



TO: Martin Alkire, Principal Planner

DATE: October 15, 2018

FROM: Judy Shanley, Principal Project Manager

RE: Pear Avenue Mixed-Use Checklist Response to Comments

As part of the citywide planning process, the City of Mountain View creates area-wide Precise Plans and evaluates the environmental impacts of the Precise Plans. Precise Plans provide the City with a means to manage development and simplify the project-level review of development applications that accomplish an adopted Precise Plan, through tiering off of the Precise Plan Environmental Impact Report (EIR).

The Mountain View City Council certified the *North Bayshore Precise Plan Subsequent EIR* and approved the amended North Bayshore Precise Plan project in December 2017. Per the Section 15183(a) of the California Environmental Quality Act (CEQA) Guidelines, CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site.

The Pear Avenue Mixed-Use Development Project (PL2017-380) proposes the type and scale of development envisioned in the Precise Plan and, based on a review by City staff, complies with the adopted Precise Plan standards and guidelines. The Pear Avenue Mixed-Use Development Project CEQA Checklist, completed in October 2018, determined that the proposed project would not result in any new environmental impacts beyond those previously evaluated and disclosed in the EIR.

The City of Mountain View received one comment letter regarding the proposed project. The comment, sent by Lozeau Drury, LLP, was received on October 10, 2018. This memo responds to the comment on the CEQA Checklist as it relates to the potential environmental impacts of the project under CEQA. A copy of the comment letter is attached.

Comment A: Indoor Air Quality. The Precise Plan EIR did not analyze indoor air quality issues, particularly related to formaldehyde emissions from composite wood products.

Response A: The California Supreme Court in a December 2015 opinion (*California Building Industry Association v. Bay Area Air Quality Management District [BAAQMD]*, 62 Cal. 4th 369 [No. S 213478]) confirmed that CEQA, with several specific exceptions, is concerned with the impacts of a project on the environment, not the effects the existing environment may have on a project. Therefore, the evaluation of the significance of project impacts under CEQA in the Pear Avenue Checklist focuses on impacts of the project on the environment, including whether a project may exacerbate existing environmental hazards.

The *North Bayshore Precise Plan Subsequent EIR* was certified in December 2017. Consistent with the EIR, a project-specific Air Quality Assessment was completed for the Pear Avenue CEQA Checklist. The Air Quality Assessment evaluated the exposure of planned sensitive uses in the area to sources of toxic air contaminants (TACs) and determined that operational exposure concentrations would be less than significant (CEQA Checklist pp. 30-31).

While not a CEQA issue, project inhabitants would be protected from potential indoor air quality issues, as the project would be required to comply with California Green Building Standards Code (CALGreen) Sections 4.504.5 and 5.504.4.5, which set formaldehyde emissions limits for composite wood products. Composite wood products manufactured in or imported to the U.S. are required to be certified and labeled as California Air Resources Board (CARB) Airborne Toxic Control Measures (ATCM) Phase II or Toxic Substances Control Act (TSCA) Title VI compliant.

Comment B: Hazardous Soil Contamination. The project site is heavily contaminated with toxic substances. The Precise Plan and the CEQA findings improperly defer mitigation for soil contamination, diminishing influence on decision making.

Response B: The *North Bayshore Precise Plan Subsequent EIR* and Pear Avenue CEQA Checklist do not defer mitigation. Consistent with the *North Bayshore Precise Plan Subsequent EIR* certified in December 2017, the project is required to comply with relevant mitigation measures identified in the EIR, including MM HAZ-3.1 through MM HAZ-3.15.

Consistent with the EIR, a project-specific Environmental Conditions Summary and Mitigation Summary Letter were prepared for the CEQA Checklist. These reports include descriptions of potential sources of on-site and off-site hazardous materials contamination and recommendations to ensure compliance with the EIR. The recommendations have been included as conditions of approval for the project (CEQA Checklist pp. 53-57).

The conditions of approval require a toxic assessment report and site management plan to be submitted as part of the building permit application. No building permits will be issued until each agency and/or department with jurisdiction has approved the toxics mitigation plan. Other conditions of approval, such as appropriate disposal of soil containing volatile organic compounds (VOCs) or lead-based paint, shall be completed during construction.

Comment C: Heritage Trees. The proposed removal of Heritage trees is a significant impact, and the CEQA findings do not propose mitigation for this loss.

Response C: The project proposes to remove 84 Heritage trees. In accordance with the Mountain View Tree Preservation Ordinance, a Heritage Tree Removal Permit would be obtained prior to the removal of Heritage trees. The project would comply with the Mountain View Heritage Tree Ordinance and accompanying tree replacement and maintenance requirements, as conditions of approval. The project is required to offset the loss of each Heritage tree with a minimum of two replacement trees, for a total of 168 replacement trees (CEQA Checklist pp. 36-37).

Comment D: Bird Strikes. The mitigation measures for bird strikes set forth in the CEQA findings are unenforceable.

Response D: The project is required to comply with the Bird Safe Design requirements and guidelines in Chapter 5: Habitat and Biological Resources of the adopted North Bayshore Precise Plan. The standards in the North Bayshore Precise Plan include bird collision guidelines and best management practices to promote bird safety (North Bayshore Precise Plan pp. 125-126).

Comment E: Significant Unavoidable Impacts. Project-level CEQA review is required because the Precise Plan EIR left many impacts significant and unavoidable. When the prior EIR leaves significant unavoidable impacts, later projects must have focused EIRs to attempt to mitigate those impacts to the extent feasible.

Response E: The *North Bayshore Precise Plan Subsequent EIR* identified significant unavoidable impacts related to cumulative greenhouse gas emissions and traffic. Overriding considerations were adopted with the certification of the EIR that accepted the possibility of certain impacts, even with the application of all feasible mitigation measures.

The Pear Avenue project would contribute to the identified significant unavoidable impacts related to cumulative greenhouse gas emissions and traffic (CEQA Checklist pp. 102-103). The project would not result in any new or greater impacts than those disclosed in the EIR. As discussed above, the Pear Avenue project is consistent with the development density established by the North Bayshore Precise Plan and would implement all applicable mitigation measures established in the certified EIR. For these reasons, the project qualifies for a CEQA Checklist under the certified *North Bayshore Precise Plan Subsequent EIR*.

The comment does not accurately represent the tiering process, as it relates to the proposed project and the certified *North Bayshore Precise Plan Subsequent EIR*. Section 21094 of the CEQA Guidelines states, “If a prior environmental impact report has been prepared and certified for a program, plan, policy, or ordinance and the lead agency makes a finding of overriding considerations pursuant to subdivision (b) or Section 21081, the lead agency for a

later project that uses the tiered environmental impact report from the program, plan, policy, or ordinance may incorporate by reference the finding of overriding considerations if all of the following conditions are met:

- a) The lead agency determines the project's significant impacts on the environment are not greater or different than those identified in the prior environmental impact report.
- b) The lead agency incorporates into the later project all the applicable mitigation measures identified in the prior environmental impact report.
- c) The prior finding of overriding considerations was not based on a determination that mitigation measures should be identified and approved in a subsequent environmental review.
- d) The prior environmental impact report was not certified more than three years before the date findings are made pursuant to Section 21081 for the later project.
- e) The lead agency has determined that the mitigation measures or alternatives found infeasible in the prior environmental impact report pursuant to paragraph (3) or subdivision (a) of Section 21081 remain infeasible based on the criteria set forth in this section.”

In this case, the Pear Avenue CEQA Checklist concluded that the proposed project would not result in any greater or different impacts than those identified in the previously certified *North Bayshore Precise Plan Subsequent EIR*, all applicable mitigation measures have been incorporated into the Pear Avenue project, the certified EIR did not make findings that mitigation measures should be identified and approved in subsequent environmental review, the EIR was certified in December 2017, and there are no mitigation measures or alternatives found to be infeasible in the *North Bayshore Precise Plan Subsequent EIR* that are now feasible to avoid the significant unavoidable impacts.

CONCLUSION

These abovementioned comments did not raise any new environmental issues or provide information indicating the project would result in additional impacts or impacts of greater severity than described in the CEQA Checklist and the previously certified *North Bayshore Precise Plan Subsequent EIR*. The Pear Avenue CEQA Checklist documents that the project is eligible to tier from the *North Bayshore Precise Plan Subsequent EIR* and, therefore, the CEQA Checklist represents an adequate level of environmental review for the project.

ATTACHMENT 1: Additional City CEQA Responses

Staff also notes that the letter from Lozeau Drury, LLP, referenced in the staff report and in the response letter from David J. Powers, does not provide any substantial evidence grounded in facts or expert opinion; rather, the law firm's allegations are broad and unsubstantiated.

The letter further alleges that the mitigation measures upon which the City relied in its project-specific initial study to support the conclusion that the project's impacts are within the scope anticipated in the North Bayshore Precise Plan program EIR and are not "peculiar to the parcel." The commenter critiques the mitigation measures adopted for the Precise Plan EIR as illegally deferred mitigation under CEQA, but the City notes that the statutory time period in which to challenge the adequacy of the City's mitigation adopted with the Precise Plan expired 30 days after the City certified the EIR and adopted the Precise Plan, or approximately the end of January 2018. Some amount of detail in formulation and implementation of mitigation may be legally deferred under CEQA to future activities and the City's mitigation scheme complies with the parameters under CEQA for such legally deferred mitigation, as the mitigation contains specific performance standards with which the future activities must comply or meet.

Further, the commenter provides no substantial evidence to support an assumption that the City and applicant's adherence to air quality standards and building regulations governing the use of construction materials will not avoid significant health risks to future residents or construction workers in the project buildings. The commenter provides no substantial evidence that further site-specific environmental investigation of potential soil contamination and following state standards and regulations for remediation activities will not adequately address the potential hazards posed by possible soil contamination on portions of the site. The commenter does not explain how the mitigation measures adopted to address the potential biological impacts associated with tree removal and bird migration and strike risks will not be effective in reducing the impacts to a less than significant level, or at least, how the project's specific characteristics will cause impacts outside the scope of the previous review or "peculiar to the parcel." The specific comments related to technical topics discussed in this paragraph are also further elaborated and discussed in the main response letter from David J. Powers.