

Responses to Legal Comments

The City of Mountain View Environmental Planning Commission received two letters following the completion of the Final EIR regarding the Village at San Antonio Center Phase II Project. Hopkins & Carley, representing Steve Rasmussen and The Milk Pail, submitted a letter on June 13, 2014 and Aaronson, Dickerson, Cohn & Lanzone, representing David Pilling, submitted a letter on June 18, 2014. The following issues of concern regarding the Environmental Impact Report (EIR) are raised in the letters:

1. Parking
2. Alternatives Analysis
3. Urban Decay
4. Pedestrian/Bicycle Safety
5. Cumulative Impacts
6. Onsite Circulation and Queuing
7. Flawed Traffic Assumptions
8. Energy
9. Responses to Comments
10. Emergency Response
11. Construction Impacts

1. Parking. The Hopkins & Carley letter requests clarification on the assumption of the successful implementation of the TDM Program. As explained in the Final EIR, to enforce the TDM, office peak-hour vehicle trip monitoring would be done by an independent, third-party evaluator; and the penalties to be incurred, should the goals not be met, would be clear within the document and enforced by the City. These requirements would be included in the Project's Conditions of Approval. Thus, the assumption in the EIR that the TDM Program would be successfully implemented is made based on this requirement of the Project and by the City. The Aaronson, Dickerson, Cohn & Lanzone letter states that parking impacts are based on incorrect demand factors. The EIR used parking requirement rates based on the City's requirements rather than ITE because it is generally accepted that the City's parking requirements are more representative of demand generated by local land uses. The ITE rates are based on nationwide surveys over a variety of different urban and suburban environments. There is no requirement in CEQA that parking demand must use ITE demand rates.

2. Alternatives Analysis. The EIR analyzes three potential alternatives: the No Project Alternative, the Reduced Density (Existing Zoning) Alternative, and the Reduced Density (Residential Component) Alternative. The CEQA Guidelines notes that "An EIR need not consider every conceivable alternative to a project...there is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason." CEQA Guidelines 15126.6(a). CEQA Guidelines 15126.6(f) notes that "The range of alternatives required in an EIR is governed by a 'rule of reason' that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice...the EIR need examine in detail only the ones that the lead agency determines could feasibly attain most of the basic objectives of the Project."

A no-office alternative was not considered because it would not meet at least three of the Project objectives which include supporting the demand for office space, locating job-generating uses close to existing residential uses, and providing mutually supportive office, hotel, and retail uses in immediate proximity to one another. The EIR does, however, evaluate an alternative that would remove half the amount of office currently proposed by the Project. The No Project Alternative assumes that the existing retail uses on the Project site would remain operational. An alternative involving no density or height exceptions was not considered because the Project would not include any density or height exceptions. The Project would be consistent with the height and intensity restrictions described in the 2030 General Plan (refer to Impact LUP-1b on page 3.9-7 of the Draft EIR).

A sensitivity analysis was conducted to see how much office development could be constructed to avoid the potential cumulative significant impact at the El Camino Real and San Antonio Road intersection. It was determined that the office development would have to be reduced by such a substantial amount that it would be very highly unlikely that a project of that size move forward. Furthermore, it is important to remember that the Project contributes only approximately 16 percent to the *potential cumulative* impact at the aforementioned intersection.

The EIR considered and dismissed offsite alternatives. There were no suitable sites within the City of Mountain View, including the North Bayshore area, that do not already have existing development proposals. The Hopkins & Carley letter recommends an alternative that segments the cinema and hotel to separate nearby sites. The Reduced Density (Existing Zoning) Alternative eliminates the hotel and cinema all together. This alternative is similar to the alternative proposed by Hopkins & Carley. Hopkins & Carley also recommends an alternative that has increased parking. A significant parking impact was not identified in the EIR; therefore, it was not necessary to analyze an alternative that would have increased parking. The Hopkins & Carley letter recommends a scaled-back alternative with fewer uses. The EIR analyzes two reduced density alternatives. The Reduced Density (Existing Zoning) Alternative would not include the cinema or the hotel and the Reduced Density (Residential Component) would halve the sizes of the office and hotel space, but include residential use.

3. Urban Decay. The Aaronson, Dickerson, Cohn & Lanzone letter asserts that the Project would result in urban decay from closure of the Milk Pail. There is no evidence that the Milk Pail would close as a result of Project implementation.

4. Bicycle/Pedestrian Safety. The Aaronson, Dickerson, Cohn & Lanzone letter asserts that the EIR does not properly evaluate bicycle/pedestrian safety. Pedestrian and bicycle safety is described on page 3.13-28 of the Draft EIR which meets the requirements of CEQA to provide a detailed discussion of potential impacts resulting from the Project. The bicycle lane proposed on San Antonio Road would be separated from the sidewalk and bicyclists would only interact with pedestrians at intersections and curb cuts. Under law, bicyclists are required to yield to pedestrians. Furthermore, the bicycle lane on San Antonio Road would be buffered with either a raised median or a striped median to separate vehicles travelling on San Antonio Road from bicyclists. The Aaronson, Dickerson, Cohn & Lanzone letter asserts that the Final EIR did not adequately respond to Mr. Pilling's comments but only references one part of the complete response provided on page 2-99 of the Final EIR. The response to Mr. Pilling's concerns

regarding bicycle and pedestrian safety also explains how the Project would improve the existing condition on San Antonio Road by decreasing the number of driveways over existing conditions.

5. Cumulative Impacts. The Aaronson, Dickerson, Cohn & Lanzone letter asserts that the EIR does not adequately analyze cumulative impacts of the Project and does not describe impacts to nearby projects in neighboring jurisdictions. As described on page 4-2 of the EIR, the General Plan EIR method for analyzing cumulative impacts was used for aesthetics, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, population and housing, public services and recreation, and utilities and service systems. Impacts in these topic areas are generally considered site specific and the geographic context for cumulative impacts does not extend significantly beyond the project boundaries.

For cumulative air quality, greenhouse gas emissions and climate change, noise, and transportation and circulation impacts, the analysis considers the list of approved cumulative projects included in the Traffic Impact Analysis (TIA). The list of projects (Appendix E to the TIA) was generated in collaboration with Mountain View staff and includes approved projects in Mountain View and the neighboring jurisdictions of Los Altos and Palo Alto. Additionally, the analysis uses a 2 percent growth factor per year over the course of Project buildout to capture any additional or planned future growth.

6. On-Site Circulation and Queuing. The Aaronson, Dickerson, Cohn & Lanzone letter asserts that Mr. Pilling's comments were ignored in the Final EIR and no additional study to evaluate queuing was prepared. The Hopkins and Carley letter also expresses concern over a lack of queuing analysis. As discussed on page 2-99 of the Final EIR, a microsimulation analysis was conducted to evaluate how the proposed driveways could serve demand during peak hours. As indicated in Appendix O of the Final EIR, the proposed access along the three adjacent roadways is adequate for this development, the driveway spacing is acceptable, and the additional access points and vehicles would not degrade operations or increase queuing in the area. There is no evidence that once a vehicle is within the Project site that it would experience additional internal queuing. As shown in Figure 2-7, there are several entry points into the proposed parking areas. Travel along the promenade would be limited to daytime hours, when pedestrian traffic is expected to be limited. Vehicles would be restricted from the promenade in the evening and on weekends, when pedestrian traffic would be heavier, and could result in slower travel through the promenade.

7. Traffic Methodology. The Aaronson, Dickerson, Cohn & Lanzone letter asserts that the EIR should have conducted the analysis using SIDRA. SIDRA is not an appropriate software package to evaluate impacts on a roadway network as this software is primarily used to evaluate impacts to and the effectiveness of rotaries or roundabouts.

8. Energy. The Aaronson, Dickerson, Cohn & Lanzone letter asserts that the EIR does not address energy impacts of the Project. As discussed on pages 2-9 through 2-10 of the Draft EIR, the Project would include many green building practices and energy efficiency measures. The Project would be designed with energy-saving techniques and meet California Code of Regulations (CCR) Title 24 and any amendments required by the City. CCR Title 24, Part 11 is the California Green Building Standard Code

(CALGreen), which requires nonresidential building construction to consider energy and other resource efficiency. The 2013 Building Energy Efficiency Standards, effective July 2014 as CCR Title 24, Part 6, also focus on several key areas to improve the energy efficiency of newly constructed buildings and include requirements that will enable both demand reductions during critical peak periods and future solar electric and thermal system installations. The Project would also meet LEED Gold standards. In addition to the energy saving designs for the Project, the Project applicant would implement a comprehensive TDM program that would provide services, incentives, facilities, and actions to reduce employee vehicle commute trips. The reduction in single-occupant vehicle trips would reduce fuel usage. During construction, Mitigation Measure AQ-MM-2a through AQ-MM-2d, discussed on pages 3.2-19 through 3.2-20 of the Draft EIR, would be implemented to minimize equipment idling times also reducing energy usage.

9. Responses to Comments. The Aaronson, Dickerson, Cohn & Lanzone letter asserts that comments on the Draft EIR were not adequately addressed. The Final EIR addresses each comment received on the Draft EIR. For those comment the Aaronson, Dickerson, Cohn & Lanzone letter assert are not adequately address, additional discussion is provided above.

10. Emergency Response. The Aaronson, Dickerson, Cohn & Lanzone letter asserts that the EIR does not analyze how the Project would interfere with the City's ability to carry out its adopted emergency response plans, including adhering to minimum response times. As described in Section 3.12, *Public Services and Recreation*, (see Impacts PSR-1a, PSR-1b, PSR-2a, PSR-2b) a representative of both the Mountain View Police Department (MVPD) and the Mountain View Fire Department (MVFD) stated in a personal communication on November 6, 2013 that existing fire services and police services are expected to be adequate and capable of ensuring safety during Project construction and that Project operation would not degrade the MVFD's or the MVPD's response times below department goals. Additionally, implementation of Mitigation Measure TRA-MM-8, Develop and implement a construction traffic control plan, would ensure emergency access in the Project area at all times.

Regarding interference with the City's Emergency Response Plan, the Project would be required to comply with the requirements outlined in Mountain View's Emergency Operations Plan. The Project would include new modern buildings designed to meet existing fire codes.

The significant and unavoidable impact at San Antonio Road and El Camino Real is a *cumulative* impact that would not occur until after Project construction and to which the Project only partially contributes. Furthermore, the Project applicant has committed to funding the intersection improvement in its entirety prior to Project occupancy.

11. Construction Impacts. The Hopkins & Carley letter asserted that construction dust and noise could impact The Milk Pail's European-style outside market. The Project would be required to comply with a Condition of Approval (PL-94 Construction Practices and Noticing in Appendix M, *Conditions of Approval*, of the EIR) that requires a publically visible sign with the telephone number and person to contact at the lead agency (i.e., the City of Mountain View) regarding dust complaints. This person will respond and take corrective action within 48 hours. Additionally, the Bay Area Air Quality Management District's

(BAAQMD's) phone number will be visible to ensure compliance with applicable regulations. Therefore, if construction dust and noise are negatively impacting The Milk Pail's operation, a representative of the Milk Pail, or a member of the public, should call the posted telephone number to report a complaint and corrective action will be implemented as soon as possible.

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June 18, 2014

BY E-MAIL

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Re: Item 5.1, June 18, 2014 Agenda – 405 San Antonio Road, Village at San Antonio Center Phase II Entitlements and Certification of the Final EIR

Dear Honorable Members of the Environmental Planning Commission:

This law firm represents David Pilling, who owns land adjacent to the proposed Village at San Antonio Center Phase II project ("Project") site, and submits this letter on Mr. Pilling's behalf for your consideration of item 5.1 at your June 18, 2014 meeting tonight. Based on our review of the Final Environmental Impact Report ("EIR") for the Project so far (which was just released last week), we have serious concerns about its legal adequacy, as explained below. In its current state, the EIR fails to comply with the requirements of the California Environmental Quality Act ("CEQA") and therefore cannot support approval of the Project. Unless a new draft EIR to correct these deficiencies is prepared and recirculated, any action taken on the Project would violate CEQA.

Moreover, it is questionable whether the Environmental Planning Commission is in a position to adopt the proposed resolution recommending certification of the EIR because there is no evidence in the record that the EIR was ever presented to the Environmental Planning Commission for review and consideration. Before approving a project based on an EIR the lead agency must certify that the (1) the EIR complies with CEQA; (2) reflects the lead agency's independent judgment and analysis; and (3) was presented to the decision-making body which

reviewed and considered the information in the EIR before approving the project. See 14 Cal Code Regs §§ 15090(a). The EIR consists of both the Draft EIR and the Responses to Comments document. However, there is no evidence in the record that the Draft EIR was ever presented to the Environmental Planning Commission for review and consideration. Item no. 7 of the agenda packet includes only the Responses to Comments Document. It does not include the Draft EIR, nor is the Draft EIR enclosed elsewhere in the packet. Moreover, the Draft EIR is not even posted on the City's website -- all that is posted is the Responses to Comments document. I had to visit the Town of Los Altos' website to review the Draft EIR. As such, it does not appear that the Environmental Planning Commission can adopt the proposed resolution recommending certification of the EIR because it cannot certify that it was presented the EIR, that it reviewed and considered the EIR or that the EIR reflects its independent judgment in compliance with 14 Cal Code Regs §§ 15090(a).¹

1. **The EIR Fails to Address Urban Decay**

Nowhere in the EIR is the Project's potential to result in urban decay even addressed, let alone adequately analyzed under CEQA. Changes to the physical environment caused by a project's economic effects are an indirect effect that must be analyzed in an EIR. 14 Cal. Code Regs §§ 15064(e), 15131(a). As evidenced in the record, the Project will likely result in closure of the Milk Pail unless a parking agreement is reached, which in turn could result in a vacant building, neglect and vandalism. This is but one example of the effect the Project may have on surrounding businesses in the area. When evidence suggests that a project's economic effects could ultimately result in urban decay or deterioration, the EIR must assess the indirect physical impact of urban decay. *Bakersfield Citizens for Local Control v City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1207; see also *American Canyon Community United for Responsible Growth v City of Am. Canyon* (2006) 145 Cal.App.4th 1062, 1072 (change in type of retail use from shopping center to 24-hour supercenter and increase in size of retail component of project required supplemental environmental review); *Citizens for Quality Growth v City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 445 (rezoning parcel for commercial and manufacturing uses could cause loss of business and resulting physical deterioration of existing business areas). Therefore, an analysis of the Project's potential to result in urban decay must be included in a revised and recirculated EIR before the Project can be considered for approval.

2. **The EIR Fails to Address Pedestrian and Bicycle Safety**

Public comments submitted into the record suggest that the Project will increase the potential for conflicts between pedestrians/ bicycles on one hand and vehicles on the other -- particularly with regard to the proposed bicycle lane on San Antonio Road between the intersections of California Street and El Camino Real which are currently at level of service ("LOS") E and F respectively. Yet the EIR completely fails to address this potentially significant impact and/or identify mitigation measures to address this impact. CEQA requires that an EIR include a "detailed statement" setting forth the "significant effects on the environment of the proposed project." (*Pub. Resources Code, § 21100, subd. (b)(1).*) "[A] 'significant effect on the

¹ Note that I raised this concern with the project planner on Monday, June 16 by email. Just prior to submitting this letter today I visited the City's website and noticed that low and behold, the link to the Draft EIR had been posted on the City's website. However, 1 (or less than 1) day is not nearly sufficient time for the Environmental Planning Commission's review and consideration of the legal adequacy of a 342 page document, appendices excluded.

environment' under CEQA is a substantial or potentially substantial adverse change in the physical conditions existing within the area affected by the project." (*California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 185, 49 Cal.Rptr.3d 169.) These CEQA provisions require the City to consider whether the design features of the Project create risks to pedestrians and bicycles in and around the project site. *City of Maywood v. Los Angeles Unified School District (LAUSD)* (2012) 208 Cal.App.4th 362. Yet the EIR contains no evidence that the City investigated or addressed pedestrian and/or bicycle safety impacts resulting from the Project. Instead, the City responded to my client's comments expressing concern about bicycle safety by simply stating "[t]he comment expresses concern about bicycle safety on San Antonio Road" and referring the commenter to an earlier response which conclusively states without support that "it is important to provide bicyclists a dedicated facility on which to travel safely." Final EIR, 2-99. This response is contradicted by evidence submitted into the record to the contrary – that bicycle lanes can themselves pose safety hazards especially when located on busy streets with numerous driveways and intersections such as San Antonio. A thorough analysis of the Project's impacts on pedestrian and bicycle safety must be included in a revised and recirculated EIR before the Project can be considered for approval.

3. The EIR Fails to Adequately Analyze Cumulative Impacts of the Project

The purpose of the cumulative impacts analysis is to avoid considering projects in a vacuum, because failure to consider cumulative harm may risk environmental disaster. *Whitman v Board of Supervisors* (1979) 88 Cal.App.3d 397, 408. Without this analysis, piecemeal approval of several projects with related impacts could lead to severe environmental harm. *San Joaquin Raptor/ Wildlife Rescue Ctr. v County of Stanislaus* (1994) 27 Cal.App.4th 713, 720. The CEQA Guidelines refer to a cumulative impact as the combination of the project's impacts with those of other projects causing "related impacts." 14 Cal. Regs § 15130(a)(1).

The EIR bases its cumulative impact analysis on the Mountain View 2030 General Plan and the *City of Mountain View 2030 General Plan and Greenhouse Gas Reduction Program Environmental Impact Report*. Draft EIR, 4-2. Yet these sources do not adequately identify all projects causing related impacts in the area that will be affected by the project as they do not include foreseeable projects in the neighboring jurisdictions of Los Altos and Palo Alto, only blocks away from the Project. See *Citizens to Preserve the Ojai v County of Ventura* (1985) 176 Cal.App.3d 421, 429 (EIR's cumulative analysis must adequately identify all projects causing related impacts in the area that will be affected by the Project). As such, the geographic scope of the cumulative impacts analysis is too narrow and therefore deficient under CEQA. See also *San Joaquin Raptor/ Wildlife Rescue Ctr. v County of Stanislaus* (1994) 27 Cal. App.4th 713, 739 (rejecting cumulative impact analysis for failing to consider other pending projects within 5 miles of project site); *Bakersfield Citizens for Local Control v City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1215 (rejected cumulative impact analysis that failed to consider other pending project concurrently considered for approval just 3.6 miles away); and *Kings County Farm Bureau v City of Hanford* (1990) 221 Cal.App.3d 692, 721 (rejecting cumulative impact analysis as deficient for not including other energy projects throughout the air basin). As such, the EIR must be revised to include other nearby pending projects within the Cities of Los

Altos and Palo Alto within the scope of the cumulative analysis and recirculated before the Project can be considered for approval.

4. The EIR Fails to Adequately Analyze Parking Impacts

After a scant one-paragraph discussion of the Project's impacts on parking (draft EIR, 3.13-28, 29), the EIR concludes that the Project's impact on parking are less than significant. There is no support in the record for this conclusion. The EIR fails to calculate the project's total parking demand using standard Institute of Traffic Engineer (ITE) rates and to compare this parking demand to the parking provided by project. Instead, the EIR relies solely on City parking code requirements which the EIR acknowledges do not even apply to the proposed P-district zoning for the Project. Moreover there is no support for the EIR's improper assumption that parking demand would be reduced by 30% as a result of the proposed TDM program. "[A] project's impact on parking generally should be studied for any potential impact on the environment." *Taxpayers for Accountable School Bond Spending v. San Diego Unified School District* (2013) 215 Cal.App.4th 1013, 1050. As stated by the Court of Appeal: "Vehicles, whether driven or parked, in effect constitute manmade conditions and therefore may constitute physical conditions in an area that may be affected by a proposed project, thereby requiring a lead agency to study whether a project's impact on parking may cause a significant effect on parking and thus the environment. Furthermore, to the extent the lack of parking affects humans, that factor may be considered in determining whether the project's effect on parking is significant under CEQA." *Id.* At 1050 (citing 14Cal. Code Regs. § 15064(e).) Because the EIR failed to adequately analyze the effect of the Project's lack of parking on humans and the environment, it failed to comply with CEQA.

5. The EIR Fails to Address Onsite Circulation and Queuing

While the EIR provides a figure of the onsite circulation (Draft EIR, Figure 2-7), nowhere does the EIR evaluate whether the proposed internal circulation of the Project will result in any significant environmental impacts including queuing and air quality impacts. As such, there is no evidence to support that the Project complies with the San Antonio Precise Plan policy to "[e]nsure that access, signage, building design and onsite circulation support the image of a single regional shopping complex." Draft EIR, 3.9-5. As shown in the comments and reports submitted into the record by my client, the Project has the potential to result in significant congestion and cueing impacts inside the parking "garage tunnel" at Location # 5, at the theatre drop-off, and in the surface parking lot for the eight-auditorium theater, and at the proposed intersection at Pachetti Way and Silicon Way which in turn could lead to air quality impacts, health impacts (due to high exhaust levels), and negatively impact emergency response times. As such, analysis of internal/on-site circulation impacts must be included in a revised and recirculated EIR before the Project can be considered for approval.

Although my client alerted the City to these potential impacts and the inadequacy of the Draft EIR for failing to analyze these impacts and requested that the Final EIR study these impacts, these comments were ignored in the Final EIR and no such study was ever conducted. CEQA requires that when a comment requests additional study, if the EIR does not respond by undertaking the requested study, it must explain why the EIR's analysis is sufficient without the additional study, provide a further analysis, or explain why the study requested is infeasible.

Berkeley Keep Jest Over the Bay Comm. v Board of Port Comm'rs (2001) 91 Cal. App. 4th 1344, 1367, 1371. The Final EIR did none of the above and is therefore inadequate under CEQA.

6. The Traffic Analysis is Based on Flawed Methodology, Data and Assumptions

The EIR Traffic Impact Analysis relies on SimTraffic which other agencies have discarded as producing inconsistent and unreliable results (for example, Truckee). My client raised this issue in his comments on the Draft EIR (Final EIR Comments 11-1, 11-11) noting that the EIR should have used "a more dynamic traffic software such as SIDRA... to resolve the mutual interaction of intersections with one another." Final EIR Comment 11-11. The City rejected this suggestion in its response to comment 11-1 stating, without support, that "[t]he Synchro/SimTraffic software used is significantly more precise than the method proposed in the comment." This response is inadequate under CEQA which requires that if comments indicate that an EIR's analysis has relied on incorrect data or flawed methodology, the EIR must provide a good faith, reasoned analysis in response. Conclusory statements unsupported by references to supporting evidence are not sufficient. 14 Cal Code Regs § 15088(c). When the EIR's discussion and analysis is not modified to incorporate the suggestions made in the comments on the draft, the EIR must acknowledge conflicting opinions and explain why they have been rejected, supporting its statements with relevant data. *Berkeley Keep Jest Over the Bay Comm. v Board of Port Comm'rs* (2001) 91 Cal. App. 4th 1344, 1367, 1371. As such, the EIR is inadequate under CEQA.

7. The EIR Fails to Present a Reasonable Range of Alternatives.

CEQA's central mandate is that "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." *Berkeley Keep Jets Over the Bay Comm v. Board of Port Comms.*, 91 Cal.App.4th 1344, 1354 (2001 (quoting Pub. Res. Code 21002). An EIR must analyze a reasonable range of alternatives to the project that would feasibly attain most of the project's basic objectives while avoiding or substantially lessening the project's significant impacts. Pub. Res. Code 2100(b)(4); CEQA Guidelines 15126.6(a). The discussion of alternatives must focus on alternatives capable of avoiding or substantially lessening the adverse environmental effects of a project, "even if these alternatives would impede to some degree the attainment of project objectives, or would be more costly." CEQA Guidelines 15126.6(b).

The EIR is deficient in its failure to identify and analyze – or at the very least raise and reject -- an alternative that would substantially lessen the Project's significant and unavoidable environmental impacts. The Alternatives analysis studies only two alternatives, none of which substantially lessen the significant and unavoidable impacts of the Project. As admitted by the EIR, the Project would result in significant and unavoidable impacts relating to traffic. Yet the EIR concludes that neither of the only two alternatives studied would substantially lessen these impacts.

The Alternatives analysis is unduly narrow and does not include a reasonable range of project alternatives. For example, why was a no-office alternative not analyzed? Why was a reduced

development alternative that involves re-use of the existing facilities not considered? Why was an alternative involving no density or height exceptions not considered? The EIR offers no explanation as to why such obvious alternatives were not considered or selected for analysis. An alternatives analysis is inadequate when an alternative that would reduce significant impacts and achieve most project objectives is excluded from the analysis and the EIR fails to include a reasonable explanation of the decision to exclude that alternative. See *Center for Biological Diversity v. County of San Bernardino* (2010) 185 CA4th 866; *Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 CA4th 1059. Therefore, the EIR must be revised to consider the additional alternatives suggested in these comments and be recirculated for public review.

8. The EIR Fails to Address Energy Impacts of the Project

The EIR fails altogether to address the Project's impact on energy as required by CEQA. See Public Resources Code § 21100(b)(3); CEQA Guidelines Appendix F. See also *People v. County of Kern* (1976) 62 CA3d 761. In addition to addressing the degree to which the Project complies with existing energy standards (i.e. Title 24) and the extent to which it would result in global climate change, the EIR should evaluate the project's energy requirements, the project's effects on local and regional energy supplies and on requirements for additional capacity, the project's effects on peak-and base-period energy demands; the project's effects on energy resources; and the project's projected transportation energy use and its overall use of efficient transportation alternatives. This analysis is missing and therefore must be included in a revised and recirculated EIR prior to consideration of the Project for approval.

9. The EIR Fails to Adequately Respond to Comments.

The lead agency must evaluate comments on a draft EIR and prepare written responses for inclusion in the final EIR. Pub Res Code § 21091(d); 14 Cal Code Regs §§15088(a). Responses to comments must be detailed and must provide a reasoned, good faith analysis and not mere '[c]onclusory statements unsupported by factual information.' *Ballona Wetlands Land Trust v. City of Los Angeles* (2011) 201 Cal.App.4th 455, 475, 134 Cal.Rptr.3d 194; 14 Cal Code Regs § 15088(c). As noted above, for example, many of the responses to comments on the Draft EIR were unresponsive and therefore inadequate. Failure of a lead agency to respond to comments raising environmental issues before approving a project frustrates CEQA's information purpose, and may render the EIR legally inadequate. See *Rural Landowners Ass'n v. City Council* (1983) 143 CA3d 1013, 1020. Further, responses to comments on a draft EIR must state reasons for rejecting suggestions and comments. 14 Cal Code Regs § 15088(c). The EIR's failure to do this violates CEQA.

10. The EIR Fails to Adequately Analyze Project's Impact on Emergency Response

The EIR summarily concludes that the Project's potential to interfere with adopted emergency response plans is less than significant because "[t]he proposed Project does not include any characteristics (e.g., permanent road closures) that would physically impair or otherwise interfere with emergency response or evacuation." (Draft EIR, 3.7-13). While the Project may not result in permanent road closures, it does result in a significant and unavoidable impact on traffic, including significant intersection delays. The EIR utterly fails to analyze how this Project "characteristic" and/or on-site circulation patterns would interfere with the City's ability to carry out its adopted emergency response plans, including adhering to minimum response times. This analysis must be included in a revised and recirculated EIR prior to consideration of the Project

for approval.

For the reasons set forth above, the EIR is so inadequate and lacking in information, that it must be revised and recirculated. On behalf of our client, we also hereby reserve the right to provide additional comments to the City Council prior to its consideration of the EIR for certification. Finally, we request to be provided copies of all notices published by the City with respect to this Project and notified of all actions taken by the City in connection with the Project. All correspondence should be sent to my attention at the mailing address noted in the header on the first page of this letter.

Very truly yours,



Camas J. Steinmetz

CJS:

cc: Nancy Minicucci, Senior Project Planner
Jannie Quinn, City Attorney
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Re: Village at San Antonio Center Phase II Project

Dear Commission Members:

I represent Steve Rasmussen and The Milk Pail. We want to raise our very serious concerns about the proposed San Antonio Center Project.

1. The ability of the City to include The Milk Pail in the Center.

San Antonio Center ("SAC") has always been an open center with patrons parking where they will and going from store to store. It has been a friendly Mountain View kind of place. Indeed, The Milk Pail has historically been treated as part of the Center.

A. The Precise Plan

In 1962, three property owners entered into a Reciprocal Parking Agreement ("RPA"). Despite the fact that The Milk Pail and other smaller properties were not parties to the RPA, they were treated as its beneficiaries. In fact, all three properties that were signatories to the 1962 RPA sat on the San Antonio Center Precise Plan Committee beginning in 1987-88 for the purpose of bringing better coordination to the entire parcel. All three participants approved the wording in the Final SAC Precise Plan that was certified in 1990 by the City Council which unambiguously made the parking available to everyone.

In commenting on the EIR for Phase I of this project, my client specifically asked about reciprocal parking. The response to the comment follows: " B4-1: **The Precise**

Plan will require shared access, shared parking and coordinated parking for adjacent properties. The residential uses included in the proposed project will be required to provide private parking.” (emphasis added.)

It was a surprise to discover that without any public discussion, that open parking provision was changed. The relevant language had remained in San Antonio Center Precise Plan from when it was first adopted in 1988 in various amended versions until June 2011 when with no discussion or outreach with stakeholders and despite assurances given to my client, the language was changed from “*however, all parking shall be accessible to other properties.*” to “*however, all parking other than private residential parking shall be accessible to other properties **in accordance with the existing Reciprocal Parking Agreement in the Center.***” (emphasis added)

This change had the effect of severing the parking rights of the outliers in SAC, including The Milk Pail, to park anywhere in the SAC, which is a right they had enjoyed for decades. The Developer posted signs in the Center stating that The Milk Pail customers cannot park in most of the Center. This is not Mountain View friendly, it is not practical and, if anything, discourages The Milk Pail customers from shopping at other stores. It is not good business.

The Commission should recommend that the SAC parking be open to all customers of the Center.

B. History of requiring Inclusion

It is legally possible for the City to require open parking without exposing itself to a “taking”. It is customary for cities to impose conditions which require solutions to the open parking. Mountain View has done this historically. The City Attorney has copies of the documents which show that with regard to the SAC has at least twice conditioned approval on the efforts to reach agreements to provide parking to neighboring parcels.

The WIRET Agreement was entered into in 1990 between Western Investment Real Estate Trust, and the City of Mountain View. WIRET was in the process of remodeling the Center and as a condition of WIRET's permit approval, the City required WIRET to execute a recordable agreement which shall be appurtenant to and run with the land. The Condition read “At such future time as substantial site plan or building modifications are applied for or made at, to or upon any of the Adjoining Parcels, WIRET, or the then current owner(s) of Parcel A, shall diligently, in good faith, and using best efforts, cooperate, with City and the owner(s) of the above mentioned Parcels, collectively or separately, in proceeding to establish and enter into a Mutual Access Agreement or Agreements (“Access Agreement” herein) with and among said owner(s) for the purpose of establishing mutual access for ingress and egress, and granting parking, pedestrian and vehicular traffic circulation rights among all said owners of the

Adjoining Parcels". While The Milk Pail was not included in this agreement, it illustrates that providing parking and access rights can be a condition.

The La Mancha Agreement was entered into in 1990 between M.S. Partnership, and the City of Mountain View when La Mancha was in the process of developing its parcel. As a prerequisite to the continued development of that Parcel and as a condition of La Mancha's permit approval, the City required La Mancha to execute a recordable agreement which shall be appurtenant to and run with the land. The condition required best efforts to negotiate mutual access for ingress and egress, parking, pedestrian and vehicular traffic circulation with Steve Rasmussen as well as another adjacent owner.

It would be perfectly legal to require parking adequate for the center to function as a whole and require that the developer make parking available to The Milk Pail at fair market rental value. The Milk Pail currently pays rent under its Parking License and would continue to pay for its use of the spaces. The decision not to require that developer to make parking available in this manner is strictly a policy decision.

It is also notable that the Phase I shortfall of parking has resulted in MGP entering into some agreement with the owner of the six story office building near the new Safeway to allow Phase I parking to use the office spaces after 6 pm at night. This office property is not part of the RPA from 1962. Nonetheless its parking need is being addressed.

The Commission should recommend that the project be conditioned on the applicant providing parking for The Milk Pail at fair market value so the Center can function as intended.

2. The inadequate parking.

Parking for Phase I is inadequate. Recently 46 spaces have had to be dedicated to that Phase I overflow. It is obvious that the Phase 1 was significantly under-parked. It is a situation which should be corrected by adding parking to Phase II. However, Phase II also provides inadequate parking for its proposed uses.

The parking as planned in Phase II depends heavily on a successful TDM for the 400,000 sq. ft. of proposed office space. A 30 % reduction of required parking spaces is assumed as a result of a successful TDM. The basis of that assumption is unclear. The actual density in office complexes seems to be much greater now than when the parking to office employee ratio was first created a few decades ago. Parking in Phase II for this reason will be under-parked as is Phase I.

A shortage of parking results in queues which will fold out on to the streets and impact traffic. It causes air pollution and safety issues. This aspect was not adequately addressed in the EIR.

The Commission should recommend that the project be required to provide more parking.

3. Failure to adequately address circulation, access and safety.

Circulation also has to be designed so that there is reasonable safe access for customers of all stores in the Center. Pacchetti Way needs to be made an integral part of Phase II. It will pose traffic, parking, circulation, pedestrian, and congestion problems which have not been addressed. There needs to be more analysis of how cars will safely enter and exit the SAC. What kind of queuing is likely to occur and how can that best be avoided?

All members of the public as well as Milk Pail customers have had unfettered historical use of all points of access into SAC. In response to a comment from my client, the EIR states that the applicant has agreed to allow access subject to my client agreeing to contribute to maintenance. My client is certainly willing to contribute to his proportional share of the maintenance cost. This should be a clear condition and not merely a response to a comment.

The Commission should recommend that access for Milk Pail be a condition as long as Milk Pail is willing, as it is, to pay its proportionate share.

4. Inadequacy of the EIR.

The EIR is deficient in a number of ways.

The Alternatives Analysis is deficient in that it did not consider off-site alternative to meet the project objectives, particularly since the Existing Zoning is admitted to be the environmentally superior alternative. There is available land in the North Bayshore area. Moreover, the Project could be segmented and some elements like the cinema and hotel be separated on to nearby sites. More importantly, since parking, in general and specifically for Milk Pail, have been the center of much controversy, an Alternative with increased parking which also accommodates the Milk Pail should have been considered.

The Land Use section which is supposed to describe impacts on land use and planning that would result from implementation of the Project and provides a discussion of the existing conditions related to land use completely ignores the impact on the Milk Pail. It does not address the fact that historically there was open parking or that Parking was dedicated to the Milk Pail through a license. It does not discuss that this resource

to the community will be unable to co-exist with the Project unless the Project enters into a Parking License or easement with the Milk Pail. It does not disclose that the failure to require the developer to negotiate such an arrangement is a policy choice.

The EIR does not seriously address the combined concerns about traffic and the overly optimistic TDM assumptions in the comments from Los Altos, Palo Alto and the County as well as members of the public. It denies the reality of effect of the garage parking approach which will result in queuing into the surrounding streets creating air pollution and safety problems. The revisions to the EIR do not take into account what happens when the assumptions underlying the TDM prove to be too optimistic.

The Commission should recommend that defects in the EIR be corrected and the EIR be recirculated before the project is approved.

5. The role of The Milk Pail as an economic, historic and cultural resource in the life of Mountain View.

The Milk Pail has played an important role in the culture, history and community life of Mountain View since 1974. It was the natural extension of the drive-in milk store which had been part of Mountain View for many years. It is one of the unique treasures of this community. The outpouring of support demonstrates the important role that The Milk Pail has played for over the past 40 years. It is an important economic resource as well. It attracts regular customers to Mountain View from as far away as Carmel, Grass Valley, Santa Cruz, and throughout San Mateo, Alameda and Santa Clara Counties as well as San Francisco. People who come visit family from elsewhere make shopping the Milk Pail a key stop during their visit. Once here, Milk Pail customers shop at other local businesses as well.

Milk Pail has made unique contributions to Mountain View. What follows are just a few examples of its generosity in this community. It raises several thousands of dollars at the store for the Holiday Fund that is supported by local papers. It gave 12,000 mini pumpkins to all of the school age young children in local schools. Milk Pail has a program whereby its customers buy 50 lb. bags of rolled oats at our cost and then it re-bags them into 3 pound bags and takes to food closets and food banks. It has done hundreds of cheese tasting events for local fund raisers for Mountain View schools, Stanford graduate student events, the MV Leadership awards event and the like. It gives produce to the MV Day Workers Center. It held the first ever "Sake and Cheese Tasting" with Masa's for Japanese Red Cross for Tsunami Relief. It paid for the freight to send eighty care boxes to American soldiers in Iraq with items that were collected at the Milk Pail from Milk Pail customers. It will be a major loss to the community if the Milk Pail cannot be saved.

The Commission should recommend that the Council condition the project on a parking agreement to preserve the Milk Pail for Mountain View.

6. Construction Impacts

It is not clear how construction will be staged so that it does not impede Milk Pail's parking license. Where will the fence be located so that it allows access to Milk Pail? Is there a procedure set in place where Milk Pail can take complaints when construction inevitably causes problems, trucks block access, dust and noise cause problems? A detailed construction plan should be publically reviewed before construction starts in order to assure it does not adversely affect the neighboring businesses. At a minimum, there should be a condition which requires that the developer immediately respond to any such complaints.

The Commission should recommend that the Developer be asked to provide the Commission with a detailed construction schedule and mitigation plan before construction is allowed to begin to make sure construction proceeds in a manner which avoids impacts on the neighboring businesses. It should include the methodologies to be employed to prevent dust and noise which will adversely impact the Milk Pail which operates as European style outside market.

The Commission should also recommend that there be severe penalties to compensate project neighbors if the construction is operated in a manner which interferes with their businesses operations.

7. What would the Community like to see.

The community expected the SAC to be a Regional Shopping Center which would not only would serve the needs of the Mountain View community but would be an economic driver. The Project tries to squeeze too much of a dense urban design which does not fit with Mountain View. Squishing a 167-room Hotel with 330 apartments, with a dog park, with a large office complex, with a Cinema in the limited space is overly dense. The project is essentially four or five separate uses rolled into one relatively constrained area. The Milk Pail customers want to see the Milk Pail as part of the mix but they almost universally express the desire for a scaled back project which will not overwhelm the community.

The Commission should recommend that the Council direct the Developer to provide a scaled back project.

CONCLUSION

My client fully supports redevelopment of San Antonio Center but redevelopment needs to be done in a way that meets the needs of the whole community not just the Developer. Certainly, a project that better addresses the concerns of the community would be more likely to avoid litigation and a referendum.

Environmental Planning Commission
June 13, 2014
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Thank you very much for your consideration.

Sincerely,

HOPKINS & CARLEY
A Law Corporation

A handwritten signature in cursive script that reads "Joan R. Gallo".

Joan R. Gallo

JRG/tsa

cc: Jannie Quinn
Gerry Beaudin
Steve Rasmussen