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BY E-MAIL AND OVERNIGHT MAIL

October 10, 2018

City of Mountain View
Zoning Administrator
Subdivision Committee
c/o Martin Alkire, Principal Planner
City Hall
500 Castro Street
Mountain View, CA 94041
martin.alkire@mountainview.gov

**RE: 1255 Pear Avenue. Application No PL-2017-380; PL-2017-381.
Request for Review under the California Environmental Quality Act
("CEQA").**

Dear Mountain View Zoning Administrator and Subdivision Committee:

I am writing on behalf of Laborers' International Union of North America Local Union No. 270 and its many members living in and around the City of Mountain View ("LIUNA") concerning 1255 Pear Avenue. Application No PL-2017-380; PL-2017-381. ("Project"). The Project proponent, the Sobrato Organization, proposes to remove 103,513 square feet of existing industrial uses, retain 175,057 square feet of existing office and industrial uses, and construct 231,210 square feet of office uses on the site, resulting in a total of 406,267 square feet of office and industrial/office uses on the site. The project also proposes to construct 635 market-rate residential units within five buildings on the northern and southern residential portions of the site. The project would set aside a 1.4-acre parcel for future development of up to 150 affordable residential units. The proposed floor-area ratio (FAR) for the office uses is 0.59, and the proposed residential FAR is 1.68. The matter is scheduled to be considered by the Zoning Administrator and the Subdivision Committee on October 10, 2018.

The City of Mountain View ("City") is proposing to approve the Project without review under the California Environmental Quality Act ("CEQA"), Pub. Res. Code section 21000, et seq., based on the assertion that the Project is consistent with the North Bayshore Precise Plan EIR. The City contends that under CEQA Guidelines section 15183 and 15168, no further environmental review is required.

LIUNA hereby requests that the City prepare an environmental impact report ("EIR") to analyze the significant environmental impacts of the Project and to propose all feasible

mitigation measures and alternatives to reduce those impacts. The City may not rely on the Precise Plan EIR for several reasons, including but not limited to those discussed below.

ANALYSIS

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the fair argument standard. Under that standard, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment. (Pub. Res. Code § 21082.2; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) ("Laurel Heights II") 6 Cal. 4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.)

The City relies on CEQA Guidelines § 15183 and 15168¹ to claim that no CEQA review is required. Section 15183 states:

In approving a project meeting the requirements of this section, a public agency shall limit its examination of environmental effects to those which the agency determines, in an initial study or other analysis:

- (1) Are peculiar to the project or the parcel on which the project would be located,
- (2) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan or community plan with which the project is consistent,
- (3) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan or zoning action, or
- (4) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

14 CCR § 15183(b). See *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1407.

CEQA Guidelines section 15168 provides:

(c) Use With Later Activities. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.

(1) If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

¹ The City's CEQA Compliance Checklist cites CEQA section 15183, but the CEQA findings cite section 15168.

(2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.

(3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.

(4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

(5) A program EIR will be most helpful in dealing with subsequent activities if it deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed analysis of the program, many subsequent activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.

Because the Precise Plan EIR did not analyze this Project, it conducted only very broad program level analysis and did not analyze Project-level impacts. A prior CEQA document may only be used for a later project that is “essentially the same project” as was analyzed in the prior document. *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320; *American Canyon Community v. American Canyon*, 145 Cal.App.4th 1062. The Precise Plan EIR did not analyze the Project at all.

A project-specific EIR is required for several reasons.

INDOOR AIR QUALITY: The Precise Plan EIR did not analyze indoor air quality issues, particularly related to formaldehyde emissions from composite wood products. Recent studies show that composite wood products and other materials release formaldehyde, a known human carcinogen. Occupants and residents of the proposed residential units and office buildings are almost certain to be exposed to formaldehyde from composite wood products such as flooring and cabinetry. Studies show that exposure levels exceed the CEQA significance threshold of 10 per million for both residential and occupational exposure. Feasible mitigation measures exist, such as requiring the use of no-added formaldehyde composite wood products, enhanced ventilation, and other measures. A project-specific EIR is required to analyze and mitigate this impact.

HAZARDOUS SOIL CONTAMINATION: The Project site is heavily contaminated with toxic substances due to prior industrial uses. Known soil and groundwater contamination includes benzene, toluene, ethylbenzene, toluene, and asbestos, among other toxic materials.. Construction workers, such as members of LIUNA, are likely to suffer the highest and worst levels of exposure since they will be directly involved in excavation of potentially contaminated soil. The Precise Plan and the CEQA findings improperly defer mitigation for soil contamination. For example, the CEQA findings state: “asbestos building survey and a lead-based paint survey shall be completed by a qualified professional to determine the presence of ACMs and/or leadbased paint for the structures proposed for demolition. The surveys shall be completed prior to demolition work beginning on these structures.” (CEQA Findings, p. 18). CEQA prohibits

deferral of development of mitigation measures, as proposed here. Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project. Guidelines, section 15126.4(a)(1)(B) states: "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." "A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.) Therefore a project-level EIR is required to propose specific mitigation measures to address soil contamination prior to project approval.

HERITAGE TREES: The Project will remove 81 heritage trees. This is a significant impact. The CEQA Findings do not propose any mitigation for this loss. An EIR is required to analyze this impact and propose feasible mitigation, such as requiring replacement of these trees on a one to one basis.

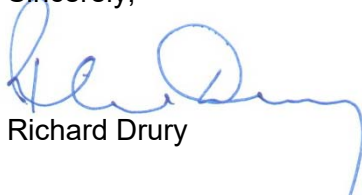
BIRD STRIKES: The CEQA findings admit that the Project may have significant impacts on birds, and in particular that birds may strike the buildings. The CEQA findings set forth certain mitigation measures, but many of the measures are set forth in a manner that is unenforceable. For example, the document states, "building lighting should be minimized as feasible." (CEQA Findings p. 8). The document also states, "A bird strike monitoring plan shall be developed and maintained for the life of the project to monitor post-construction bird strikes and evaluate whether additional bird-safe design measures are needed to reduce the frequency of bird strikes." These mitigation measures are deferred and unenforceable. As discussed above, CEQA prohibits deferred mitigation, and requires mitigation measures to be enforceable.

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. The Precise Plan EIR had significant unavoidable impacts including: air quality, biological resources, greenhouse gases, hazardous materials, noise, and traffic. Therefore a project-level EIR is required to analyze the proposed Project's impacts in these areas and to propose mitigation measures to reduce those impacts. In the case of *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125, the court of appeal held that when a "first tier" EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later phases of the project to ensure that those unmitigated impacts are "mitigated or avoided." (Id. citing CEQA Guidelines §15152(f)) The court reasoned that the unmitigated impacts were not "adequately addressed" in the first tier EIR since they were not "mitigated or avoided." (Id.) Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been "adequately addressed," in a way that ensures the effects will be "mitigated or

avoided.” (Id.) Such a second tier EIR is required, even if the impact still cannot be fully mitigated and a statement of overriding considerations will be required. The court explained, “The requirement of a statement of overriding considerations is central to CEQA’s role as a public accountability statute; it requires public officials, in approving environmental detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support.” (Id. at 124-125)

For the above and other reasons, the City must prepare an EIR to analyze and mitigate the impacts of the proposed Project prior to Project approval. The City may not rely on the Precise Plan EIR. A Project-level CEQA analysis is required.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Drury", with a long, sweeping tail extending to the right.

Richard Drury