of San Jose.

Individual members of Silicon Valley Residents live, work, recreate, and raise their families in the City and in the surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

In addition, Silicon Valley Residents has an interest in enforcing 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 businesses and industries to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth

[7] Memorandum from City of San Jose Planning Commission to City of San Jose City Council (July 19, 2022) (hereinafter "City Council Report").

that, in turn, reduce future employment opportunities.

II. THE FEIR LACKS SUBSTANTIAL EVIDENCE TO SUPPORT THE CONCLUSIONS THAT THE PROJECT'S ENVIRONMENTAL EFFECTS WOULD BE LESS THAN SIGNIFICANT

An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[8] The failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.[9] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[10] In reviewing challenges to an agency's approval of an EIR based on whether the agency utilized the appropriate processes, the court will "determine de novo whether the agency has employed the correct procedures, 'scrupulously enforcing all legislatively mandated CEQA requirements.'"[11] Even when the substantial evidence standard is applicable, reviewing courts will not "'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.'"[12]

Here, the FEIR lacks substantial evidence to support the conclusions that impacts will be less than significant and that the mitigation measures adequately reduce impacts. Instead, substantial evidence shows that the Project would have significant impacts on noise, transportation, and public health that are not adequately disclosed or mitigated in the FEIR. The FEIR also fails to sufficiently analyze the significance of energy use impacts and water supply impacts.

A. The FEIR Lacks Substantial Evidence to Support the Conclusion that the Project's Construction Noise Impacts Would Be Less Than Significant.

The Project's construction noise impacts are underestimated in the FEIR. As supported by Mr. Derek Watry's expert comments, the Project will have significant

[8] *Kings Cty. Farm Bur.,* 221 Cal.App.3d at 732.
[9] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[10] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[11] *Id., Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.
[12] *Berkeley Keep Jets Over the Bay Com.,* 91 Cal.App.4th at 1355.

impacts from construction noise levels and the FEIR's proposed mitigation is insufficient to reduce these impacts to less than significant levels.[13] Mr. Watry determined that the FEIR relied on an inflated existing ambient noise level (i.e., 59 dBA) to calculate whether the Project exceeds the threshold of significance for construction noise impacts.[14] Employing a representative existing ambient noise level (i.e., 51-52 dBA) shows that nearly the entire site would exceed the threshold of significance for construction noise impacts.[15] Moreover, the proposed mitigation measures to reduce significant impacts from construction noise on nearby residential and commercial land uses (i.e., construction hours, equipment, idling and staging areas, noise barriers) are inadequate to reduce these impacts to below the threshold of significance.[16]

Notably, the residents at Bercaw Lane will be significantly impacted by construction noise during that first year, at least.[17] Mr. Watry explained that "[a]t 25 feet, the closest approach of construction work to the Bercaw Lane property lines, the noise level will be 87 dBA Leq which exceeds the 60 dBA standard by 27 dBA. These are mitigated noise levels."[18]

Mr. Watry calculated that the distance at which construction noise levels would be significant is approximately 561 feet.[19] See Figure 1 below, which shows that 85 percent of the Project is within 561 feet of residences (yellow) and 66 percent of the Project is within 561 feet of the Bercaw Lane residences (pink).[20] He therefore concluded that the Project's construction noise levels are significant, which is an undisclosed and unmitigated significant impact in the FEIR.[21]

[13] Comments by Derek Watry on the Cambrian Park Mixed-Use Village Project Final EIR (July 12, 2022) (hereinafter, "Watry Comments"). See "Exhibit A" attached hereto.
[14] *Id.* at 4.
[15] *Id.* at 6.
[16] *Id.* at 8.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.* at 7.
[21] *Id.* at 6.

Moreover, for construction-related noise to be considered significant, the City's General Plan Policy EC-1.7 states that for "a project located within 500 feet of residential uses," "substantial noise generating activities" must "continu[e] for more than 12 months."[22] Mr. Watry's comments provide substantial evidence that even *mitigated* construction noise levels would exceed the thresholds for a period exceeding 12 months.[23]

[22] City of San Jose, Envision San José 2040 General Plan, Policy EC-1.7 at 41 (adopted November 1, 2011; amended July 7, 2022), available at: https://www.sanjoseca.gov/home/showpublisheddocument/22359/637928744399330000.
[23] Watry Comments at 8.

Phase	Start Date	End Date	Days/Week	Workdays
Demolition	8/15/2021	10/15/2021	5	45
Site Preparation	10/1/2021	1/26/2020	5	84
Grading	2/1/2022	7/8/2022	5	114
Trenching/Foundation	5/1/2022	11/9/2022	5	138
Building Construction	8/1/2022	7/28/2022	5	260
Architectural Coating	10/1/2022	9/30/2023	5	260
Paving	8/1/2023	11/6/2023	5	70

[24]

Based on the Project's proposed construction timeline in Appendix B set forth above, Mr. Watry explained, "[t]he activities that will primarily occur during the first year – demolition, site prep, grading, trenching, construction foundations – will occur across the site, and it is not reasonable to assert that equipment will not be routinely moving throughout 66% of the site for long durations."[25] Additionally, "building construction will only have just begun in the last 2 weeks of the first year, so any shielding that may later be provided when the project residences nearest Berclaw are built cannot be claimed for the first year."[26]

For the foregoing reasons, Mr. Watry's comments demonstrate that the Project will have significant impacts from construction noise levels and that the FEIR's existing mitigation is insufficient to reduce these impacts to less than significant levels. The analysis in the FEIR must be revised to accurately analyze the Project's significant construction noise impacts as well as feasible mitigation measures that would substantially lessen these significant environmental effects.

B. The FEIR Lacks Substantial Evidence to Support the Conclusion that the Project's Transportation Impacts Would Be Less Than Significant.

The FEIR's conclusion that the Project would not result in a Vehicle Miles Traveled ("VMT") impact is unsupported by substantial evidence. The FEIR estimates that the Project would result in 8.96 residential per capita VMT, which is approximately 24.8 percent below the VMT rate in the immediate area, and 12.01 per employee for employment-based VMT generation, which is about 16.4 percent

[24] City of San Jose, *Final Environmental Impact Report; Cambrian Park Mixed-Use Village Project; File Nos. PDC17-040 and PD20-007* at Appendix B (July 2022) (hereinafter, "FEIR").
[25] Watry Comments at 8.
[26] *Id.*

less than the rate in the broader area.[27] For residential VMT, transportation expert Daniel T. Smith Jr., P.E. determined that pedestrian enhancement measures[28] may reduce VMT by 0.625 percent based on the California Air Pollution Officers Association's report entitled, "Quantifying Greenhouse Gas Mitigation Measures," but found the FEIR's conclusion that trip internalization would reduce VMT by 24.18 percent to be unsupported.[29]

Mr. Smith also explained that the Project's employment-based VMT estimation is dependent on an extremely high percentage of Project residents from a very small number of households to fill the jobs within the Project site—an assumption that is entirely unsupported by substantial evidence in the FEIR.[30] In addition, the City's analysis of VMT for the Project's hotel, retail, and restaurant components is based on an unsupported assumption that trips would be diverted from similar, existing establishments, rather than new trips to the Project site.[31] Rather, the Project's new hotel, retail, and restaurant components would provide additional capacity to serve a growing demand and new customers, not to simply share in a fixed demand.[32] This conclusion is further substantiated by the City's Transportation Analysis Handbook, which states that "[r]egional-serving projects, [like this Project], can lead to longer vehicle-trips and may *increase* VMT."[33]

Finally, the FEIR's cumulative impact analysis is unsupported. CEQA requires the City to provide a meaningful analysis concerning whether the Project would result in a cumulatively considerable contribution to a significant cumulative transportation impact, and support that analysis with substantial evidence. "[A]

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[27] City of San Jose, *Draft Environmental Impact Report; Cambrian Park Mixed-Use Village Project; File Nos. PDC17-040 and PD20-007* at 237 (November 2021) (hereinafter, "DEIR"); Comments by Daniel Smith on the Cambrian Park Mixed-Use Village Project Final EIR at 1-2 (July 13, 2022) (hereinafter, "Smith Comments"). See "Exhibit A" attached hereto.

[28] The Project proposes: (1) closing the existing vehicular access to the site at Wyrick Avenue, leaving just a pedestrian-only connection; and (2) creating new traffic signal protected crosswalks to the site, one across Union Avenue and one across Camden Avenue.

[29] *Id.* at 1.

[30] *Id.* at 2.

[31] *Id.* at 3.

[32] *Id.*

[33] City of San Jose, *Transportation Analysis Handbook* at 12 (April 2020), available at: https://www.sanjoseca.gov/home/showdocument?id=28461 (emphasis added). The DEIR concluded that "the combined size of the proposed hotel (as converted to an equivalent retail space based on trip generation) and retail/restaurant uses would exceed the 100,000-square foot threshold for local-serving retail." DEIR at 231. "The City has defined retail projects below 100,000 square feet as local-serving shopping centers and those above as regional shopping centers." City of San Jose, *Transportation Analysis Handbook* at 13 (April 2020), available at: https://www.sanjoseca.gov/home/showdocument?id=28461. Thus, this Project is considered a regional-serving project.

cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts."[34] CEQA Guidelines section 15130 requires a discussion of cumulative impacts in an EIR "when the project's incremental effect is cumulatively considerable, …."[35] "'Cumulatively considerable' means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."[36] For the discussion of significant cumulative impacts to be adequate, the lead agency may utilize either: (1) "[a] list of past, present, and probable future projects producing related or cumulative impacts," or (2) "[a] summary of projections contained in an adopted local, regional or statewide plan, or related planning document, that describes or evaluates conditions contributing to the cumulative effect."[37] Under either method, the geographic scope of the area affected by the cumulative effect must be reasonable.[38]

Here, the FEIR explains that "[p]rojects must demonstrate consistency with the General Plan to avoid having to do a project specific cumulative impact analysis."[39] As set forth in the City's Transportation Analysis Handbook, "if a project is determined to be inconsistent with the General Plan, a cumulative impact analysis will be required as part of a General Plan amendment to determine the project's cumulative effect on the regional air quality and greenhouse gas emissions targets and other performance metrics of the General Plan related to transportation."[40] The FEIR concludes the Project would be consistent with the General Plan and "would be considered part of the cumulative solution to meet the General Plan's long-range transportation goals."[41]

These conclusions are unsupported by substantial evidence and severely deficient for two reasons. First, as discussed in detail in the below section concerning the annexation proposal, the Project is inconsistent with General Plan policies governing transit-oriented development. Per the City's Transportation Analysis Handbook, given these policy inconsistencies, a cumulative impact analysis must be required for this Project as part of a General Plan amendment to

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[34] 14 C.C.R. § 15130(a)(1).
[35] *Id.* at § 15130(a).
[36] *Id.* at § 15065(a)(3).
[37] *Id.* at § 15130(b)(1)(A)-(B).
[38] *Id.* at § 15130(b)(3).
[39] DEIR at 239.
[40] City of San Jose, *Transportation Analysis Handbook* at 12 (April 2020), available at: https://www.sanjoseca.gov/home/showdocument?id=28461.
[41] DEIR at 240.

determine the Project's cumulative transportation impacts. The omission of this analysis violates the City's own policies in its Transportation Analysis Handbook.

Second, "[t]hresholds of significance may not be applied 'in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect,'" and it is well-established that an agency's methodology for assessing a cumulative impact must be supported by substantial evidence.[42] Here, the approach relied upon in the FEIR to analyze the Project's cumulative transportation impacts is not supported by substantial evidence and improperly excludes substantial evidence of the Project's potentially significant cumulative transportation impacts. The cumulative impact analysis entirely omits any discussion of whether the Project's contribution to the cumulative transportation impacts will be cumulatively considerable in light of its and other projects' contributions to the impacts. Thus, the analysis does not meet CEQA's procedural requirement for analyzing cumulative impacts, as described above.[43]

Furthermore, the City ignored comments from members of the public and transportation experts that the Project would likely result in a cumulatively considerable contribution to a significant transportation impact.[44] Specifically, the FEIR ignores the North 40 Project in the Town of Los Gatos as well as projects in other nearby areas that will add to cumulative impacts – all without adequate mitigation.[45] These are closely related, existing and foreseeable projects that were improperly excluded from the Project's cumulative impacts analysis. For example, Mr. Smith concluded in his comments that "a significant project in Los Gatos, the North 40 Project, must be considered in the analysis given the size and proximity of that project, which would produce related cumulative impacts."[46] The failure to analyze the potentially significant cumulative transportation impacts from the North 40 Project as well as other projects in the area is a substantial omission in the FEIR.

For these reasons, the approach adopted in the FEIR's cumulative transportation impact analysis is entirely unsupported by substantial evidence and

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[42] *Protect Niles v. City of Fremont* (2018) 25 Cal. App. 5th 1129, 1153.
[43] *See* 14 C.C.R. §§ 15130(a); 15065(a)(3).
[44] *Protect Niles,* 25 Cal. App. 5th at 1152. ("Residents' personal observations of traffic conditions where they live and commute may constitute substantial evidence even if they contradict the conclusions of a professional traffic study. [internal citation omitted] This is especially true where, as here, residents cite specific facts that call into question the underlying assumptions of a traffic study.")
[45] Smith Comments at 7; Comments submitted by Friends of Cambrian Park on the DEIR (January 3, 2022).
[46] *Id.*

cannot be relied upon to assess whether the Project would result in a cumulatively considerable contribution to a significant cumulative transportation impact. The FEIR must be revised to include a cumulative transportation impact analysis that adequately evaluates vehicle trips from past, present, and probable future projects producing related impacts on transportation.[47]

C. The FEIR Lacks Substantial Evidence to Support the Conclusion that the Project's Public Health Impacts Would Be Less Than Significant.

The City's health risk assessment failed to adequately evaluate the significant health risk impacts associated with Project construction and operation because the Project's DPM emissions were underestimated due to flaws in the Project's air model.[48] Specifically, the model incorporated a mitigated cancer risk that relied on the use of Tier 4 *Final* construction equipment even though MM AIR-2.1 allows for the use of Tier 4 Interim *or* Final engine standards.[49] Although the FEIR revised the CalEEMod air quality model to include Tier 4 *Interim* mitigation, the health risk analysis was not also revised to account for the higher DPM emissions that may occur as a result of the use of Tier 4 Interim equipment. SWAPE's comments demonstrated that Tier 4 Interim and Tier 4 Final equipment are not in fact equally effective in reducing particulate matter emissions from construction equipment because Tier 4 Interim equipment has higher emission levels than Tier 4 Final equipment.[50] Therefore, by modeling construction emissions assuming a full Tier 4 Final equipment fleet, the City's health risk analysis failed to account for higher emissions that would occur as a result of the use of Tier 4 Interim equipment, thus underestimating construction emissions of all pollutants, including DPM.[51]

DPM is a toxic air contaminant that has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer,

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[47] It must also be noted that the FEIR already includes a cumulative projects list in Table 3.0-1 that can be further developed to inform the Project-specific cumulative impact analysis without placing a significant burden on the City.
[48] Comments on the DEIR for the Cambrian Park Mixed-Use Village Project, Exhibit A at 9 (January 3, 2022).
[49] *Id.*
[50] *Id.* at 7-8; Comments by SWAPE on the Cambrian Park Mixed-Use Village Project Final EIR at 2-3 (July 12, 2022) (hereinafter, "SWAPE Comments"). See "Exhibit A" attached hereto.
[51] *Id.*

and premature death[52,53,54] The health risk posed by exposure to DPM is considered significant if it exceeds the BAAQMD significance threshold of 10 cases per million.[55] DPM is a component of fine particulate matter (PM2.5).[56] However, the FEIR stated that it used coarser PM10 emissions as an assumed indicator of the Project's DPM emissions to provide a more conservative DPM estimate because the Project's PM10 emissions would higher than PM2.5 emissions.

In response to SWAPE's comments on the DEIR, the FEIR included a revised air quality analysis which remodeled construction emissions using Tier 4 Interim equipment (rather than Tier 4 Final, as the DEIR had done). The revised model resulted in exhaust PM10 emissions that were approximately 158% greater than the DEIR's emissions estimates.[57] However, the City failed to revise the health risk assessment to quantify emissions using Tier 4 Interim equipment as it had for criteria pollutants. Therefore, the FEIR's health risk analysis retained the same erroneous and underestimated results using Tier 4 Final equipment.

SWAPE's comments on the FEIR explained this error, and explained that the higher emissions calculations from the FEIR's new analysis using Tier 4 Interim equipment should have also been used in a revised health risk assessment. Since the air quality analysis used exhaust PM10 emissions, rather than PM2.5, to represent DPM emissions, SWAPE compared the PM10 emissions from the DEIR's CalEEMod model that relied on Tier 4 Final mitigation and the FEIR's revised model that utilized Tier 4 Interim mitigation.[58] Based on this comparison, SWAPE concluded that the difference between PM10 emissions from Tier 4 Interim and Tier 4 Final equipment was substantial and the failure to revise the Project's health risk assessment in the FEIR accordingly likely resulted in an underestimation of DPM emissions.[59] As a result, SWAPE concluded that the FEIR's conclusion that the mitigated excess cancer risk would not exceed the significance threshold remained unsupported by substantial evidence. The City cannot certify the FEIR until these errors are corrected.

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[52] California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.
[53] U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.
[54] Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf.
[55] FEIR at 71.
[56] See California Air Resources Board, Overview: Diesel Exhaust & Health, available at https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.
[57] SWAPE Comments, p. 3.
[58] SWAPE Comments at 2-3.
[59] *Id*.

The DEIR estimated the Project's resulting cancer risk caused by construction and operation of the Project with construction mitigation measure MM AIR-2.1 to be 8.48 cases per million, which is only slightly below the BAAQMD significance threshold of 10 cases per million.[60] However, since the City failed to correct the DEIR's erroneous use of Tier 4 Final mitigation in its health risk assessment as it did in the rest of the air quality analysis, that estimate remains wrong. In reality, the Project's DPM emissions will be substantially higher (e.g. up to 158% higher, as with PM10 emissions), potentially resulting in a significant health risk that may exceed 10 cases per million.

The FEIR also concluded that the Project's diesel generators would result in an increased cancer risk of 0.46 in one million. Our expert concluded that the increased cancer risk resulting from the diesel generator emissions coupled with the increased cancer risk resulting from DPM emissions under Tier 4 Interim equipment may result in a significant, undisclosed health risk impact.[61] Thus, the FEIR's conclusion that the Project would not result in a significant health risk during construction is not supported by substantial evidence, as required by State law, and the City Council cannot certify the FEIR and approve the Project-related pre-zone ordinance and annexation resolution until the EIR is revised to ensure that health impacts are adequately evaluated, disclosed, and mitigated.

D. The FEIR's Energy Analysis Fails to Comply with the Reach Code and Lacks Substantial Evidence to Support the Conclusion that the Project's Energy Use Impacts Would Be Less Than Significant.

The City's analysis of natural gas and electricity usage does not evaluate energy impacts in compliance with the City's mandatory requirements under its Reach Code. The City must disclose the Project's energy mix and usage based on what is actually required by the City's policies and ordinances. The FEIR lacks this mandatory analysis. In addition, the FEIR's claim that the Project's energy use impacts would be less than significant due to the Project's compliance with the Reach Code is unsupported, since the City did not actually evaluate energy impacts as required by the Reach Code. The City's unsupported energy analysis does not provide a sufficient basis to certify the FEIR or approve the Project under either State or local law.

[60] FEIR at 71.
[61] SWAPE Comments at 3.

E. The FEIR Fails to Analyze Water Supply Impacts in the Manner Required by CEQA and Lacks Substantial Evidence to Support the Conclusion that the Water Supply Impacts Would Be Less Than Significant.

The City acknowledged that there would be insufficient water supplies to meet the water demand of the Project during future dry years. This is a significant impact under CEQA.[62] Yet, the City dismisses water supply impacts as less than significant with the implementation of conservation measures, without actually analyzing the feasibility and effectiveness of these conservation measures to reduce water demand during dry years and identifying these measures as formal mitigation.[63] The City's failure to include an analysis of whether the conservation measures would reduce this significant impact, and failure to require mitigation ensuring such conservation measures are implemented (should the analysis show they are effective), results in a failure to disclose required information to the public, in violation of CEQA.

In sum, multiple expert analyses, as referenced herein, provided substantial evidence demonstrating that the City failed to support the FEIR's conclusions regarding impacts on public health, noise, transportation, energy use, and water supply with substantial evidence. As a result, the FEIR's conclusions that these impacts would be less than significant are unsupported by the record. For these reasons, Silicon Valley Residents urges the City Council to direct Staff to revise and recirculate the EIR for additional public review.

III. THE FINDINGS REQUIRED BY STATE LAW TO APPROVE THE ANNEXATION PROPOSAL CANNOT BE MADE

In adopting a resolution approving the annexation proposal, state law requires the City Council to make the following finding, among others: "…[t]hat the proposal is consistent with the adopted general plan of the city."[64] This finding cannot be made for this Project because the Project is inconsistent with General Plan policies governing transit-oriented development, recycled water use, and air

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[62] "'Significant effect on the environment' means a substantial, or potentially substantial, adverse change in the environment." Pub. Res. Code § 21068.
[63] *King & Gardiner Farms, LLC v. Cnty. of Kern* (2020) 45 Cal. App. 5th 814, 856, *as modified on denial of reh'g* (Mar. 20, 2020) (" Simply stating a generalized goal for mitigating an impact does not allow the measure to qualify for the exception to the general rule against the deferred formulation of mitigation measures.")
[64] Gov't Code § 56757(c)(5).

quality policies limiting site grading. The City Council must therefore deny the annexation proposal.[65]

A. The Project Is Inconsistent with General Plan Policies for Recycled Water and Onsite Water Reuse.

The City claimed that the Project site is too far from the nearest recycled water line and "it is not feasible to obtain recycled water on the project site at this time."[66] The annexation proposal will therefore not support the location of new development within the vicinity of a recycled water system, as encouraged by Policy MS-17.2.

Policy MS-19.1 requires new development to contribute to the cost-effective expansion of the recycled water system in proportion to the extent that it receives benefit from the local water supply. The Project's total water usage is estimated at 352.5 acre-feet per year as compared to 9.1 acre-feet per year used by the existing development.[67] The annexation of these lands for new development will therefore be benefited by local, potable water resources, yet there is no requirement to contribute to the cost-effective expansion of the recycled water system.

Policy MS-18.12 encourages, when feasible and cost effective, on-site rainwater catchment for new and existing development. There is no analysis of the feasibility to install on-site rainwater catchment despite that the annexation will result in a significant increase in potable water usage on site.[68] The failure to incorporate water reuse green building practices is also inconsistent with Policy MS-1.2, which is focused on increasing the number of buildings within the City that make use of green building practices by incorporating those practices into new construction. Implementation of water reuse measures would provide for greater consistency with the General Plan policies, yet as currently proposed, the Project is inconsistent with these policies and the findings to approve the annexation proposal cannot be made by the City Council.

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[65] It must also be noted that the full report on the proposed annexation was not even prepared for the City Council's consideration at this hearing and will only be provided to the City Council for the September 13, 2022, hearing. It is therefore premature for the City Council to decide on the annexation proposal until the City Council reviews and considers the full report.
[66] FEIR at 124-125.
[67] DEIR, Appendix I at 15.
[68] *Id.*

B. The Project is Inconsistent with General Plan Policies Governing Transit.

Policy FS-4.7 encourages transit-oriented development as a means to reduce costs for expansion and maintenance of the City's streets, in addition to other benefits and consistent with the General Plan Transportation goals and policies. The proposed annexed site is in a Commercial Corridor and Center Urban Village, which the General Plan describes as being "less directly connected to transit than other Growth Areas," and "recogniz[es] that transit-oriented sites should be given more priority for accommodating new growth."

The site proposed to be annexed is also located approximately two miles from the closest Light Rail along Winchester Boulevard, north of Camden Avenue and five Valley Transportation Authority bus lines serve the site.[69] Policy TR-3.8 requires collaboration with transit providers to develop and provide transit stop amenities such as pedestrian pathways approaching stops, benches and shelters, nighttime lighting, traveler information systems, and bike storage to facilitate access to and from transit stops. These measures encourage ridership. The Staff Report to the Planning Commission acknowledged that "VTA has been made aware of the request for additional service at this area," and that "[t]he project is being conditioned to coordinate with VTA to provide bus stop improvements and duck-outs. … to provide a 21-foot wide sidewalk along the Camden Avenue project frontage and a 19-foot wide sidewalk along the Union Avenue project frontage."[70] Although these conditions will add some transit amenities to the area, greater effort is needed to demonstrate consistency with Policy TR-3.8, especially with regards to the light rail stop.

C. The Project is Inconsistent with General Plan Policy Ms-13.3 to Reduce Grading.

Policy MS-13.3 requires subdivision designs and site planning to minimize grading yet approximately 400,000 cubic yards of soil is proposed be exported for this Project.[71] A Reduced Grading and Excavation Alternative was evaluated in the EIR to reduce construction air quality impacts but was nevertheless dismissed, despite the reduced amount of grading and excavation than the proposed Project.[72]

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[69] DEIR at 224.
[70] Memorandum from Christopher Burton to Planning Commission at 22 (July 13, 2022) (hereinafter, "Staff Report").
[71] DEIR at 113.
[72] *Id.* at xxi.

For the foregoing reasons, the City Council must deny the Project's annexation proposal.

IV. THE FINDINGS REQUIRED BY THE SUBDIVISION MAP ACT CANNOT BE MADE FOR THE PROJECT'S TENTATIVE MAP

The annexation and pre-zoning are associated with a Planned Development Permit, File No. PD20-007, and a Tentative Map, File No. PT21-007.[73] These two applications will be heard separately after the annexation has been certified by the Local Agency Formation Commission of Santa Clara County.[74] For purposes of CEQA compliance, the Staff Report to the Planning Commission explained that the FEIR was prepared for all of the separate discretionary actions and planning activities associated with entitlement and development of the Project site.[75] As such, it is timely to also comment on the required findings for the Project's proposed tentative map.

A tentative map for any subdivision must not be approved unless the proposed subdivision, together with the provisions for its design and improvement, is consistent with the applicable general plan of the City.[76] A tentative map of any subdivision must be disapproved if any of the findings described in Section 66474 of the Subdivision Map Act are made.[77] Specifically, a tentative map must be denied if any of the following findings can be made: "(a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451. (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 type of improvements is likely to cause serious public health problems. …."[78]

As a result of the Project's ongoing unmitigated significant impacts discussed above and in previously submitted comments on the Project, the findings required under state and City laws to approve the Project's tentative map are not supported by substantial evidence. In particular, the findings necessary to approve the tentative map pursuant to the Subdivision Map Act—specifically, the findings that

[73] Staff Report at 3.
[74] *Id.*
[75] *Id.*
[76] City of San Jose, Municipal Code § 19.12.130(A).
[77] Gov't Code § 66474.
[78] *Id.* at § 66474(a)-(f).

the proposed map is consistent with the General Plan, that the Project is not likely to cause substantial environmental damage, and that the Project will not result in serious public health problems—are not supported by substantial evidence for the reasons discussed herein and in previously submitted comments on the Project.

V. CERTIFICATION OF THE FEIR IS PREMATURE SINCE NOT ALL PROJECT ENTITLEMENTS HAVE BEEN CONSIDERED BY CITY DECISION MAKERS

It is well-settled that certification or adoption of a CEQA document cannot be issued before a project has been approved.[79] This is consistent with CEQA's requirement that an EIR consider the "whole of an action."[80] This includes all phases of a project that are reasonably foreseeable.[81] As the courts have held, "[t]he purpose of CEQA is to inform the public of plans, so that the public can help guide decision makers about environmental choices."[82]

At this hearing, the City Council will consider only two of Project's four discretionary entitlements – the annexation (Cambrian No. 37) and Planned Development Prezoning (PDC17-040). The remaining entitlements (i.e., Planned Development Permit and Tentative Map) will be considered by City decision makers *after* the annexation and Planned Development Zoning become effective. For that reason, a recommendation to approve the Project and certify the EIR would be premature at this time.

Future actions to be taken by City decision makers on the underlying Project approvals which are not currently before the City Council may result in changes to the Project or the addition of new mitigation measures that must be evaluated and incorporated into the FEIR during the CEQA process. If the FEIR is certified prior to considering the remaining land use entitlements for the Project, the City Council's ability to ensure that all mitigation measures and alternatives are adequately considered in the FEIR will be limited. Therefore, the City Council must not certify the FEIR pursuant to CEQA at this time given that the Project's remaining entitlements have not yet been considered or approved by the decision-

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[79] See, e.g., *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963; *Coalition for an Equitable Westlake/Macarthur Park v. City of Los Angeles* (2020) 47 Cal.App.5th 368, 379; *Stockton Citizens for Sensible Planning v. City of Stockton*, 48 Cal. 4th 481, 489; *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 418-25.
[80] 14 C.C.R. § 15378; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.
[81] *Id.*
[82] *Endangered Habitats League, Inc. v. State Water Resources Control Bd.* (1997) 63 Cal.App.4th 227, 242.

making body. Instead, the City Council may consider the approval of the resolution certifying the FEIR at the same meeting where the tentative map and planned development permit(s) are considered.

VI. CONCLUSION

For the reasons stated herein and in the attached comments, Silicon Valley Residents urges the City Council to not certify the FEIR, pre-zone the site, and initiate annexation proceedings. The City Council must direct Staff to prepare and circulate a legally adequate EIR which fully analyzes the environmental impacts of all the Project's required entitlements and mitigates the Project's significant impacts to public health, noise, transportation, energy use, and water supply.

The City must remedy all substantial defects in the FEIR, and in the Project as a whole, before the Project may be presented to the City's decision making body at any future public hearing.

Thank you for your attention to these comments.

Sincerely,

[redacted]

Tara C. Rengifo
Associate Attorney

TCR:acp

5745-015acp

EXHIBIT A

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
trengifo@adamsbroadwell.com

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO
MICHAEL R. SEVILLE

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

July 13, 2022

Via Email

City of San Jose Planning Commission
City of San Jose
200 E. Santa Clara Street
San Jose, CA 95113
[redacted]

Kara Hawkins, [redacted]

Re: Comments to Planning Commission on Agenda Item No. 5.b for the Cambrian Park Mixed-Village Project (File Nos. PDC17-040, PD20-007) (SCH No. 2018022034)

Dear Honorable Commissioners, Ms. Hawkins:

We are writing on behalf of Silicon Valley Residents for Responsible Development ("Silicon Valley Residents") provide comments on the Staff Report for the Cambrian Park Mixed-Use Village Project (File No. PDC17-040, PD20-007, CAMBRIAN 37, and SCH No. 2018022034) ("Project"), proposed by Weingarten Realty ("Applicant"), prepared by the City of San Jose ("City"), as well as the Final Environmental Impact Report ("FEIR") and Responses to Comments ("RTC") prepared pursuant to the California Environmental Quality Act ("CEQA"). The Project site is located at 14200 and 14420 Union Avenue (Assessor's Parcel Numbers ("APNs") 419-08-012 and -013) ("Site").

Staff's recommendation is for the Planning Commission to recommend that the City Council certify the FEIR, approve an ordinance to pre-zone the site, and adopt a resolution initiating annexation proceedings is unsupported and based on a deficient FEIR. The Project cannot be recommended for approval at this time because the City has not conducted a legally sufficient environmental review of the Project pursuant to CEQA. The City lacks substantial evidence to support the FEIR's conclusions that impacts will be less than significant. The FEIR also relies

on ineffective and unenforceable mitigation measures that fail to adequately reduce impacts. The Planning Commission cannot recommend approval of the Project in reliance on a legally inadequate FEIR.

These comments demonstrate that the FEIR's public health, noise, transportation, energy use, and water supply analyses remain substantially inaccurate and incomplete. The RTC also fails to meaningfully respond to many of the technical comments on the DEIR and fails to resolve many of the legal and evidentiary deficiencies we previously identified in the DEIR.[1] As a result, the FEIR fails to adequately disclose the Project's potentially significant impacts, as required by CEQA.

We prepared our comments with the assistance of technical experts, including air quality, GHG emissions, and health risk assessment experts Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., at Soil / Water / Air Protection Enterprise ("SWAPE"); traffic and transportation expert Daniel T. Smith Jr., P.E.; and noise expert Derek Watry. SWAPE's comments, Mr. Hagemann's *curriculum vitae*, and Mr. Rosenfeld's *curriculum vitae* are attached to this letter as Exhibit A. Mr. Smith's comments and his *curriculum vitae* are attached to this letter as Exhibit B. Mr. Watry's comments and his *curriculum vitae* are attached to this letter as Exhibit C. We reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.[2]

For the reasons stated herein, Silicon Valley Residents urges the Planning Commission to consider these comments and direct Staff to revise and recirculate the EIR for further public comment. The Project cannot be approved and should not be rescheduled for a further public hearing, until all of the issues raised in these comments, and in the comments of other members of the public and responsible agencies, have been addressed in a revised and recirculated EIR.

I. STATEMENT OF INTEREST

Silicon Valley Residents is an unincorporated association of individuals and

[1] Comments on the Draft Environmental Impact Report for the Cambrian Park Mixed-Village Project (File Nos. PDC17-040, PD20-007) (SCH No. 2018022034) (January 3, 2022).
[2] Gov. Code § 65009(b); Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; *See also Galante Vineyards v. Monterey Water Dist*. (1997) 60 Cal. App. 4th 1109, 1121.

labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. Residents includes San Jose residents Christopher Valverde, Jonathan R. Baker, and Christopher Reed, the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, along with their members, their families, and other individuals who live and work in the City of San Jose.

Individual members of Silicon Valley Residents live, work, recreate, and raise their families in the City and in the surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

In addition, Silicon Valley Residents has an interest in enforcing 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 businesses and industries to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. A RECOMMENDATION TO CERTIFY THE EIR IS PREMATURE GIVEN THAT ALL PROJECT ENTITLEMENTS HAVE NOT YET BEEN CONSIDERED BY CITY DECISION MAKERS

It is well-settled that certification or adoption of a CEQA document cannot be issued before a project has been approved.[3] This is consistent with CEQA's requirement that an EIR consider the "whole of an action."[4] This includes all phases of a project that are reasonably foreseeable.[5] As the courts have held, "[t]he

[3] See, e.g., *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963; *Coalition for an Equitable Westlake/Macarthur Park v. City of Los Angeles* (2020) 47 Cal.App.5th 368, 379; *Stockton Citizens for Sensible Planning v. City of Stockton*, 48 Cal. 4th 481, 489; *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 418-25.
[4] 14 C.C.R. § 15378; *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.
[5] *Id.*

purpose of CEQA is to inform the public of plans, so that the public can help guide decision makers about environmental choices."[6]

At this hearing, the Planning Commission will consider only two of Project's four discretionary entitlements – the annexation (Cambrian No. 37) and Planned Development Prezoning (PDC17-040). The City has scheduled the remaining entitlements (Planned Development Permit and Tentative Map) to be considered by the City decision makers *after* the annexation and Planned Development Zoning becomes effective. For that reason, a recommendation to approve the Project and certify the EIR would be premature at this time.

Future actions to be taken by City decision makers on the underlying Project approvals which are not currently before the Planning Commission may result in changes to the Project or the addition of new mitigation measures that must be evaluated and incorporated into the Project's EIR during the CEQA process. If the Planning Commission recommends certification of the FEIR prior to considering the remaining land use entitlements for the Project, the City Council's ability to ensure that all mitigation measures and alternatives are adequately considered in the Project's EIR will be limited. Therefore, the Planning Commission must not recommend that the City Council certify the FEIR pursuant to CEQA at this time given that the Project's remaining entitlements have not yet been considered or approved by the decision making body. Instead, the Planning Commission could recommend that the City Council consider the approval of the resolution certifying the FEIR at the same meeting where the tentative map and planned development permit(s) are considered.

III. THE RESPONSES TO COMMENTS ARE DEFICIENT AND THE EIR MUST BE REVISED AND RECIRCULATED

CEQA requires that a lead agency evaluate and prepare written responses to comments in a FEIR.[7] Agencies are required to provide "detailed written response to comments…to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review

[6] *Endangered Habitats League, Inc. v. State Water Resources Control Bd.* (1997) 63 Cal.App.4th 227, 242.
[7] Pub. Res. Code § 21091(d); 14 C.C.R. §§ 15088(a), 15132.

process is meaningful."[8] When a comment raises a "significant environmental issue," the written responses must describe the disposition of each such issue raised by commentators.[9] Specifically, the lead agency must address the comment "in detail giving reasons why" the comment was "not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice,"[10] particularly in response to comments are made by experts.[11] Failure of a lead agency to respond to comments raising significant environmental issues before approving a project frustrates CEQA's informational purpose and may render the EIR legally insufficient.[12]

The City's responses to comments in the FEIR fail to fulfill the City's legal duty to provide reasoned and adequate responses.

A. RESPONSES TO COMMENTS ON THE PROJECT'S SIGNIFICANT AND UNMITIGATED CONSTRUCTION NOISE IMPACTS ARE INADEQUATE

The RTC fails to meaningfully respond to noise expert Mr. Watry's comments addressing the failure to adequately analyze the Project's significant construction noise impacts and the deficient mitigation measures to reduce this impact to less than significant levels. Contrary to the analysis set forth in the DEIR and the noise analysis in Appendix G, the RTC now claims without sufficient evidentiary support that "since substantial construction generating activities such as grading, demolition, and excavation would move throughout the site and would not occur in one location for more than 12 months, substantial construction noise would not occur at a particular noise receptor or group of receptors for more than 12 months."[13] According to Mr. Watry, "[t]he 12-month aspect is crucial to the FEIR's

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[8] *City of Long Beach v. Los Angeles Unified Sch. Dist*. (2009) 176 Cal.4th 889, 904.
[9] Pub. Res. Code §21091(d); 14 C.C.R. §§15088(c), 15132(d), 15204(a).
[10] 14 C.C.R. § 15088(c); S*ee Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124 ("*Laurel II*"); *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal. App. 4th 603, 615.
[11] *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367, 1371.
[12] *Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1020.
[13] City of San Jose, *Cambrian Park Mixed-Use Village Project, Final Environmental Impact Report* at 97 (July 2022) (hereinafter "RTC").

claim of the 'temporary' noise impact being less than significant and is called out 18 times in the responses to comments about construction noise."[14]

Mr. Watry first responds to the RTC and FEIR's thresholds of significance for the Project's construction noise analysis. The FEIR included two criteria addressing construction noise impacts: (1) a significant impact would occur if a project located within 500 feet of residential uses would involve substantial noise-generating activities continuing for more than 12 months; and (2) an increase of 5 dBA Leq or more over the existing ambient and over 60 dBA Leq for more than 12 months at residences.[15] For the first threshold of significance, Mr. Watry calculated that 79% of the 18.1-acre project site is within 500 feet of residences.[16] Additionally, based on the Project's construction timeline set forth in the FEIR, demolition activities, site preparation, grading, and trenching will occur over the initial eleven and a half months of Project construction to be followed by building construction.[17] Based on the foregoing, Mr. Watry concluded that "construction noise from this project clearly meets the standard for a significant noise impact pursuant to General Plan Policy EC-1.7."[18]

With regard to the second threshold, Mr. Watry reiterated his comments that 52 dBA is the existing daytime ambient noise level in the backyards of homes along Bercaw Lane, which are "precisely the area that construction noise will impact," according to Mr. Watry.[19] The FEIR acknowledged, "The commenter has correctly summarized existing ambient noise levels at nearby receptors as presented in the noise assessment…."[20] Nevertheless, the FEIR's Revised Noise Study relies on a 59 dBA L_{eq} ambient daytime hourly average noise levels, which is based on a noise measurement taken on the street at the intersection of Bercaw Lane and Wyrick Avenue.[21] Mr. Watry 's comments explain that the 52 dBA noise measurements taken near the backyards of the homes along Bercaw Lane are most representative of ambient noise levels because these are the locations where the sensitive receptors

[14] Comments by Derek Watry on the Cambrian Park Mixed-Use Village Project Final EIR at 2 (July 12, 2022) (hereinafter, "Watry Comments").
[15] RTC at 96; DEIR at 182.
[16] Watry Comments at 4.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.* at 4-5.

will be most affected by increased noise levels during construction.[22] Mr. Watry's comments therefore demonstrate that the City's reliance on an elevated 59 dBA L_{eq} baseline noise level is unsupported because it is not representative of Project conditions. Mr. Watry's comments, by contrast, provide specific evidentiary support for utilizing 52 dBA as the existing daytime ambient noise level and he likewise provides support for his determination that the threshold of significance for this Project's noise impacts is an exceedance of 60 dBA L_{eq} for a period of 12 months.[23]

Based on the correct threshold, Mr. Watry's comments ultimately conclude that "[t]hroughout the first year, the noise levels in the backyards will regularly and routinely exceed both the existing ambient by 5 dBA and the absolute standard of 60 dBA. Therefore, the inescapable conclusion is that – even given the definition of 'temporary' as 12 months – the residents of Bercaw Lane will be significantly impacted by construction noise during that first year, at least."[24]

In his response to the FEIR, Mr. Watry utilized the Revised Noise Study's mitigated noise level of 81 dBA L_{eq} at 50 feet to calculate the noise level at other distances and concludes that noise levels remain significant after FEIR mitigation measures are applied.[25] He determined that "[t]he distance at which the mitigated noise level is 60 dBA is 561 feet, even farther than the 500-foot distance presumed by Policy EC-1.7," and that around 85 percent of the Project site is within 561 feet of a residential property line.[26] Moreover, around 66 percent of the Project site is within 561 feet of the Bercaw Lane residences.[27] Mr. Watry explains that "[a]t 25 feet, the closest approach of construction work to the Bercaw Lane property lines, the noise level will be 87 dBA Leq which exceeds the 60 dBA standard by 27 dBA. These are <u>mitigated</u> noise levels."[28]

See Figure 1 below generated by Mr. Watry, which shows that 85 percent of the Project is within 561 feet of residences (yellow) and 66 percent of the Project is within 561 feet of the Bercaw Lane residences (pink).[29]

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[22] *Id.* at 5.
[23] *Id.*
[24] *Id.* at 8.
[25] *Id.* at 6.
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.* at 7.

In terms of the duration of the Project's significant construction noise impacts, Mr. Watry's comments provide substantial evidence that even *mitigated* construction noise levels would exceed the thresholds for a period exceeding 12 months.[30] Mr. Watry concludes that "[t]he activities that will primarily occur during the first year – demolition, site prep, grading, trenching, construction foundations – will occur across the site, and it is <u>not</u> reasonable to assert that equipment will <u>not</u> be routinely moving throughout 66% of the site for long durations."[31] He also dismisses the RTC's claim that the construction of certain buildings will act as a noise barrier; "building construction will only have just begun in the last 2 weeks of the first year, so any shielding that may later be provided

[30] *Id.* at 8.
[31] *Id.*

when the project residences nearest Berclaw are built cannot be claimed for the first year."[32]

For the foregoing reasons, the RTC's responses to Mr. Watry's comments are not supported by substantial evidence and the FEIR still fails to establish that the Project's construction noise impacts—even with the proposed mitigation measures—will be less than significant. Mr. Watry's comments demonstrate that the Project will have significant impacts from construction noise levels and that the FEIR's existing mitigation is insufficient to reduce these impacts to less than significant levels. The analysis in the FEIR must be revised to accurately demonstrate the full extent of the Project's construction noise impacts.

B. RESPONSES TO COMMENTS ON THE PROJECT'S SIGNIFICANT AND UNMITIGATED TRANSPORTATION IMPACTS ARE INADEQUATE

The RTC fails to meaningfully respond to transportation expert Mr. Daniel Smith's comments on the Project's VMT impacts.

First, Mr. Smith determined in his comments on the FEIR that the Project's 8.96 residential per capita VMT is approximately 24.8 percent below the VMT rate in the immediate area.[33] For employment based VMT generation, the FEIR finds that the Project would generate VMT at a rate of 12.01 per employee, which is about 16.4 percent less than the rate of the broader area.[34] Mr. Smith concluded that "the EIR's estimated residential per capita VMT and employment-based VMT for the Project are implausible given that this Project, although mixed use, is of limited size and is sited in a highly suburbanized environment rather than in a dense urban area."[35]

Mr. Smith explained that the analysis suggests two Project features that would reduce VMT: (1) closure of the existing vehicular access to the site at Wyrick Avenue, leaving just a pedestrian-only connection; and (2) creating new traffic signal protected crosswalks to the site, one across Union Avenue and one across

[32] *Id.*
[33] Comments by Daniel Smith on the Cambrian Park Mixed-Use Village Project Final EIR at 1 (July 13, 2022) (hereinafter, "Smith Comments").
[34] *Id.*
[35] *Id.*

Camden Avenue.[36] The pedestrian enhancement measures would reduce about 0.625 percent of VMT, according to Mr. Smith based on the California Air Pollution Officers Association's published document entitled, "Quantifying Greenhouse Gas Mitigation Measures," which would "leave[] presumed internalization to account for the purported 24.18 percent balance of reduction in residential VMT per capita, which [Mr. Smith concludes] is not supported by evidence in the analysis."[37] Mr. Smith therefore determined that "the predicted VMT per resident capita is unreliable."[38]

Mr. Smith further stated that "the reduction in prevailing VMT per employee compared to prevailing average in the Project area would be dependent on an extremely high percentage of Project residents from a very small number of households to fill the jobs within the Project."[39] Mr. Smith concluded that "[t]his assumption is implausible and not supported by evidence in the FEIR."[40] He also noted that since the FEIR estimates approximately 730 jobs under the Office Variant but a mere 200 jobs under the Assisted Living Variant, "the two Variants would have different rates of VMT per employee because of different percentages of employees living internal to the Project."[41] However, the FEIR's analysis assumed that the workforce in each case would generate the same average VMT per employee for both variants, which is another error in the analysis.[42]

Second, Mr. Smith commented that the DEIR's assumption that the Project's hotel, retail, and restaurant uses would not generate net new trips because the Project would only attract existing trips made to hotel, retail, and restaurant sites around the Project area is speculative and unsupported.[43] The RTC incorrectly described Mr. Smith's comments as focused on the City's methodology for assessing the VMT impacts of the Project. However, Mr. Smith's comments did not object to the City's selected methodology, but rather demonstrates that the underlying

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[36] *Id.*
[37] *Id.* at 2.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*
[42] *Id.*
[43] *Id.* at 3.

assumption made by the City and its consultants to analyze the VMT impacts from the Project's hotel, retail, and restaurant uses is unsubstantiated.[44]

Mr. Smith explains in his comments on the FEIR that "[e]ach year the City and the region experience a growth in households and jobs. … the Project's hotel/restaurant component is not just sharing in serving a fixed demand but is providing capacity to serve a growing demand. As a result, the assumption of trip internalization in the FEIR's VMT evaluation approach is not supported by substantial evidence and skews the corresponding VMT impacts analysis for these uses against a realistic estimate of the VMT that the hotel, retail and restaurant components would generate."[45]

Third, Mr. Smith previously commented that "although the DEIR purports to assess cumulative impacts based on a list of approved but not yet developed projects within an approximate 2.5-mile radius of the Project site, two specific projects within that radius were not included in the cumulative projects list and that no projects within that radius but lying within the limits of the Town of Los Gatos were included."[46] Response EE.48 explained in part that "No projects in the Town of Los Gatos were included in the cumulative LOS analysis given that there are no study intersections located in Los Gatos."[47] Mr. Smith determined that Response EE.48 simply "evades the issue of whether trips from approved projects in Los Gatos would travel through the locations that were studied in the FEIR and would thereby intensify the cumulative impacts of the Project."[48]

However, Response EE.48 does admit that the 9395 S. Bascom and the 3090 S. Bascom approved developments were not considered in the cumulative analysis because each were estimated to not make traffic contributions exceeding 10 peak hour trips to any one of the DEIR study intersections.[49] However, as Mr. Smith pointed out, "this 10 peak hour minimum trip standard does not appear in the City's Transportation Analysis Handbook, which defines ATI as 'A City-maintained database of vehicle-trips generated by projects for which an entitlement to build has

[44] *Id.*
[45] *Id.* at 3.
[46] *Id.* at 7.
[47] RTC at 111.
[48] Smith Comments at 7.
[49] *Id.*

been granted that have yet been built or occupied.'"[50] Mr. Smith also commented that "[b]y ignoring projects of a certain size, the analysis ignores the fundamental purpose of a cumulative impacts analysis, which is to assess an impact created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts."[51] Mr. Smith also noted that comments by Ann Riddell identified additional development projects in the subject Project vicinity have not been included in the cumulative impacts analysis.[52]

Fourth, Mr. Smith previously commented that the DEIR did not account for transportation impacts from the Project's proposed 18 Accessory Dwelling Units ("ADU").[53] Response EE.49 indicates the number of ADUs has been increased to 27 ADUs.[54] In response, Mr. Smith commented that "[t]he FEIR in its Appendix B presents a piecemeal sensitivity analysis of the VMT and traffic consequences of including the now proposed 27 ADUs. The FEIR improperly evaluates in isolation the consequence of just adding the 27 ADUs, but instead must also evaluate increased VMT and traffic from the missing cumulative projects noted above."[55]

Finally, Mr. Smith reiterated his comment that the "selection of competing services within the 5-mile radius circle of the Project site from which trips would be diverted is unrepresentative of the actual locations of competing facilities within that 5-mile radius."[56] Mr. Smith states in his comments that no information was provided in the way of facts or arguments by the City in the RTC to change his analysis detailed in his comment letter on the DEIR.

The FEIR must be revised and recirculated to correct these deficiencies and errors in the analysis.

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[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] *Id.* at 8.
[54] *Id.*
[55] *Id.*
[56] *Id.* at 3.

C. RESPONSES TO COMMENTS ON THE PROJECT'S SIGNIFICANT AND UNMITIGATED PUBLIC HEALTH RISKS ARE INADEQUATE

The RTC fails to meaningfully respond to SWAPE'S comments on the potentially significant public health risks associated with Project construction and operation, and fails to mitigate potentially significant health risk impacts. SWAPE previously commented that the Project's model was flawed because the Project's cancer risk was calculated based on Tier 4 *Final* equipment instead of the less stringent Tier 4 *Interim* equipment, which the Project proposes to use as mitigation.[57] The RTC dismisses SWAPE's comments without adequate justification.[58] Specifically, the RTC claims that Tier 4 Interim and Tier 4 Final equipment are equally effective in reducing particulate matter emissions. This assumption is incorrect. SWAPE's comments in response demonstrate that there are substantial differences in the emissions between Tier 4 Interim and Tier 4 Final equipment.[59] SWAPE determined that "by correctly including Tier 4 Interim mitigation rather than Tier 4 Final mitigation, the revised model results in exhaust PM10 emissions that are approximately 158% greater than the original emissions estimates."[60] Given this significant discrepancy, SWAPE concluded that the DEIR's Health Risk Assessment ("HRA") "is underestimated, and the resulting cancer risk should not be relied upon to determine Project significance."[61]

Additionally, the FEIR revised the DEIR air quality and health risk analysis to include a discussion of the Project's generators.[62] The RTC explains that "the generator emissions of diesel particulate matter would increase cancer risk over the 30-year Project exposure period by 0.46 cases per million."[63] In their comments on the FEIR, SWAPE "acknowledge[d] that this cancer risk, when combined with the cancer risk associated with Project construction and operation, would not change the less-than-significant health risk impact determination," but SWAPE determined that "in conjunction with the higher [Diesel Particulate Matter] emission rate and

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[57] Comments by SWAPE on the Cambrian Park Mixed-Use Village Project Final EIR at 2 (July 12, 2022) (hereinafter, "SWAPE Comments").
[58] RTC at 57.
[59] *Id.*; SWAPE Comments at 2.
[60] *Id.* at 3.
[61] *Id.*
[62] RTC at 71.
[63] *Id.*

cancer risk that would result from the less stringent Tier 4 Interim emissions standards, as discussed above, the Project may result in a significant health risk impact."[64] Based on SWAPE's review and analysis, the FEIR fails to adequately evaluate, disclose, and mitigate the Project's potentially significant health risk impacts and the FEIR must be revised accordingly.[65]

D. THE FEIR FAILS TO RESPOND TO COMMENTS ON THE PROJECT'S SIGNIFICANT AND UNMITIGATED ENERGY IMPACTS

We previously commented that the DEIR was inadequate as an environmental document because it failed to properly disclose, analyze, and mitigate the Project's significant impacts on energy use. Our comments identified a multitude of issues with the DEIR's impacts analysis on energy that were not adequately addressed in RTC.

First, the DEIR's energy impact analysis did not assume compliance with the City's requirements under the Reach Code and based the impacts analysis on a combination of electricity and natural gas usage. The FEIR failed to resolve this error. The failure to analyze the Project's energy impacts under the laws that the Project must comply with continues to be a substantial informational gap in the FEIR's analysis contrary to CEQA's requirements.

Second, the FEIR still lacks evidentiary support for the determination that the Project would not result in a significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources during operations. This information constitutes critical omissions that require analysis in a revised EIR.

a. The FEIR Must Disclose and Evaluate the Project's Actual Electricity Usage Based on Compliance with the City's Reach Code

The RTC Response EE.58 is non-responsive to our comment that the DEIR failed as an informational document because the energy impacts analysis "do[es] not assume compliance with the City's Reach Code," and therefore the Project's actual

[64] SWAPE Comments at 3.
[65] *Id.* at 4.

electricity usage and impacts on energy and the environment is undisclosed.[66] Response EE.58 again explains that "[t]he project must comply with the City's Reach Code to obtain building permits," and "[c]onformance with the City's Reach Code is evaluated prior to building permit issuance."[67] However, this analysis must not be deferred until issuance of the Project's building permit. In order to comply with CEQA Appendix F energy analysis requirements, this information must be discussed in the EIR. Moreover, the Project's actual electricity usage in compliance with the City's Reach Code may result in significant impacts on energy supply that will be undisclosed and unmitigated if this analysis is delayed until issuance of the building permits.

Compliance with the City's Reach Code would increase the Project's electricity usage and may result in significant environmental impacts, such as from the effects on local and regional energy supplies, especially from SJCE's electricity supply, the effects on peak and base electricity demand, and compliance with existing energy standards. The FEIR must therefore be revised to evaluate the impacts on energy supply from the Project's actual electricity usage in compliance with the City's Reach Code. "'[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.' The error is prejudicial 'if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.'"[68]

Additionally, Response EE.58 states that "natural gas usage was assumed for the apartments, retail/restaurant, townhomes, and hotel uses in the model, making the Draft EIR's results conservative."[69] However, by not assuming Reach Code compliance in the analysis, the FEIR impermissibly constrains the analysis of the Project's energy impacts to a combination of natural gas and electricity usage that is not permitted by law. The failure to disclose the Project's actual energy mix and usage in the FEIR constitutes a failure to proceed in the manner required by CEQA

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[66] City of San Jose, *Cambrian Park Mixed-Use Village Project, Draft Environmental Impact Report* at 109 (November 2021) (hereinafter "DEIR").
[67] RTC at 129.
[68] *San Joaquin Raptor/Wildlife Rescue Ctr. v. Cty. of Stanislaus* (1994) 27 Cal. App. 4th 713, 721–722, *as modified* (Sept. 12, 1994).
[69] RTC at 129.

and is therefore an abuse of discretion.[70] Thus, the FEIR must be revised to quantify and disclose the Project's electricity usage based on what is actually required by the City's policies and ordinances.

b. The FEIR Lacks Substantial Evidence to Demonstrate that the Project Would Not Result in a Significant Environmental Impact Due to Wasteful, Inefficient, or Unnecessary Consumption of Energy Resources

CEQA Guidelines Appendix F identifies the following means to achieve the goal of conserving energy: decreasing overall per capita energy consumption, decreasing reliance on fossil fuels, and increasing reliance on renewable energy sources.[71] In order to ensure that energy impacts are considered in project decisions, CEQA requires that EIRs include a discussion of the potential energy impacts of proposed projects and a detailed statement of mitigation measures designed to "minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."[72]

RTC Response EE.59 fails to support the determination that "[t]he EIR's analysis demonstrates that the project would not result in a wasteful use of energy,…."[73] First, the FEIR fails to adequately analyze the significance of the Project's energy impacts given the Project's reliance on fossil fuels.[74] One of the stated goals in Appendix F is to *decrease* reliance on fossil fuels.[75] The FEIR, however, estimates that implementation of the Assisted Living Variant would increase natural gas usage by approximately 20.5 million kBtu per year and implementation of the Office Variant would increase natural gas usage by approximately 21.6 million kBtu per year.[76] Response EE.59 wholly ignores the Project's natural gas usage estimated in the FEIR and instead reiterates that the

[70] *Save our Peninsula Comm. v. Monterey Cty. Bd. of Supervisors* (2001) 87 Cal. App. 4th 99, 118.
[71] Appendix F at § I.
[72] Pub. Res. Code § 21100(b)(3); CEQA Guidelines, Appendix F, Energy Conservation ("Appendix F"), § I. Appendix F defines "Unavoidable Adverse Effects" as "wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated."
[73] RTC at 132.
[74] DEIR at 110-111.
[75] *Id.*
[76] *Id.*

Project would comply with the City's Reach Code.[77] However, the energy supply analysis admittedly does not assume compliance with the Reach Code and calculates natural gas usage for Project features such as the apartments, townhouses, hotel, strip mall, restaurant, and assisted living facility/office space.[78] Based on the energy use calculations in the FEIR, the Project would increase reliance on fossil fuels that may result in an undisclosed potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources.

Second, as explained above, the energy impacts analysis should have considered the Project's actual electricity usage in compliance with the City's Reach Code to analyze the environmental impacts. CEQA Guidelines section 15126.2 states that the energy impacts analysis "shall focus on energy use that is caused by the project."[79] Appendix F establishes that potential energy impacts could arise from the project's effects on local and regional energy supplies, requirements for additional capacity, peak and base period demands for electricity, and the project's effects on energy resources.[80] By failing to disclose the Project's actual electricity usage consistent with the Reach Code, the FEIR fails to analyze the energy impacts caused by the Project, and it remains unknown if additional natural gas usage may be necessary to supply energy for the Project. As a result, the analysis in the FEIR fails to comply with the requirements set forth in Appendix F.

Third, another stated goal for conserving energy set forth in Appendix F is "increasing reliance on renewable energy sources."[81] Appendix F further states that "Mitigation Measures may include: … 4. Alternate fuels (particularly renewable ones) or energy systems."[82] In line with Appendix F, the San Jose 2030 Greenhouse Gas Reduction Strategy includes a Green Building Measure and Design Feature to "[e]ncourage maximized use of on-site generation of renewable energy for all new and existing buildings," and "[e]ncourage the installation of solar panels or other clean energy power generation sources over parking areas."[83]

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[77] RTC at 132-133.
[78] DEIR at 109-110.
[79] 14 C.C.R. § 15126.2(b).
[80] Appendix F § II.C.
[81] *Id.* at § I.
[82] *Id.* at § II.D.4.
[83] DEIR at 111.

Response EE.59 states that "[t]he project proposes to install solar panels on all low-rise residences units and will make taller mixed-use and commercial buildings solar ready. In addition, the project anticipates that there will be solar on the mixed-use commercial/residential building."[84] However, "solar ready" and "anticipate[d]" solar does not ensure an increase in the reliance on renewable energy systems, as required by Appendix F. This discussion of renewable energy generation is vague and uncertain, and fails to provide a meaningful "investigation into renewable energy options that might be available or appropriate for the project."[85]

Moreover, although "[t]he Project's use of on-site solar will decrease the need to pull energy from the grid," "electricity for the Project would [also] be provided by SJCE,…."[86] The FEIR, however, does not disclose the Project's actual electricity usage and also fails to assess how much electricity would be needed from the grid as compared to the energy generated by on-site renewable energy sources. Response EE.59 wrongly asserts that "Appendix F of the CEQA Guidelines does not require a discussion of how much electricity would be needed from the grid as compared to the energy generated by on-site renewable energy source."[87] However, Appendix F lists possible energy impacts and mitigation measures for the lead agency to consider, which include the project's energy requirements; the project's effects on local and regional energy supplies, requirements for additional capacity, and peak and base period demands for electricity and other forms of energy; the degree to which the project complies with existing energy standards; and the project's effects on energy resources.[88] The FEIR must be revised and recirculated to adequately disclose proposed renewable energy generation for the Project and sufficiently analyze the related energy impacts.

Finally, compliance with the Building Code and other energy efficiency requirements does not, by itself, constitute an adequate assessment of measures that can be taken to address the energy impacts during construction and operation of the Project. In *Ukiah Citizens for Safety First v. City of Ukiah*, the court held that the EIR inadequately described the energy impacts of a Costco project where the

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[84] RTC at 132.
[85] *California Clean Energy Comm. v. City of Woodland* (2014) 225 Cal. App. 4th 173, 213.
[86] DEIR, Appendix B, "Additional Responses to City of San Jose GHGRS Project Compliance Checklist" at 2.
[87] RTC at 132.
[88] Appendix F § II.C.

EIR relied on the project's compliance with energy conservation standards to conclude that energy consumption would be less than significant, and did not separately evaluate energy impacts from transportation, construction, or operation.[89] Here, the FEIR relies on the California Building Code and Title 24 energy efficiency standards, CALGreen code, green building practices, and a number of green building measures and design features, consistent with the San José 2030 Greenhouse Gas Reduction Strategy to support the less than significant determination.[90] However, as described above, additional analysis is necessary under the requirements of Appendix F to support a determination that the Project would not result in the wasteful, inefficient, and unnecessary consumption of energy during construction and operations.

Therefore, for several reasons, the FEIR fails to comply with Appendix F energy analysis requirements and must be revised.

E. THE FEIR FAILS TO ADEQUATELY RESPOND TO COMMENTS ON THE PROJECT'S POTENTIALLY SIGNIFICANT AND UNMITIGATED IMPACTS ON WATER SUPPLY

The RTC fails to adequately respond to our comments that the DEIR lacks substantial evidence to support the conclusion that the Project would not result in significant impacts to water supplies.

We commented that the DEIR fails to adequately identify and analyze the conservation measures that would purportedly reduce future water demand during single-dry water year and multiple dry years given that total water demand during these periods is estimated to *exceed* the total supply.[91] RTC Response EE.55 states that "the set of conservation measures may change with successive UWMPs based on a variety of factors, and so it is not possible to precisely predict what specific conservation measures may be implemented in future drought conditions by the SJWC."[92] However, in response to the Santa Clara Valley Water District's comments dated January 3, 2022 recommending the implementation of water conservation measures, Response A.8 recognizes that "the project as proposed

[89] *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal. App. 4th 256, 263-266.
[90] DEIR at 111.
[91] DEIR, Appendix I at 13.
[92] RTC at 124.

already includes several water conservation measures," including drought-tolerant plant species, high efficiency irrigation systems, weather-based irrigation controllers, dedicated irrigation water meters, individual water meters for single-family homes and townhouses, and submeters for retail/commercial spaces and multi-family units.[93] If, in fact, the Project will incorporate these measures to reduce the Project's water usage, the FEIR must disclose these measures, along with any additional measures, and incorporate the measures as formal mitigation or conditions of approval to ensure adoption.

IV. THE PROJECT IS INCONSISTENT WITH SIGNATURE PROJECT POLICY IP-5.10 AND CANNOT BE APPROVED PRIOR TO ADOPTION OF AN URBAN VILLAGE PLAN

The Project proponent intends to develop the site as a Signature Project, which allows a mixed-use project with residential uses on commercially designated properties within an Urban Village if the project either (1) meets the criteria outlined in General Plan Policy IP-5.10 to qualify as a Signature Project, or b) if an Urban Village Plan is adopted which allows residential development on commercial-designated sites.[94] The site is located in an Urban Village Area without an adopted Urban Village Plan and thus the Project must meet the criteria set forth under Policy IP-5.10.

Policy IP-5.10 allows non-residential development to proceed within Urban Village areas in advance of the preparation of an Urban Village Plan.[95] In addition, a residential, mixed-use "Signature" project may also proceed ahead of preparation of a Village Plan.[96] A residential, mixed-use Signature project may proceed within Urban Village areas in advance of the preparation of an Urban Village Plan if it **fully meets** the following requirements:

1. Within the Urban Village areas, Signature projects are appropriate on sites with an Urban Village, residential, or commercial Land Use / Transportation Diagram designation.
2. Incorporates job growth capacity above the average density of jobs/acre planned for the developable portions of the entire Village Planning area and,

[93] *Id.* at 9.
[94] DEIR at 169; 171.
[95] *Id.* at 169.
[96] *Id.*

for portions of a Signature project that include housing, those portions incorporate housing density at or above the average density of dwelling units per acre planned for the entire Village Planning area.
3. Is located at a visible, prominent location within the Village so that it can be an example for, but not impose obstacles to, subsequent other development within the Village area.[97]

Additionally, a proposed Signature project will be reviewed for **substantial conformance** with the following objectives:

1. Includes public parklands and/or privately maintained, publicly accessible plazas or open space areas.
2. Achieves the pedestrian friendly design guideline objectives identified within this Envision San José 2040 General Plan.
3. Is planned and designed through a process that provided a substantive opportunity for input by interested community members.
4. Demonstrates high-quality architectural, landscape and site design features.
5. Is consistent with the recommendations of the City's Urban Design Review process or equivalent recommending process if the project is subject to review by such a process.[98]

The Project fails to satisfy all of the findings required by Policy IP-5.10 because the Project will not incorporate job growth capacity above the average density of jobs/acre planned for the developable portions of the entire Village Planning area. The Staff Report states that "[t]he project is [] required to generate approximately 910 new jobs. The project, with 349,310 square feet of commercial space, meets this criterion and provides for the creation of approximately 1,165 new jobs."[99] To the contrary, the DEIR concluded that the Project would add "up to approximately 200 jobs (assuming one worker per 300 square feet of commercial/retail space provided) under the Assisted Living Variant and approximately 730 jobs under the Office Variant," both of which are substantially less than the required 910 new jobs.[100] The DEIR also calculated that the "Assisted Living Variant … would result in a total of 176 employees," and "[t]he Office

[97] *Id.*
[98] *Id.*
[99] Memorandum to City of San Jose Planning Commission from Christopher Burton at 5 (July 13, 2022)(hereinafter "Staff Report").
[100] DEIR at 112.

Variant … would …. create approximately 709 jobs."[101] The FEIR retains the DEIR's conclusions on these issues. Thus, the job creation estimations proposed under either Project scenario are substantially less than the required 910 new jobs pursuant to Policy IP-5.10, and the Staff Report lacks evidentiary support for its new and inflated commercial square footage and job creation calculation. Accordingly, the requirements under Policy IP-5.10 have not been satisfied and the Project must not be approved as a Signature Project.

V. THE FINDINGS REQUIRED BY STATE LAW TO APPROVE THE ANNEXATION PROPOSAL CANNOT BE MADE

In adopting a resolution approving the annexation proposal, state law requires the City Council to make the following finding, among others: "…[t]hat the proposal is consistent with the adopted general plan of the city."[102] This finding cannot be made for this Project for several reasons and the Planning Commission must therefore recommend denial of the annexation proposal to the City Council.[103]

A. THE PROJECT IS INCONSISTENT WITH GENERAL PLAN POLICIES FOR RECYCLED WATER AND ONSITE WATER REUSE

In the RTC, the City claims that the Project site is too far from the nearest recycled water line and "it is not feasible to obtain recycled water on the project site at this time."[104] The annexation proposal will therefore not support the location of new development within the vicinity of a recycled water system, as encouraged by Policy MS-17.2.

Policy MS-19.1 requires new development to contribute to the cost-effective expansion of the recycled water system in proportion to the extent that it receives benefit from the local water supply. The Project's total water usage is estimated at

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[101] *Id.* at 202.
[102] Gov't Code § 56757(c)(5).
[103] It must also be noted that the full report on the proposed annexation was not even prepared for the Planning Commission's consideration and will only be provided to the City Council for the September 13, 2022, hearing. Staff Report at 10. It is therefore premature for the Planning Commission to make a recommendation to the City Council on the annexation proposal until the Commission has the opportunity to review the full report.
[104] RTC at 124-125.

352.5 acre-feet per year as compared to 9.1 acre-feet per year used by the existing development.[105] The annexation of these lands for new development will therefore be benefited by local, potable water resources, yet there is no requirement to contribute to the cost-effective expansion of the recycled water system.

Policy MS-18.12 encourages, when feasible and cost effective, on-site rainwater catchment for new and existing development. There is no analysis of the feasibility to install on-site rainwater catchment despite that the annexation will result in a significant increase in potable water usage on site.[106] The failure to incorporate water reuse green building practices is also inconsistent with Policy MS-1.2, which is focused on increasing the number of buildings within the City that make use of green building practices by incorporating those practices into new construction.

It should also be noted that the Santa Clara Valley Water District submitted comments dated November 23, 2020 that recommended a host of measures to reduce or avoid adverse impacts to water supply.[107] Specifically, the District explained that "[r]e-development of the site provides opportunities to minimize water and associated energy use by using recycled water, incorporating on-site reuse for both storm and graywater, and requiring water conservation measures above State standards (i.e., CALGreen). To reduce or avoid adverse impacts to water supply, the City and applicant should consider the following: …

- The installation of dual plumbing to facilitate and maximize the use of alternative water sources for irrigation, toilet flushing, cooling towers, and other non-potable water uses should recycled water lines be adjacent to the site or potentially extended in the future to serve the site. In addition, onsite reuse of water may be appropriate now or in the future.
- Maximize the use of alternative water sources for non-potable uses including stormwater, rainwater, and graywater…."[108]

Implementation of water reuse measures would provide for greater consistency with the General Plan policies, yet as currently proposed, the Project is

[105] DEIR, Appendix I at 15.
[106] *Id.*
[107] Email from Jourdan Alvarado, CFM, SCVWD, to Kara Hawkins, City of San Jose (November 23, 2020).
[108] *Id.*

inconsistent with these policies and the findings to approve the annexation proposal cannot be made.

B. THE PROJECT IS INCONSISTENT WITH GENERAL PLAN POLICIES GOVERNING TRANSIT

Policy FS-4.7 encourages transit-oriented development as a means to reduce costs for expansion and maintenance of the City's streets, in addition to other benefits and consistent with the General Plan Transportation goals and policies. The proposed annexed site is in a Commercial Corridor and Center Urban Village, which the General Plan describes as being "less directly connected to transit than other Growth Areas," and "recogniz[es] that transit-oriented sites should be given more priority for accommodating new growth."

The site proposed to be annexed is also located approximately two miles from the closest Light Rail along Winchester Boulevard, north of Camden Avenue and five Valley Transportation Authority bus lines serve the site.[109] Policy TR-3.8 requires collaboration with transit providers to develop and provide transit stop amenities such as pedestrian pathways approaching stops, benches and shelters, nighttime lighting, traveler information systems, and bike storage to facilitate access to and from transit stops. These measures encourage ridership. The Staff Report acknowledges that "VTA has been made aware of the request for additional service at this area," and that "[t]he project is being conditioned to coordinate with VTA to provide bus stop improvements and duck-outs. … to provide a 21-foot wide sidewalk along the Camden Avenue project frontage and a 19-foot wide sidewalk along the Union Avenue project frontage."[110] Although these conditions will add some transit amenities to the area, greater effort is needed to demonstrate consistency with Policy TR-3.8, especially with regards to the light rail stop.

C. THE PROJECT IS INCONSISTENT WITH GENERAL PLAN POLICY MS-13.3 TO REDUCE GRADING

Finally, Policy MS-13.3 requires subdivision designs and site planning to minimize grading yet approximately 400,000 cubic yards of soil is proposed be

[109] DEIR at 224.
[110] Staff Report at 22.

exported for this Project.[111] A Reduced Grading and Excavation Alternative was evaluated in the EIR to reduce construction air quality impacts but was nevertheless dismissed, despite the reduced amount of grading and excavation than the proposed Project.[112]

For the foregoing reasons, the Planning Commission must recommend denial of the annexation proposal.

VI. THE FINDINGS REQUIRED BY THE SUBDIVISION MAP ACT CANNOT BE MADE FOR THE PROJECT'S TENTATIVE MAP

The annexation and pre-zoning are associated with a Planned Development Permit, File No. PD20-007, and a Vesting Tentative Map, File No. PT21-007.[113] These two applications will be heard separately after the annexation has been certified by the Local Agency Formation Commission of Santa Clara County.[114] For purposes of CEQA compliance, the Staff Report explains that the FEIR was prepared for all of the separate discretionary actions and planning activities associated with entitlement and development of the Project site.[115] As such, it is timely to also comment on the required findings for the Project's proposed tentative map.

A tentative map for any subdivision must not be approved unless the proposed subdivision, together with the provisions for its design and improvement, is consistent with the applicable general and specific plans of the City.[116] A tentative map of any subdivision must be disapproved if any of the findings described in Section 66474 of the Subdivision Map Act are made.[117] Specifically, a tentative map must be denied if any of the following findings can be made: "(a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451. (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans. (c) That the site is not physically suitable for the type of development. (d) That the site is not

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[111] DEIR at 113.
[112] *Id.* at xxi.
[113] Staff Report at 3.
[114] *Id.*
[115] *Id.*
[116] City of San Jose, Municipal Code § 19.12.130(A).
[117] Gov't Code § 66474.

physically suitable for the proposed density of development. (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 type of improvements is likely to cause serious public health problems. ...."[118]

As a result of the Project's ongoing unmitigated significant impacts discussed above, the findings required under state and City laws to approve the Project's tentative map are not supported by substantial evidence. In particular, the findings necessary to approve the tentative map pursuant to the Subdivision Map Act—specifically, the findings that the proposed map is consistent with the General Plan, that the Project is not likely to cause substantial environmental damage, and that the Project will not result in serious public health problems—are not supported by substantial evidence for the reasons set forth in Sections III and V herein.

VII. CONCLUSION

For the reasons stated herein and in the attached comments by technical experts, Silicon Valley Residents urges the Planning Commission to not recommend that the City Council certify the FEIR, pre-zone the site, and initiate annexation proceedings. In the alternative, Silicon Valley Residents urges the Planning Commission to direct Staff to prepare and circulate a legally adequate EIR which fully analyzes the environmental impacts of all the Project's required entitlements and mitigates the Project's significant impacts to public health, noise, transportation, energy use, and water supply.

The City must remedy all substantial defects in the FEIR, and in the Project as a whole, before the Project may be presented to the City's decision making body at any future public hearing.

[118] *Id.* at § 66474(a)-(f).

Thank you for your attention to these comments.

Sincerely,

[redacted]

Tara C. Rengifo
Associate

Attachments
TCR:acp

EXHIBIT A

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G, C.Hg.
(949) 887-9013
[redacted]

Paul E. Rosenfeld, PhD
(310) 795-2335
[redacted]

July 12, 2021

Tara C. Rengifo
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd #1000
South San Francisco, CA 94080

Subject: Comments on the Cambrian Park Project (SCH No. 2018022034)

Dear Ms. Rengifo,

We have reviewed the July 2022 Planning Commission Agenda ("Agenda"), July 2022 Final Environmental Impact Report ("FEIR"), and November 2021 Draft Environmental Impact Report ("DEIR") for the Cambrian Park Mixed-Use Village Project ("Project") located in the City of San Jose ("City"). Upon review, we find that the FEIR is insufficient in addressing our comments regarding the Project's potentially significant health risk impacts. As asserted in our December 21, 2021 comment letter, a revised EIR should be prepared and recirculated to adequately evaluate the Project's significant impacts on the environment.

Air Quality

Diesel Particulate Matter Emissions Inadequately Evaluated

As discussed in our December 21st letter, the DEIR failed to adequately evaluate the potential health risk impacts associated with Project construction and operation because the DEIR's health risk analysis ("HRA") underestimated the Project's diesel particulate matter ("DPM") concentration. The HRA relied upon exhaust PM_{10} estimates from a flawed air model to calculate the Project's cancer risk that accounted for the implementation of Tier 4 Final mitigation instead of the less stringent Tier 4 Interim mitigation (p. 69). Review of the FEIR demonstrates that the Project again fails to adequately evaluate the Project's potential health risk impacts. As discussed below, we find the FEIR to be inadequate and maintain that the FEIR's less-than-significant health risk impact determination should not be relied upon.

Specifically, in response to our December 21st comment regarding the Project's inadequate HRA, the FEIR states:

> "Response EE.9: The air quality analysis in Appendix B of the Draft EIR relied upon Tier 4 interim equipment as mitigation (see Response EE.7). Also, both Tier 4 interim and Tier 4 final equipment are equally effective in reducing particulate matter emissions from construction equipment. In addition, the air quality analysis used the greater exhaust PM10 emissions, rather than PM2.5, to represent diesel particulate matter emissions (which provides a conservative estimate of particulate matter emissions). Tier 4 final equipment standards were incorporated by U.S. EPA following Tier 4 interim to further reduce NOx emissions but did not alter the emissions related to particulate matter. Therefore, whether the Mitigation to reduce cancer risk (or NOx emissions) used Tier 4 interim or Tier 4 final, the conclusion is the same that the project's cancer risk is reduced to a less-than-significant impact with mitigation measure MM AIR-2. For these reasons, the DEIR did not underestimate diesel particulate emissions and has appropriately mitigated project impacts" (p. 57).

As demonstrated above, the FEIR claims that Tier 4 Interim and Tier 4 Final equipment are equally effective in reducing particulate matter emissions and, rather, Tier 4 Final emissions standards were only intended to further reduce NO_X emissions. However, the FEIR's claim that the difference between Tier 4 Interim and Tier 4 Final mitigation would not heavily impact PM_{10} emissions is incorrect.

Review of the DEIR's original CalEEMod model that accounts for Tier 4 Final mitigation[1] and the FEIR's revised model that accounts for Tier 4 Interim mitigation[2] demonstrates that there is a significant difference between the PM_{10} emissions estimates associated with Project construction (see excerpts below):

DEIR's "Cambrian Park Plaza – AQ/GHG Model Alternative 1" Model (Appendix B, pp. 97)

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total
Year	tons/yr									
2021	0.0558	0.5715	2.4895	4.1100e-003	0.4063	6.5100e-003	0.4128	0.0821	6.5100e-003	0.0886
2022	1.6085	0.7017	5.2665	8.2400e-003	0.1757	0.0129	0.1885	0.0386	0.0129	0.0515
2023	4.6145	0.9254	4.7191	7.6500e-003	0.0000	0.0113	0.0113	0.0000	0.0113	0.0113
Maximum	**4.6145**	**0.9254**	**5.2665**	**8.2400e-003**	**0.4063**	**0.0129**	**0.4128**	**0.0821**	**0.0129**	**0.0886**

[1] Provided in Appendix B to the DEIR.
[2] Provided in Attachment 1 to the FEIR.

FEIR's "Cambrian Park Plaza – AQ/GHG Model Alternative 1" Model (Attachment 1, pp. 54)

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total
Year	tons/yr									
2021	0.0715	1.3677	2.5261	4.1100e-003	0.4063	6.5100e-003	0.4128	0.0821	6.5100e-003	0.0886
2022	1.6499	3.0909	5.4210	8.2400e-003	0.1757	0.0207	0.1963	0.0386	0.0207	0.0593
2023	4.6628	2.8766	4.8520	7.6500e-003	0.0000	0.0333	0.0333	0.0000	0.0333	0.0333
Maximum	**4.6628**	**3.0909**	**5.4210**	**8.2400e-003**	**0.4063**	**0.0333**	**0.4128**	**0.0821**	**0.0333**	**0.0886**

As demonstrated above, by correctly including Tier 4 Interim mitigation rather than Tier 4 Final mitigation, the revised model results in exhaust PM_{10} emissions that are approximately 158% greater than the original emissions estimates. Yet, the HRA was not revised and updated to account for this increase in PM_{10} emissions. As a result, the FEIR's HRA utilizes an underestimated DPM concentration to calculate the health risk impact associated with Project construction. As such, we maintain our comments set forth in the December 21st letter and again state on the basis of substantial evidence that the FEIR's HRA is underestimated, and the resulting cancer risk should not be relied upon to determine Project significance.

Furthermore, regarding the health risk impacts associated with the proposed operational diesel generators, the FEIR states:

> "In terms of health risk, the generator emissions of diesel particulate matter would increase cancer risk over the 30-year Project exposure period by 0.46 cases per million. The resulting cancer risk caused by construction and operation of the project with construction mitigation measure MM AIR-2.1 would be 8.48 cases per million for Alternative 1 (that includes the assisted living variant) and 8.52 cases per million with Alternative 2 (that includes the office variant), both of which are below the BAAQMD significance threshold of 10 cases per million. The conclusions in the Draft EIR regarding health risk impacts to the maximally exposed individual sensitive receptor would not change with the addition of the three emergency diesel generators and impacts would remain less than significant. Revisions to the Draft EIR text to include the discussion of generators are shown in Section 5.0, Draft EIR Text Revisions of this FEIR" (p. 71).

As demonstrated above, the proposed diesel generators would result in a cancer risk of 0.46 in one million. Here, we acknowledge that this cancer risk, when combined with the cancer risk associated with Project construction and operation, would not change the less-than-significant health risk impact determination. However, in conjunction with the higher DPM emission rate and cancer risk that would result from the less stringent Tier 4 Interim emissions standards, as discussed above, the Project may result in a significant health risk impact.

As such, until a revised EIR is prepared and recirculated along with an updated, more accurate HRA, the FEIR's response is inadequate, and we maintain our December 21st comment that the FEIR fails to adequately evaluate the Project's potential health risk impacts.

Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Sincerely,

[redacted]

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

[redacted]

Paul E. Rosenfeld, Ph.D.

Attachment A: Matt Hagemann CV
Attachment B: Paul E. Rosenfeld CV

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

2656 29th Street, Suite 201
Santa Monica, CA 90405

Matt Hagemann, P.G, C.Hg.
(949) 887-9013
[redacted]

Matthew F. Hagemann, P.G., C.Hg., QSD, QSP

Geologic and Hydrogeologic Characterization
Investigation and Remediation Strategies
Litigation Support and Testifying Expert
Industrial Stormwater Compliance
CEQA Review

Education:

M.S. Degree, Geology, California State University Los Angeles, Los Angeles, CA, 1984.
B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist
California Certified Hydrogeologist
Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with SWAPE, Matt has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2104, 2017;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt's responsibilities have included:

- Lead analyst and testifying expert in the review of over 300 environmental impact reports and negative declarations since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at more than 100 industrial facilities.
- Expert witness on numerous cases including, for example, perfluorooctanoic acid (PFOA) contamination of groundwater, MTBE litigation, air toxins at hazards at a school, CERCLA compliance in assessment and remediation, and industrial stormwater contamination.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.

With Komex H2O Science Inc., Matt's duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.
- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted

public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9.

Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, Oxygenates in Water: Critical Information and Research Needs.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific

principles into the policy-making process.
- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt is currently a part time geology instructor at Golden West College in Huntington Beach, California where he taught from 2010 to 2014 and in 2017.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Coloradao.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal repesentatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F**. 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukanaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examinations, 2009-2011.

SWAPE Technical Consultation, Data Analysis and Litigation Support for the Environment

SOIL WATER AIR PROTECTION ENTERPRISE
2656 29th Street, Suite 201
Santa Monica, California 90405
Attn: Paul Rosenfeld, Ph.D.
Mobil: (310) 795-2335
Office: (310) 452-5555
Fax: (310) 452-5550
Email: [redacted]

Paul Rosenfeld, Ph.D.

Chemical Fate and Transport & Air Dispersion Modeling

Principal Environmental Chemist

Risk Assessment & Remediation Specialist

Education

Ph.D. Soil Chemistry, University of Washington, 1999. Dissertation on volatile organic compound filtration.

M.S. Environmental Science, U.C. Berkeley, 1995. Thesis on organic waste economics.

B.A. Environmental Studies, U.C. Santa Barbara, 1991. Thesis on wastewater treatment.

Professional Experience

Dr. Rosenfeld has over 25 years' experience conducting environmental investigations and risk assessments for evaluating impacts to human health, property, and ecological receptors. His expertise focuses on the fate and transport of environmental contaminants, human health risk, exposure assessment, and ecological restoration. Dr. Rosenfeld has evaluated and modeled emissions from oil spills, landfills, boilers and incinerators, process stacks, storage tanks, confined animal feeding operations, industrial, military and agricultural sources, unconventional oil drilling operations, and locomotive and construction engines. His project experience ranges from monitoring and modeling of pollution sources to evaluating impacts of pollution on workers at industrial facilities and residents in surrounding communities. Dr. Rosenfeld has also successfully modeled exposure to contaminants distributed by water systems and via vapor intrusion.

Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing lead, heavy metals, mold, bacteria, particulate matter, petroleum hydrocarbons, chlorinated solvents, pesticides, radioactive waste, dioxins and furans, semi- and volatile organic compounds, PCBs, PAHs, creosote, perchlorate, asbestos, per- and poly-fluoroalkyl substances (PFOA/PFOS), unusual polymers, fuel oxygenates (MTBE), among other pollutants. Dr. Rosenfeld also has experience evaluating greenhouse gas emissions from various projects and is an expert on the assessment of odors from industrial and agricultural sites, as well as the evaluation of odor nuisance impacts and technologies for abatement of odorous emissions. As a principal scientist at SWAPE, Dr. Rosenfeld directs air dispersion modeling and exposure assessments. He has served as an expert witness and testified about pollution sources causing nuisance and/or personal injury at sites and has testified as an expert witness on numerous cases involving exposure to soil, water and air contaminants from industrial, railroad, agricultural, and military sources.

Professional History:

Soil Water Air Protection Enterprise (SWAPE); 2003 to present; Principal and Founding Partner
UCLA School of Public Health; 2007 to 2011; Lecturer (Assistant Researcher)
UCLA School of Public Health; 2003 to 2006; Adjunct Professor
UCLA Environmental Science and Engineering Program; 2002-2004; Doctoral Intern Coordinator
UCLA Institute of the Environment, 2001-2002; Research Associate
Komex H_2O Science, 2001 to 2003; Senior Remediation Scientist
National Groundwater Association, 2002-2004; Lecturer
San Diego State University, 1999-2001; Adjunct Professor
Anteon Corp., San Diego, 2000-2001; Remediation Project Manager
Ogden (now Amec), San Diego, 2000-2000; Remediation Project Manager
Bechtel, San Diego, California, 1999 – 2000; Risk Assessor
King County, Seattle, 1996 – 1999; Scientist
James River Corp., Washington, 1995-96; Scientist
Big Creek Lumber, Davenport, California, 1995; Scientist
Plumas Corp., California and USFS, Tahoe 1993-1995; Scientist
Peace Corps and World Wildlife Fund, St. Kitts, West Indies, 1991-1993; Scientist

Publications:

Remy, L.L., Clay T., Byers, V., **Rosenfeld P. E.** (2019) Hospital, Health, and Community Burden After Oil Refinery Fires, Richmond, California 2007 and 2012. *Environmental Health.* 18:48

Simons, R.A., Seo, Y. **Rosenfeld, P**., (2015) Modeling the Effect of Refinery Emission On Residential Property Value. Journal of Real Estate Research. 27(3):321-342

Chen, J. A, Zapata A. R., Sutherland A. J., Molmen, D.R., Chow, B. S., Wu, L. E., **Rosenfeld, P. E.,** Hesse, R. C., (2012) Sulfur Dioxide and Volatile Organic Compound Exposure To A Community In Texas City Texas Evaluated Using Aermod and Empirical Data. *American Journal of Environmental Science*, 8(6), 622-632.

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Cheremisinoff, N.P., & **Rosenfeld, P.E.** (2011). *Handbook of Pollution Prevention and Cleaner Production: Best Practices in the Agrochemical Industry*, Amsterdam: Elsevier Publishing.

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Wu, C., Tam, L., Clark, J., **Rosenfeld, P**. (2009). Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States. *WIT Transactions on Ecology and the Environment, Air Pollution,* 123 (17), 319-327.

Tam L. K.., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008). A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, 70, 002252-002255.

Tam L. K.., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008). Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, 70, 000527-000530.

Hensley, A.R. A. Scott, J. J. J. Clark, **Rosenfeld, P.E.** (2007). Attic Dust and Human Blood Samples Collected near a Former Wood Treatment Facility. *Environmental Research*. 105, 194-197.

Rosenfeld, P.E., J. J. J. Clark, A. R. Hensley, M. Suffet. (2007). The Use of an Odor Wheel Classification for Evaluation of Human Health Risk Criteria for Compost Facilities. *Water Science & Technology* 55(5), 345-357.

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Presentations:

Rosenfeld, P.E., "The science for Perfluorinated Chemicals (PFAS): What makes remediation so hard?" Law Seminars International, (May 9-10, 2018) 800 Fifth Avenue, Suite 101 Seattle, WA.

Rosenfeld, P.E., Sutherland, A; Hesse, R.; Zapata, A. (October 3-6, 2013). Air dispersion modeling of volatile organic emissions from multiple natural gas wells in Decatur, TX. *44th Western Regional Meeting, American Chemical Society.* Lecture conducted from Santa Clara, CA.

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Rosenfeld, P.E. (April 19-23, 2009). Perfluoroctanoic Acid (PFOA) and Perfluoroactane Sulfonate (PFOS) Contamination in Drinking Water From the Use of Aqueous Film Forming Foams (AFFF) at Airports in the United States. *2009 Ground Water Summit and 2009 Ground Water Protection Council Spring Meeting*, Lecture conducted from Tuscon, AZ.

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Wu, C., Tam, L., Clark, J., **Rosenfeld, P**. (20-22 July, 2009). Dioxin and furan blood lipid concentrations in populations living near four wood treatment facilities in the United States. Brebbia, C.A. and Popov, V., eds., *Air Pollution XVII: Proceedings of the Seventeenth International Conference on Modeling, Monitoring and Management of Air Pollution*. Lecture conducted from Tallinn, Estonia.

Rosenfeld, P. E. (October 15-18, 2007). Moss Point Community Exposure To Contaminants From A Releasing Facility. *The 23rd Annual International Conferences on Soils Sediment and Water.* Platform lecture conducted from University of Massachusetts, Amherst MA.

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Conferences on Soils Sediment and Water. Platform lecture conducted from University of Massachusetts, Amherst MA.

Rosenfeld, P. E. (October 15-18, 2007). Somerville Community Exposure To Contaminants From Wood Treatment Facility Emissions. The *23rd Annual International Conferences on Soils Sediment and Water*. Lecture conducted from University of Massachusetts, Amherst MA.

Rosenfeld P. E. (March 2007). Production, Chemical Properties, Toxicology, & Treatment Case Studies of 1,2,3-Trichloropropane (TCP). *The Association for Environmental Health and Sciences (AEHS) Annual Meeting*. Lecture conducted from San Diego, CA.

Rosenfeld P. E. (March 2007). Blood and Attic Sampling for Dioxin/Furan, PAH, and Metal Exposure in Florala, Alabama. *The AEHS Annual Meeting.* Lecture conducted from San Diego, CA.

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Hensley A.R., Scott, A., **Rosenfeld P.E.,** Clark, J.J.J. (November 4-8, 2006). Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility. *APHA 134 Annual Meeting & Exposition.* Lecture conducted from Boston Massachusetts.

Paul Rosenfeld Ph.D. (October 24-25, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. Mealey's C8/PFOA. *Science, Risk & Litigation Conference.* Lecture conducted from The Rittenhouse Hotel, Philadelphia, PA.

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Paul Rosenfeld Ph.D. (September 26-27, 2005). Fate, Transport and Persistence of PDBEs. *Mealey's Groundwater Conference.* Lecture conducted from Ritz Carlton Hotel, Marina Del Ray, California.

Paul Rosenfeld Ph.D. (June 7-8, 2005). Fate, Transport and Persistence of PFOA and Related Chemicals. *International Society of Environmental Forensics: Focus On Emerging Contaminants*. Lecture conducted from Sheraton Oceanfront Hotel, Virginia Beach, Virginia.

Paul Rosenfeld Ph.D. (July 21-22, 2005). Fate Transport, Persistence and Toxicology of PFOA and Related Perfluorochemicals. *2005 National Groundwater Association Ground Water And Environmental Law Conference*. Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld Ph.D. (July 21-22, 2005). Brominated Flame Retardants in Groundwater: Pathways to Human Ingestion, Toxicology and Remediation. *2005 National Groundwater Association Ground Water and Environmental Law Conference.* Lecture conducted from Wyndham Baltimore Inner Harbor, Baltimore Maryland.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. and Rob Hesse R.G. (May 5-6, 2004). Tert-butyl Alcohol Liability and Toxicology, A National Problem and Unquantified Liability. *National Groundwater Association. Environmental Law Conference*. Lecture conducted from Congress Plaza Hotel, Chicago Illinois.

Paul Rosenfeld, Ph.D. (March 2004). Perchlorate Toxicology. *Meeting of the American Groundwater Trust*. Lecture conducted from Phoenix Arizona.

Hagemann, M.F., **Paul Rosenfeld, Ph.D.** and Rob Hesse (2004). Perchlorate Contamination of the Colorado River. *Meeting of tribal representatives*. Lecture conducted from Parker, AZ.

Paul Rosenfeld, Ph.D. (April 7, 2004). A National Damage Assessment Model For PCE and Dry Cleaners. *Drycleaner Symposium. California Ground Water Association*. Lecture conducted from Radison Hotel, Sacramento, California.

Rosenfeld, P. E., Grey, M., (June 2003) Two stage biofilter for biosolids composting odor control. *Seventh International In Situ And On Site Bioremediation Symposium Battelle Conference* Orlando, FL.

Paul Rosenfeld, Ph.D. and James Clark Ph.D. (February 20-21, 2003) Understanding Historical Use, Chemical Properties, Toxicity and Regulatory Guidance of 1,4 Dioxane. *National Groundwater Association. Southwest Focus Conference. Water Supply and Emerging Contaminants*.. Lecture conducted from Hyatt Regency Phoenix Arizona.

Paul Rosenfeld, Ph.D. (February 6-7, 2003). Underground Storage Tank Litigation and Remediation. *California CUPA Forum*. Lecture conducted from Marriott Hotel, Anaheim California.

Paul Rosenfeld, Ph.D. (October 23, 2002) Underground Storage Tank Litigation and Remediation. *EPA Underground Storage Tank Roundtable*. Lecture conducted from Sacramento California.

Rosenfeld, P.E. and Suffet, M. (October 7- 10, 2002). Understanding Odor from Compost, *Wastewater and Industrial Processes. Sixth Annual Symposium On Off Flavors in the Aquatic Environment. International Water Association*. Lecture conducted from Barcelona Spain.

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Rosenfeld, P.E. and Grey, M. A. (November 11-14, 2002). Using High-Carbon Wood Ash to Control Odor at a Green Materials Composting Facility. *Soil Science Society Annual Conferenc*e. Lecture conducted from Indianapolis, Maryland.

Rosenfeld. P.E. (September 16, 2000). Two stage biofilter for biosolids composting odor control. *Water Environment Federation.* Lecture conducted from Anaheim California.

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Rosenfeld, P.E., and C.L. Henry. (1999). An evaluation of ash incorporation with biosolids for odor reduction. *Soil Science Society of America*. Lecture conducted from Salt Lake City Utah.

Rosenfeld, P.E., C.L. Henry, R. Harrison. (1998). Comparison of Microbial Activity and Odor Emissions from Three Different Biosolids Applied to Forest Soil. *Brown and Caldwell.* Lecture conducted from Seattle Washington.

Rosenfeld, P.E., C.L. Henry. (1998). Characterization, Quantification, and Control of Odor Emissions from Biosolids Application To Forest Soil. *Biofest.* Lecture conducted from Lake Chelan, Washington.

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Rosenfeld, P.E., C.L. Henry, R. B. Harrison, and R. Dills. (1997). Comparison of Odor Emissions From Three Different Biosolids Applied to Forest Soil. *Soil Science Society of America*. Lecture conducted from Anaheim California.

Teaching Experience:

UCLA Department of Environmental Health (Summer 2003 through 20010) Taught Environmental Health Science 100 to students, including undergrad, medical doctors, public health professionals and nurses. Course focused on the health effects of environmental contaminants.

National Ground Water Association, Successful Remediation Technologies. Custom Course in Sante Fe, New Mexico. May 21, 2002. Focused on fate and transport of fuel contaminants associated with underground storage tanks.

National Ground Water Association; Successful Remediation Technologies Course in Chicago Illinois. April 1, 2002. Focused on fate and transport of contaminants associated with Superfund and RCRA sites.

California Integrated Waste Management Board, April and May, 2001. Alternative Landfill Caps Seminar in San Diego, Ventura, and San Francisco. Focused on both prescriptive and innovative landfill cover design.

UCLA Department of Environmental Engineering, February 5, 2002. Seminar on Successful Remediation Technologies focusing on Groundwater Remediation.

University Of Washington, Soil Science Program, Teaching Assistant for several courses including: Soil Chemistry, Organic Soil Amendments, and Soil Stability.

U.C. Berkeley, Environmental Science Program Teaching Assistant for Environmental Science 10.

Academic Grants Awarded:

California Integrated Waste Management Board. $41,000 grant awarded to UCLA Institute of the Environment. Goal: To investigate effect of high carbon wood ash on volatile organic emissions from compost. 2001.

Synagro Technologies, Corona California: $10,000 grant awarded to San Diego State University.
Goal: investigate effect of biosolids for restoration and remediation of degraded coastal sage soils. 2000.

King County, Department of Research and Technology, Washington State. $100,000 grant awarded to University of Washington: Goal: To investigate odor emissions from biosolids application and the effect of polymers and ash on VOC emissions. 1998.

Northwest Biosolids Management Association, Washington State. $20,000 grant awarded to investigate effect of polymers and ash on VOC emissions from biosolids. 1997.

James River Corporation, Oregon: $10,000 grant was awarded to investigate the success of genetically engineered Poplar trees with resistance to round-up. 1996.

United State Forest Service, Tahoe National Forest: $15,000 grant was awarded to investigating fire ecology of the Tahoe National Forest. 1995.

Kellogg Foundation, Washington D.C. $500 grant was awarded to construct a large anaerobic digester on St. Kitts in West Indies. 1993

Deposition and/or Trial Testimony:

In the Circuit Court Of The Twentieth Judicial Circuit, St Clair County, Illinois
Martha Custer et al., Plaintiff vs. Cerro Flow Products, Inc., Defendants
Case No.: No. 0i9-L-2295
Rosenfeld Deposition, 5-14-2021
Trial, October 8-4-2021

In the Circuit Court of Cook County Illinois
Joseph Rafferty, Plaintiff vs. Consolidated Rail Corporation and National Railroad Passenger Corporation d/b/a AMTRAK,
Case No.: No. 18-L-6845
Rosenfeld Deposition, 6-28-2021

In the United States District Court For the Northern District of Illinois
Theresa Romcoe, Plaintiff vs. Northeast Illinois Regional Commuter Railroad Corporation d/b/a METRA Rail, Defendants
Case No.: No. 17-cv-8517
Rosenfeld Deposition, 5-25-2021

In the Superior Court of the State of Arizona In and For the Cunty of Maricopa
Mary Tryon et al., Plaintiff vs. The City of Pheonix v. Cox Cactus Farm, L.L.C., Utah Shelter Systems, Inc.
Case Number CV20127-094749
Rosenfeld Deposition: 5-7-2021

In the United States District Court for the Eastern District of Texas Beaumont Division
Robinson, Jeremy et al *Plaintiffs*, vs. CNA Insurance Company et al.
Case Number 1:17-cv-000508
Rosenfeld Deposition: 3-25-2021

In the Superior Court of the State of California, County of San Bernardino
Gary Garner, Personal Representative for the Estate of Melvin Garner vs. BNSF Railway Company.
Case No. 1720288
Rosenfeld Deposition 2-23-2021

In the Superior Court of the State of California, County of Los Angeles, Spring Street Courthouse
Benny M Rodriguez vs. Union Pacific Railroad, A Corporation, et al.
Case No. 18STCV01162
Rosenfeld Deposition 12-23-2020

In the Circuit Court of Jackson County, Missouri
Karen Cornwell, *Plaintiff,* vs. Marathon Petroleum, LP, *Defendant.*
Case No.: 1716-CV10006
Rosenfeld Deposition. 8-30-2019

In the United States District Court For The District of New Jersey
Duarte et al, *Plaintiffs,* vs. United States Metals Refining Company et. al. *Defendant.*
Case No.: 2:17-cv-01624-ES-SCM
Rosenfeld Deposition. 6-7-2019

In the United States District Court of Southern District of Texas Galveston Division
M/T Carla Maersk, *Plaintiffs,* vs. Conti 168., Schiffahrts-GMBH & Co. Bulker KG MS "Conti Perdido" *Defendant.*
Case No.: 3:15-CV-00106 consolidated with 3:15-CV-00237
Rosenfeld Deposition. 5-9-2019

In The Superior Court of the State of California In And For The County Of Los Angeles – Santa Monica
Carole-Taddeo-Bates et al., vs. Ifran Khan et al., Defendants
Case No.: No. BC615636
Rosenfeld Deposition, 1-26-2019

In The Superior Court of the State of California In And For The County Of Los Angeles – Santa Monica
The San Gabriel Valley Council of Governments et al. vs El Adobe Apts. Inc. et al., Defendants
Case No.: No. BC646857
Rosenfeld Deposition, 10-6-2018; Trial 3-7-19

In United States District Court For The District of Colorado
Bells et al. Plaintiff vs. The 3M Company et al., Defendants
Case No.: 1:16-cv-02531-RBJ
Rosenfeld Deposition, 3-15-2018 and 4-3-2018

In The District Court Of Regan County, Texas, 112th Judicial District
Phillip Bales et al., Plaintiff vs. Dow Agrosciences, LLC, et al., Defendants
Cause No.: 1923
Rosenfeld Deposition, 11-17-2017

In The Superior Court of the State of California In And For The County Of Contra Costa
Simons et al., Plaintiffs vs. Chevron Corporation, et al., Defendants
Cause No C12-01481
Rosenfeld Deposition, 11-20-2017

In The Circuit Court Of The Twentieth Judicial Circuit, St Clair County, Illinois
Martha Custer et al., Plaintiff vs. Cerro Flow Products, Inc., Defendants
Case No.: No. 0i9-L-2295
Rosenfeld Deposition, 8-23-2017

In United States District Court For The Southern District of Mississippi
Guy Manuel vs. The BP Exploration et al., Defendants
Case: No 1:19-cv-00315-RHW
Rosenfeld Deposition, 4-22-2020

In The Superior Court of the State of California, For The County of Los Angeles
Warrn Gilbert and Penny Gilber, Plaintiff vs. BMW of North America LLC
Case No.: LC102019 (c/w BC582154)
Rosenfeld Deposition, 8-16-2017, Trail 8-28-2018

In the Northern District Court of Mississippi, Greenville Division
Brenda J. Cooper, et al., *Plaintiffs,* vs. Meritor Inc., et al., *Defendants*
Case Number: 4:16-cv-52-DMB-JVM
Rosenfeld Deposition: July 2017

In The Superior Court of the State of Washington, County of Snohomish
Michael Davis and Julie Davis et al., Plaintiff vs. Cedar Grove Composting Inc., Defendants
Case No.: No. 13-2-03987-5
Rosenfeld Deposition, February 2017
Trial, March 2017

In The Superior Court of the State of California, County of Alameda
Charles Spain., Plaintiff vs. Thermo Fisher Scientific, et al., Defendants
Case No.: RG14711115
Rosenfeld Deposition, September 2015

In The Iowa District Court In And For Poweshiek County
Russell D. Winburn, et al., Plaintiffs vs. Doug Hoksbergen, et al., Defendants
Case No.: LALA002187
Rosenfeld Deposition, August 2015

In The Circuit Court of Ohio County, West Virginia
Robert Andrews, et al. v. Antero, et al.
Civil Action N0. 14-C-30000
Rosenfeld Deposition, June 2015

In The Iowa District Court For Muscatine County
Laurie Freeman et. al. Plaintiffs vs. Grain Processing Corporation, Defendant
Case No 4980
Rosenfeld Deposition: May 2015

In the Circuit Court of the 17th Judicial Circuit, in and For Broward County, Florida
Walter Hinton, et. al. Plaintiff, vs. City of Fort Lauderdale, Florida, a Municipality, Defendant.
Case Number CACE07030358 (26)
Rosenfeld Deposition: December 2014

In the County Court of Dallas County Texas
Lisa Parr et al, *Plaintiff*, vs. Aruba et al, *Defendant.*
Case Number cc-11-01650-E
Rosenfeld Deposition: March and September 2013
Rosenfeld Trial: April 2014

In the Court of Common Pleas of Tuscarawas County Ohio
John Michael Abicht, et al., *Plaintiffs,* vs. Republic Services, Inc., et al., *Defendants*
Case Number: 2008 CT 10 0741 (Cons. w/ 2009 CV 10 0987)
Rosenfeld Deposition: October 2012

In the United States District Court for the Middle District of Alabama, Northern Division
James K. Benefield, et al., *Plaintiffs*, vs. International Paper Company, *Defendant*.
Civil Action Number 2:09-cv-232-WHA-TFM
Rosenfeld Deposition: July 2010, June 2011

In the Circuit Court of Jefferson County Alabama
Jaeanette Moss Anthony, et al., *Plaintiffs*, vs. Drummond Company Inc., et al., *Defendants*
Civil Action No. CV 2008-2076
Rosenfeld Deposition: September 2010

In the United States District Court, Western District Lafayette Division
Ackle et al., *Plaintiffs*, vs. Citgo Petroleum Corporation, et al., *Defendants*.
Case Number 2:07CV1052
Rosenfeld Deposition: July 2009

EXHIBIT B

SMITH ENGINEERING & MANAGEMENT

July 13, 2022

Ms. Tara Rengifo
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: Cambrian Park Mixed-Use Village Final EIR and Responses to Comments P21026

Dear Ms. Rengifo:

I reviewed the Final Environmental Impact Report (the "FEIR") for the Cambrian Park Mixed-Use Village Project (the "Project") in the City of San Jose. My review is with respect to transportation and circulation considerations. Previously I reviewed and commented on the Draft Environmental Impact Report (the "DEIR") for the subject Project in a letter dated December 30, 2021.My qualifications to perform this review were thoroughly documented in that December 30 letter and my professional resume was attached thereto.

Findings of the VMT Analysis Are Implausible

The EIR's analysis of residential per capita VMT finds that while the Project area experiences a VMT rate of about the Citywide rate of 11.91 VMT per capita, the Project is estimated to have a residential VMT of 8.96 per capita, about 24.8 percent below the rate that prevails in the immediate area. For employment-based VMT generation, the EIR finds that while the immediate Project area experiences a VMT rate per employee of 14.37 VMT, the Project would generate VMT at a rate of 12.01 per employee, about 16.4 percent less than the rate the area currently experiences. These differences between the broader Project area's VMT and the Project's VMT put the Project below the City's VMT significance thresholds. However, the EIR's estimated residential per capita VMT and employment-based VMT for the Project are implausible given that this Project, although mixed use, is of limited size and is sited in a highly suburbanized environment rather than in a dense urban area. Both of these

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factors tend to minimize the internalization and tendencies to non-private vehicle travel to/from the Project.

The projected VMTs for the Project are drawn from the City's VMT estimator model which combines the estimated existing VMT statistics for the project area combined with assumed adjustments for features and characteristics of the Project. However, there is no indication that the adjustments embedded in the VMT Estimator model have been validated by actual observation in the suburban environments of San Jose and supported by local based evidence in the DEIR or a referenced document of local observed evidence.

In this instance, the EIR analysis suggests two Project features that would reduce VMT. One is closure of the existing vehicular access to the site at Wyrick Avenue, leaving just a pedestrian-only connection. The other is creating new traffic signal protected crosswalks to the site, one across Union Avenue and one across Camden Avenue. The authoritative document *Quantifying Greenhouse Gas Mitigation Measures* published by the California Air Pollution Officers Association indicates that the above type of pedestrian enhancement measures would reduce about 0.625 percent of VMT. That leaves presumed internalization to account for the purported 24.18 percent balance of reduction in residential VMT per capita, which is not supported by evidence in the analysis. It is highly unlikely that trip internalization would account for this degree of reduction and most importantly, such a reduction is not support in the FEIR's analysis. To the contrary, as discussed below, internalization factors associated with restaurants are limited by consumer preferences and loyalties. To a lesser extent this is true of retail, but internalization to in-project retail is also substantially limited by reliance on wholesale superstores, and membership wholesale superstores, as well as reliance on e-commerce sales in preference to local brick and mortar stores. Hence, the predicted VMT per resident capita is unreliable.

Similarly, the reduction in prevailing VMT per employee compared to prevailing average in the Project area would be dependent on an extremely high percentage of Project residents from a very small number of households to fill the jobs within the Project. This assumption is implausible and not supported by evidence in the FEIR. Additionally, the FEIR assumes the addition of approximately 730 jobs under the Office Variant but a mere 200 jobs under the Assisted Living Variant. The analysis seems to have assumed that the workforce in each case would generate the same average VMT per employee for both variants despite the fact that the small internal resident working population could only fill a much lower percentage of the Office Variant's large number of employees than the Assisted Living Variant's lower number of employees. Logically the two Variants would have different rates of VMT per

employee because of different percentages of employees living internal to the Project.

Comment and Response EE.41:

The FEIR responds to my comments that it labels as Comments EE.42 through EE.45 in part by reference to Comment EE.41. This response attempts to cast my comments as an objection to the City's *methodology* for assessing the VMT impacts of the Project's hotel and restaurant components. However, my comments are not an objection to methodology; they criticize the underlying assumption on the part of the City and its consultants that assumes the Project's Hotel, Retail and Restaurant components will not generate net new trips. The FEIR's analysis presumes that these uses within the Project site would attract existing trips made from their points of origin to nearby hotel, retail and restaurant sites around the Project area. This assumption is unsupported and not based on substantial evidence. Each year the City and the region experience a growth in households and jobs. Also, the City and region experience a growth in trips from outside the region to destinations within. Moreover, there is growth in inter-regional travel passing through the region where travelers may pause for a meal or for a night's rest. These factors fuel an increase in demand for hotel and restaurant services to which developments like the hotel/restaurant component of the Project respond. Clearly the Project's hotel/restaurant component is not just sharing in serving a fixed demand but is providing capacity to serve a growing demand. As a result, the assumption of trip internalization in the FEIR's VMT evaluation approach is not supported by substantial evidence and skews the corresponding VMT impacts analysis for these uses against a realistic estimate of the VMT that the hotel, retail and restaurant components would generate.

Also, the City and its consultants' selection of competing services within the 5-mile radius circle of the Project site from which trips would be diverted is unrepresentative of the actual locations of competing facilities within that 5-mile radius. Of the 30 surrounding retail centers and hotels from which the FEIR assumes patronage may be diverted to the Project's hotel, retail and restaurant components, 29 locations are located in an arc extending from slightly southeast from the Project site through northeast, north and northwest of the Project. Only one center is directly south of the Project, and none are considerably southeast or south of directly west of the Project site. This distribution of comparable sites is highly implausible since the 5-mile radius extends to the south to include the entire Town of Los Gatos, extends west 0.4 miles beyond where Saratoga Avenue crosses Fruitvale Avenue, extends to the southeast to include the northern part of the Almaden Valley to south of the point where Camden Avenue crosses Almaden Expressway and east in the SR 85 corridor to a point where it crosses Blossom Avenue. It is likely that the FEIR's analysis omitted other small retail/restaurant complexes similar to what the Project proposes to build.

The location of existing hotels within the 5-mile radius considered comparable to that proposed in the Project illustrates an even more skewed distribution. One identified hotel is located almost directly east of the Project site. From that one site to the east, the entire quadrant to the northeast is devoid of sites. In a small pie slice of the circle ranging from due north to northwest, the other 14 hotel sites are located. From northwest through west through southwest through south and southeast to almost due east, the 5-mile radius circle is devoid of identified hotels similar to what the Project proposes to build. However, numerous hotels are known to exist in the devoid sections of the 5-mile radius circle, including, but not limited to, the Hotel Los Gatos, the Toll House Hotel, the Los Gatos Lodge, the Los Gatos Garden Inn and Hotel, the Best Western Inn of Los Gatos, the Saratoga Oakes Lodge and the Inn at Saratoga among others. If the places where Project trips are supposedly diverted-from are not representative of all the locations where similar facilities exist within the 5-mile circle of the site, then the VMT analysis that is based on that information will be skewed, inaccurate and underestimated. Hence, any conclusions drawn about whether the diversions would lead to a greater or lesser net VMT generation are speculative and unsupported by substantial evidence.

Comment and Response EE.43

We skip over Comment and Response EE.42 since the section of our letter so labeled in the FEIR response involved introductory materials rather than critical comment on the DEIR and since the FEIR declined to substantively respond to this section.

Comment EE.43 states that the VMT analysis of the Project's hotel/restaurant/retail component is improper because it assumes that those uses merely divert trips from a fixed regional total of such trips rather than servicing a growth in the total of such trips. Response EE.43 references Response EE.41. The Response incorrectly identifies the issue as a matter of methodology. However, Response EE.41 ultimately discloses its unreasonable underlying assumption that the hotel/restaurant/retail components merely divert trips from a fixed regional total of such trips, whereas, for the reasons set forth in the preceding discussion, these components of the Project are likely to provide increased capacity to service increasing regional demand for such trips. The Response also asserts that because the Project is a mixed-use project involving residential and employment uses in addition to the hotel/restaurant/retail component, trip internalization will inevitably lead to reduced VMT.

While the possibility of some trip internalization is acknowledged, the realities of decisionmaking factors in hotel and restaurant choices tend to minimize internalization considerations and tendency to select facilities closest to ultimate

destinations. For instance, some choose hotels purely based on price. Business travelers and others intending longer stays may prefer hotels offering suites or be influenced by the quality and amenity of ancillary facilities such as pools, gyms spas and on-premises restaurants and cocktail lounges. Frequent travelers' choices may be influenced by the loyalty rewards programs offered by some hotel chains. Others may be driven by the considerations such as whether the hotel is "pet friendly" or has "kid friendly" features. Others may be influenced by the availability and size of meeting rooms, banquet facilities and ball rooms. It is not inevitable that placing a hotel in a mixed-use environment will result in low VMT.

Similar types of personal considerations affect choices of restaurants. Some diners may have preferences for particular types of foods or specialty foods and are willing to drive to reach restaurants serving them. Even among particular types of specialty foods, preferences may take precedence over travel distance. For example, diners may pass up several nearby pizza parlors serving typical West Coast style pizza to patronize a more distant one serving genuine East Coast style pizza. Some may be seeking a quality restaurant experience while others may seek fast-casual or high-turnover/sit-down situations and there is no guarantee that all types will be available within the Project. When friends meet for lunch or dinner out, it is normal to select a restaurant that is about equally accessible to all the parties. Some people may patronize a particular restaurant out of familiarity, comfort, loyalty and habit even though objectively there may be quite similar restaurants closer to home. So, because of these personal decisionmaking factors, there is no guarantee that restaurants sited within a mixed use complex will result in lower VMT than ones located elsewhere since patrons from the project may prefer to travel to more distant restaurants rather than making trips to internalized restaurant destinations that would result in little or no VMT.

Comment and Response EE.44

This section of comment continued the discussion of why an analysis based on the presumption that the Project's hotel and restaurant components would simply divert trips from a constant trip base rather than sharing in trips from a growing trip base is unreasonable.

Response EE.44 states in part, "The suggested approach itself would be speculative and assumes that residents located within proximity to the project site would choose to make a longer vehicular trip to retail, restaurant, and hotel uses elsewhere in the City rather than the shorter trip to the project site or walk or ride a bike."

In fact, the paragraphs immediately above describe the many compelling personal decisionmaking factors that would lead persons intending to eat a meal or utilize hotel facilities to bypass nearby restaurants and hotels in order to patronize more distant ones. The response's underlying assumption that persons in choosing where to eat meals or patronize hotels would place highest priority on minimizing VMT is unsupported, speculative and contrary to observable human behavior. The response is inadequate.

Comment and Response EE.45

Furthermore, even assuming the FEIR properly assumed that the proposed retail and hotel uses of the project will result in a redistribution of trips from a fixed total of such trips made to nearby facilities, the FEIR bases the diversion on an incomplete and geographically skewed identification of locations from which such diversions are presumed to occur. It also assumes that the diversions would automatically be ones that lower VMT without supporting evidence.

Response EE.45 inadvertently confirms that the spatial distribution of diversion sites is skewed incomplete, stating that they are locations within a 5-mile radius of the Project site *but only ones that are also within the City Limits of the City of San Jose.* The response now claims that the analysis is conservative because it relied on diversion of hotel trips to the Project from hotels that are much closer to the Project site than ones in other communities that may be closer to the limits of the 5-mile radius. The document has not substantiated this by providing the distances to the sites it considered. However, we note that there are areas within the Town of Los Gatos that are within as little as 1.2 miles of the Project site.

Also we have above identified reasons why travelers would drive farther to a more distant hotel rather than to the closest one on their route or to their ultimate destination. Those reasons may include budget price, greater amenity, availability of suites, designation as "pet friendly", the traveler's participation in a particular hotel chain's loyalty rewards program or just simple preference for a certain hotel chain. Similarly, we have identified numerous personal preference factors that lead people intending to eat a meal to bypass nearby restaurants to patronize a more distant ones. The notion that travel to hotels and restaurants would optimize itself to minimize VMT is unproven, speculative and contrary to human experience. The response is inadequate.

Comment and Response EE.48

This comment pointed out that, although the DEIR purports to assess cumulative impacts based on a list of approved but not yet developed projects within an approximate 2.5-mile radius of the Project site, two specific projects within that

radius were not included in the cumulative projects list and that no projects within that radius but lying within the limits of the Town of Los Gatos were included.

Response EE.48 begins with an irrelevant discussion of how the Project is consistent with San Jose's *Envision San Jose 2040 General Plan*, a matter that was not part of the comment. It then continues, noting "No projects in the Town of Los Gatos were included in the cumulative LOS analysis given that there are no study intersections located in Los Gatos". This response evades the issue of whether trips from approved projects in Los Gatos would travel through the locations studied in the FEIR and would thereby intensify the cumulative impacts of the Project. We note that a significant project in Los Gatos, the North 40 Project, must be considered in the analysis given the size and proximity of that project, which would produce related cumulative impacts.

The Response then continues to admit that the 9395 S. Bascom and the 3090 S Bascom approved developments were not considered in the cumulative analysis because they were each estimated to not make traffic contributions exceeding 10 peak hour trips to any one of the DEIR study intersections. The response states at page 135 "The City's Approved Trip Inventory (ATI) includes trips of approved developments that would add more than 10 peak hour trips per lane to intersections." However, this 10 peak hour minimum trip standard does not appear in the City's Transportation Analysis Handbook, which defines ATI as "A City-maintained database of vehicle-trips generated by projects for which an entitlement to build has been granted that have yet been built or occupied. Consists of assigned vehicle-trips by turn movement at signalized intersections." An adequate discussion of cumulative impacts under CEQA Guidelines is based on a list of past, present, and probable future projects producing related or cumulative impacts. By omitting projects without adequate justification under the metric identified above, the FEIR's analysis of the project's cumulative transportation impacts is skewed and deficient, and must be revised. This begs the question of whether, by ignoring projects of a certain size, the analysis ignores the fundamental purpose of a cumulative impacts analysis, which is to assess an impact created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. We also take note that comment letter HH by Ann Riddell at Comment HH.2 identifies additional development projects in the subject Project vicinity have not been included in the analysis.

Comment and Response EE.49

This comment indicated the DEIR did not appear to reflect the traffic from 18 proposed Accessory Dwelling Units ("ADU") then proposed as part of the

Project. Response EE.49 indicates the Project has subsequently been intensified to include 27 ADUs.

The FEIR in its Appendix B presents a piecemeal sensitivity analysis of the VMT and traffic consequences of including the now proposed 27 ADUs. The FEIR improperly evaluates in isolation the consequence of just adding the 27 ADUs, but instead must also evaluate increased VMT and traffic from the missing cumulative projects noted above.

Conclusion

This completes my comments on the Cambrian Park Mixed-Use Village Project FEIR.

Sincerely,

Smith Engineering & Management
A California Corporation

[redacted]

Daniel T. Smith Jr., P.E.
President

DANIEL T. SMITH, Jr.
President

EDUCATION

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

PROFESSIONAL REGISTRATION

California No. 21913 (Civil)
California No. 938 (Traffic)
Nevada No. 7969 (Civil)
Arizona No. 22131 (Civil)
Washington No. 29337 (Civil)

PROFESSIONAL EXPERIENCE

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw,Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

Litigation Consulting. Consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors including specialties in bicyclist-involved and speed bump matters; land use and development matters involving access and transportation impacts; parking and other traffic matters.

Bicycle Facilities. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

Urban Corridor Studies/Alternatives Analysis. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

Area Transportation Plans. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21'st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of

5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

Special Event Facilities. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

Transportation Centers. Project manager for Daly City Intermodal Study which developed a $7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg. Also prepared parking programs and facilities for large area plans and individual sites.

Campus Transportation. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

Transportation System Management & Traffic Restraint. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation and for Berkeley, (Calif.), Neighborhood Traffic Study that pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, Redwood City, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

MEMBERSHIPS

Institute of Transportation Engineers Transportation Research Board

PUBLICATIONS AND AWARDS

Residential Street Design and Traffic Control, with W. Homburger *et al.* Prentice Hall, 1989.
Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.
Residential Traffic Management, State of the Art Report, U.S. Department of Transportation, 1979.
Improving The Residential Street Environment, with Donald Appleyard et al., U.S. Dept. of Transportation, 1979.
Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.
Bikeways, State of the Art - 1974, U.S. Dept. of Transportation, 1974.
Location and Safety Criteria For Bicycle Facilities, U.S. Dept. of Transportation, 1976.

EXHIBIT C

WILSON IHRIG
ACOUSTICS, NOISE & VIBRATION

CALIFORNIA
WASHINGTON
NEW YORK

WI #21-092

12 July 2022

Tara C. Rengifo, Esq.
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

Subject: *Cambrian Park Mixed-Use Village, San José, California*
Final Environmental Impact Report
Review and Comment on Response to DEIR Comments

Dear Ms. Rengifo,

In December 2021, we reviewed the information and noise impact analyses in the following documents and provided comments to you which were then submitted to the City of San José:

Cambrian Park Mixed-Use Village Project
Draft Environmental Impact Report ("DEIR")
San José, California
File Nos. PDC17-040 & PD20-007
November 2021

Cambrian Park Village Noise and Vibration Assessment ("Noise Study")[1]
San José, California
Illingworth & Rodkin, Inc.
April 23, 2021

This month, the City issued the following document which contains their responses to our comments:

Cambrian Park Mixed-Use Village Project
Final Environmental Impact Report ("FEIR")
July 2022

Appendix B of the FEIR includes a revised version of the Noise Study ("Revised Noise Study").

[1] This document is Appendix G of the DEIR

Summary of Previous Comments

The focus of our comments on the DEIR was that despite the fact that the Noise Study indicated that "[c]onstruction noise would exceed ambient daytime noise levels in the area by more than 5 dBA Leq[2] and "given the construction timeline of 28 months, it is anticipated that ambient noise levels would be exceeded at individual noise sensitive land uses in the vicinity of the site for a period exceeding 12 months" [Noise Study at p. 25], the DEIR erred in concluding that construction noise would not cause a significant impact after implementation of a number of best practices noise reduction mitigation measures. While we acknowledged that the mitigation measures should be implemented as a matter of good practice, we concluded that they would not reduce the construction noise to decibel levels that are less than the adopted threshold of existing daytime ambient plus 5 dBA. We did not directly address the duration of the noisy construction period as the DEIR had already acknowledged that it would exceed 12 months.

Summary of FEIR Responses

The gist of the FEIR responses to our comments on the significance of construction noise is that, contrary to what was stated in the DEIR Noise Study, the construction noise levels will not exceed the quantified thresholds (existing daytime ambient plus 5 dBA and 60 dBA) for more than 12 months. The 12-month aspect is crucial to the FEIR's claim of the "temporary" noise impact being less than significant and is called out 18 times in the responses to comments about construction noise.[3]

Comments on Threshold of Significance for Construction Noise Analysis

The concept of adopting a reasonable threshold of significance is integral to working of any CEQA impacts analysis. As stated in the DEIR,

> For temporary construction-related noise to be considered significant, construction noise levels would have to exceed ambient noise levels by five dBA Leq or more and exceed the normally acceptable levels of 60 dBA Leq at the nearest noise-sensitive land uses or 70 dBA Leq at office or commercial land uses for a period of more than 12 months. Alternatively, a significant impact would occur if a project located within 500 feet of residential uses or 200 feet of commercial or office uses would involve substantial noise-generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months. [DEIR at p. 182]

We will comment on the "alternative" criteria first and only in this section since it is seemingly straightforward.

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[2] "Leq" denotes "equivalent level" which may be thought of as the average level. Unless otherwise noted, all decibel levels in this comment letter are Leq levels.

[3] Our understanding is that the lead agency has broad discretion to establish thresholds of significance, and the DEIR cites Envision San José 2040 General Plan Policy EC-1.7 as the source of the 12-month period as the definition of "temporary". While we are not in a position to challenge that definition, we do note that other major cities, most notably the City of Oakland and the City of Los Angeles, use 10 days or less as the working definition of "temporary" in their CEQA construction noise analyses. [*City of Oakland CEQA Thresholds of Significance Guidelines*, 28 October 2013; *L.A. CEQA Thresholds Guide*, City of Los Angeles, 2006]

1 "Alternative" Threshold of Significance

Figure 1 shows the project parcels and the area within those parcels that are within 500 feet of residential land use. Figure 2 shows the project construction timeline (through Building Construction) as represented in the DEIR.[4]

Figure 1 Project Site and Area within 500 ft of Residences

[4] DEIR, Appendix B (Air Quality and Greenhouse Gas Assessment), Attachment 2 (CalEEMod Input Assumptions and Outputs). The dates have not be revised to reflect project delays.

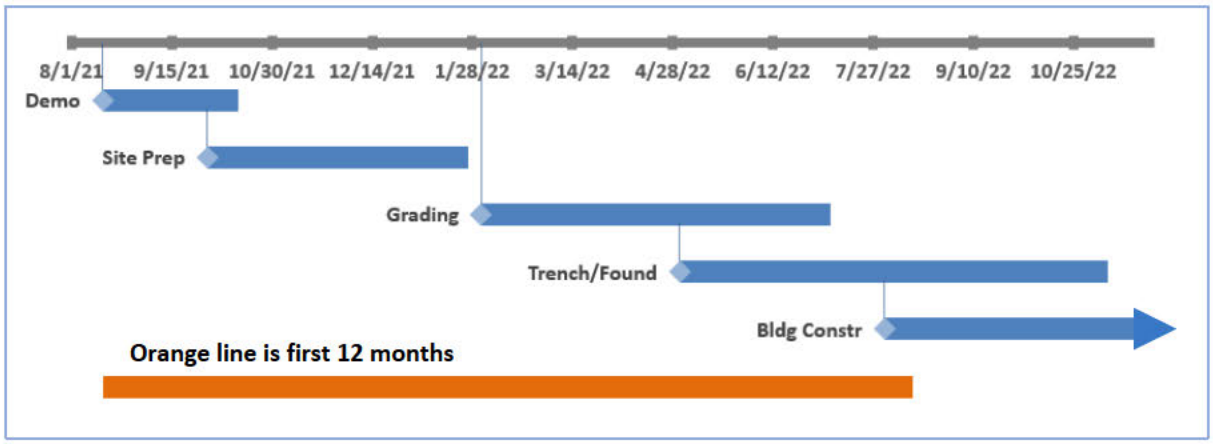

Figure 2 Project Construction Timeline (Building Construction continues to 7/28/23)

According to the "alternative" criteria – which is a restatement of General Plan Policy EC-1.7 – a significant noise impact is presumed to occur if construction "within 500 feet of residential uses would involve substantial noise-generating activities (such as building demolition, grading, excavation, pile driving, use of impact equipment, or building framing) continuing for more than 12 months". Given that 79% of the 18.1-acre project site is within 500 feet of residences and building construction does not even begin until 11½ months into the project, construction noise from this project clearly meets the standard for a significant noise impact pursuant to General Plan Policy EC-1.7.

2 Primary Threshold of Significance

As stated above, the primary threshold of significance for residences is the one the FEIR response addresses so will henceforth be referred to as simply the "threshold of significance". As stated in the DEIR, the threshold is:

> exceed ambient noise levels by five dBA Leq or more and exceed the normally acceptable levels of 60 dBA Leq at the nearest noise-sensitive land uses . . . for a period of more than 12 months

In our comments on the DEIR, we noted that the preparers of the Noise Study had made two measurements on the shared property line with homes on Bercaw Lane (representative of their backyards) and a measurement at the intersection of Bercaw Lane and Wyrick Avenue. The two measurements near the backyards and the lowest daytime level at the intersection range from 51 to 53 dBA. The FEIR states that "The commenter has correctly summarized existing ambient noise levels at nearby receptors as presented in the noise assessment (Appendix G) and Section 3.12, Noise, of the Draft EIR." We asserted in our previous comments, and we reassert now, that these three measurements substantially establish 52 dBA as the existing daytime ambient noise level in the backyards of homes on Bercaw which is precisely the area that construction noise will impact.

The responses in the FEIR do not take up this issue directly, but the Revised Noise Study now includes reference to "ambient daytime hourly average noise levels (59 dBA Leq)". [Revised Noise Study at

p. 31] The 59 dBA level appears to be the average level of the daytime range at measurement location LT-1, which is located at the intersection of Bercaw Lane and Wyrick Avenue. LT-1 is not the location that best represents the backyards of homes on Bercaw, which is where sensitive receptors will be most affected by increased noise levels during construction. Rather, the noise levels obtained at ST-2 and ST-4 are the most representative of the backyard ambient levels (see Figure 3). This assertion is corroborated by the DEIR which states,

> The short-term noise measurements documented mid-day noise levels in order to establish a noise level for comparison with construction and operational noise. [DEIR at p. 179]

Figure 3 DEIR Ambient Noise Measurement Locations [DEIR at p. 180]

The reported noise levels at ST-2 and ST-4 are 52 and 51 dBA, respectively, so, as before, we assert that the proper ambient level to use for the backyards of Bercaw residences is 52 dBA, and the existing ambient plus 5 dBA is 57 dBA. Taking into account the compound nature of the threshold which is "exceed ambient noise levels by five dBA L_{eq} or more and exceed the normally acceptable levels of 60 dBA L_{eq}" [emphasis added], we take the correct threshold of significance to be:

> Exceed 60 dBA L_{eq} for a period of 12 months

Comments on Revised Construction Noise Analysis, Proposed Mitigation Measures, and Significance Determination

As stated previously, the gist of the FEIR's substantive response to our previous comments is that the duration of high construction noise levels would be less than 12 months, not that the noise levels would be reduced more than we had claimed they would be. In the DEIR, the unmitigated construction noise levels were summarized as "77 to 89 dBA L_{eq} at a distance of 50 feet" [Noise Study at p. 25]. In the FEIR, the Revised Noise Study states:

> . . . the construction noise logistics plan would provide a minimum of 5 dBA of noise reduction assuming the acoustical shielding provided by temporary noise barriers. Average construction noise levels would be reduced to 81 dBA Leq at 50 feet from the center of the construction activity when shielded by noise barriers. [Revised Noise Plan at p. 31]

81 dBA equals the logarithmic ("decibel") average of 77 to 89 dBA which is 86 dBA less 5 dBA noise reduction due to a temporary noise barrier.[5] So, although the phrasing confuses the issue, the unmitigated construction noise levels are the same in the FEIR and the DEIR. The FEIR does not refute our previous comments regarding the inability of the so-called mitigation measures – other than the barrier – to reduce noise levels.

Using the Revised Noise Study's mitigated noise level of 81 dBA Leq at 50 feet, one may calculate the noise level at other distances using 6 dBA per doubling of distance as the DEIR does [Revised Noise Report at p. 25]. The resulting levels are shown in Figure 4.[6] The distance at which the mitigated noise level is 60 dBA is 561 feet, even farther than the 500-foot distance presumed by Policy EC-1.7. At 25 feet, the closest approach of construction work to the Bercaw Lane property lines, the noise level will be 87 dBA Leq which exceeds the 60 dBA standard by 27 dBA. These are mitigated noise levels.

Approximately 85% of the project property is within 561 feet of a residential property line. If one focuses on a particular receptors or small group of receptors, the residences on Bercaw on either side of Wyrick Avenue will be those most impacted. Figure 5 shows the area within 561 feet of this residential property line. This area encompasses 66% of the project property.

The Revise Noise Report uses 64 dBA as the noise level associated with the threshold of significance. As can be seen in Figure 4, this corresponds to a distance of 350 feet. The following statement was added to the Revised Noise Report:

> The area represented by the 350-foot distance encompasses about one-third of the project site. Approximately two-thirds of the project site would be developed outside of the 350-foot impact zone. In addition, the vast majority of proposed construction activities would occur near the northwest corner of the site, which is typically 400 to 600 feet from Bercaw Lane residences. Given the overall construction timeline of 28 months, it is reasonable to conclude that mitigated construction noise levels would not exceed the construction noise thresholds at individual noise sensitive land uses in the vicinity of the site for a period exceeding 12 months. [Revised Noise Report at p. 31]

[5] It is reasonable to assume that barriers that will block the line-of-sight and provide 5 dBA of noise reduction are feasible. To the extent that more than a 5-dBA reduction is claimed, that claim must be substantiated with a numerical analysis, which is not set forth in the FEIR.

[6] As can be seen in Figure 4, the noise level does not decline uniformly with distance because of the logarithmic nature of sound attenuation (i.e., it attenuates at 6 dBA per doubling of distance rather than 6 dB every 500 feet which would be linear attenuation).

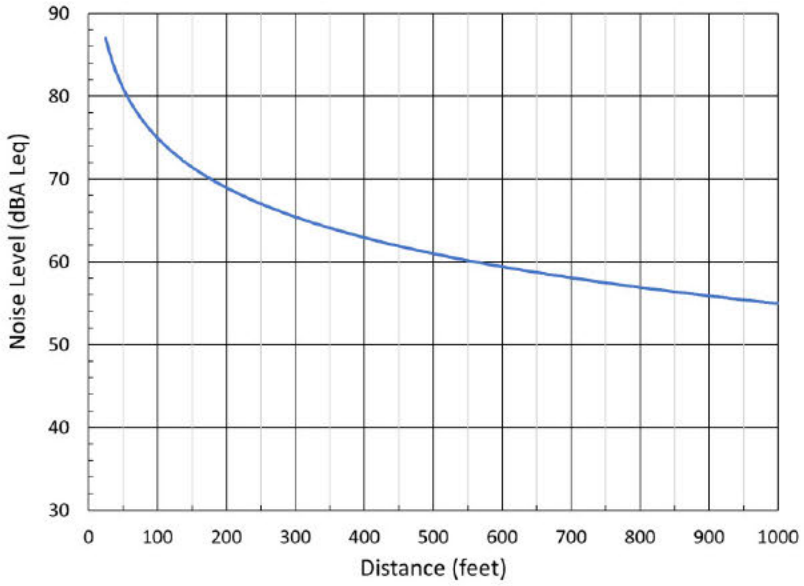

Figure 4 Construction Noise Levels at Various Distances

85% of the project property is within 561 feet of residences (yellow area)

66% of the project property is within 561 feet of the residences near the middle of the site (magenta area)

Figure 5 Property Areas

There is no quantitative calculation to substantiate the conclusion in the foregoing paragraph that "mitigated construction noise levels would not exceed the construction noise thresholds at individual noise sensitive land uses in the vicinity of the site for a period exceeding 12 months", but the heuristic logic seems to be that because the site is so large, there will be periods within the construction timeline when all of the noise activity will be far enough away that a particular receptor will not be impacted.

The Revised Noise Study determined its "impact distance" of 350 feet based on a standard of 64 dBA which we assert is erroneously high given the DEIR backyard ambient noise measurements. Using the correct noise standard of 60 dBA based on the backyard ambient measurements, the impact distance is 561 feet. Around 85% of the entire site and 66% of the site from the vantage point of many residences on Bercaw Lane are within 561 feet. We see in Figure 2 that building construction will only have just begun in the last 2 weeks of the first year, so any shielding that may later be provided when the project residences nearest Berclaw are built cannot be claimed for the first year. The activities that will primarily occur during the first year – demolition, site prep, grading, trenching, construction foundations – will occur across the site, and it is not reasonable to assert that equipment will not be routinely moving throughout 66% of the site for long durations.

Conclusion

In conclusion, this project constitutes a major redevelopment of an 18.1-acre site that abuts residential neighborhoods. The undertaking is so large that building construction for the project will not even begin for 11½ months, during which time heavy construction equipment will be used to demolish the many existing structures, prepare the site for the new project, grade the site, and dig trenches and foundations. For this work, the only practical noise abatement will be temporary noise barriers at the property line. While this will provide some relief, construction is inherently loud, particularly in comparison to the existing ambient in the backyards of the residences. Throughout the first year, the noise levels in the backyards will regularly and routinely exceed both the existing ambient by 5 dBA and the absolute standard of 60 dBA as construction is carried out across large swaths of the property. Therefore, the inescapable conclusion is that – even given the definition of "temporary" as 12 months – the residents of Bercaw Lane will be significantly impact by construction noise during that first year, at least.

Please contact me if you have any question about this review of the construction noise analysis in the *Cambrian Park Mixed-Use Village Final Environmental Impact Report*.

Very truly yours,

WILSON IHRIG

[redacted]

Derek L. Watry
Principal

2022-07-08 - cambrian park feir - noise - d watry (draft).docx

DEREK L. WATRY

Principal

Since joining Wilson Ihrig in 1992, Derek has gained experienced in many areas of practice including environmental, construction, forensic, architectural, and industrial. For all of these, he has conducted extensive field measurements, established acceptability criteria, and calculated future noise and vibration levels. In the many of these areas, he has prepared CEQA and NEPA noise technical studies and EIR/EIS sections. Derek has a thorough understanding of the technical, public relations, and political aspects of environmental noise and vibration compliance work. He has helped resolve complex community noise issues, and he has also served as an expert witness in numerous legal matters.

Education

- M.S. Mechanical Engineering, University of California, Berkeley
- B.S. Mechanical Engineering, University of California, San Diego
- M.B.A. Saint Mary's College of California

Project Experience

12th Street Reconstruction, Oakland, CA
Responsible for construction noise control plan from pile driving after City received complaints from nearby neighbors. Attendance required at community meetings.

525 Golden Gate Avenue Demolition, San Francisco, CA
Noise and vibration monitoring and consultation during demolition of a multi-story office building next to Federal, State, and Municipal Court buildings for the SFDPW.

911 Emergency Communications Center, San Francisco, CA
Technical assistance on issues relating to the demolition and construction work including vibration monitoring, developing specification and reviewing/recommending appropriate methods and equipment for demolition of Old Emergency Center for the SFDPW.

Central Contra Costa Sanitary District, Grayson Creek Sewer, Pleasant Hill, CA
Evaluation of vibration levels due to construction of new sewer line in hard soil.

City of Atascadero, Review of Walmart EIR Noise Analysis, Atascadero, CA
Review and Critique of EIR Noise Analysis for the Del Rio Road Commercial Area Specific Plan.

City of Fremont, Ongoing Environmental Services On-Call Contract, Fremont, CA
Work tasks primarily focus on noise insulation and vibration control design compliance for new residential projects and peer review other consultant's projects.

City of Fremont, Patterson Ranch EIR, Fremont, CA
Conducted noise and vibration portion of the EIR.

City of King City, Silva Ranch Annexation EIR, King City, CA
Conducted the noise portion of the EIR and assessed the suitability of the project areas for the intended development. Work included a reconnaissance of existing noise sources and receptors in and around the project areas, and long-term noise measurements at key locations.

Conoco Phillips Community Study and Expert Witness, Rodeo, CA
Investigated low frequency noise from exhaust stacks and provided expert witness services representing Conoco Phillips. Evaluated effectiveness of noise controls implemented by the refinery.

Golden Gate Park Concourse Underground Garage, San Francisco, CA
Noise and vibration testing during underground garage construction to monitor for residences and an old sandstone statue during pile driving for the City of San Francisco.

Laguna Honda Hospital, Clarendon Hall Demolition, San Francisco, CA
Project manager for performed vibration monitoring during demolition of an older wing of the Laguna Honda Hospital.

Loch Lomond Marina EIR, San Rafael, CA
Examined traffic noise impacts on existing residences for the City of San Rafael. Provided the project with acoustical analyses and reports to satisfy the requirements of Title 24.

Mare Island Dredge and Material Disposal, Vallejo, CA
EIR/EIS analysis of noise from planned dredged material off-loading operations for the City of Vallejo.

Napa Creek Vibration Monitoring Review, CA
Initially brought in to peer review construction vibration services provided by another firm, but eventually was tapped for its expertise to develop a vibration monitoring plan for construction activities near historic buildings and long-term construction vibration monitoring.

San Francisco DPW, Environmental Services On-Call, CA
Noise and vibration monitoring for such tasks as: Northshore Main Improvement project, and design noise mitigation for SOMA West Skate Park.

San Francisco PUC, Islais Creek Clean Water Program, San Francisco, CA
Community noise and vibration monitoring during construction, including several stages of pile driving. Coordination of noise and ground vibration measurements during pile driving and other construction activity to determine compliance with noise ordinance. Coordination with Department of Public Works to provide a vibration seminar for inspectors and interaction with Construction Management team and nearby businesses to resolve noise and vibration issues.

San Francisco PUC, Richmond Transport Tunnel Clean Water Program, San Francisco, CA
Environmental compliance monitoring of vibration during soft tunnel mining and boring, cut-and-cover trenching for sewer lines, hard rock tunnel blasting and site remediation. Work involved long-term monitoring of general construction activity, special investigations of groundborne vibration from pumps and bus generated ground vibration, and interaction with the public (homeowners).

Santa Clara VTA, Capitol Expressway Light Rail (CELR) Bus Rapid Transit (BRT) Update EIS, CA
Reviewed previous BRT analysis and provide memo to support EIS.

Shell Oil Refinery, Martinez, CA
Identified source of community noise complaints from tonal noise due to refinery equipment and operations. Developed noise control recommendations. Conducted round-the-clock noise measurements at nearby residence and near to the property line of the refinery and correlated results. Conducted an exhaustive noise survey of the noisier pieces of equipment throughout the refinery to identify and characterize the dominant noise sources that were located anywhere from a quarter to three-quarters of a mile away. Provided a list of actions to mitigate noise from the noisiest pieces of refinery equipment. Assisted the refinery in the selection of long-term noise monitoring equipment to be situated on the refinery grounds so that a record of the current noise environment will be documented, and future noise complaints can be addressed more efficiently.

Tyco Electronics Corporation, Annual Noise Compliance Study, Menlo Park, CA
Conducted annual noise compliance monitoring. Provided letter critiquing the regulatory requirements and recommending improvements.

University of California, San Francisco Mission Bay Campus Vibration Study, CA
Conducted measurements and analysis of ground vibration across site due to heavy traffic on Third Street. Analysis included assessment of pavement surface condition and propensity of local soil structure.

Supplemental Comments to City Council on Agenda Item No. 10.4: Cambrian Park Mixed-Village Project (File Nos. PDC17-040, PD20-007) (SCH No. 2018022034)

Alisha C. Pember <[redacted]>
Tue 8/9/2022 12:08 PM

To: City Clerk <[redacted]> The Office of Mayor Sam Liccardo <[redacted]> District1 <[redacted]> District2 <[redacted]> District3 <[redacted]> District4 <[redacted]> District5 <[redacted]> District 6 <[redacted]> District7 <[redacted]> District8 <[redacted]> District9 <[redacted]> District 10 <[redacted]> Hawkins, Kara <[redacted]>
Cc: Tara C. Rengifo <[redacted]>

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Good afternoon,

Please find attached **Supplemental Comments to City Council on Agenda Item No. 10.4: Cambrian Park Mixed-Village Project (File Nos. PDC17-040, PD20-007) (SCH No. 2018022034)** and **Exhibit A**.

If you have any questions, please contact Tara Rengifo.

Thank you.

Alisha Pember

Alisha C. Pember
[redacted]

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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
trengifo@adamsbroadwell.com

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
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TANYA A. GULESSERIAN
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

August 9, 2022

Via Email
Mayor Liccardo and City Council
City of San Jose
200 E. Santa Clara St.
San José, CA 95113
Email: [redacted]

Kara Hawkins, Environmental Project Manager: [redacted]

Re: Supplemental Comments to City Council on Agenda Item No. 10.4: Cambrian Park Mixed-Village Project (File Nos. PDC17-040, PD20-007) (SCH No. 2018022034)

Dear Mayor Liccardo and Councilmembers, Ms. Hawkins:

We provide these supplemental comments on behalf of Silicon Valley Residents for Responsible Development ("Silicon Valley Residents") in response to the Staff Report submitted to the City Council ("Staff Report") concerning the Cambrian Park Mixed-Use Village Project (File No. PDC17-040, PD20-007, CAMBRIAN 37, and SCH No. 2018022034) ("Project"), proposed by Kimo Realty ("Applicant"). The Project site is located at 14200 and 14420 Union Avenue (Assessor's Parcel Numbers ("APNs") 419-08-012 and -013) ("Site").

Attached as "Exhibit A" please find supplemental expert comments by traffic and transportation expert Daniel T. Smith Jr., P.E., dated August 9, 2022. Mr. Smith's attached comments discuss the Final Environmental Impact Report's ("FEIR") failure to provide substantial evidence to support the conclusion that the Project's impacts on vehicle miles traveled ("VMT") would be reduced to less than significant levels. The FEIR omits critical supporting information to demonstrate how the Project's residential per capita VMT and employment-based VMT were calculated and thus Mr. Smith concludes that potentially significant impacts on

VMT may remain undisclosed in the FEIR. We request that the attached expert comments be included in the record.

Thank you for your attention to these comments.

Sincerely,

[redacted]

Tara C. Rengifo

TCR:acp

5745-016acp

EXHIBIT A

SMITH ENGINEERING & MANAGEMENT

August 9, 2022

Ms. Tara Rengifo
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Subject: Cambrian Park Mixed-Use Village Final EIR
P21026

Dear Ms. Rengifo:

I reviewed the Final Environmental Impact Report (the "FEIR") for the Cambrian Park Mixed-Use Village Project (the "Project") in the City of San Jose. My review is with respect to transportation and circulation considerations. Previously I reviewed and commented on the Draft Environmental Impact Report (the "DEIR") for the subject Project in a letter dated December 30, 2021.My qualifications to perform this review were thoroughly documented in that December 30 letter and my professional resume was attached thereto.

Findings of the VMT Analysis Are Unsupported

The EIR's analysis of residential per capita VMT finds that while the Project area experiences a VMT rate of about the Citywide rate of 11.91 VMT per capita, the Project is estimated to have a residential VMT of 8.96 per capita, about 24.8 percent below the rate that prevails in the immediate area. For employment-based VMT generation, the EIR finds that while the immediate Project area experiences a VMT rate per employee of 14.37 VMT, the Project would generate VMT at a rate of 12.01 per employee, about 16.4 percent less than the rate the area currently experiences. These differences between the broader Project area's VMT and the Project's VMT put the Project below the City's VMT significance thresholds. The EIR includes certain percentage reductions in the trip generation tables to reduce the Project's VMT impacts but omits a clear and adequate discussion of how such reductions were applied to calculate the Project's residential per capita VMT and employment-based VMT. The failure to set forth these supporting calculations in the EIR leaves the EIR's ultimate

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5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

conclusions unsupported. In failing to show the analytical route the City took to reach its conclusion, the EIR's less than significant determination for these impacts is unsupported.

Furthermore, the EIR explains that the projected VMTs for the Project are drawn from the City's VMT estimator model which combines the estimated existing VMT statistics for the project area combined with assumed adjustments for features and characteristics of the Project. However, the analysis also assumes that each trip is presumed to reduce VMT at *average* trip rates rather than the shortest trips, which are most likely to be eliminated by internalization or improved walking and biking facilities. The EIR thus does not set forth the most conservative analysis for the Project's VMT impacts.

Conclusion

This completes my comments to the City Council on the Cambrian Park Mixed-Use Village Project FEIR.

Sincerely,

Smith Engineering & Management
A California Corporation

[redacted]

Daniel T. Smith Jr., P.E.
President

My Thoughts on Items 10.2 & 10.3 on Tuesday's Agenda

Daniel Strokis <[redacted]>

Tue 8/9/2022 2:34 PM

To: Liccardo, Sam <[redacted] Jones, Chappie <[redacted] Jimenez, Sergio <[redacted] Peralez, Raul <[redacted] Cohen, David <[redacted] Carrasco, Magdalena <[redacted] Davis, Dev <[redacted] Esparza, Maya <[redacted] Arenas, Sylvia <[redacted] Foley, Pam <[redacted] Mahan, Matt <[redacted] District1 <[redacted] District2 <[redacted] District3 <[redacted] District4 <[redacted] District5 <[redacted] District 6 <[redacted] District7 <[redacted] District8 <[redacted] District9 <[redacted]

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City Councilmembers,

Today, I write to you in support of two projects on your 8/9 Council agenda, with suggestions for how to improve each of them.

Cambrian Village:
I support the vibrant Cambrian Village project AND I want to see homes that are more affordable built there.

First, I applaud Kimco's recent pledge to increase the number of affordable homes in Cambrian Village from 15 to 30 homes. This has long been one of the main requests of Catalyze SV members & the representative for this area, Councilmember Foley.

The Council can make the proposal even more affordable by:
a) increasing the total number to 50 homes as the 8/5 Council memo calls for; and/or

b) making the current proposed 30 affordable homes focused more on residents such as teachers & service workers (by lowering the income levels to 60% of our area's median income, instead of the current level of 100%, which is now $117,900 per year).

I support the current number of homes & building heights because our community desperately needs housing and density enables the extensive community amenities included in projects like this one.

Kimco's Cambrian Village is a dynamic project responsive to the broader community's needs. It will bring much-needed vibrancy to this neighborhood with lots of walkable homes, shops, restaurants, jobs, visitors, fun activities, parks & other public spaces.

Republic at Blossom Hill:
This is another important project that mixes affordable housing, retail, & market-rate housing on a walkable site. It's also

right next to a VTA light-rail station and Canoas Creek Trail.

Catalyze SV members offered a lot of feasible suggestions to the developer two years ago and the developer didn't take any of them. I'd like to ask you to incorporate the main ideas, such as:

a) provide free VTA transit passes to residents to make the transit stop here a greater success
b) increase the sustainability of the project to a higher-level of environmental standard such as LEED Platinum
c) activate the buildings & public space further to make it safer and more vibrant for residents & transit riders

The best developments are ones in which community members like me offer constructive ideas for how we can make them better for everyone and you ensure these ideas are incorporated. Thanks for your engagement on these two projects!

Sincerely,
Daniel Strokis

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Input on Items 10.2 & 10.3 on Tuesday's Agenda

J'Carlin <[redacted]>
Tue 8/9/2022 2:15 PM

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Republic at Blossom Hill: This is another important project that mixes affordable housing, retail, & market-rate housing on a walkable site. It's also right next to a VTA light-rail station and Canoas Creek Trail. I'd like to ask you to activate the buildings & public space further to make it safer and more vibrant for residents & transit riders The best developments are ones in which community members like me offer constructive ideas for how we can make them better for everyone and you ensure these ideas are incorporated. Thanks for your engagement on these two projects!

Sincerely,

Carlin Black
District 1 Resident, San Jose
For info: Catalyze SV, SCAG, WNAC

--
Carlin Black

Aka J'Carlin