FINAL ENVIRONMENTAL IMPACT REPORT FOR EAST WEDDELL RESIDENTIAL PROJECTS

STATE CLEARINGHOUSE NUMBER 2013052010

Prepared for

City of Sunnyvale

FEBRUARY 2014

Prepared by

Amy Skewes-Cox, AICP

In conjunction with

BASELINE ENVIRONMENTAL CONSULTING
ENVIRONMENTAL COLLABORATIVE
ILLINGWORTH & RODKIN, INC.
LSA ASSOCIATES
NATALIE MACRIS
TJKM

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Chapter I
INTRODUCTION

♦ ♦ ♦

A. PURPOSE OF THE FINAL EIR

This document, together with the Draft Environmental Impact Report (Draft EIR), is the Final Environmental Impact Report (Final EIR) for the East Weddell Residential Projects. The Draft EIR identifies the likely environmental consequences of the projects and recommends mitigation measures to reduce or eliminate significant impacts. This Final EIR document responds to public comments on the Draft EIR, revises the Draft EIR as necessary, and provides a Mitigation Monitoring and Reporting Program for the projects.

According to the California Environmental Quality Act (CEQA) (as amended January 1, 2013), lead agencies are required to consult with public agencies having jurisdiction over a proposed project and to provide the general public with an opportunity to comment on the Draft EIR. For this project, the City of Sunnyvale is the lead agency. This Final EIR has been prepared to respond to comments received on the Draft EIR and to clarify any errors, omissions, or misinterpretations of the analysis or findings in the Draft EIR.

This document, together with the Draft EIR, will constitute the Final EIR if the City of Sunnyvale certifies the Final EIR as complete and adequate under CEQA.

B. ENVIRONMENTAL REVIEW PROCESS

The 30-day Notice of Preparation (NOP) public review began on May 3, 2013. The City held a public scoping meeting on May 22, 2013. The Draft EIR was made available for public review from September 9, 2013 to October 23, 2013. The general public was advised of the availability of the Draft EIR through notification by mail on the City's website, and property owners within 500 feet of the two project sites were notified by mail. Public agencies and interest groups were also notified by mail. The Planning Commission held a public hearing on October 21, 2013 to gather public comments on the Draft EIR.

During the public review period on the Draft EIR, written comments were made on the Draft EIR. A copy of written comments and responses to the comments can be found in Chapter II of this Final EIR.
Before acting on the projects (i.e., approval of the requested General Plan amendments, rezonings, Special Development Permits, potential Vesting Tentative Maps, and modifications to the Tasman/Fair Oaks Area Pedestrian and Bicycle Circulation Plan), the City Council after recommendation by the Planning Commission must certify the Final EIR and adopt the Mitigation Monitoring and Reporting Program (see Chapter IV of this document). In addition, the City Council must make the necessary findings for the adoption of mitigation measures associated with the projects. The findings will be part of the overall resolution to be adopted by the City Council.

C. REPORT ORGANIZATION

This document consists of the following chapters:

- *Chapter I: Introduction.* This chapter includes a discussion of the purpose and organization of the Final EIR.
- *Chapter II: Comment Letters and Responses.* This chapter contains the names of individuals and agencies commenting on the Draft EIR and reproductions of letters and emails received on the Draft EIR. The comments are numbered in the margins of the comment letters and responses are keyed to the comment numbers. Where revisions to the Draft EIR are appropriate, these are summarized and the actual text changes are shown in Chapter III.
- *Chapter III: Draft EIR Text Changes and Errata.* Corrections or clarifications based on comments received on the Draft EIR are contained in this chapter, including language that has been added to or deleted from the Draft EIR. Underlined text represents language that has been added to the Draft EIR; text in ~~strikeout~~ has been deleted from the Draft EIR. Errata are also shown in this chapter.
- *Chapter IV: Mitigation Monitoring and Reporting Program.* This chapter identifies mitigation measures referenced in the EIR as necessary to avoid or reduce the projects' potentially significant impacts and provides a program for implementation and monitoring of these measures. The timing and entity responsible for monitoring are identified.

Chapter II
COMMENT LETTERS AND RESPONSES

♦ ♦ ♦

This chapter contains the comments received on the Draft EIR during the public review period and provides responses to those comments. The chapter includes a reproduction of each letter (including emails) that addressed the Draft EIR and was received during the public review period. Each letter is followed by responses to comments made in the letter.

COMMENT NUMBER

A. State, Regional, and Local Agency Comments

1. California Department of Transportation (Caltrans) A1-1
2. Santa Clara Valley Transportation Authority (VTA) A2-1

B. Public and Special Interest Group Comments

1. Adams Broadwell Joseph & Cardozo (October 9, 2013) B1-1
2. Argle ..... B2-1 to B2-2
3. Holly Bitter ..... B3-1 to B3-4
4. Carol Eyring ..... B4-1 to B4-5
5. Terry and Rebecca Mathews ..... B5-1 to B5-3
6. Gina Senzatimore (October 15, 2013) ..... B6-1 to B6-4
7. Gina Senzatimore (October 3, 2013 ..... B7-1
8. Gina Senzatimore (October 9, 2013) ..... B8-1 to B8-2
9. Betty Shultz B9-1
10. Mary Anne Lock B10-1
11. Gina Senzatimore (October 4, 2013) ..... B11-1 to B11-3
12. Jeanne Gehrung B12-1
13. Silicon Valley Bicycle Coalition B13-1
14. Todd Eyring B14-1
15. Mary Ann Stanfield ..... B15-1 to B15-2
16. Gina Senzatimore (October 21, 2013) ..... B16-1 to B16-5
17. Jeni Pfeiffer ..... B17-1 to B17-6
18. Tom and Mimi Maremaa ..... B18-1 to B18-4
19. Caryl Taraldson B19-1
20. Martin Landzaat B20-1
21. Reyes Family B21-1
22. Felix Natis ..... B22-1 to B22-3
23. Gina Senzatimore (October 20, 2013) ..... B23-1 to B23-3
24. Adams Broadwell Joseph & Cardozo (October 23, 2013) ..... B24-1 to B24-41
25. Allen Matkins ..... B25-1 to B25-13
26. Sares Regis Group of Northern California, LLC ..... B26-1 to B26-15
27. Anonymous B27-1
28. Jeni Pfeiffer B28-1
29. Carol Eyring B29-1

C. Comments Received at October 21, 2013 Planning Commission Public Hearing

1. Joseph Coelho C-1
2. Bessie Jane Carter C-2
3. Vice Chair Melton C-3
4. Commissioner Hendricks C-4

A. STATE, REGIONAL, AND LOCAL AGENCY COMMENTS

NOTE: No federal agencies commented on the Draft EIR.

LETTER A1

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
111 GRAND AVENUE
OAKLAND, CA 94612
PHONE (510) 286-6053
FAX (510) 286-5559
TTY 771

Flex your power!
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PLANNING DIVISION

October 21, 2013

SCL101921
SCL-101-44.825
SCH# 2013052010

Mr. Ryan Kuchenig
City of Sunnyvale
Dept. of Community Development
456 West Olive Avenue
Sunnyvale, CA 94088

Dear Mr. Kuchenig:

East Weddell Residential Project – Draft Environmental Impact Report (DEIR)

Thank you for including the California Department of Transportation (Caltrans) in the East Weddell Residential Project review process for the project referenced above. We have reviewed the DEIR and have the following comments.

Traffic Impact Analysis (TIA)
The TIA did not analyze the State Route 237 ramps at North Fair Oaks Avenue or the ramps at Mathilda and U.S. Highway 101. These are important connections to State facilities that could be impacted by this development. Please consider contingency mitigation measures, if intersections at these and other State facilities noted in the DEIR fall to unacceptable LOS levels and include the contingency measures in the Final Environmental Impact Report. **A1-1**

Should you have any questions regarding this letter, please call Brian Brandert of my staff at

Sincerely,

ERIK ALM, AICP
District Branch Chief
Local Development - Intergovernmental Review

c: Scott Morgan, State Clearinghouse
Rob Swierk, Santa Clara Valley Transportation Authority (VTA)

LETTER A1
California Department of Transportation

A1-1 As part of the project traffic impact analysis (TIA) prepared for the Draft EIR (Section 4.10, Transportation), TJKM analyzed expected vehicle project trip assignments for the State Route (SR) 237 ramps at North Fair Oaks Avenue and Highway 101 ramps at Mathilda Avenue. Based on expected project vehicle trip assignments, fewer than 10 trips per lane per approach are expected to be added to the ramp intersections relative to these interchanges under worst-case Full Buildout Scenario project conditions. As a result, neither interchange meets the minimum threshold for analysis based on Santa Clara Valley Transportation Authority (VTA) criteria of 10 added project trips per lane, and therefore neither was analyzed for level of service (LOS) impacts.

LETTER A2

SANTA CLARA
Valley Transportation Authority

October 23, 2013

City of Sunnyvale
Planning Division
P.O. Box 3707
Sunnyvale, CA 94088-3707

Attention: Ryan Kuchenig

Subject: East Weddell Residential Projects

Dear Mr. Kuchenig:

Santa Clara Valley Transportation Authority (VTA) staff have reviewed the Draft EIR and TIA for 670 apartment units at 520-592 East Weddell Drive and 610-630 East Weddell Drive. We have the following comments.

Land Use
VTA supports the land use intensification proposed at these site locations within walking distance of the Fair Oaks Light Rail Transit station. This station is identified in VTA's Community Design & Transportation (CDT) Program Cores, Corridors and Station Areas framework, which shows VTA and local jurisdiction priorities for supporting concentrated development in the County. The CDT Program was developed through an extensive community outreach strategy in partnership with VTA Member Agencies, and was endorsed by all 15 Santa Clara County cities and the county.

Transportation Demand Management – Transit Incentives
The DEIR notes several Transportation Demand Management measures proposed for the Sares Regis site as part of the Green Building Program density bonus, primarily focused on measures to increase bicycling and walking (p. 3-16 – p. 3-18). VTA supports these recommendations and also encourages the City to consider requiring VTA Eco Passes or similar transit incentives on a continuing basis for residents of both developments. The VTA Eco Pass is a photo ID validated with an annual sticker to provide unlimited rides on VTA Bus and Light Rail seven days a week. VTA sells Eco Passes at a discount to residential developments, employers, and educational institutions. For more information about VTA's Eco Pass program, please contact Angela Sipp of VTA at **A2-1**

Pedestrian Accommodations
The TIA notes that "It is expected that both projects would result in a noticeable increase in pedestrian activity, given the higher-density nature of the proposed residential developments and their proximity to the VTA bus and LRT stops within a half-mile radius." (p. 65) In light of this, VTA recommends that the City work with the project sponsor to improve pedestrian

LETTER A2

accommodations on the southwest and southeast corners of the Fair Oaks Avenue/East Weddell Drive intersection. Potential improvements could include wider sidewalks, tightened curb radii, and ramps for ADA compliance. **A2-1**

Thank you for the opportunity to review this project. If you have any questions, please call me at

Sincerely,

Roy Molseed
Senior Environmental Planner

cc: Jack Witthaus, City of Sunnyvale
Erik Alm, Caltrans
Brian Brandert, Caltrans

SU1304

LETTER A2
Santa Clara Valley Transportation Authority

A2-1 Comments are noted.

With regard to pedestrian accommodation, it is noted that the Raintree applicant would construct sidewalks on the site's East Weddell Drive frontages (where currently there are none) in order to connect the Raintree site and vicinity with existing pedestrian facilities at the East Weddell Drive/North Fair Oaks Avenue intersection. If required by the City, improvements may include sidewalk extension/reconstruction, addition of curb radii, and Americans with Disabilities Act (ADA)-accessible pedestrian ramps.

Also, as part of the Conditions of Approval, the East Weddell Residential Projects would make VTA EcoPasses available to project residents, and the City would work with the project applicants to provide pedestrian improvements on the southwest and southeast corners of the Fair Oaks Avenue/East Weddell Drive intersection as determined to be necessary by a City-directed evaluation.

B. PUBLIC AND SPECIAL INTEREST GROUP COMMENTS

LETTER B1

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
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October 9, 2013

VIA U.S. MAIL AND FACSIMILE

Hanson Hom
Director
Community Development
City of Sunnyvale
456 W. Olive Ave.
Sunnyvale, CA 94087
Fax: 408-730-7715

Re: Follow Up Records Request and Comment Extension Request – East Weddell Projects Draft Environmental Impact Report

Dear Mr. Hom:

On behalf of International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, and Sheet Metal Workers Local 104, we respectfully request that the City extend the time to comment on the East Weddell Residential Projects ("Project") Draft Environmental Impact Report ("DEIR"). This request is based on the City's failure to make all documents referenced in the DEIR available to the public for the duration of the comment period, as required by Public Resources Code section 21092(b)(1) and California Code of Regulations, title 14, section 15087. B1-1

CEQA requires a lead agency to make a draft EIR and all documents referenced in a draft EIR available for public review during the entire comment period.[1] When a draft EIR is submitted to the State Clearinghouse, "the public review period shall not be less than 45 days . . . ."[2] CEQA's procedural

[1] Pub. Resources Code, § 21092, subd. (b)(1); 14 Cal. Code Regs. (hereafter CEQA Guidelines), § 15087, subd. (c); *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1385, fn. 12.
[2] CEQA Guidelines, § 15105, subd. (a).

requirements are strictly applied to lead agencies.[3] When the law requires an act to be done within a statutory period of time or number of days, "the question becomes one simply of the measurement of time."[4] The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process.[5] As noted by leading CEQA commentators, Remy, Thomas, Moose & Manley:

> The above-referenced requirement in section 21092 to notify the public of the address at which "all documents referenced in a draft EIR" can be found (and, presumably, read) was added in the 1993 legislative session. Interpreted literally, the amendment seems to require agencies to make available for public review all documents on which agency staff or consultants expressly rely in preparing a draft EIR. In light of case law emphasizing the importance of ensuring that the public can obtain and review documents on which agencies rely for the environmental conclusions (*see Emmington v. Solano County Redevelopment Agency* (1st Dist. 1987) 195 Cal.App.3d 491, 502-03 [237 Cal.Rptr. 636]), agencies should ensure that they literally comply with this requirement.[6]

B1-1

If an agency does not make a draft EIR and all materials referenced in a draft EIR available during the entire 45-day, public-comment period, the agency violates CEQA's procedural requirements.

The City of Sunnyvale has failed to comply with CEQA's procedural requirements. On September 23, 2013, this Firm submitted a request for ***immediate access*** for any and all materials referenced or relied upon in the DEIR.[7] The City did not respond to our request until October 4, 2013, eleven days after our initial request for immediate access. Moreover, the City's response failed

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[3] See, e.g., *Latinos Unidos de Napa v. City of Napa* (2011) 196 Cal.App.4th 1154 [finding notice invalid when agency posted notice for 29.5 days instead of statutorily required 30 days]; *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 702-03; see also *Scoville v. Anderson* (1901) 131 Cal. 590, 596.
[4] *Scoville v. Anderson*, *supra*, 131 Cal. at p. 596.
[5] *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 702-03.
[6] Remy, Thomas, Moose & Manley, *Guide to the California Environmental Quality Act*, pp. 342-43 (Solano Press, 2007).
[7] Letter from Robyn C. Purchia, Adams Broadwell Joseph & Cardozo, to Hanson Hom and Kathleen L. Franco Simmons, City of Sunnyvale (Sept. 23, 2013) (Attachment A).

to provide numerous essential documents referenced in the DEIR. In particular, we have not received the following referenced documents:

1. Bay Area Air Quality Management District (BAAQMD), 2013b, e-mail from Alison Kirk of BAAQMD to James Reyff dated May 5, 2013.

2. TJKM, 2013, *Traffic Analysis for the East Weddell Residential Projects,* May.

3. Golder Associates, 2002, Environmental Site Assessment, Fair Oaks Business Park, 520-592 East Weddell Drive, Sunnyvale, California, March 8.

4. Treadwell and Rollo, 2012, Limited Environmental Site Investigation, Fair Oaks Business Park, 520 to 592 East Weddell Drive, Sunnyvale California, 6 November.

5. WEST Environmental Services and Technology, 2012, Phase I Environmental site Assessment, 610 and 630 East Weddell Avenue, Sunnyvale, California, October. B1-1

6. San Francisco Public Utilities Commission, 2013, Letter to Hanson Hom, Director of Community Development, City of Sunnyvale, April 30.

7. City of Sunnyvale, 2013b, e-mail from Ryan Kuchenig, Associate Planner, City of Sunnyvale Department of Community Development, e-mail communication forwarding comments on ADEIR public services section, June 27.

8. Plecque, Jeffrey, Captain, Police Services Bureau, City of Sunnyvale Department of Public Safety, 2013, e-mail communication, April 24.

9. City of Sunnyvale, 2013d, e-mail from Ryan Kuchenig, Associate Planner, City of Sunnyvale Department of Community Development, e-mail communication forwarding comments on ADEIR recreation section, July 16.

10. Santa Clara Valley Transportation Authority (VTA), 2012, *Transportation Impact Analysis Guidelines*. **[2009 version was provided]**.

11. Santa Clara Valley Transportation Authority (VTA), 2011, *2011 Congestion Management Program Monitoring and Conformance Report.*

12. BKF Engineers, 2013a, memorandum from Mike O'Connell, Project Engineer, re: "Fair Oaks Residential Village – Fire Flow," July 3.

13. City of Sunnyvale, 2008, *Luminaire/Lawrence Station Road Project Draft EIR*, May 2008, pages 153-155.

14. City of Sunnyvale, 2013, e-mail from Ryan Kuchenig, Associate Planner, City of Sunnyvale Department of Community Development, forwarding comments on ADEIR utilities and service systems section, June 28.

15. Kier & Wright Civil Engineers & Surveyors, Inc., 2013b, letter from Mark A. Knudsen, re: "Site Development at 610 E. Weddell Drive, Sewer Analysis," August 16.

16. Illingworth & Rocklin, Inc. 2013. (This document is cited in the DEIR as the source of Tables 4.2-5, 4.2-6, 4.2-7, 4.2-8, 4.2-9, 4.2-10, 4.2-11, 4.2-12, 4.4-1, 4.4-2, 4.7-3 and Figures 4.2-2, 4.2-3, 4.2-4, 4.2-5). B1-1

17. Reports, correspondence or studies provided by Joshua Carmen, James Reyff, or Michael Thill, Illingworth & Rodkin, Inc. re *Noise, Air Quality, and Greenhouse Gas Emissions* (Referenced at DEIR p. 7-1.)

18. Reports, correspondence, studies or reconnaissance surveys provided by Environmental Collaborative re *Biological Resources* (Referenced at DEIR pp. 4.3-1 and 7-1.)

19. Reports, correspondence or studies provided by Todd Taylor and Bruce Abelli-Amen, Baseline[8] re *Hazards, Hydrology and Geology* (Referenced at DEIR p. 7-1.)

The City's failure to provide these documents during the entire 45-day comment period is a failure to comply with CEQA's procedural requirements.

[8] DEIR p. 7-1 references a consulting company called "Baseline," but the cover page of the DEIR references a consulting company called "Baseline Environmental Consulting." It is unclear if these are the same entities.

As you know, the City determined that the Project could have an impact on air quality and may result in the disturbance of contaminated soils that could threaten the health of construction workers. The City's failure to comply with CEQA has precluded a meaningful review of these impact areas. Our review of the DEIR has been severely limited without access to documents referenced and relied upon in the DEIR.

B1-1

In light of the City's failure to comply with CEQA and the burden placed on the public to meaningfully review and comment on the Project's impacts, we request that the City extend the comment period by an additional 45 days beyond when these documents are provided to us. Not only is an extension of the comment period required under CEQA, but it is necessary to ensure meaningful public review.

Please email me at tenslow@adamsbroadwell.com or call me at regarding this request.

Thank you for your assistance with this matter.

Sincerely,

Thomas A. Enslow

TAE:ljl

cc: Ryan M. Kuchenig, Associate Planner
(Via email, rkuchenig@sunnyvale.ca.gov)
Kathryn Berry, Assistant City Attorney
(Via email, kberry@sunnyvale.ca.gov)

LETTER B1
Adams Broadwell Joseph & Cardozo (October 9, 2013)

B1-1 The letter lists a number of reference documents. The City responded to this request and all documents were provided in digital or hard copy format to the commenter by October 11, 2013. The City determined that it was not necessary to extend the comment period for the Draft EIR.

LETTER B2

Subject: Fwd: E Weddell residential projects comments - traffic impacts
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 9/18/2013 7:57 AM
To: Amy Skewes-Cox <amysc@rtasc.com>

Amy,

Please see the attached email regarding the DEIR.

Thanks,

Ryan Kuchenig, Associate Planner
Department of Community Development
City of Sunnyvale

rkuchenig@sunnyvale.ca.gov

P Save the environment. Please don't print this email unless you really need to.

---------- Forwarded message ----------
From: <argle25356@mypacks.net>
Date: Sun, Sep 15, 2013 at 9:49 AM
Subject: E Weddell residential projects comments - traffic impacts
To: rkuchenig@sunnyvale.ca.gov

I have comments on the E Weddell residential projects.
I am very concerned about the additional traffic on E Weddell Drive/Fair Oaks Ave.
I live on Morse Ave between E Weddell Drive and Tasman Drive.

During morning commute hours, there are usually several cars turning right onto Fair Oaks Ave (southbound) from E Weddell Drive. Adding more cars should not be a problem BUT when the light is green on Weddell Drive in both directions, the cars turning right onto Fair Oaks Ave frequently (incorrectly) yield to the cars turning left onto Fair Oaks Ave from W Weddell Drive and E Weddell Drive backs up. This will be a bigger problem with more cars on E Weddell Drive unless the right turners yielding to left turners problem can be fixed. **B2-1**

During evening commute hours, there are frequently so many cars turning left onto E Weddell Drive from Fair Oaks Ave (northbound) that the entire left turn lane fills up and the last car in line blocks the left lane of Fair Oaks Ave. Many times I drive farther north on Fair Oaks and turn left at Tasman where there is more room. However, with the additional traffic with a destination on E Weddell Drive, those drivers will be unwilling to go to the next light at Tasman, which will cause the left turn lane onto E Weddell Drive to fill up and the drivers to block Fair Oaks Ave left lane during evening commute hours, likely several cars instead of the one car blocking it now.

Another concern is parking. In the evening, the patrons of the Lion and Compass use the parking lot of the property proposed for development. On Sunday morning, the members of the nearby Korean Christian church use the parking lot of the property proposed for development. Once this **B2-2**

LETTER B2

property is developed as residential instead of business, the parking lots won't be empty and available on evenings or weekends like business parking lots are. Where will all those cars go? There is not enough street parking in the area to support them and the parking lots of the Lion and Compass and Korean Christian Church are not big enough to support them. **B2-2**

LETTER B2
Argle (full name not provided)

B2-1 The traffic impact analysis prepared for the Draft EIR (Section 4.10, Transportation) concluded that no significant impacts are expected with respect to project traffic, whether with implementation of either of the Applicant Proposed Scenarios or the Full Buildout Scenarios.

B2-2 According to the applicants, the Sares Regis project would provide 348 parking stalls for the 205 dwelling units proposed under the Applicant Proposed Scenario, while the Raintree project would provide 790 parking stalls for the 465 dwelling units proposed under the Applicant Proposed Scenario.

The following text change is made to the fourth paragraph of page 3-16 of the Draft EIR:

Approximately ~~331~~ 348 parking spaces would be provided in the parking garage.

The following text change is made to the first paragraph on page 3-19 of the Draft EIR:

…and a total of ~~419~~ 436 parking spaces would be provided.

The following text change is made to the third paragraph of page 3-19 of the Draft EIR:

Parcel A would include approximately ~~413~~ 400 spaces, with ~~259~~ 256 of those spaces in a three-story parking garage. A total of ~~92~~ 93 parking spaces would be provided in carports and ~~62~~ 51 spaces would be surface parking. Parcel B would include a three-story parking structure with ~~398~~ 390 parking spaces that would serve the four-story residential building on Parcel B. A total of 790 parking spaces would be provided for the Raintree site under the Applicant Proposed Scenario.

The following change is made to the last paragraph on page 3-19 of the Draft EIR:

…..parking structure would be five stories in height and a total of ~~1,188~~ 1,154 on-site parking spaces would be provided.

The proposed number of parking stalls at both sites is greater than the minimum required for State density bonus projects but less than what would be required by the Sunnyvale Municipal Code if the projects were not providing affordable housing under the State density bonus law. In other words, the proposed on-site parking would meet applicable requirements.

Parking deficits are considered to be a social effect, rather than an impact on the physical environment as defined by CEQA. Under CEQA, a project's social impacts need not be treated as significant impacts on the environment. The City may wish to evaluate the commenter's parking concerns in its consideration of the projects, however.

LETTER B3

Subject: Fwd:
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/14/2013 8:03 AM
To: Amy Skewes-Cox <amysc@rtasc.com>

---------- Forwarded message ----------
From: **H Bitter** <h_bitter@rocketmail.com>
Date: Fri, Oct 11, 2013 at 3:39 PM
Subject:
To: "rkuchenig@sunnyvale.ca.gov" <rkuchenig@sunnyvale.ca.gov>

Mr. Kuchenig

We do not have the space nor the infrastructure to accommodate more housing in this area. **B3-1**

What are the city's plans for traffic control? Will Weddell be improved to extend to Lakehaven Dr or Lakewood Dr? It is hard and dangerous enough to try and get out of and into Weddell to Fair Oaks without adding nearly 800 vehicles to the mix. Oh and the toxicity of the ground under consideration... we don't want to be breathing that in either. **B3-2**

Will we ever get a real grocery chain this side of 101? **B3-3**

Ground has already broken on the last holdout property across from the self storage between Tasman and Weddell. Why add more?

Build it and they will come is not a proactive business approach these days. Ask yourself how many units ALREADY built in Sunnyvale stand vacant currently. To say nothing of the monster projects along the N. First St. corridor. **B3-4**

Please seriously reconsider this decision for the people who already live here, not for those you hope to entice.

Sincerely

18 yr. Sunnyvale Resident
Holly A. Bitter - Democrat
600 E. Weddell Dr. #224
Sunnyvale, CA 94089

LETTER B3
Holly Bitter

B3-1 This comment addresses the merits of the project or development in general rather than the EIR, and therefore no response is necessary under CEQA.

B3-2 This comment does not specifically address the EIR. However, the issue of traffic is addressed in Section 4.10, Transportation, of the Draft EIR, and hazards issues are addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR.

B3-3 This comment addresses the merits of the project or development in general rather than the EIR, and therefore no response is necessary under CEQA.

B3-4 This comment addresses the merits of the project or development in general rather than the EIR, and therefore no response is necessary under CEQA.

LETTER B4

Subject: Fwd: 520-592 E. Weddell & 610 - 630 E. Weddell questions
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/3/2013 10:18 AM
To: Amy Skewes-Cox <amysc@rtasc.com>, Trudi Ryan <tryan@sunnyvale.ca.gov>

FYI - New Comments re: E. Weddell

Ryan Kuchenig, Associate Planner
Department of Community Development
City of Sunnyvale
(408) 730-7431
rkuchenig@sunnyvale.ca.gov

P Save the environment. Please don't print this email unless you really need to.

---------- Forwarded message ----------
From: **Carol Kaylene** <caroltk3@yahoo.com>
Date: Wed, Oct 2, 2013 at 11:25 PM
Subject: Re: 520-592 E. Weddell & 610 - 630 E. Weddell questions
To: "rkuchenig@sunnyvale.ca.gov" <rkuchenig@sunnyvale.ca.gov>

Hi Again, Ryan,

I thought another question:

1. Could the city encourage individually owned condos be built instead of apartments?

This way there would be more personal ownership in our city. Otherwise, we just have hundreds of more renters living in Sunnyvale, that don't have a personal stake in what becomes of our city. **B4-1**

Thanks Again,
Carol Eyring
Sunnyvale Home Owner

From: Carol Kaylene <caroltk3@yahoo.com>
To: "rkuchenig@sunnyvale.ca.gov" <rkuchenig@sunnyvale.ca.gov>
Sent: Wednesday, October 2, 2013 11:02 PM
Subject: 520-592 E. Weddell & 610 - 630 E. Weddell questions

LETTER B4

Dear Ryan Kuchenig,

I have the following questions about the proposal to build 470 apartments on East Weddell:

1. With current public schools in the area beyond designed capacity, what are the plans to build new schools or reclaim the public school sites currently leased to private schools? **B4-2**

For example, Bishop Elementary and Columbia are extremely over-crowded.

2. With traffic so congested in the proposed area, what are the plans to help with the increase in traffic? Will new roads and/or lanes be built? **B4-3**

Proposing the new residents will just take public transportation, walk or bike is not an acceptable answer. Especially, since this area currently is extremely dangerous to bike or walk.

3. Is there a plan to convert the roadways to bike paths and sidewalks? Since I like to bike and walk a lot this seems like a very green idea. However, this would only create more traffic gridlock. **B4-4**

4. Will the city of Sunnyvale require the new apartment owners to provide a private functional mass transit like the mini buses current retirement homes use? However, in the case of the apartment owners, they could shuttle their residents to/from their jobs and downtown Sunnyvale as part of the agreement to approve their building permits. Especially since so many variances to current codes would be needed to build such high density housing in the proposed location. **B4-5**
This could also help the downtown thrive since if everyone takes their own cars to park in the downtown, parking and traffic will be a mess.

I look forward to hearing your answers to my current questions.

Sincerely,
Carol P. Eyring, P.E.

LETTER B4
Carol Eyring

B4-1 This comment addresses the project merits rather than the EIR, and therefore no response is necessary under CEQA.

B4-2 Project impacts on schools are addressed in Section 4.8, Public Services, of the Draft EIR. As indicated on Draft EIR page 4.8-3, Columbia Middle School currently has capacity to accept an additional 35 students. The Draft EIR does not address capacity at Bishop Elementary School because students from the projects would not attend that school.

The Draft EIR (Impact SERVICES-3, pages 4.8-7 through 4.8-8) concludes that students from the projects would increase enrollment at Sunnyvale School District and Fremont Union High School District schools, but not to the extent that new or physically altered school facilities would be needed. Existing capacities at Lakewood Elementary School and Columbia Middle School would be adequate to serve the additional enrollment from the projects. At Fremont High School, which currently operates overcapacity, the enrollment increase of 13 to 19 students expected from the projects would require the addition of classes and teachers, but no new or physically altered school facilities. As stated in the Draft EIR (page 4.8-8), as a condition of project approval, the project applicants would be required to pay standard school impact fees and, as provided by State law, the payment of these fees is deemed to fully mitigate the impacts of new development on school services.

The Draft EIR, therefore, addresses the concerns raised by the commenter. Since the projects would not create the need for new or physically altered school facilities, analysis of plans to build new schools or reclaim currently leased school sites is not necessary and would be beyond the scope of the EIR.

B4-3 The traffic impact analysis (see Section 4.10, Transportation, of the Draft EIR) concluded that no significant impacts are expected from project traffic, whether with implementation of the Applicant Proposed Scenarios or the Full Buildout Scenarios. Thus, no mitigation measures such as constructing new roadways or adding lanes were determined to be necessary.

With regard to safety, TJKM reviewed the recent collision history on Fair Oaks Avenue in the vicinity of the project sites. The history revealed a low annual collision rate of four collisions or fewer at the East Weddell Drive/North Fair Oaks Avenue intersection. Also, the collision types varied widely, suggesting no apparent pattern of concern. Impacts on pedestrian and bicycle facilities and safety are addressed in Impacts TRANSPORTATION-10 and TRANSPORTATION-11, respectively (see Draft EIR pages 4.10-61 through 4.10-63). The Draft EIR recommends mitigation measures for impacts on these facilities (see Mitigation Measures TRANSPORTATION-10 and TRANSPORTATION-11 on Draft EIR pages 4.11-62 and 4.10-63). The City collision data showed three bicycle-related collisions over a 5-year period at the East Weddell Drive/North Fair Oaks Avenue intersection. This low rate suggests there is no collision pattern of concern relative to bicycles.

B4-4 As stated in the Draft EIR, East Weddell Drive currently includes bicycle lanes or routes on both sides of North Fair Oaks Avenue. These facilities would continue to be available with implementation of the proposed project.

Also, as stated in the Draft EIR (pages 4.10-61 through 4.10-63), the Raintree applicant proposes to extend the John W. Christian Greenbelt, a Class I, off-street shared-use path, through its property along the San Francisco Public Utilities Commission (SFPUC) right-of-way, if approved by the SFPUC. Design and construction of the John W. Christian Greenbelt Trail within SFPUC right-of-way would require close coordination between the Raintree applicant and the SFPUC.

Lastly, as stated in the Draft EIR (pages 4.10-61 through 4.10-63), the Sares Regis site is anticipated to connect with the future multi-use East Channel Trail along Santa Clara Valley Water District property located northeast of the site. This future trail would ultimately provide a direct pedestrian connection between the Sares Regis site and the Santa Clara Valley Transportation Authority (VTA) Fair Oaks light rail transit (LRT) station.

B4-5 No on-site private shuttles are proposed at this time. However, project residents and guests are expected to use existing available VTA transit service in the vicinity, including Bus Route 26 on North Fair Oaks Avenue and the Mountain View-Winchester light rail transit line, accessible via the Fair Oaks Station located within one-half mile of both project sites. Both lines operate under capacity during peak commute hours and thus are expected to be able to accommodate additional transit riders generated by both projects. Transit service is addressed in Section 4.10, Transportation, of the Draft EIR.

LETTER B5

Subject: Fwd: Input for apartment projects on E. Weddell Drive
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/8/2013 7:38 AM
To: Amy Skewes-Cox <amysc@rtasc.com>, Trudi Ryan <tryan@sunnyvale.ca.gov>

Amy,

New comments received yesterday afternoon (below).

Thank you,

Ryan Kuchenig, Associate Planner
Department of Community Development
City of Sunnyvale

rkuchenig@sunnyvale.ca.gov

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---------- Forwarded message ----------
From: **Terry & Rebecca Matthews** <matthews2005@gmail.com>
Date: Mon, Oct 7, 2013 at 3:29 PM
Subject: Input for apartment projects on E. Weddell Drive
To: rkuchenig@sunnyvale.ca.gov

Hello,

I have some comments/concerns regarding the proposed apartment projects on E. Weddell Drive. I live directly across the street on Jena Terrace and am extremely concerned about the traffic this project will bring to the area.

This section of E. Weddell Drive near the Fair Oaks Business Park and John Christian Greenbelt is very dangerous. Many pedestrians and cyclists cross Weddell near the greenbelt and we would love to see something done here to slow traffic. Cars drive at high speeds down this section and take corners very fast; there is no stop sign in between Fair Oaks Avenue and Borregas Avenue. This project will only increase the traffic in this area and make it even more dangerous. **B5-1**

I would also like to know if the city is considering allowing street “parallel parking” on at least one side of Weddell in this area considering the plan to develop more high density housing and the already existing town homes and churches in the area create a high need for parking! Will the proposed property really have enough parking to accommodate aver 650 units? **B5-2**

LETTER B5

I am also concerned about the affect this housing will have on the schools in the area. The elementary school is Lakewood and I'm not sure it can accommodated that big of an increase in enrollment. **B5-3**

Thank you for taking my concerns into consideration.

Sincerely,

Rebecca Matthews

LETTER B5
Terry and Rebecca Mathews

B5-1 The traffic impact analysis (see Section 4.10, Transportation, of the Draft EIR) concluded that no significant impacts are expected with the addition of project traffic, whether with implementation of the Applicant Proposed Scenarios or the Full Buildout Scenarios.

With regard to safety, TJKM reviewed the recent collision history on Fair Oaks Avenue in the vicinity of the project sites. The history revealed a low annual collision rate of four collisions or fewer at the East Weddell Drive/North Fair Oaks Avenue intersection. Also, the collision types varied widely, suggesting no apparent pattern of concern. Impacts on pedestrian and bicycle facilities and safety are addressed in Impacts TRANSPORTATION-10 and TRANSPORTATION-11, respectively (see Draft EIR pages 4.10-61 through 4.10-63). The Draft EIR recommends mitigation measures for impacts on these facilities (see Mitigation Measures TRANSPORTATION-10 and TRANSPORTATION-11 on Draft EIR pages 4.11-62 and 4.10-63). The City collision data showed three bicycle-related collisions over a 5-year period at the East Weddell Drive/North Fair Oaks Avenue intersection. This low rate suggests there is no collision pattern of concern relative to bicycles.

B5-2 According to the applicants, the Sares Regis project would provide 348 parking stalls for the 205 dwelling units proposed under the Applicant Proposed Scenario, while the Raintree project would provide 790 parking stalls for the 465 units proposed under the Applicant Proposed Scenario. See Response to Comment B2-2. The proposed number of parking stalls at both sites is greater than the minimum required for State density bonus projects but less than what would be required by the Sunnyvale Municipal Code if the projects were not providing affordable housing under the State density bonus law. In other words, the proposed on-site parking would meet applicable requirements.

B5-3 Please refer to Response to Comment B4-2. As noted in that response, project impacts on schools are addressed in Section 4.8, Public Services, of the Draft EIR. The Draft EIR (Impact SERVICES-3, pages 4.8-7 through 4.8-8) concludes that the existing capacity at Lakewood Elementary School would be adequate to serve the additional student enrollment from the projects. The Draft EIR therefore addresses the concerns raised by the commenter.

LETTER B6

Subject: Fwd: Oppose Housing
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/15/2013 1:53 PM
To: Amy Skewes-Cox <amysc@rtasc.com>

---------- Forwarded message ----------
From: **gina senzatimore** <senzatimore@earthlink.net>
Date: Tue, Oct 15, 2013 at 1:49 PM
Subject: Re: Oppose Housing
To: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>

Ryan,

Thanks for the reply.

E. Weddell is a dead end street with a closed business that is sure to have issues with toxic and hazardous substances. This poses a real threat and would expose construction workers, surrounding neighborhoods, and future residents. **B6-1**

E Weddell leads to a service road for the Fair Oaks Substation and connects to the pedestrian greenbelt.. It is also the only way in and out of our neighborhood. The residents of the condos at the end of Lakehaven Drive may think housing is a good idea, but their complex doesn't share street traffic with E Weddell. Their road is in Lakewood Village. They will not be impacted by the traffic issues like we will.

610 E Weddell should remain commercial, otherwise the road will be a bottleneck morning and night. According to a recent article in the Mercury News, about 600 new apartment and residential units will be open in downtown Sunnyvale (not including Solstice). There are over 300 units at Lawrence Station, 284 at Via on Fairoaks and Tasman and 97 apartments being built right now across the street on Fairoaks. I just read about plans for 50 more units on Persian Ave and even more development between Morse and Fairoaks. **B6-2**

If there was a facility that didn't get a lot of traffic, such as a public storage, it would be safer for everyone involved. I'm sure that the original zoning was the best idea and done so for a good reason. I realize there are a lot of public storage businesses in our area, but with all the new housing, it may be necessary. As will city services be to the thousands of new residents. **B6-3**

Gina Senzatimore

LETTER B6

-----Original Message-----
From: Ryan Kuchenig
Sent: Oct 4, 2013 4:12 PM
To: gina senzatimore
Subject: Re: Oppose Housing

Gina Senzatimore,

Thank you for providing comments regarding the E. Weddell Residential Projects. Comments related to the Draft Environmental Impact Report (DEIR) and responses to those comments will be included in the Final EIR document. Comments unrelated to the EIR, but specific to the project, will be included in the project staff reports.

Your contact information will be added to a list of interested parties that will be notified of the availability Final EIR and public hearing dates (Planning Commission and City Council).

Thank you,

Ryan Kuchenig, Associate Planner
Department of Community Development
City of Sunnyvale

rkuchenig@sunnyvale.ca.gov

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On Thu, Oct 3, 2013 at 5:09 PM, gina senzatimore
wrote:

> Ryan,
>
> I'd like to add that I completely agree with Sunnyvale resident Debra
> Mark's comments on Aug 13, 2013 at the City of Sunnyvale Council Meeting
> about all these recently approved and built projects (coined “stack and
> pack”) in Sunnyvale. It is disheartening that residents who have spoken out
> about high density residential and commercial buildings (such as the huge
> LinkedIn structures on Mathilda) are not being heard.
>
> I hope you had the chance to hear what she had to say. She said exactly
> what I and many other Sunnyvale residents are thinking and feeling. Her
> comments also apply to the buildings being proposed at Weddell Dr. Three,
> four, five and especially six story buildings are creating walls- both
> visual and economic. Many people here cannot afford any of these new
> housing developments. They are large, ugly and incongruous with the rest of

B6-4

LETTER B6

B6-4

> the city.
>
> Gina Senzatimore
>

LETTER B6
Gina Senzatimore (October 15, 2013)

B6-1 As discussed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR, subsurface materials at both of the East Weddell project sites have been affected with hazardous materials from past land uses. Previous environmental investigations at the project sites have identified the nature and extent of hazardous materials concerns. Mitigation Measures HAZARDS-1 and HAZARDS-2 would require regulatory oversight at each of the project sites to ensure that all remedial actions necessary to protect future construction workers, maintenance and utility workers, site users, and the general public are implemented. Mitigation Measure HAZARDS-3 would require additional measures to prevent hazardous materials releases during construction activities, and Mitigation Measure HAZARDS-4 would require removal of lead, asbestos, and other hazardous materials from project site buildings prior to demolition. These mitigation measures would reduce potential impacts from toxic and hazardous substances at the project sites to less-than-significant levels.

B6-2 The traffic impact analysis (see Section 4.10, Transportation, of the Draft EIR) concluded that no significant impacts are expected from project traffic, whether with implementation of the Applicant Proposed Scenarios or the Full Buildout Scenarios. The traffic impact analysis also addresses impacts under cumulative conditions (i.e., with traffic from the projects combined with other anticipated development in the area) and concluded that no significant impacts are expected under these conditions.

B6-3 The comment addresses the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA.

B6-4 Refer to Response to Comment B7-1.

LETTER B7

Subject: Fwd: Oppose Housing
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/4/2013 9:46 AM
To: Trudi Ryan <tryan@sunnyvale.ca.gov>, Amy Skewes-Cox <amysc@rtasc.com>

Amy,

Here is one that came in yesterday.

Ryan Kuchenig, Associate Planner
Department of Community Development
City of Sunnyvale

rkuchenig@sunnyvale.ca.gov

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---------- Forwarded message ----------
From: **gina senzatimore** <senzatimore@earthlink.net>
Date: Thu, Oct 3, 2013 at 5:09 PM
Subject: Oppose Housing
To: rkuchenig@sunnyvale.ca.gov

Ryan,

I'd like to add that I completely agree with Sunnyvale resident Debra Mark's comments on Aug 13, 2013 at the City of Sunnyvale Council Meeting about all these recently approved and built projects (coined “stack and pack”) in Sunnyvale. It is disheartening that residents who have spoken out about high density residential and commercial buildings (such as the huge LinkedIn structures on Mathilda) are not being heard.

B7-1

I hope you had the chance to hear what she had to say. She said exactly what I and many other Sunnyvale residents are thinking and feeling. Her comments also apply to the buildings being proposed at Weddell Dr. Three, four, five and especially six story buildings are creating walls- both visual and economic. Many people here cannot afford any of these new housing developments. They are large, ugly and incongruous with the rest of the city.

Gina Senzatimore

LETTER B7
Gina Senzatimore (October 3, 2013)

B7-1 This comment mainly addresses the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA. Project visual impacts are addressed in Section 4.1, Aesthetics, of the Draft EIR.

LETTER B8

Subject: Fwd: Oppose Housing
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/9/2013 8:16 AM
To: Amy Skewes-Cox <amysc@rtasc.com>, Trudi Ryan <tryan@sunnyvale.ca.gov>

---------- Forwarded message ----------
From: **gina senzatimore** <senzatimore@earthlink.net>
Date: Wed, Oct 9, 2013 at 8:11 AM
Subject: Re: Oppose Housing
To: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>

Ryan,

Thanks for you reply.
I hope I will be contacted because I did not receive the letter about the public hearing on Oct 21. Some of my neighbors did. EVERYONE in El Dorado should have had this letter sent to them. As I mentioned before, there is one entrance and exit and it is E Weddell Drive.

This project is too many stories. 200 is too many units. E Weddell Drive cannot handle the amount of traffic from such a large complex. Other options need to be discussed. I would also like to know if the site is contaminated. Many people say the ground there is toxic.

B8-1

I attended the city council meeting last night and heard residents speak up about overdevelopment in Sunnyvale. This is a concern for many of us all over the city who have to drive, take our children to crowded schools and deal with high density housing.

The city needs to prioritize and allow for more open space. We will all suffer if these large developments continue to be built.

Gina

LETTER B8

-----Original Message-----
From: Ryan Kuchenig
Sent: Oct 4, 2013 4:12 PM
To: gina senzatimore
Subject: Re: Oppose Housing

Gina Senzatimore,

Thank you for providing comments regarding the E. Weddell Residential Projects. Comments related to the Draft Environmental Impact Report (DEIR) and responses to those comments will be included in the Final EIR document. Comments unrelated to the EIR, but specific to the project, will be included in the project staff reports.

Your contact information will be added to a list of interested parties that will be notified of the availability Final EIR and public hearing dates (Planning Commission and City Council).

Thank you,

Ryan Kuchenig, Associate Planner
Department of Community Development
City of Sunnyvale
(408) 730-7431
rkuchenig@sunnyvale.ca.gov

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On Thu, Oct 3, 2013 at 5:09 PM, gina senzatimore
wrote:

> Ryan,
>
> I'd like to add that I completely agree with Sunnyvale resident Debra
> Mark's comments on Aug 13, 2013 at the City of Sunnyvale Council Meeting
> about all these recently approved and built projects (coined “stack and
> pack”) in Sunnyvale. It is disheartening that residents who have spoken out
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> I hope you had the chance to hear what she had to say. She said exactly
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> four, five and especially six story buildings are creating walls- both
> visual and economic. Many people here cannot afford any of these new
> housing developments. They are large, ugly and incongruous with the rest of

B8-2

LETTER B8

> the city.
>
> Gina Senzatimore
>

LETTER B8
Gina Senzatimore (October 9, 2013)

B8-1 This comment mainly addresses the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA. The traffic impact analysis (see Section 4.10, Transportation, of the Draft EIR) concluded that no significant impacts are expected from project traffic, whether with implementation of the Applicant Proposed Scenarios or the Full Buildout Scenarios. Hazards issues are addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR. Project impacts on schools are addressed in Section 4.8, Public Services, of the Draft EIR.

B8-2 Refer to Response to Comment B7-1.

LETTER B9

Subject: Fwd: Proposed dwellings on E Weddell Drive
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/14/2013 8:03 AM
To: Amy Skewes-Cox <amysc@rtasc.com>

---------- Forwarded message ----------
From: **Betty Shultz** <betty.shultz@att.net>
Date: Fri, Oct 11, 2013 at 12:11 PM
Subject: Proposed dwellings on E Weddell Drive
To: "rkuchenig@sunnyvale.ca.gov" <rkuchenig@sunnyvale.ca.gov>

I live in El Dorado Mobile Home Park on E Weddell. We have a stop sign at the entrance to our park. Proposed dwellings further down Weddell will not only block our view when trying to get onto Fair Oaks, but with the proposed traffic the dwellings will result in, I am fearful there will be a lot of accidents as Weddell is curved. Furthermore, there are so many new apartments/condo's in the immediate area and many new being built, aren't we overcrowding the area a bit? **B9-1**

Thank you for looking into this matter for us.

Regards,
Betty Shultz

LETTER B9
Betty Shultz

B9-1 The traffic impact analysis (see Section 4.10, Transportation, of the Draft EIR) concluded that no significant impacts are expected from project traffic, whether with implementation of the Applicant Proposed Scenarios or the Full Buildout Scenarios. With regard to traffic safety, TJKM reviewed the sight lines on East Weddell Drive and determined that the project site driveways as currently proposed are not expected to cause any significant traffic hazards. The potential for traffic hazards is addressed in Impact TRANSPORTATION-14 on Draft EIR pages 4.10-66 through 4.10-67.

LETTER B10

Date: 7, 2013

To Whom It May Concern.

I am a long time resident of El Dorado Mobile Home Park located at 600 E. Weddell Dr., I am in space 105.

I would find these additional building projects located at 520-592 and 610-630 E. Weddell Drive would have a significant impact on the traffic in this area. B10-1

I imagine this development will influence me to consider leaving the area.

Sincerely

Mary Anne Lock
Space # 105

RECEIVED
OCT 11 2013
PLANNING DIVISION

LETTER B10
Mary Anne Lock

B10-1 The traffic impact analysis (see Section 4.10, Transportation, of the Draft EIR) concluded that no significant impacts are expected from project traffic, whether with implementation of the Applicant Proposed Scenarios or the Full Buildout Scenarios.

RECEIVED
OCT 15 2013
PLANNING DIVISION

LETTER B11

4 Oct 2013

Ryan,

I am very opposed to apartments being built on Weddell Dr. A four story complex – hundreds more people coming into this area (double the amount of cars) will only increase traffic congestion. This area is becoming a glut of housing. And currently there are apartments being built on Fairoaks. It seems the construction noise and greed will never end. B11-1

When the existing building was a company, the traffic in and out on Weddell was minimal. Mostly in the morning, then around five o'clock and non-existent on the weekends. This will not be the case if hundreds more people move into the area. B11-2

The City is over building housing, while apartments sit empty in downtown. B11-3

We do not need anymore here – especially on Weddell Drive.

Gina Senzakmie - Sunnyvale Resident

LETTER B11
Gina Senzatimore (October 4, 2013)

B11-1 This comment addresses the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA. Traffic and noise issues are addressed in the Draft EIR.

B11-2 The traffic impact analysis (see Section 4.10, Transportation, of the Draft EIR) concluded that no significant impacts are expected from project traffic, whether with implementation of the Applicant Proposed Scenarios or the Full Buildout Scenarios.

B11-3 This comment addresses the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA.

LETTER B12

Request	28995	**Status**	**Open**
Assigned To	RKuchenig	**Priority, Contact**	Regular WebForm
From	Jeanne Gehrung <JeanneLTOC@aol.com>	**Receive Date**	10-16-13 1:33 pm
To AP	Planning <planning@ci.sunnyvale.ca.us>	**Reply Needed**	**No**
Subject	construction apartments/condos	**Close Date**	t.b.d.
Regarding Location	520 E Weddell Dr 37.39682, -122.01395		

Message If this construction is allowed it will have a high impact on traffic in and out of El Dorado Mobile Home Park. This is our ony entrance and with added residents traffic will become a major issue.. We have enough apartments, etc in Sunnyvale already. **B12-1**

Actions

Action	Reassign
Date	10-17-13 10:00 am
From	Deborah Gorman - Community Development
To	Ryan Kuchenig - Planning
Subject	Web Request - Reassign 28995 from: Deborah Gorman to: RKuchenig, subject: construction apartments/c
Message	E Weddell comment. Thank you.

Ratings

LETTER B12
Jeanne Gehrung

B12-1 The traffic impact analysis (see Section 4.10, Transportation, of the Draft EIR) concluded that no significant impacts are expected from project traffic, whether with implementation of the Applicant Proposed Scenarios or the Full Buildout Scenarios. The closest intersection, North Fair Oaks Avenue at East Weddell Drive, is anticipated to operate acceptably at level of service (LOS) B and C under worst-case Cumulative-plus-Project Conditions (Full Buildout Scenario) during the AM and PM peak hours, respectively. Similar acceptable operations are anticipated under Cumulative Conditions without project traffic. Anticipated total traffic volumes under Cumulative-plus-Project Conditions (Full Buildout Scenario) that are the basis for this LOS conclusion are anticipated to be higher on North Fair Oaks Avenue than on East Weddell Drive. Since the El Dorado Mobile Home Park driveway intersects East Weddell Drive just east of North Fair Oaks Avenue, it can therefore reasonably be anticipated based on East Weddell traffic volumes that driveway service levels under Cumulative-plus-Project Conditions (Full Buildout Scenario) during the AM and PM peak hours would be no worse than LOS B and C, respectively. As a result, additional delays due to project traffic on East Weddell Drive for El Dorado Mobile Home Park residents are expected to be minimal, and no traffic impacts are anticipated at the El Dorado Mobile Home Park driveway under any traffic analysis scenarios.

LETTER B13

SILICON VALLEY BICYCLE COALITION

Promoting the bicycle for everyday use.

1922 The Alameda
Suite 420
San Jose, CA 95126

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Fax 408.213.7559

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SVBC is a 501(c)(3) non-profit organization. EIN 77-0338658

http://bikesiliconvalley.org

October 21, 2013

Mayor and Council
City of Sunnyvale

Via email

RE: Support for residential development at 610 East Weddell Drive

Dear Mayor Spitaleri and City Council Members:

Silicon Valley Bicycle Coalition is a non-profit that promotes the bicycle for everyday use in Santa Clara and San Mateo Counties. We are supported by a membership of over 1,400. I am writing on behalf of SVBC to convey our appreciation for and support of the many bike-friendly elements of the proposed residential development at 610 East Weddell Drive.

Because the development is located within bicycling distance of VTA light rail and the huge employment center at Moffett Business Park, it is an ideal location for amenities that encourage car-free travel. The development includes twice the number of required bicycle parking spaces called for by Sunnyvale ordinance. The project also includes a bicycle maintenance and repair facility, which helps promote bike use.

Additionally, we applaud the developer's plans to provide improvements to the John Christian Greenbelt Trail, an effort consistent with the goals of Sunnyvale's 2006 Bicycle Plan. The planned extension incorporates the Valley Transportation Authority's (VTA's) Bicycle Technical Guidelines into the design. The developer is working with the San Francisco Public Utilities Commission in an effort to continue the trail along SFPUC right-of-way. Impressively, the developer intends to construct the trail extension on the development property if negotiations with SFPUC are not successful. **B13-1**

Getting people out of their cars creates safer environments for bicyclists and pedestrians, reduces pollution, improves air quality, and improves health. We thank the developer of 610 East Weddell Drive for working intently toward that goal, and strongly support the many bicycle-related elements of the development proposal.

If you have any questions about SVBC or our support for the bicycle elements of this project, please do not hesitate to contact me.

Sincerely,

Corinne Winter
President and Executive Director

Cc (via email): Ken Busch & Olya Drasnykh, Saris Regis
Ryan Kuchenig, City Planner

LETTER B13
Silicon Valley Bicycle Coalition

B13-1 This comment addresses the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA.

LETTER B14

Subject: Fwd: Apartment Developments In Sunnyvale...
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/21/2013 10:24 AM
To: Amy Skewes-Cox <amysc@rtasc.com>, Trudi Ryan <tryan@sunnyvale.ca.gov>

---------- Forwarded message ----------
From: **carol parry** <pianoparry@yahoo.com>
Date: Sat, Oct 19, 2013 at 1:04 AM
Subject: Apartment Developments In Sunnyvale...
To: "rkuchenig@sunnyvale.ca.gov" <rkuchenig@sunnyvale.ca.gov>

Dear Ryan,
I believe that in order to foster a commitment to a better Sunnyvale, every citizen needs to have a stake in our city. When I came to Sunnyvale in 1987, a majority of city residents owned a piece of their own dwelling. Today this is not the case. I believe that good government is based on a large group of citizens united by a common stake in their community. This common stake compels the citizens to be involved in their city's affairs, and this results in a better city for all of us.

To be sure, Prop 13 combined with inflation has exacted a heavy toll on our city over the past few decades. However, with the shortage in housing in Sunnyvale there has come higher property prices and this in turn his has created a feeling among families, even families which are diligent in saving, that home ownership is simply out of their reach for them. If the apartments which are planned were not approved and instead the planned dwellings were sold as individually owned condominiums, then this would go a long way in reducing the price of a housing unit, and it would give hope to families dreaming of owning their own property some day.

B14-1

Another problem with approving yet more apartment developments in our city is the broken structure of taxation. It is my understanding that the burden of the parcel tax is not evenly distributed between apartment dwellers and house owners alike. This flaw in the tax law needs to be rectified. But if instead of apartments, individually owned units were built, at least those living the new units would share the parcel tax burden and feel more of a stake in their own city government and how the revenue is spent.

I believe that Sunnyvale is destined to be a great urban community. I hope to see vast well planned growth and development in our city, including vast high rise condominium developments in our city. I think it is time for Sunnyvale to grow and take its place with clout among the great cities of the county and of this region. However, I believe that the good character of our city can only be formed by citizens equally yoked and united as common stake holders, striving for excellence in our

LETTER B14

community. I hope that these truths have not escaped the minds of our city leaders. I trust that you will remind our city leaders that they should steer our city in the direction of fostering more individually owned properties, not less. B14-1

Sincerely Yours,
Todd Eyring
246 Morse Ave.

LETTER B14
Todd Eyring

B14-1 This comment addresses the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA.

LETTER B15

Subject: Fwd: Proposed project on 610-630 E. Weddell Dr. Sunnyvale
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/21/2013 10:24 AM
To: Amy Skewes-Cox <amysc@rtasc.com>, Trudi Ryan <tryan@sunnyvale.ca.gov>

---------- Forwarded message ----------
From: **MARYANNSTANFIELD** <maryannstanfield@comcast.net>
Date: Sun, Oct 20, 2013 at 12:25 PM
Subject: Proposed project on 610-630 E. Weddell Dr. Sunnyvale
To: rkuchenig@sunnyvale.ca.gov
Cc: maryannstanfield@comcast.net, design@signwiz.com

Ryan:
I live at the El Dorado Mobile Home Park - right next door to the old Applied Material site. I assume that site is to be redeveloped for 465 and 205 units? Is the city crazy?

That dead end street is not wide enough and cannot handle all the traffic. There are lots of school kids, mom and babies, senior and pets, bicyclists and skateboarders who use the sidewalk outside of El Dorado Mobile Home Park from the #26 bus stop at Fairoaks and Weddell down to the green park between El Dorado Mobile Home Park and old Applied Materials site. **B15-1**

We have another issue at the stoplight at E. Weddell Dr. and Fairoaks. Traffic going North on Fairoaks frequently run the red light at Weddell. I have almost been hit numerous times since 1987. Another dangerous issue is the off ramp from 101 North at Fairoaks. Cars make a quick right hand turn on Fairoaks and cross over three lanes to make a left hand turn on W. Weddell Dr. and nearly cause accidents with oncoming traffic.

Another issue is traffic on Fairoaks going North past Awanee, before crossing over 101 have to watch for off ramp 101 S traffic that does not stop or yield. Again, nearly causing broadsides. Now, take these issues and multiple times the number of cars that we will have in the area if the Weddell projects are developed. Not to mention people wanting to cross from West Weddell crosswalk at the traffic light across Fairoaks to get to side walk close to 101. W. Weddell traffic making right hand turns going North on Fairoaks to get on 101N sometimes do not stop for the pedestrian. It will be worse and dangerous with added traffic on both sides of Weddell.

Currently the El Dorado Mobile Home Park does not have a stop sign for cars leaving the mobile home park. It is hard to see pedestrians on both sides of the side walk before moving onto E. Weddell to go to the light. **B15-2**

We also have a lot of traffic going South on Fairoaks/Weddell drive who block the intersection. How do we solve all these issues? Thank you. Mary Ann Stanfield

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LETTER B15
Mary Ann Stanfield

B15-1 The traffic impact analysis concluded that no significant impacts are expected from project traffic, whether with implementation of either of the Applicant Proposed Scenarios individually or the Full Buildout Scenarios. Traffic safety issues are addressed in Response to Comment B15-2 below.

B15-2 TJKM reviewed the recent collision history on Fair Oaks Avenue in the vicinity of the project sites. The history revealed a low annual collision rate of four collisions or fewer at the East Weddell Drive/North Fair Oaks Avenue intersection. Also, the collision types varied widely, suggesting no apparent pattern of concern. It is speculative to conclude that collisions on Fair Oaks Avenue would increase with increased traffic due to the projects. The City collision data showed three bicycle-related collisions over a 5-year period at the East Weddell Drive/North Fair Oaks Avenue intersection. This low rate suggests there is no collision pattern of concern relative to bicycles.

Impacts on pedestrian and bicycle facilities and safety are addressed in Impacts TRANSPORTATION-10 and TRANSPORTATION-11, respectively (see Draft EIR pages 4.10-61 through 4.10-63). The Draft EIR recommends mitigation measures for impacts on these facilities (see Mitigation Measures TRANSPORTATION-10 and TRANSPORTATION-11 on Draft EIR pages 4.11-62 and 4.10-63).

LETTER B16

Subject: Fwd: E Weddell
From: Trudi Ryan <tryan@sunnyvale.ca.gov>
Date: 10/21/2013 8:58 PM
To: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>, "amysc@rtasc.com" <amysc@rtasc.com>

Comment letter on the East Weddell projects.

Trudi Ryan, AICP
Planning Officer
City of Sunnyvale

tryan@sunnyvale.ca.gov

P Save the environment. Please don't print this email unless you really need to. </S

---------- Forwarded message ----------
From: **gina senzatimore** <senzatimore@earthlink.net>
Date: Mon, Oct 21, 2013 at 4:30 PM
Subject: E Weddell
To: TRyan@ci.sunnyvale.ca.us

Ms. Ryan,

Hello. I am resident of North Sunnyvale for more than 30 years now. I am very opposed to the two expansive apartment projects on E Weddell Drive. These are high density, multi level and have many health risks to those living nearby. The demolition and development of both projects puts my neighborhood at risk for cancer and toxic hazards. Since 2004 we have watched this area become overbuilt and have had to deal with construction noise, excessive dust in our homes and increased traffic. Many children and seniors live here. Some longtime residents of my neighborhood have cancer or have been through chemotherapy. I walk my daughters to Lakewood School everyday at 7;30 and pick them up at 2:15 to walk home. If the building is demolished we will be walking past the construction site daily. It will put them at risk because there are confirmed toxic substances at 610 E Weddell and no amount of mitigation proves that we won't be affected. I am angry with the city that seems to say they care so much about children and that Sunnyvale is safe. I disagree. Overdevelopment of N. Sunnyvale, where it was mostly industrial and commercial, is exposing workers and residents, young and old, to life threatening health risks. **B16-1**

These developments are not going to enhance the neighborhood. We already have many people living here now and our street- E Weddell- cannot handle the traffic from a 200+ apartment complex. The EIR says the road was studied for two days. I invite you to come see the traffic here at 6:30 p.m on a weekday. E Weddell leads to our only driveway in and out and more cars will only cause more congestion, accidents and dangerous conditions for pedestrians and bicyclists who use the road everyday. It doesn't matter how nice or fancy the developers make the apartments. The road is the road and we won't benefit from hundreds of more cars coming from both sides of **B16-2**

Weddell. We have had many accidents at the intersection of Weddell/Fairoaks and Tasman/Fairoaks. We cannot support more high density housing and the traffic headaches it will bring. **B16-2**

The 370 page EIR is full of contradictions about how nearly everything wrong with developing 610 E Weddell will simply be handled by mitigation. The 101 will always be busy and putting apartments next to it exposes residents to toxins 24/7. Using Lakehaven Drive for emergency access puts strain on a neighborhood that also has limited access in and out. The proposed sites should remain offices or industrial. Why knowingly build on toxic soil where children will live and play? The city will lessen the quality of life to North Sunnyvale residents and put us in direct danger in regards to the roads, health hazards and overcrowding if these complexes are approved. **B16-3**

City services and schools are going to be even more stressed and we deserve better. Every two weeks there is some sort of fundraiser at Lakewood School where parents are asked to contribute to school services. The school has had portable classrooms for 20 years or more. Adding more classes and portables is an insufficient way to deal with the overcrowding. **B16-4**

It is unsafe to develop on E Weddell. I oppose the apartment complexes at 610-630 E Weddell and 520 Weddell and ask the city planners to ethically consider the well being of new residents, longtime residents and our children who may become the future residents of Sunnyvale. **B16-5**

Gina Senzatimore

LETTER B16
Gina Senzatimore (October 21, 2013)

B16-1 The issue of toxic hazards is addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR.

The comment states that demolition and development of both projects would put the neighborhood at risk for cancer and toxic hazards. The comment states that, since 2004, the commenter has had to deal with excessive dust.

The commenter is referred to Mitigation Measure AIR-5 in the Draft EIR, which requires control of construction dust through Bay Area Air Quality Management District (BAAQMD)-recommended Best Management Practices. In addition, Mitigation Measure AIR-5 would reduce potentially significant community health risk impacts from demolition and construction activities associated with the projects to less-than-significant levels.

B16-2 The traffic impact analysis (see Section 4.10, Transportation, of the Draft EIR) concluded that no significant impacts are expected from project traffic, whether with implementation of the Applicant Proposed Scenarios or the Full Buildout Scenarios. Recent collision history on Fair Oaks Avenue in the vicinity of the project sites, including at intersections at East Weddell Drive and Tasman Drive, shows that the collision types varied widely, suggesting no apparent pattern of concern.

The comment states that putting apartments next to Highway 101 would expose residents to "toxins [*sic*] 24/7." This impact is addressed in the Draft EIR, pages 4.2-24 through 4.2-40. The commenter is referred to Mitigation Measure AIR-4, which would reduce potentially significant community health risk impacts resulting from operation of the projects to less-than-significant levels.

B16-3 Mitigation Measure TRANSPORTATION-9 (Draft EIR pages 4.10-60 through 4.10-61) would require that both project sites be designed to incorporate emergency vehicle access that (1) meets City emergency access standards as described in the City of Sunnyvale Department of Public Safety Fire Prevention Unit's *Requirements for Fire Department Vehicle Access*, and (2) is approved by the City Fire Marshal. This mitigation would reduce the impact on emergency access to a less-than-significant level.

Potential health hazards have been addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR and in the responses to Comment Letter B24.

B16-4 Project impacts on public services, including schools, are addressed in Section 4.8, Public Services, of the Draft EIR.

The Draft EIR (Impact SERVICES-3, pages 4.8-7 through 4.8-8) concludes that students from the projects would increase enrollment at Sunnyvale School District and Fremont Union High School District schools, but not to the extent that new or physically altered school facilities would be needed. Existing capacities at Lakewood Elementary School and Columbia Middle School would be adequate to serve the additional enrollment from the projects. At Fremont High School, which currently operates overcapacity, the enrollment increase of 13 to 19 students expected from the

projects would require the addition of classes and teachers, but no new or physically altered school facilities. As stated in the Draft EIR (page 4.8-8), as a condition of project approval, the project applicants would be required to pay standard school impact fees and, as provided by State law, the payment of these fees is deemed to fully mitigate the impacts of new development on school services.

The Draft EIR therefore addresses the concerns raised by the commenter to the extent allowed by CEQA. Since the projects would not create the need for new or physically altered school facilities, they would not result in a significant environmental impact under CEQA.

B16-5 This comment addresses the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA.

LETTER B17

Jeni Pfeiffer

10275 N De Anza Blvd,

Cupertino, CA 95014

byjeni@yahoo.com

Re: East Weddell DEIR Comments

The East Weddell Projects Draft Environmental Impact Report (DEIR) has failed to include two critical, and common, CEQA Categories from this report to adequately describe the environmental setting of the Sares Regis and Raintree Sites affected by hazardous contaminants (520-592 E. Weddell Ave. and 610 – 630 E. Weddell Ave, Sunnyvale) that could potentially pose a significant threat to human health or the environment: **B17-1**

1. Geology and Soils
2. Hydrology and Water Quality

Additionally, the East Weddell Projects DEIR also fails to report that the State of California and the Santa Clara County map the East Weddell Projects is the Seismic Hazard Zones:

1. Liquefaction Hazard Zone
2. FEMA Special Flood Hazard Area (northwest project area close to/or in)

B17-2

Since liquefaction can occur when loose, water saturated, fine-grained soils (such as sands and silt) are shaken during an earthquake, what is the impact of the hazardous ground contaminants and proper mitigation, if any? Soil can temporarily become liquid like and structures may settle unevenly. If present, these weak materials can fail during an earthquake and, unless proper precautions are taken during grading and construction, can cause damage to structures.

The East Weddell Projects DEIR identifies hazardous contaminants - Arsenic, VOC, tetrachloroethylene (PCE), vanadium, groundwater containing petroleum hydrocarbons in the diesel and motor oil, to name a few, which place residents at high risk for adverse health known to cause cancer. Analog Devices, at 610 East Weddell Drive, was listed as a registered hazardous waste generator and identified as responsible for the release of 100 gallons of liquid hydrogen during an incident in 2006. The failure to disclosure liquefaction and FEMA Flood Hazard Zone proximity is a disservice to the Sunnyvale residents and this report. **B17-3**

One DEIR Hazard mitigation measure suggests simply laying concrete over, or a fresh layer of soil. This does not seem to be an adequate remedy for areas where there is a potential for, or an historical occurrence of liquefaction, shifting of soil, and high probability for an earthquake disruption, as well, and water movement from the FEMA Flood Hazard Zone. These contaminates can move and/or dislodge.

The thresholds of significance may be vastly different combined with liquefaction and flood FEMA zone, particularly with water supply and rising sea levels threatening coastal real estate and habitat.

The U.S. Geological Survey's Working Group on California Earthquake Probabilities estimated that there is a 62 percent probability that one or more Moment Magnitude10 (MW) 6.7 or greater earthquakes will occur in the San Francisco Bay Area between 2002 and 2031, this is a grave concern. B17-3

The City of Sunnyvale is the lead agency for the East Weddell Residential Projects. According to CEQA, The lead agency must analyze project impacts to 18 different environmental resource factors detailed in Appendix G during their CEQA review, yet these important disclosures have not been made. Yet, some very important items have been omitted by direction of your staff. B17-4

California Public Resources Code Section 2696 requires the delineation and mapping of "Seismic Hazard Zones" in California. **Affected cities and counties must regulate certain development projects within these zones. Construction or development including additions, on affected properties may be subject to the findings of a geological report prepared by a registered California geologist.**

I would like to see a Geological and Soil Study and Hydrology and Water Quality Report. Given both the liquefaction and FEMA Flood Hazard Zones, combined with known ground hazardous contaminants, high density housing does not seem sensible, practical, nor safe for residential quality of health and living. B17-5

I would not recommend rezoning for high-density housing. Nor certify this East Weddell Projects Draft Environmental Impact Report. It is incomplete. B17-6

LETTER B17
Jeni Pfeiffer

B17-1 As noted in Section 1.4 of the Draft EIR, these topic areas were analyzed in the Initial Study for the project, which was circulated with the Notice of Preparation for public review from May 3, 2013 to June 1, 2013. Based on the significance of impacts for these topic areas identified in the Initial Study, it was determined that no additional analysis was necessary for the Draft EIR.

B17-2 The topics of liquefaction and flooding were analyzed in the Initial Study for the project. Regional liquefaction hazard maps from the Association of Bay Area Governments indicate that the East Weddell project sites have a "moderate" liquefaction hazard risk.[1] Site-specific analyses of liquefaction hazards performed as part of geotechnical investigations of the project sites indicated that liquefaction-induced settlements of up to one-half inch could occur at the sites, and those investigation reports made recommendations to address this potential impact.[2] Mitigation Measure GEO-1 of the Initial Study required that the recommendations of the geotechnical investigations be implemented as a condition of project approval. The hydrology analysis in the Initial Study determined that the project sites are not located within a FEMA-mapped flood hazard zone.[3] No additional mitigation is necessary to address the potential geologic or hydrologic concerns identified in this comment.

B17-3 Please refer to Response to Comment B17-2, above, regarding the potential for liquefaction and flooding hazards at the sites, which were evaluated in the Initial Study for the project. Also, please refer to Response to Comment B6-1, above, regarding mitigation measures in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR that are designed to protect future construction workers, maintenance and utility workers, site users, and the general public from potential hazards from contamination at the sites. These mitigation measures would require regulatory oversight at each of the project sites, and none would provide for "simply laying concrete over, or a fresh layer of soil," as stated by the commenter. No additional mitigation is necessary to address the potential hazardous materials concern identified in this comment.

B17-4 Before the Draft EIR was prepared, an Initial Study Checklist and Notice of Preparation (NOP) were completed and distributed for public review and comment (see page 1-3 of the Draft EIR). As noted on Draft EIR page 1-3, the NOP can be viewed on the City's website. From this process, certain topics were dismissed from further consideration in the Draft EIR based on the analysis provided in the Initial Study.

B17-5 Please refer to Responses to Comments B17-2 and B17-3, above, regarding potential liquefaction and flooding hazards at the sites and the potential for hazardous materials migration. As noted in Response to Comment B17-2, site-specific geologic investigations, prepared by California Professional Geologists, were prepared for the project sites, and Mitigation Measure GEO-1 in the Initial Study for the projects requires that the recommendations of the geotechnical investigations be implemented as a condition of project approval. No additional mitigation is necessary to

[1] City of Sunnyvale, 2013, Initial Study for the East Weddell Residential Projects, May, p. 51.
[2] City of Sunnyvale, 2013, Initial Study for the East Weddell Residential Projects, May, p. 51.
[3] City of Sunnyvale, 2013, Initial Study for the East Weddell Residential Projects, May, p. 61.

address the potential geologic, hydrologic, or hazardous materials concerns identified in this comment.

B17-6 Regarding the commenter's concerns about Draft EIR completeness, please refer to Responses to Comments B17-1 through B-17-5 above.

LETTER B18

Subject: Fwd: East Weddell Residential Projects - Resident Comments and Feedback
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/22/2013 8:13 AM
To: Amy Skewes-Cox <amysc@rtasc.com>, Trudi Ryan <tryan@sunnyvale.ca.gov>

---------- Forwarded message ----------
From: **Tom Maremaa** <tom.maremaa@gmail.com>
Date: Mon, Oct 21, 2013 at 7:26 PM
Subject: East Weddell Residential Projects - Resident Comments and Feedback
To: Ryan Kuchenig <rkuchenig@ci.sunnyvale.ca.us>

Dear Ryan Kuchenig,

Thank you for your notice of the Draft Environmental Impact Report for East Weddell Residential Projects : Planning project #2013-7240, State Clearinghouse #2013052010.

We've lived here since 2007, during which time we've been through and endured many new construction projects:

(1) Our own City Park by Toll Brothers

(2) Classic Communities on Fair Oaks,(next to Lion & Compus restaurant)

(3) Pulte Group at the end of Kiel court, at Fair Oaks

(4) Classic Communities at Kiel court and Karlstad

(5) Barry Swenson Group at Toyama and Morse

(6) Verona by Toll Brothers at Tasman and Morse

(7) Classic Communities at Tasman and Morse

(8) Via Apartment rentals and Fresh & Easy shopping area

(9) Classic Communities at Toyama and Morse

(10) St. Anton (1101 Anton) rental apartments on Fair oaks(across from Public Storage)

(11) Orchard Park Project next to the tennis courts (Borregas area in progress)

(12) 7-Seas Park construction (ground-breaking ceremony on 10/16/2013),in progress

Now this project is going to be #13 (unlucky, indeed). All the Identified Potential Environmental Impacts in your report will happen here. We certainly don't need this.

As we write this, the noise and pollution from Anton project with all the dust, smog, and many heavy machinery are going on.

B18-1

LETTER B18

Every day we endure many UPS trucks driving back-and forth on Weddell from their place on Morse Ave.

We've been hoping the City would have UPS move its place from our neighborhood and go somewhere else, because this is residential now.

When we bought our houses, Toll Brothers gave us all a map showing a nice quiet Cul-De-Sac, at Kiel Ct. However, after we moved in, they opened not one but two entrances.

B18-1

To our horror, hundreds of cars and trucks cruise our street going back and forth to their homes elsewhere, as well as employees of the nearby companies such as Aixtron, Equinix, etc. They all enjoy a nice ride, zipping along as fast as they can, several times a day, seven days a week, while we residents have to endure the noise and swallow all the fumes.

We hoped to wake-up to the sounds of nature such as chirping and singing birds, not this!

Since we've started living here, we've not experienced a good night's sleep, nor peace.

Instead of this project, we need a nice big chain supermarket, a drugstore,and some useful businesses because the tiny Fresh & Easy is not sufficient, and its future is unknown.

We are very happy with this Fair Oaks Business park, and get along with them. They told us the buildings are termite-ridden. If they get demolished, all the termites, rats, rodents and roaches, etc. will be attacking us and infesting our homes.

We don't need any more crowds, we live in a very dense, congested area.

This project will unleash thousands of more renters with their cars, strollers,pets, etc. The rate of turnover for rental units is always very high, and we don't need to endure more delivery and constantly moving trucks.

B18-2

We need more trees, not to destroy the existing ones. We also like the little view that's left here of Santa Cruz Mountains. These tall buildings, are going to totally block everything, making this place very dark. Weddell Dr. is already extremely noisy, and polluted, this will make it a total nightmare for us to pass through connecting to freeways, roads, etc.

This is a massive project in scope, the excessive urbanization, traffic congestion,environmental damages from noise, air quality, greenhouse gas emissions, hazardous materials, utilities and service systems, etc. are not tolerable.

This project is our worst nightmare, we'll be overwhelmed and crushed by many more crowds and traffic. This is simply a disaster for us. Since it's announcement, we've lost neighbors and friends who moved out because of this.

We hope not to be the next victim of this.

We also have been asking the City many times now for a SOUNDWALL all along the 101 freeway corridor. This has now many residential areas, the noise is unbearable. How come Persian Dr. all along freeway 237 has a sound wall, even by the Indian temple, while most of it is not at all residential? All other cities around here have sound walls for their residents. We've needed it for all these years. We feel totally abandoned and forgotten.

B18-3

We are very unhappy and extremely concerned about this proposal, as are the overwhelming

B18-4

LETTER B18

majority of our neighbors who have told us so. We like where we live, and have no intention of moving. We hope this will not drive us out of this city.

Please help us on this, we deserve a better quality of life. We don't want to be disappointed in our elected officials.

As a reminder, the City Council members and the mayor, are elected to represent US, the residents of Sunnyvale, and NOT a bunch of greedy, out-of towner GIGANTIC developers who want to make even more money at our expense. **B18-4**

On behalf of all the residents who need peace, quiet, and a better quality of life around here, we appreciate your help and would like to thank you in advance to please stop this madness.

Abandoned, anxious,and sleepless in Sunnyvale,

Tom & Mimi Maremaa

1075 Konstanz Terrace

Sunnyvale, Ca 94089

LETTER B18
Tom and Mimi Maremaa

B18-1 This comment addresses current conditions rather than the adequacy of the Draft EIR, and therefore no response is necessary under CEQA.

B18-2 This comment addresses the merits of the project rather than the adequacy of the Draft EIR. The comment raises concerns regarding views, traffic, noise, air quality, greenhouse gas emissions, hazardous materials, and impacts on services and utilities. The Draft EIR addresses these issues in Sections 4.1, 4.10, 4.7, 4.2, 4.4, 4.5, 4.8, and 4.11, respectively.

B18-3 The comment states that a sound wall is needed along the Highway 101 freeway corridor. Responsibility for the construction of sound walls all along Highway 101 through Sunnyvale is outside the scope of the analysis of the Draft EIR and is not a required mitigation measure. Section 4.7, Noise, of the Draft EIR addresses noise issues related to the projects. The project applicants would not be responsible for mitigating existing noise conditions that may warrant a sound wall; rather, the applicants would be responsible for mitigating impacts associated with the proposed project only.

The following text is removed from page 3-8 of the Draft EIR:

> ~~*A sound wall may be required along portions of the south and west boundary of the property but this has not yet been determined.*~~

B18-4 This comment does not address the Draft EIR, and therefore no response is necessary under CEQA.

LETTER B19

Subject: Fwd: East Weddell Residential Projects
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/22/2013 3:03 PM
To: Amy Skewes-Cox <amysc@rtasc.com>, Trudi Ryan <tryan@sunnyvale.ca.gov>

From: **Lynn** <lynn@taraldson.net>
Date: Tue, Oct 22, 2013 at 12:52 PM
Subject: East Weddell Residential Projects
To: rkuchenig@sunnyvale.ca.gov

I am writing to oppose the building of the apartments on 520-592 East Weddell Avenue and 610-630 East Weddell Avenue.

These very high density apartments will negatively impact Sunnyvale. They will increase traffic, be an eyesore, increase crime and put a strain on local schools and the Greenbelt.

B19-1

I am a resident of the condominiums at Lakehaven Terrace. This huge apartment complex will be a few yards away from my condo. Their windows will be directly opposite from my bedroom window. This will dramatically decrease my quality of life. It will also decrease the resale value of my condominium and make it much harder to rent.

Please do not allow these apartments to be built.

Sincerely,
Caryl Taraldson

620 Lakehaven Terrace
Sunnyvale, CA 94089

LETTER B19
Carol Taraldson

B19-1 This comment mainly expresses an opinion regarding the project rather than the adequacy of the Draft EIR. The comment raises concerns regarding visual impacts, traffic, and impacts on schools and recreational facilities. The Draft EIR addresses these issues in Sections 4.1, 4.10, 4.8, and 4.9, respectively. Other issues raised by the comment, such as project impacts on property values, are outside the scope of the EIR.

LETTER B20

562 Carlisle Way
Sunnyvale, CA 94087

October 22, 2013

BY EMAIL (.PDF)

City of Sunnyvale
Department of Community Development
456 W. Olive Ave.
Sunnyvale, CA 94088

Attention: Ryan Kuchenig
(rkuchenig@ci.sunnyvale.ca.gov)

Re: East Weddell Residential Projects Draft EIR

Dear Mr. Kuchenig:

The draft Environmental Impact Report (EIR) does not have any information in the Public Services section about urgent medical care facilities. I attended the EIR scoping meeting on May 22, 2013 and specifically asked that urgent medical care facilities be analyzed in the EIR. In Appendix A, a letter by Ms. Rebekah Sandell lists her concerns about the lack of an urgent medical care clinic and hospital in the northern Sunnyvale. I am repeating my request for urgent medical care to be analyzed in the final EIR, if the City of Sunnyvale chooses to ignore my request, please provide a justification.

I would like the final EIR to analyze the impact of the East Weddell residential projects on the following public services:

EMS-Paramedic capacity and response times
Urgent medical facility capacity and access times

B20-1

The traffic generated by the East Weddell residential projects will impact the travel times of EMS-paramedic vehicles to people in need of their services. In addition, the traffic generated by the East Weddell residential projects will impact the travel times of EMS-paramedic vehicles to local urgent medical care facilities. I would like the final EIR to analyze the EMS-paramedic travel times. Sunnyvale Public Safety officers are trained to provide EMS-basic service, I am requesting an analysis of the EMS-paramedic service.

The additional people brought into Sunnyvale by the East Weddell residential projects will impact Sunnyvale's urgent medical care facilities. I would like the final EIR to analyze the capacity of Sunnyvale's urgent medical care facilities.

The East Weddell residential projects may have a limited effect on Sunnyvale's EMS-paramedic

capacity and urgent medical care facilities, but the cumulative impact of recent and future projects in the City of Sunnyvale should also be considered. B20-1

Sincerely,

Martin Landzaat
martin_landzaat@hotmail.com

LETTER B20
Martin Landzaat

B20-1 This comment raises two issues: (1) project impacts on emergency medical service (EMS)/paramedic capacity and response times, and (2) project impacts on urgent medical facility capacity and access times. These issues are addressed separately below.

Project Impacts on EMS/Paramedic Capacity and Response Times

As noted by the commenter, EMS/paramedic services are provided by the City of Sunnyvale Department of Public Safety (DPS), which would provide fire protection and police services to the project sites. Project impacts on these services are addressed in Section 4.8, Public Services, of the Draft EIR.

As discussed in the Draft EIR (page 4.8-1), CEQA generally limits the analysis of project impacts on public services to an evaluation of the need for new facilities. The need for additional service capacity (such as additional EMS/paramedic personnel or equipment) is generally a fiscal impact, not an environmental impact under CEQA. CEQA does not require an analysis of fiscal impacts unless the increased demand triggers the need for a new facility (such as a new fire station), since the new facility would have a physical impact on the environment (see Draft EIR, page 4.8-1).

The Draft EIR (Impact SERVICES-1, page 4.8-5) concludes that the projects would increase the demand for fire protection and police services, but not to the extent that new or physically altered fire stations or police facilities would be needed. The environmental impact would therefore be less than significant, and no mitigation is required. Evaluating additional effects on EMS/paramedic capacity would be outside the scope of the EIR, for the reasons discussed above. The City may wish to evaluate such issues in its consideration of the projects, however.

The commenter also raises the issue of EMS/paramedic response times. Emergency services response times are addressed in Section 4.10, Transportation, of the Draft EIR. On page 4.10-60, the Draft EIR states the following:

> … TJKM reviewed concerns of the DPS Police Services Bureau about the effect of project traffic on the ability to provide adequate police response. TJKM used the criterion of adequate response time, since peak hour traffic levels have an effect on this criterion. Since no significant traffic impacts are expected to occur with the addition of project traffic under any analysis year (Existing, Background, or Cumulative), it is expected that accordingly, project traffic would not affect police response times within the study area, and no mitigation measures relative to project traffic are required.

This same conclusion would apply to EMS/paramedic response times.

Project Impacts on Urgent Medical Facility Capacity and Access Times

As already discussed above, CEQA generally limits the analysis of project impacts on public services to an evaluation of the need for new facilities, not other types of capacity. Also, CEQA limits the analysis to services that are public – i.e., governmental. CEQA does not require an EIR

to evaluate impacts on private or non-profit services and facilities that might be affected by a project.

Urgent medical services in Sunnyvale and the surrounding region are offered by a wide variety of mostly private or non-profit organizations. CEQA does not require the EIR to evaluate impacts on these types of services. Even if CEQA required this analysis, it would be speculative to make assumptions about how many project residents would require these services and which facilities they would use. Furthermore, as the commenter notes, the projects alone would likely have a limited effect on these services. For example, the projects alone would be highly unlikely to create a need for new urgent medical facilities.

While analysis of effects on urgent medical services and facilities is outside the scope of the EIR, the City may wish to evaluate such issues in its consideration of the projects.

LETTER B21

Subject: Fwd: Apartment complex on E. Weddell Dr.
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/23/2013 10:24 AM
To: Amy Skewes-Cox <amysc@rtasc.com>, Trudi Ryan <tryan@sunnyvale.ca.gov>

---------- Forwarded message ----------
From: **Laly reyes** <tinkerlaly@hotmail.com>
Date: Wed, Oct 23, 2013 at 10:05 AM
Subject: Apartment complex on E. Weddell Dr.
To: rkuchenig@sunnyvale.ca.gov

Dear Ryan kuchening,

I am e-mail to you because I am very concerned about the apartment project on E. Weddell Drive. We currently live in The Dorado Mobile Home Park. I foresee mayor problems if an apartment complex would to be build on E. Weddell Drive.

You see the Mobile Home Park has only one entrance/exit and it is located on E. Weddell Drive. All 285 residents use that entrance/exit. It would make it so difficult to go in and out of the The Dorado Mobile Home Park if there was more cars. The traffic would be terrible. I have two young children that go to school and have afternoon activities. I am a busy mom always doing errands. With more vehicle on the street it will be overwhelming. **B21-1**

I would suggest instead a Dog park or a children's Park. That way the area could be kept clean, open and everyone can enjoy it.

There is a lot of Apartment/housing project going on. Downtown has 800 +, Tasman Dr has 1000+, Lawrence has 336, and still developers want more.

Please consider doing a Dog park or a children's Park please. Hopefully you can make E. Weddell Drive a nice and green environmentally place.

Thank you for taking time to see our concerns.

From,

Reyes Family

LETTER B21
Reyes Family

B21-1 This comment primarily addresses the merits of the project rather than the Draft EIR. The issues of traffic and traffic safety are discussed in Section 4.10, Transportation, of the Draft EIR. The traffic impact analysis concluded that no significant impacts are expected from project traffic, whether with implementation of the Applicant Proposed Scenarios or the Full Buildout Scenarios.

LETTER B22

TO: CITY OF SUNNYVALE Oct. 23, 2013
ATTN: RYAN KUCHENIG
DEPARTMENT OF COMMUNITY DEVELOPMENT
RE: EAST WEDDELL RESIDENTIAL PROJECT

As I write this letter, I can think of three potential negative impacts that will hurt my environment here at City Park. My entrance to my home is East Weddell and Konstanz Terrace. Beautiful trees line this street creating a pleasant view as you turn onto East Weddell. Parking is easy to find except for the weekends. Everybody is home and parking gets harder to find. With the potential plan to build high density housing in the amount of 650 apartment units in this area seems way too much for this neighborhood.

First of all, between Fair Oaks and Morse avenue on East Weddell are tall well established trees that provide shade and a unique atmosphere that my wife and I love. We are scared that the new developer will cut down these trees which must be fifty years old. With the trees gone and the beautiful green grass that is all along the business park, we are sure that the developer will create a concrete jungle. There will be little space to enjoy trees, birds and everything else that is nature. Instead we will have cars lining the street of East Weddell. **B22-1**

As I said earlier in my letter, parking is adequate now but just wait till the 650 apartment structure is built. Automobiles and especially service vehicles are now parking on East Weddell along side of City Park town houses. I'm sure when the new construction starts and when it's complete East Weddell will have no bike lane. Their will be just lines of cars all on East Weddell. I know the plan is to park cars in the proposed parking garage. But if it is a shorter walk to park on East Weddell, people will take the easy way home. From the little artist rendering that I've seen, you can't even park your car close to your front door of the proposed 650 apartment complex. You must also consider the entrance onto Highway 101 north bound is an extremely short merge lane and DANGEROUS. **B22-2**

LETTER B22

With all the cars trying to merge onto the freeway north bound during the commute hours, vehicle accidents will be a common occurrence. Not to mention Sunnyvale Emergency Services will be very active in this part of the city. **B22-2**

Please reconsider the construction of this project. It is way too big. It will disrupt the area. People who are not home owners don't care about their surroundings. When you have a thousand people living living in a small area of 16 acres, many problems will be un-earthed and it won't be pleasant. I have a problem with three cigarette smokers living beside me. They smoke in their home which we share the same wall. The second hand smoke comes into my home and it is very difficult to eat dinner or just sit in my dinning room. The HOA has no desire to make my problem right. It cost money to change the CC& R's and they feel that the smokers could sue the HOA. My point is, when you live in such close proximity of each other you need to design environments that are practical. This project is not practical for the people. All I see is storage buildings that house people. No private patio no nothing to allow a person enjoy a private sit down. The design does not consider many aspect of life that would also affect the residents at "City Park at Sunnyvale". Please do what's right. Make this at least half the size of the proposed 650 units and put more quality of life features in the complex that would benefit all the neighbors in the area. **B22-3**

Sincerely,

Felix Natis
1084 Konstanz Ter.
Sunnyvale, Ca. 94089

LETTER B22
Felix Natis

B22-1 It is not the intention of the applicants to remove any trees lining East Weddell; however, certain trees would be removed to allow for ingress and egress to the site. Section 4.3, Biological Resources, of the Draft EIR (page 4.3-4) addresses tree removal and the need to abide by the City's Tree Protection Ordinance (Section 19.94 of the Sunnyvale Municipal Code).

B22-2 According to the applicants, the Sares Regis project would provide 348 parking stalls for the 205 dwelling units proposed under the Applicant Proposed Scenario, while the Raintree project would provide 790 parking stalls for the 465 units proposed under the Applicant Proposed Scenario. See Response to Comment B2-2. The proposed number of parking stalls at both sites is greater than the minimum required for State density bonus projects but less than what would be required by the Sunnyvale Municipal Code if the projects were not providing affordable housing under the State density bonus law. In other words, the proposed on-site parking would meet applicable requirements.

Currently, there are bicycle lanes on both sides of East Weddell Drive surrounding the Raintree project site. No parking is permitted on either side of the roadway in this area. These bicycle lanes would remain following construction of the Raintree project.

Recent collision history on Fair Oaks Avenue in the vicinity of the project sites, including at intersections at East Weddell Drive and Tasman Drive, shows that collision types varied widely, suggesting no apparent pattern of concern.

Mitigation Measure TRANSPORTATION-9 (Draft EIR pages 4.10-60 through 4.10-61) would require that both project sites be designed to incorporate emergency vehicle access that (1) meets City emergency access standards as described in the City of Sunnyvale Department of Public Safety Fire Prevention Unit's *Requirements for Fire Department Vehicle Access*, and (2) is approved by the City Fire Marshal. This mitigation would reduce the impact on emergency access to a less-than-significant level.

B22-3 This comment addresses the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA.

LETTER B23

RECEIVED OCT 20, 2013

OCT 22 2013

PLANNING DIVISION

To Trudi Ryan,

I am a resident of Sunnyvale since 1974 and live at 600 E Weddell Dr. I am outraged at the proposed apartments on Weddell, especially at 610-630 E Weddell. I read the EIR and cannot believe how things like increased traffic and noise and toxic hazards are not going to have a significant impact, because they are. We have one driveway in and out of our neighborhood. E Weddell is not a through street and cannot handle high density residential at the end of it. I read on the report that our neighborhood is at Maximum Cancer Risk for the development of BOTH projects on Weddell. The demolition of the building will expose all of us to hazardous materials. I walk my daughters to Lakewood School everyday past the proposed site. (It is faster to walk and less stressful because of all the new housing developments and increased traffic on Tasman and Fairoaks.) I shudder to think about having to walk them past a site where toxic substances are released if the existing building is demolished. Since 2004 we have watched this area get more and more built up. I've had to adapt to the traffic, as many of my neighbors have, and it will get worse with thousands of more people and cars. **B23-1**

I am also angry at the size of these E Weddell developments. I see that Morse Ave has 17 townhomes approved, Persian 47 and Toyama only 18 units, but we will have over 600 apartments-even more if a full buildout is approved! This is way too many units for E Weddell and for the intersection at Fairoaks where many accidents have occurred, some deadly.

I invite you to walk E Weddell with me and see for yourself how rezoning and building hundreds of apartments will not enhance the neighborhood but will cause more traffic, congestion, and accidents. The EIR states "No major road improvements would be required." I disagree. There is a curve on E Weddell as soon as cars turn right from Fairoaks and the end of the road is not visible. At 6:30 every night many cars are making the turn onto E Weddell and it is a very short distance to the driveway where we have to turn left. It will be a dangerous and unsafe situation with the addition of more cars as there is barely enough time to put our signals to make that left hand turn.

B23-2

The EIR does not mention any other driveways on E Weddell. The site is zoned commercial and perhaps it should remain so. When it was Analog Devices traffic, was minimal-some in the am, pm and none on the weekend. With all the other housing going up all over Sunnyvale, putting apartments in this location, on a dead end street (emergency access is another concern-using Lakehaven Drive as access when Lakewood Village also suffers from inadequate entrance and exits), right next to the 101 freeway of all things and exposing workers, residents and surrounding neighborhoods to toxic hazards, all I can think is WHY? This is not a good site for a four or five story apartment complex. It will be incompatible with what is here now.

Rezoning the site at 610 E Weddell is not safe and will jeopardize our health and create dangerous road conditions. **B23-3**

Gina Senzatimore

408-541-9753

LETTER B23
Gina Senzatimore (October 20, 2013)

B23-1 This comment addresses the merits of the project rather than specific elements of the Draft EIR. The issue of traffic safety is addressed in Section 4.10, Transportation, of the Draft EIR. Noise issues are addressed in Section 4.7, Noise, and hazardous waste issues are addressed in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR.

B23-2 Recent collision history on Fair Oaks Avenue in the vicinity of the project sites, including at intersections at East Weddell Drive and Tasman Drive, shows that the collision types varied widely, suggesting no apparent pattern of concern. In the most recent 5-year history of collisions, no fatalities were reported at the East Weddell Drive/North Fair Oaks Avenue intersection. The City collision data showed three bicycle-related collisions over the 5-year period at the East Weddell Drive/North Fair Oaks Avenue intersection. This low rate suggests there is no collision pattern of concern relative to bicycles. The potential for traffic hazards is addressed in Impact TRANSPORTATION-14 on Draft EIR pages 4.10-66 through 4.10-67.

Mitigation Measure TRANSPORTATION-9 (Draft EIR pages 4.10-60 through 4.10-61) would require that both projects be designed to incorporate emergency vehicle access that (1) meets City emergency access standards as described in the City of Sunnyvale Department of Public Safety Fire Prevention Unit's *Requirements for Fire Department Vehicle Access*, and (2) is approved by the City Fire Marshal. This mitigation would reduce the impact on emergency access to a less-than-significant level.

B23-3 This comment addresses the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA.

LETTER B24

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October 23, 2013

VIA E-MAIL AND OVERNIGHT MAIL

Ryan Kuchenig
Department of Community Development
City of Sunnyvale
456 West Olive Ave.
Sunnyvale, CA 94088
rkuchenig@sunnyvale.ca.gov

Re: Comments on the Draft Environmental Impact Report for the East Weddell Residential Projects, SCH No. 2013052010

Dear Mr. Kuchenig:

We are writing on behalf of Sunnyvale Residents for Responsible Development regarding the September 2013 Draft Environmental Impact Report ("DEIR") prepared for the East Weddell Residential Projects ("Project"). As explained more fully below, the DEIR does not comply with the requirements of the California Environmental Quality Act ("CEQA"). The City of Sunnyvale ("City") may not approve the Project until the errors in the DEIR are corrected and a revised document is recirculated for public review and comment.

The Project is described as the replacement of existing office/industrial buildings with new multi-story residential buildings on two adjacent, but separately owned, sites: the Raintree site at 520-592 East Weddell Drive and the Sares Regis site at 610-630 East Weddell Drive. One four-story residential building is proposed for the Sares Regis site and would include 205 residential apartments, a four-story parking garage, and a landscaped common area. Eight apartment buildings, with a total of 465 units, are proposed for the Raintree site. The eight buildings would range in height from three to four stories. The whole of the project includes General Plan amendments for the two sites; rezoning for the two sites; Special Development

Permits for each site; Potential Vesting Tentative Maps for each site; modifications to the Tasman/Fair Oaks Area Pedestrian and Bicycle Circulation Plan; San Francisco Public Utilities Commission approval of improvements to the John W. Christian Greenbelt, and upsizing of the existing public sewer main on North Fair Oaks Avenue.

Because the action includes General Plan amendments, the Draft EIR also addresses a maximum buildout scenario, referred to as the "Full Buildout Scenario", of 938 units for the two sites (259 units at the Sares Regis site and 679 units at the Raintree site). The Draft EIR addresses the Applicant Proposed Scenario at a project level of detail and the Full Buildout Scenario at a program level.

I. STATEMENT OF INTEREST

Sunnyvale Residents for Responsible Development ("Sunnyvale Residents") is an unincorporated association of individuals and labor unions that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes: City of Sunnyvale residents Jack X. Jones, Cheryl Pollock and Bob Rule; the International Brotherhood of Electrical Workers Local 332, Plumbers & Steamfitters Local 393, Sheet Metal Workers Local 104, and their members and their families; and other individuals that live and/or work in the City of Sunnyvale and Santa Clara County.

Individual members of Sunnyvale Residents and the affiliated unions live, work, recreate and raise their families in Santa Clara County, including the City of Sunnyvale. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Sunnyvale 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 business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

II. SUMMARY OF THE DEIR'S INFORMATIONAL AND ANALYTICAL DEFICIENCIES

As these comments will demonstrate, the DEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It fails in significant aspects to perform its function as an informational document that is meant "to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment" and "to list ways in which the significant effects of such a project might be minimized."[1]

Substantial evidence indicates that the Project is likely to cause significant adverse impacts. The DEIR is legally defective due to its failure to adequately identify, evaluate and mitigate these potentially significant impacts. The errors and deficiencies of the DEIR include the following:

1. The DEIR fails to disclose that residual pesticides from past agricultural use are present in soils at concentrations that exceed safety thresholds for future site occupants;

2. The DEIR lacks substantial evidence to support its conclusion that impacts from volatile organic compounds ("VOCs") in soil and soil gas on the Sares Regis site will be mitigated below a level of significance; B24-1

3. The DEIR fails to adequately disclose and assess potential impacts from benzene contamination on the Raintree site;

4. The DEIR violates Bay Area Quality Management District ("BAAQMD") guidance by failing to quantify unmitigated construction emissions and to compare unmitigated emissions with BAAQMD threshold of significance;

5. The DEIR erroneously assumes that all off-road construction equipment will be model year 2006 or newer and comply with the Tier 2 standard for new off-road diesel engines, resulting in significantly underestimated impacts and inadequate mitigation measures; B24-2

[1] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391.

6. The DEIR improperly piecemeals its review of air quality impacts by evaluating various Project components separately rather than evaluating emissions from the Project as a whole;

7. The DEIR's evaluation of the significance of average daily construction emissions is arbitrary and violates BAAQMD Guidelines;

B24-2

8. The DEIR underestimates the scope of cancer risks from Project construction and fails to apply the most recent guidance developed by the Office of Environmental Health Hazard Assessment;

9. The DEIR's assumption that proposed mitigation will reduce construction emission cancer risks below a level of significance is erroneous and not supported by substantial evidence;

B24-3

10. The DEIR improperly compares mitigated operational emissions to the BAAQMD significance thresholds, resulting in an unsupported finding of no significant operational air quality impacts and a failure to require that the assumed operational air quality mitigation measures will be undertaken;

11. The DEIR improperly segments its review of operational emissions from development on the Sares Regis portion of the Project from its review of operational emissions from the Raintree portion of the Project, resulting in a failure to disclose potentially significant impacts;

12. The DEIR's assumption that proposed mitigation will reduce health risks to future residents from nearby roadway emissions to below a level of significance is erroneous and not supported by substantial evidence;

B24-4

13. The DEIR fails to identify the Project's inconsistency with the City's General Plan goals to "reduce the exposure of its citizens to air pollutants" and to utilize site planning "to protect citizens from unnecessary exposure to air pollutants;

B24-5

14. The DEIR's analysis of the vibration impacts on future project residents from truck traffic on the adjacently located Highway 101 is not supported by substantial evidence;

B24-6

15. The conclusion that proposed mitigation measures will reduce construction noise below a level of significance is not supported by substantial evidence; B24-7

16. The determination that potential impacts from the construction of the upsized sewer main on North Fair Oaks Avenue would be less than significant is not supported by substantial evidence and is improperly piecemealed from the analysis of the rest of the Project's impacts; and B24-8

17. The DEIR fails to assess the Project's inconsistency with the General Plan's recycled water policy.

The DEIR must be withdrawn and revised to address these errors and deficiencies. Because of the substantial omissions in the information disclosed in the DEIR, revisions necessary to comply with CEQA will be, by definition, significant. In addition, substantial revision will be required to address impacts that were not disclosed in the DEIR. Because these revisions are significant, the revised DEIR will need to be recirculated for additional public comment.[2] B24-9

We prepared our comments regarding the DEIR analyses with the assistance of air quality expert Dr. Petra Pless and hazards expert Mr. Matthew Hagemann. The comments from each expert are attached to this letter as Attachments A and B, respectively, along with each expert's *curriculum vitae*.

III. CEQA REQUIRES THE DISCLOSURE OF ALL POTENTIALLY SIGNIFICANT PROJECT IMPACTS AND THE INCORPORATION OF ALL FEASIBLE MITIGATION MEASURES NECESSARY TO REDUCE SUCH IMPACTS TO BELOW A LEVEL OF SIGNIFICANCE

CEQA has two basic purposes. First, CEQA is designed to inform decisionmakers and the public about the potential, significant environmental effects of a project.[3] Except in certain limited circumstances, CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR").[4] An EIR's purpose is to inform the public and B24-10

[2] Pub. Resources Code § 21091.1; 14 Cal. Code Regs. ("CEQA Guidelines") § 15088.5.
[3] CEQA Guidelines § 15002, subd. (a)(1).
[4] See, e.g., Pub. Resources Code § 21100.

its responsible officials of the environmental consequences of their decisions before they are made. Thus, an EIR "protects not only the environment but also informed self-government."[5]

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."[6] CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.[7] In addition, an adequate EIR must contain the facts and analysis necessary to support its conclusions.[8]

The second purpose of CEQA is to require public agencies to avoid or reduce environmental damage when possible by requiring appropriate mitigation measures and through the consideration of environmentally superior alternatives.[9] If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.[10] CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.[11] Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation. B24-10

As discussed in detail below, the DEIR fails to meet either of these two key goals of CEQA. The DEIR fails to adequately and completely describe the Project and the Project setting and fails to disclose and evaluate all potentially significant environmental impacts of the Project. In addition, it proposes mitigation measures that are unenforceable, vague or so undefined that it is impossible to evaluate their effectiveness.

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[5] *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.
[6] CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.
[7] Pub. Resources Code § 21100, subd. (b)(1); CEQA Guidelines § 15126.2, subd. (a).
[8] See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.
[9] CEQA Guidelines § 15002, subds. (a)(2)-(3); see also, *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, 400.
[10] Pub. Resources Code §§ 21002.1, subd. (a), 21100, subd. (b)(3).
[11] Pub. Resources Code §§ 21002-21002.1.

IV. THE DEIR FAILS TO DISCLOSE, EVALUATE AND ADEQUATELY MITIGATE POTENTIAL IMPACTS FROM CONTAMINATED SOILS

Hazards expert Mr. Hagemann has reviewed the DEIR and concluded that it fails to disclose, evaluate and adequately mitigate potential risks from contaminated soils.[12] Residual pesticide contamination was not adequately assessed and may pose risks to construction workers, nearby residents and future residents. Additionally, the Project may be subject to contamination through the migration of contaminated soil vapor, a condition not adequately evaluated in the DEIR. Additional investigation of contamination on the Project parcels is necessary and a revised DEIR must be prepared to adequately address these issues and to identify appropriate mitigation

A. The DEIR Fails to Disclose that Residual Pesticides from Past Agricultural Use Are Present in Soils at Concentrations that Exceed Safety Thresholds for Future Site Occupants

B24-11

The DEIR fails to disclose that residual pesticides from past agricultural use may be present in soils on both the Sares Regis site and the Raintree site at concentrations that would pose a hazard to future site occupants when disturbed by Project construction and operations. A revised DEIR must be prepared to include a full evaluation of health risks posed by pesticides on construction workers, future residents and existing residents in the adjacent neighborhoods.

1. Pesticide Contamination on the Sares Regis Site

According to the DEIR, the Sares Regis site was used for orchards from the earliest available historical records until the 1960s. The DEIR goes on to say that, although records of specific pesticide use aren't available:

> Prior to World War II, inorganic pesticides – often containing lead, arsenic, and other metals – were frequently used in agriculture. Following World War II, highly persistent organic pesticides, such as DDT, were commonly used until regulations began to restrict their use in the 1970s. Residues of

[12] Hagemann, Comments on the East Weddell Residential Projects (Oct. 21, 2013) ("Hagemann Comments").

inorganic and organic agricultural chemical can persist in soils for decades, potentially presenting a health risk to those who may come into contact with soils affected by those chemicals.[13]

The DEIR, however, fails to disclose that the dieldrin (which, like DDT, is an organochlorine pesticide) was detected on the Sares Regis site at levels more than ten times greater than the San Francisco Bay Regional Water Quality Control Board Environmental Screening Level (ESL). The 2012 Phase I Environmental Site Assessment (ESA) prepared for the Sares Regis site[14] reported that dieldrin was detected at levels up to 30.4 ug/kg, but then mistakenly concluded that the sample result was "below the Regional Board residential ESL of 34 ug/kg." The ESA's statement that the Regional Board residential ESL is "*34 ug/kg*" was in error. The actual Regional Board residential ESL for dieldrin is *2.3 ug/kg*.[15] As a result, the DEIR incorrectly reported that "No organic compounds were detected in soils above ESLs for residential use."[16] B24-11

The U.S. EPA has determined that dieldrin is a probable human carcinogen.[17] Pesticide residuals in soils that may pose a health risk are a well-known issue for developers and local agencies in Santa Clara County.

Because the dieldrin detections were mistakenly dismissed as being below the residential land use ESL, the DEIR fails to disclose the actual baseline soil conditions of the Project parcel and fails to evaluate potential threats to human health posed by the pesticides in the soil. Health risks would potentially result from construction worker exposure to the residual pesticides during grading and excavation activities.[18] The construction workers would potentially be exposed to the pesticides by touching contaminated soil and by breathing dust that has

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[13] DEIR at p. 4.5-1
[14] WEST Environmental Services and Technology, 2012, Phase I Environmental Site Assessment, 610 and 630 East Weddell Avenue, Sunnyvale, California, p. 6.
[15] Hagemann Comments at p. 2, citing to San Francisco Bay Area Regional Water Quality Control Board 2013 Tier 1 ESLs (May 2013), Summary Table C; http://www.swrcb.ca.gov/rwqcb2/water_issues/programs/ESL/Lookup_Tables_Summary_May_2013.pdf,
[16] DEIR at p. 4.5-2.
[17] Hagemann Comments at p. 2, citing http://www.atsdr.cdc.gov/phs/phs.asp?id=315&tid=56.
[18] Hagemann Comments at p. 2.

pesticides bound to the soil particles. Additionally, adjacent residents would be potentially exposed to pesticide-containing dust during earthmoving activities and if soil is exported, by trucks, from the Project site.

The DEIR also fails to disclose that, according to the 2012 Phase I ESA, "pesticides might have been stored, mixed and/or disposed" in association with a building identified in historical air photos.[19] The San Jose Mercury News identified Santa Clara County to have a "hidden pesticide risk" from former agricultural operations, including old orchards.[20] Sampling conducted for a 2007 news story in the Mercury News identified undetected "hot spots" and samples taken from soils in a Los Altos park at a former walnut orchard had levels of DDT compounds above the state definition of hazardous waste. The Mercury News article concluded that Santa Clara County has more toxic cleanup sites involving old orchard pesticides than any county in California, as well as a significant number of other sites contaminated by other types of farming or pesticide handling. Accordingly, the failure to disclose the historic use, storage and disposal of pesticides on the Project site misleads the public as to the potential that this site, like so many other sites in Santa Clara County, may have a pesticide contamination problem. B24-11

The DEIR does provide, as mitigation, that occupancy permits for the Sares Regis site are to be issued contingent upon the site receiving closure with Department of Toxic Substances Control ("DTSC") under the Voluntary Cleanup Program. However, the cleanup of the Sares Regis site under this program is directed at volatile organic compounds in soil gas and does not address pesticide contamination. The DEIR states "currently, remedial action is expected to be limited to excavation and off-site disposal of a small volume of soil."[21] The DEIR goes on to describe this area as a volume of 10 cubic yards of soil that will be removed for offsite disposal.[22]

The DEIR does not describe any plans for further testing of residual pesticides in soil and makes no mention of the need to address the exceedance of the residential ESL for dieldrin in soil. Failure to consider further sampling, especially in a former pesticide mixing and loading area, is inconsistent with provisions for pesticide sampling as made under other CEQA actions in Santa Clara County.

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[19] Hagemann Comments at p. 2, citing http://www.atsdr.cdc.gov/phs/phs.asp?id=315&tid=56
[20] Hagemann Comments at p. 2, citing http://www.mercurynews.com/science/ci_7217803
[21] DEIR at p. 2-14.
[22] DEIR at p.5-2.

In Santa Clara County, pesticide contamination assessments are routinely conducted as part of the CEQA process.[23] For example, an August 2013 Initial Study for a project in Santa Clara concluded that excavation and trenching required for project construction "could result in impacts to construction workers from exposure to soil contamination related to agricultural operations."[24] Mitigation for that project required shallow soil samples to be taken throughout the project site in order to "determine if contaminated soil from previous agricultural land uses is located on-site with concentrations above established construction/trench worker thresholds."[25]

Consistent with provisions made under CEQA for other Santa Clara Valley projects, sampling for pesticides should be conducted site-wide. The sampling should adhere to guidance promulgated by the DTSC, entitled "Interim Guidance for Sampling Agricultural Properties."[26] Under this guidance, sampling for pesticides at the 4 acre-site requires drilling eight borings for the collection of four composite soil samples.[27]
The results of the sampling should be assessed for health risks by appropriate regulatory agencies, including the City and DTSC. B24-11

The results of the sampling, along with the regulatory determination, should be included in a revised DEIR. Any mitigation that would be necessary to protect construction worker health and health of the public should be identified in a revised DEIR. Additional mitigation, for handling and disposing pesticide-contaminated soil should also be identified in the revised DEIR.

2. Pesticide Contamination on the Raintree Site

B24-12

The DEIR also fails to disclose that the pesticide DDE has been detected on the Raintree site at levels that exceed the residential ESL. The U.S. EPA has determined that DDE is a probable human carcinogen.[28]

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[23] Hagemann Comments at pp. 2-3.
[24] Hagemann Comments at p. 3.
[25] *Id.*
[26] Hagemann Comments at p. 3., citing http://www.dtsc.ca.gov/Schools/upload/Ag-Guidance-Rev-3-August-7-2008-2.pdf.
[27] *Id.*
[28] Hagemann Comments at p. 3., citing http://www.atsdr.cdc.gov/toxprofiles/tp35-c1.pdf, at p. 7

The DEIR incorrectly claims that soils on the site contained "pesticides at low concentrations, below ESLs for residential land uses."[29] The November 2012 Treadwell & Rollo Environmental Site Investigation Report for the Raintree site, however, provides the following conflicting information:

> The organochlorine pesticide DDE was detected at concentrations ranging from 0.087 mg/kg to 1.8 mg/kg in 3 of the 6 shallow soil samples analyzed. The residential and commercial/industrial shallow soil ESLs for DDE are 1.7 mg/kg and 4 mg/kg, respectively.[30]

In other words, the DDE detection of 1.8 mg/kg **exceeds** the residential ESL of 1.7 mg/kg.

B24-12

Despite this data, the Treadwell and Rollo report and, in turn, the DEIR erroneously conclude that 1.8 mg/kg does not exceed the residential ESL of 1.7 mg/kg. As a result of this error, the public and decisionmakers are not informed of potentially significant contamination impacts and no mitigation is imposed to address this contamination.

Like at the Sares Regis site, further investigation is necessary to determine the extent of pesticide contamination on the site. Consistent with DTSC guidance, sampling for pesticides at the12 acre-site would require drilling 22 borings for the collection of six composite soil samples.[31] The results of the sampling should be assessed for health risks by regulatory agencies and should be included in a revised DEIR along with mitigation necessary to protect the health of workers, neighbors and future residents.

B. The DEIR's Mitigation of VOC Contamination on the Sares Regis Site Is Inadequate to Support a Finding that Impacts Will Be Reduced Below a Level of Significance

B24-13

The DEIR lacks substantial evidence to support its conclusion that impacts from VOCs in soil and soil gas on the Sares Regis site will be mitigated below a

[29] DEIR at p. 4.5-3.
[30] Treadwell & Rollo, November 2012, Limited Environmental Site Investigation Report for Fair Oaks Business Park, 520 to 592 East Weddell Drive, Sunnyvale, California, p. 6
[31] Hagemann Comments at p. 4, citing http://www.dtsc.ca.gov/Schools/upload/Ag-Guidance-Rev-3-August-7-2008-2.pdf, Table 1

level of significance.[32] A soil gas sample taken in 2013 found VOC concentrations above the ESLs in one location on the Sares Regis site.[33] On the basis of the 2013 sampling, the environmental consultant recommended the removal of 10 cubic yards of soil along with post-excavation sampling to determine if the contamination was removed.

B24-13

The Sares Regis site has been enrolled in the DTSC Voluntary Cleanup Program;[34] however, no documentation was provided in the DEIR that would show that DTSC approves the plan to remove the 10 cubic yards of soil as a cleanup measure. A revised DEIR should be prepared to include a DTSC letter approving of the cleanup plans as protective of the proposed residential land use. Without such a letter, the City lacks substantial evidence to support its assumption that the proposed mitigation will reduce potential impacts below a level of significance.[35]

C. The DEIR Fails to Disclose and Evaluate Potentially Significant Benzene Contamination on the Raintree Site

B24-14

The DEIR fails to adequately disclose and assess potential impacts from benzene contamination on the Raintree site. Benzene is a known human carcinogen.[36] The DEIR states that soils on the Raintree site contain "petroleum hydrocarbons … at low concentrations, below ESLs for residential land uses."[37] Sampling data for the Raintree site, however, has shown benzene at concentrations of up to 30 ug/m3,[38] which are close enough to the residential California Human Health Screening Level of 36.2 ug/m3[39] and the residential ESL of 42 ug/m3 that additional sampling is warranted.[40]

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[32] Hagemann Comments at p. 4.
[33] DEIR at p. 4.5-2.
[34] DEIR at p. 4.5-2.
[35] Hagemann Comments at pp. 4-5.
[36] Hagemann Comments at p. 5., citing http://www.atsdr.cdc.gov/toxfaqs/TF.asp?id=38&tid=14
[37] DEIR at p. 4.5-3.
[38] Treadwell & Rollo, Limited Environmental Site Investigation Report for Fair Oaks Business Park, 520 to 592 East Weddell Drive, Sunnyvale, California, Table 5.
[39] Hagemann Comments at p. 5., citing http://www.calepa.ca.gov/brownfields/documents/2005/chhslsguide.pdf, Table 2
[40] Hagemann Comments at p. 5., citing http://www.calepa.ca.gov/brownfields/documents/2005/chhslsguide.pdf, Summary Table E

The DEIR, however, makes no provisions for further sampling of the benzene in the soil vapor and includes no information that the DTSC would allow for development of the site for a residential project given the findings of benzene that approach regulatory screening levels. A revised DEIR should be prepared to document notification of DTSC of the findings and to document that DTSC would agree that no further action is necessary at the site to protect human health prior to completion of the Project. B24-14

V. THE DEIR FAILS TO ADEQUATELY DISCLOSE SIGNIFICANT AIR QUALITY IMPACTS AND FAILS TO SUPPORT ITS AIR QUALITY IMPACT FINDINGS WITH SUBSTANTIAL EVIDENCE

The DEIR claims that its analysis of construction impacts rely on the methodologies and thresholds of significance developed by the BAAQMD as set forth in its *CEQA Air Quality Guidelines*.[41] As discussed below, contrary to its claim, the DEIR's evaluation does not follow the BAAQMD's *CEQA Air Quality Guidelines*. Furthermore, the analysis suffers from a number of incorrect assumptions and errors in methodology that render its conclusions regarding the significance of construction impacts and the sufficiency of mitigation erroneous and without foundation. Air Quality expert Dr. Pless has reviewed the DEIR's air quality analysis and the supporting documents in the record. Dr. Pless has identified the following errors and omissions in the DEIR which render the DEIR's evaluation of the Project's air quality impacts legally inadequate:[42] B24-15

(1) The DEIR violates BAAQMD guidance by failing to quantify unmitigated construction emissions and to compare unmitigated emissions with BAAQMD threshold of significance;

[41] DEIR at p. 4.2-15. The DEIR erroneously cites to "May 2011 CEQA Air Quality Guidelines"; the BAAQMD's revised draft *CEQA Air Quality Guidelines* were proposed on May 3, 2010 and the final *CEQA Air Quality Guidelines* were adopted on May 31, 2012; *see* http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Updated-CEQA-Guidelines.aspx. Dr. Pless's comments rely on the final *CEQA Air Quality Guidelines* adopted on May 31, 2012.

[42] Pless, Review of Draft Environmental Impact Report for East Weddell Residential Projects, City of Sunnyvale (Oct. 22, 2013) ("Dr. Pless Comments").

(2) The DEIR erroneously assumes that all off-road construction equipment will be model year 2006 or newer and comply with the Tier 2 standard for new off-road diesel engines, resulting in significantly underestimated impacts and inadequate mitigation measures; **B24-16**

(3) The DEIR improperly piecemeals its review of air quality impacts by evaluating various Project components separately rather than evaluating emissions from the Project as a whole; **B24-17**

(4) The DEIR's evaluation of the significance of average daily construction emissions is arbitrary and violates BAAQMD Guidelines; **B24-18**

(5) The DEIR's evaluation of air quality impacts associated with the Fair Oaks sewer pipe replacement activities is conclusory and not supported by substantial evidence; **B24-19**

(6) The DEIR underestimates the scope of cancer risks from Project construction and fails to apply the most recent guidance developed by the Office of Environmental Health Hazard Assessment ("OEHHA");

(7) The DEIR's assumption that proposed mitigation will reduce construction emission cancer risks below a level of significance is erroneous and not supported by substantial evidence; **B24-20**

(8) The DEIR improperly compares mitigated operational emissions to the BAAQMD significance thresholds, resulting in an unsupported finding of no significant operational air quality impacts and a failure to require that the assumed operational air quality mitigation measures will be undertaken;

(10) The DEIR improperly segments its review of operational emissions from development on the Sares Regis portion of the Project from its review of operational emissions from the Raintree portion of the Project, resulting in a failure to disclose potentially significant impacts; **B24-21**

(11) The DEIR's assumption that proposed mitigation will reduce health risks to future residents from nearby roadway emissions below a level of significance is erroneous and not supported by substantial evidence; and B24-22

(12) The DEIR fails to identify the Project's inconsistency with the City's General Plan goals to "reduce the exposure of its citizens to air pollutants" and to utilize site planning "to protect citizens from unnecessary exposure to air pollutants. B24-23

A. The DEIR Violates BAAQMD Guidance by Failing to Quantify and Evaluate the Significance of Unmitigated Construction Emissions

The BAAQMD's *CEQA Air Quality Guidelines*, which the DEIR claims to have followed[43], recommends determining the significance of emissions during Project construction based on the following six steps:

Step 1: Emissions Quantification;
Step 2: Comparison of Unmitigated Emissions with Thresholds of Significance;
Step 3: Mitigation and Emission Reductions;
Step 4: Comparison of Mitigated (Basic Mitigation) Emissions with Thresholds of Significance;
Step 5: Implement Additional Construction Mitigation Measures; and
Step 6: Comparison of Mitigated Emissions with Thresholds of Significance.[44]

B24-24

Here, the DEIR skips the first five steps and only compares mitigated emissions with the BAAQMD's thresholds of significance. This approach fails to identify significant impacts of unmitigated impacts on air quality and consequently fails to require the mitigation measures that are built into the assumptions for the mitigated emissions calculations.[45]

[43] DEIR at p. 4.2-15.
[44] Dr. Pless Comments; BAAQMD, *CEQA Air Quality Guidelines*, pp. 8-1 and 8-2.
[45] Dr. Pless Comments.

In this case, the DEIR assumed that all off-road construction equipment engines would be model year 2006 or newer and comply with the Tier 2 standard for *new* nonroad (or off-road) diesel engines established by the U.S. Environmental Protection Agency ("EPA").[46] In other words, the DEIR's emission estimates assume that all construction equipment engines are only eight years old or younger. (As discussed in Section IV.B, *infra*, this assumption is erroneous.)

The DEIR then compares these *mitigated* (Tier 2-compliant) emissions to the BAAQMD's significance thresholds to find no significant impacts. Had the DEIR compared *unmitigated* emissions from a typical construction fleet to the BAAQMD's significance thresholds, it would have found significant impacts requiring mitigation.[47] Because it skips that step, the DEIR finds that construction emissions would not be significant. As discussed below, not only does this analysis fail to comply with BAAQMD guidance, this erroneous methodology also results in a failure to require that the assumed mitigation measures will be undertaken. As a result, the findings based on this analysis understate or fail to disclose impacts and are not supported by substantial evidence. B24-24

In order to provide meaningful and supported air quality analysis, the City should prepare a revised DEIR that follows the six steps laid out in BAAQMD's *CEQA Air Quality Guidelines* to determine significance of construction emissions and require adequate mitigation to ensure that emissions will remain below significance thresholds.

B. The Assumption that Tier 2 or Newer Engines Would Be Used for Off Road Construction Equipment Is Not Supported by Any Evidence or Required by Any Proposed Enforceable Measures

The DEIR's assumption that EPA Tier 2 or stricter engines would be used for off-road construction equipment is not supported by any evidence and is contrary B24-25

[46] DEIR at p. 4.2-18 ("Emission rates for construction equipment representative of U.S. EPA Tier 2 engine emission standards were assumed (a model year 2006 construction equipment fleet).") and Appendix D, Table "Off-Road Construction Equipment & On-Site Vehicle Exhaust Emissions, Sares Regis Site – 2014-2015 – Construction Emissions with Tier 2 Equipment" and Table "Off-Road Construction Equipment & On-Site Vehicle Exhaust Emissions, Raintree Site – 2014-2016 – Construction Emissions with Tier 2 Equipment."
[47] Dr. Pless Comments.

to studies regarding the average age and lifespan of construction equipment.[48] By failing to determine the significance of emissions based on the likely range of construction equipment, the DEIR fails to disclose actual emissions, fails to determine and disclose actual significance of these emissions and fails to impose appropriate mitigation, including restrictions on the age and type of construction engines.

The DEIR does *not* incorporate its assumption of Tier 2 compliance into a corresponding mitigation measure and thus does not actually require Tier 2 compliance or the use of only model year 2006 or newer engines for all off-road construction equipment.[49] Nonbinding mitigation measures may not be relied upon to support an EIR's finding that impacts will be mitigated below a level of significance.[50]

The only mitigation of construction equipment that is proposed as binding mitigation is Mitigation Measure AIR-5a. It is only because the DEIR finds excess cancer risks from diesel particulate matter exhaust emissions (mostly attributable to off-road construction equipment) that it requires any mitigation for construction equipment at all in Mitigation Measure AIR-5a. This measure, however, does not require compliance with EPA's Tier 2 standards for all construction engines. (See discussion regarding the inadequacies of Mitigation Measure AIR-5a, *infra*, in Section V.F.2.) B24-25

The assumption that only model year 2006 or newer engines would be used for off-road construction equipment that would be used to construct the Project is not realistic unless specifically required in mitigation measures.[51] Studies of the average useful life of construction fleet equipment demonstrate that is very likely that some engines in the construction equipment fleet would be considerably older.[52] The following table shows a summary of the useful life of construction

[48] Dr. Pless Comments.
[49] Dr. Pless Comments.
[50] *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 385.
[51] Dr. Pless Comments.
[52] Dr. Pless Comments.

equipment in years and their corresponding percentage emissions of the entire construction fleet as estimated by the Union of Concerned Scientists. [53]

	Percent of Total PM from Construction Equipment	Percent of Total NOx from Construction Equipment	Useful Life (in years)
Excavators	17%	18%	17
Tractors/Loaders/Backhoes	16%	12%	18
Crawler Tractors (Tracked Bulldozers)	13%	13%	29
Rubber-Tired Loaders	12%	12%	21
Skid-Steer Loaders	7%	4%	13
Off-Highway Trucks	5%	9%	17
Rough-Terrain Forklifts	5%	3%	16
Graders	5%	5%	23
Off-Highway Tractors	4%	5%	31
Rollers	3%	3%	20
Trenchers	3%	2%	28
Scrapers	3%	4%	26
Cranes	3%	4%	19
Rubber-Tired Dozers	2%	2%	32
Pavers	2%	1%	26
Bore/Drill Rigs	1%	1%	10
Other Construction Equipment	0.4%	1%	16
Paving Equipment	0.3%	0.2%	24
Surfacing Equipment	0.04%	0.1%	22

B24-25

As the above table shows, the useful life of construction equipment, which is defined as *the age at which half of the equipment of a given model year* has been retired, varies from 10 to 32 years.[54] In other words, the other half of equipment of a given model year continues to be operated considerably longer than 10 to 32 years. For example, the average useful life for skid steer loaders is 13 years and for excavators 17 years.[55] Thus, the assumption that the exempted equipment in the Project's construction fleet would only be eight years old and comply with EPA Tier 2 standards is erroneous and is not supported by substantial evidence.

[53] Dr. Pless Comments, citing Union of Concerned Scientists, Digging up Trouble, The Health Risk of Construction Pollution in California, November 2006, p. 4; available http://www.ucsusa.org/assets/documents/clean_vehicles/digging-up-trouble.pdf.
[54] Dr. Pless Comments.
[55] Dr. Pless Comments.

As a result of this unsupported assumption, the DEIR's emission estimates are substantially understated and lack sufficient foundation or reliability to form the basis for the DEIR's findings. Older construction equipment has considerably higher emissions and is frequently not subject to federal or state regulations because it is too old.[56] Accordingly, use of this equipment can substantially increase emissions on a construction site.[57] The same study by the Union of Concerned Scientists summarizes:

> Construction and other off-road equipment, however, did not face new particulate matter (PM) emission standards until 1996, with some engines unregulated as late as 2003. In 2004, the U.S. Environmental Protection Agency (EPA) finally forced construction equipment to meet similar standards to highway trucks and buses, requiring 90 percent reductions in nitrogen oxides (NOx) and PM for most engine sizes. These standards will phase in over a seven-year period starting in 2008, reaching full implementation in 2014 (EPA 2004). Although these standards will significantly reduce pollutants from new engines, the full benefits will not be realized until sometime after 2030, when the long-lasting equipment currently in use today is finally retired. There are technology options available to clean up these existing machines, but neither the EPA nor the state of California currently requires them. As a result, if no additional requirements are put in place, the construction sector will continue emitting high levels of toxic and smog-forming pollution for the next two to three decades.[58]

B24-25

Therefore, it is highly unlikely that all exempted engines of the construction fleet for Project construction would meet EPA's Tier 2 emission factors.[59] Because older equipment has disproportionately higher emissions, exhaust emissions from this equipment are likely substantially underestimated in the DEIR.[60]

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[56] Dr. Pless Comments.
[57] Dr. Pless Comments.
[58] Dr. Pless Comments, citing Union of Concerned Scientists, Digging up Trouble, The Health Risk of Construction Pollution in California, November 2006, at p. 3.
[59] Dr. Pless Comments.
[60] Dr. Pless Comments.

The DEIR must be revised to either require that all Project construction equipment comply with Tier 2 or better (as is now erroneously assumed) or to provide revised emission estimates and associated health risks based on worst-case, reasonably likely construction fleet emissions rather than on unrealistic, optimistic assumptions. B24-25

C. The DEIR Impermissibly Piecemeals the Impacts on Air Quality from Project Construction instead of Evaluating Impacts from the Whole of the Project

The DEIR's air quality analysis violates CEQA because it segments evaluation of air quality emissions from demolition and construction on the Raintree site from evaluation of demolition and construction on the Sares Regis site. By looking at the emissions from construction activities on each site separately, the EIR understates and fails to disclose the impacts on air quality from the Project as a whole.[61] CEQA prohibits such "piecemealing" since, by dividing a project up into two or more pieces each with a comparatively lesser environmental impact, it makes each phase appear less significant.[62] Instead, CEQA requires evaluation of the impacts from the "whole of the project."[63] B24-26

Under CEQA, the term "project" is given a broad interpretation in order to maximize protection of the environment.[64] The project includes the "whole of the action" that may result in either a direct or indirect physical change in the environment.[65] In performing its analysis, the lead agency may not split a project into two or more segments. This approach ensures "that environmental considerations do not become submerged by chopping a large project into many little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences."[66]

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[61] Dr. Pless Comments.
[62] *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 165-166.
[63] CEQA Guidelines § 15378, subd. (a); *Burbank- Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.
[64] *McQueen v. Board of Directors* (1988) 202 Cal.App.3d 1136, 1143.
[65] CEQA Guidelines § 15378, subd. (a).
[66] *Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 283

For example, in the case *Arviv Enterprises v. South Valley Area Planning Commission*, the Court rejected an attempt of a housing developer to divide a 21 home development into several smaller pieces -- first 5 homes, then 2 homes, then 14 homes, each with successive mitigated negative declarations. The Court held that the applicant had improperly described the project and that a single EIR was required to analyze and mitigate the effects of the entire 21-home development even though separate and distinct applications for entitlements were submitted for each component. The Court stated: "The significance of an accurate project description is manifest, where, as here, cumulative environmental impacts may be disguised or minimized by filing numerous, serial applications."[67]

In the case at hand, the City describes the Project under review as the amendment of current General Plan and zoning designations of existing office/industrial parcels to allow the construction of new multi-story residential buildings on two immediately adjacent properties, the Raintree site and the Sares Regis site.[68] The DEIR states that the "project" is defined as "the two development projects *combined*."[69] B24-26

More specifically, the DEIR describes the "overall project" as including the following "components":[70]

- General Plan amendments for two sites[71]
- Rezoning for two sites
- Special Development Permits
- Potential Vesting Tentative Maps

[67] *Arviv Enterprises v. South Valley Area Planning Commission* (2002) 101 Cal.App.4th 1333, 1346.
[68] City of Sunnyvale, Notice of Completion of an Environmental Impact Report for the East Weddell Residential Projects at p. 1 (emphasis provided).
[69] DEIR at pp. 1-1, 2-1; see also City of Sunnyvale, Notice of Completion of an Environmental Impact Report for the East Weddell Residential Projects at p. 1.
[70] DEIR at pp. 1-1, 2-1; see also City of Sunnyvale, Notice of Completion of an Environmental Impact Report for the East Weddell Residential Projects at p. 1.
[71] While the DEIR states that separate development applications will be processed for the Raintree site and the Sares Regis site, it states that the General Plan Amendment and rezoning could be processed either together or separately. DEIR at pp. 1-1, 2-1; see also City of Sunnyvale, Notice of Completion of an Environmental Impact Report for the East Weddell Residential Projects at p. 1.

- Modifications to the Tasman/Fair Oaks Area Pedestrian and Bicycle Circulation Plan

- San Francisco Public Utilities Commission (SFPUC) approval of improvements to the John W. Christian Greenbelt

In addition, the DEIR states that "as part of the proposed projects," the project applicants for the two sites shall jointly replace the existing 8-inch public sewer main in North Fair Oaks Avenue with a 10-inch main.[72]

B24-26

Since CEQA requires reviewing the impacts of the whole of a project rather than evaluating each of the separate components or phases of a project independently, the DEIR should have evaluated the potential significance of emissions from all of the listed Project components, as a whole. The DEIR fails to take this approach and instead evaluates emissions from development on the Raintree site in isolation from emissions from development of the Sares Regis site.

This approach results in a failure to disclose and mitigate potentially significant impacts. When the Project's components are analyzed as a whole, as required by CEQA, their construction emissions result in significant impacts on air quality where the DEIR found none.

B24-27

The DEIR adopts the BAAQMD thresholds of significance for construction emissions of reactive organic gases ("ROG") and nitrogen oxides ("NOx") (which are both ozone precursors), as well as for particulate matter exhaust with an average aerodynamic diameter[73] of 10 and 2.5 micrometers or less ("PM10" and "PM2.5", respectively).[74] The table below compares total mitigated construction emissions in pounds per day ("lb/day) as presented by the DEIR for the *Applicant Proposed Scenarios*[75] (*i.e.*, assuming Tier 2-compliant engines only) to the BAAQMD's daily thresholds of significance for these pollutants.

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[72] DEIR at p. 4.11-11.
[73] The aerodynamic diameter describes the diameter of a sphere with a unit density that has aerodynamic behavior identical to that of the particle in question; *i.e.*, an expression of aerodynamic behavior of an irregularly shaped particle in terms of the diameter of an idealized particle. Particles having the same aerodynamic diameter may have different dimensions and shapes. Dr. Pless Comments.
[74] DEIR at p. 4.2-16.
[75] DEIR at Tables 4.2-5 (Sares Regis) and 4.2-6 (Raintree).

Mitigated Construction Emissions (lb/day)

	ROG	NOx	PM10	PM2.5
Applicant Proposed Scenarios				
Sares Regis	6.9	13.0	0.9	0.4
Raintree	35.6	32.2	2.3	1.9
Total Applicant Proposed Scenarios	**52.5**	**45.2**	**3.2**	**2.3**
BAAQMD Threshold	54	54	82	54
Significant?	no	no	no	no

B24-27

The table shows that total mitigated ROG emissions from construction of the *Sares Regis* and *Raintree Applicant Proposed Scenarios*, 52.5 lb/day, are just 1.5 lb/day shy of the BAAQMD's threshold of 54 lb/day. As discussed in Sections V.B, V.D and V.E of this letter, the DEIR underestimates mitigated emissions that would occur during construction. When these errors are corrected, Dr. Pless concludes that mitigated ROG emissions from the total *Applicant Proposed Scenarios* will greatly exceed the BAAQMD's construction significance threshold for ROG emissions.[76] The failure to disclose this significant impact violates CEQA.

D. The DEIR Fails to Correctly Estimate Daily Emissions during Construction

The DEIR's evaluation of the significance of daily construction emissions is also legally inadequate. The DEIR applies BAAQMD thresholds that are based upon the use of BAAQMD approved emission models, but then fails to use the approved emission models to determine daily emissions.[77] As a result, the DEIR fails to disclose potentially significant air quality impacts and its findings are not supported by substantial evidence.

B24-28

The DEIR erroneously claims that its analysis of construction impacts relies on the methodologies and thresholds of significance developed by the BAAQMD's *CEQA Air Quality Guidelines*.[78] As Step 1 of a significance determination, the

[76] Dr. Pless Comments.
[77] Dr. Pless Comments.
[78] DEIR, p. 4.2-15. The DEIR erroneously cites to "May 2011 CEQA Air Quality Guidelines"; the BAAQMD's revised draft *CEQA Air Quality Guidelines* were proposed on May 3, 2010 and the final

BAAQMD's CEQA Air Quality Guidelines recommend the following for quantification of construction emissions:

> BAAQMD recommends using URBEMIS to quantify construction emissions for proposed land use development projects and the Roadway Construction Emissions Model (RoadMod) for proposed linear projects such as, new roadway, roadway widening, or pipeline installation. …[79]

The recommended model, URBEMIS, has been superseded by the exclusive use of the California Emissions Estimator Model ("CalEEMod") and the BAAQMD now recommends:

> On July 31, 2013, the California Air Pollution Control Officers Association (CAPCOA) released CalEEMod 2013.2. This land use model can be downloaded from www.caleemod.com. From this point forward, the BAAQMD will no longer support the use of Urbemis. Please perform all future analyses using CalEEmod.[80]

B24-28

Here, the DEIR only uses CalEEMod to estimate ROG emissions from architectural coatings during construction (*i.e.*, painting).[81] For all other construction activities, the DEIR *does not* use CalEEMod to estimate emissions.[82]

Instead, the DEIR computes annual and average daily exhaust emissions from off-road construction equipment (excavators, dozers, loaders, scrapers, backhoes, etc.) with spreadsheets based on the Project construction schedule and using emission factors from the OFFROAD Model developed by the California Air

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CEQA Air Quality Guidelines were adopted on May 31, 2012; *see* http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES/Updated-CEQA-Guidelines.aspx. My comments rely on the BAAQMD's final *CEQA Air Quality Guidelines* adopted on May 31, 2012.

[79] BAAQMD, *CEQA Air Quality Guidelines,* p. 8-1.

[80] BAAQMD, website "CEQA Guidelines", last updated August 6, 2013; http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES.aspx.

[81] Dr. Pless Comments; DEIR, p. 4.2-18; CalEEMod version 2011.1.1 has been superseded by version 2013.2.2; *see* http://www.caleemod.com/. However, a review of the revisions by Dr. Pless found that architectural coatings were not affected other than permitting the user to modify the square footage; *see* http://www.aqmd.gov/caleemod/doc/Revisions-2013-2-2.pdf.

[82] Dr. Pless Comments.

Resources Board ("CARB").[83] For estimating exhaust emissions for on-road vehicles (water, haul, cement, and vendor trucks and construction worker vehicles), the DEIR relies on emission factors from CARB's EMFAC2011 mobile source emissions model.[84] While both OFFROAD and EMFAC2011 are incorporated into CalEEMod for estimating construction emissions, CalEEMod calculates average daily emissions using a significantly different methodology than used by the DEIR.[85]

The DEIR explains that "average daily" emissions "were computed from total emissions and dividing [by] the number of construction days."[86] The DEIR computed the number of construction days for the *Sares Regis* construction at 462 days (assuming 22 days per month and 21 months of construction) and for the *Raintree* construction at 528 days (assuming 22 days per month and 24 months of construction).[87] This approach is not consistent with the CalEEMod model, BAAQMD guidance, or industry standards.[88] The DEIR provides no explanation why it did not use the CalEEMod model for these emission sources, as recommended by the BAAQMD, and instead undertook its own approach. **B24-28**

The intent of the BAAQMD's *CEQA Air Quality Guidelines* is to compare daily construction emissions *as determined with the current agency-recommended models* to the respective daily thresholds of significance.[89] CalEEMod (as well as its predecessor URBEMIS) provides daily emissions *separately for each construction phase* (*e.g.*, demolition, grading, building construction, etc.):

> Since construction phases may or may not overlap in time, the maximum daily construction emissions will not necessarily be the sum of all possible daily emissions. CalEEMod therefore calculates the maximum daily emissions *for each construction phase*. The program will then add together the maximum daily emissions for each

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83 83

84 DEIR, pp. 4.2-17 and 4.2-18.

85 Dr. Pless Comments; California Air Pollution Control Officers Association, CalEEMod, California Emissions Estimator Model, User's Guide, Version 2013.2, July 2013 (hereafter "CalEEMod User's Guide"); available at http://www.aqmd.gov/caleemod/doc/UsersGuide.pdf. (At p. 2 for off-road construction equipment: "Horsepower and load factors are loaded with the default average values of the mode tier according to population based on OFFROAD2011…")

86 DEIR, pp. 4.2-18 and 4.2-19.

87 DEIR, pp. 4.2-18 and 4.2-19.

88 Dr. Pless Comments.

89 Dr. Pless Comments.

> construction phase that overlaps in time. Finally the program will report the highest of these combined overlapping phases as a daily maximum. For fugitive dust calculations during grading, the maximum amount of acres graded in a day is determined by the number of grading equipment which is assumed to operate for 8 hours.[90]

Consistent with this approach, the BAAQMD's *CEQA Air Quality Guidelines* provide the following instructions for determining total daily emissions during overlapping construction activities:

> Following quantification of project-generated construction-related emissions, the total average daily emissions of each criteria pollutant and precursor should be compared with the lead agency's determined project thresholds. If construction-related emissions have been quantified using multiple models or model runs, *sum the criteria air pollutants and precursor levels from each where said activities would overlap. In cases where the exact timing of construction activities is not known, sum any phases that could overlap to be conservative*.[91]

B24-28

Here, instead of summing emissions during potentially overlapping activities, the DEIR "averages" all emissions over the entire construction period.[92] This approach substantially underestimates impacts on a short-term basis.[93] The consequences of this "averaging" approach become particularly apparent when considering ROG emissions from architectural coating, which occur only during four weeks. ROG emissions are precursors to ground-level ozone formation through a complex series of chemical reactions between ROG and NOx in the presence of sunlight. Any contribution to ozone formation from these ROG precursors would thus occur on a daily basis.[94] As a result, averaging ROG emissions from

[90] California Air Pollution Control Officers Association, California Emissions Estimator Model, User's Guide, Appendix A, Calculation Details for CalEEMod, revised July 2013, CalEEMod v.2013.2, *emphasis* added; available at http://www.aqmd.gov/caleemod/doc/AppendixA.pdf.
[91] BAAQMD, *CEQA Air Quality Guidelines*, p. 8-1.
[92] Dr. Pless Comments.
[93] Dr. Pless Comments.
[94] Dr. Pless Comments.

architectural coatings over the entire construction period of two years (104 weeks) severely underestimates the Project's contribution to daily ozone formation.[95]

BAAQMD has established quantitative daily and annual significance thresholds to maintain or achieve attainment with the national and state ambient air quality standards. These standards have been established for both long-term and short-term concentrations of pollutants in the ambient air. Specifically, national ambient air quality standards exist for 1-hour and 8-hour ozone, 24-hour and annual PM10, and 24-hour and annual PM2.5 concentrations; state ambient air quality standards exist for 8-hour ozone, 24-hour PM10, and 24-hour and annual PM2.5 concentrations.[96]

The daily average significance thresholds established by the BAAQMD for construction (and operational) emissions address compliance with the short-term ambient air quality standards.[97] BAAQMD did not establish a significance threshold for annual emissions during construction because construction activities are typically short-term or temporary in duration. In contrast, for operational emissions, the BAAQMD establishes both average daily and maximum annual significance thresholds to ensure ongoing compliance with both short-term and long-term ambient air quality standards.[98] B24-28

Thus, the DEIR's "averaging" approach does not assess the potential impacts from construction activities on compliance with daily and hourly national and state ambient air quality standards.[99] Without such an evaluation, the DEIR cannot demonstrate that Project construction emissions would <u>not</u> "[r]esult in a cumulatively considerable net increase of any criteria pollutant for which the project region is in nonattainment under an applicable federal or state ambient air quality standard (including emissions which exceed quantitative threshold for ozone precursors)" or "[v]iolate any air quality standard or contribute substantially to an existing or projected air quality violation." The DEIR should be revised to evaluate daily construction emissions using the CalEEMod in compliance with BAAQMD guidance.

[95] Dr. Pless Comments.
[96] Dr. Pless Comments.
[97] Dr. Pless Comments.
[98] Dr. Pless Comments.
[99] Dr. Pless Comments.

E. The DEIR's Evaluation of Construction Air Quality Impacts Fails to Take Into Account Emissions Associated with the Fair Oaks Avenue Sewer Pipe Replacement Activities

The DEIR's air quality analysis is further deficient because it fails to take into account the additional construction emissions that will occur as a result of the Project's North Fair Oaks Avenue sewer replacement activities. In the *Utilities and Service Systems* section, the DEIR states that an existing 8-inch sewer main in North Fair Oaks Avenue immediately northeast of the Raintree site will have to be upsized to a 10-inch sewer main to have adequate capacity to handle flows from the proposed Project.[100] The DEIR states that the upsizing of the North Fair Oaks Avenue sewer main is "part of the proposed projects."[101] The DEIR, however, fails to include emissions from the North Fair Oaks Avenue sewer replacement activities in its construction emission calculations.

The DEIR states that "[a]nnual and average daily emissions for construction were calculated, including both on-site and off-site activities."[102] However, the description of these off-site activities indicates that only "haul trips, vendor trips and construction worker trips" were included in the emission estimates[103] but not the upsizing of the sewer main. A review of the construction emission calculations in the DEIR's Appendix D by Dr. Pless confirmed that the North Fair Oaks sewer upgrade project component was not considered in the emission calculations. The DEIR emission estimates for the Project as a whole must be revised to account for emissions associated with upsizing the sewer. B24-29

Instead of evaluating the construction emissions from the North Fair Oaks Avenue sewer replacement activities with the rest of the Project construction emissions, the DEIR instead spends one sentence looking at the potential air quality impacts of the North Fair Oaks Avenue sewer replacement activities in isolation from the rest of the Project.[104] The failure to include this Project

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[100] DEIR at p. 4.11-10.
[101] DEIR at p. 4.11-11. Even if this activity were characterized solely as a mitigation measure rather than part of the Project, CEQA requires evaluation of the environmental impacts of proposed mitigation measures where the mitigation may exacerbate or create new significant Project impacts. See *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.
[102] DEIR at p. 4.2-17.
[103] DEIR at p. 4.2-18.
[104] DEIR at p. 4.11-10.

component in the overall analysis of Project impacts improperly segments review of air quality impacts from the North Fair Oaks Avenue sewer replacement activities from the rest of the Project.[105]

Moreover, as discussed *infra* in Section VIII, the DEIR lacks any analysis or evidence to support its analysis of the air quality impacts from the North Fair Oaks Avenue sewer replacement activities. Its entire analysis and discussion of air quality impacts from this activity consists of the following conclusory sentence: "*Construction noise and air emissions would be short term and would not result in significant air quality or noise impacts.*"[106] This one sentence analysis is unsupported by any citations, data, evidence or meaningful analysis. Accordingly, it cannot be relied upon to support a finding that air quality impacts from this activity would be less than significant.[107] B24-29

F. The DEIR's Analysis of Construction Health Risks Is Flawed and Fails to Identify Significant Cancer Risks after Implementation of Recommended Mitigation Measures

The Project would be constructed near existing residences including apartment buildings located near the north and west edges of the Raintree site and single-family residences to the north and east of the Sares Regis site.[108] Residents of these buildings would be exposed to exhaust emissions of diesel particulate matter ("DPM"),[109] a known toxic air contaminant ("TAC") and classified human carcinogen.[110] B24-30

[105] CEQA Guidelines § 15063, subd. (a)(1).
[106] DEIR at p. 4.11-10.
[107] See *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842; Pub. Resources Code § 21081.5; CEQA Guidelines § 15091, subd. (b).
[108] DEIR at p. 4.2-41.
[109] *Id.*
[110] Dr. Pless Comments, citing World Health Organization, International Agency for Research on Cancer, IARC: Diesel Engine Exhaust Carcinogenic, June 12, 2012; available at http://www.iarc.fr/en/media-centre/pr/2012/pdfs/pr213_E.pdf.

LETTER B24

1. The Air Quality Analysis Underestimates Potential Cancer Risks from Construction Emissions Because It Relies on Erroneous and Arbitrary Methodology

The DEIR underestimates the scope of cancer risks from Project construction emissions due to its failure to correctly apply the methodology developed by the OEHHA.[111] The DEIR bases its findings on a health risk assessment of the potential cancer risks for residents of buildings adjacent to the construction sites. This health risk assessment relies on dispersion modeling of DPM (as PM2.5) exhaust emissions from construction equipment to predict resulting offsite DPM concentrations and predicts excess (increased) lifetime cancer risks.[112]

For the *Sares Regis Applicant Proposed Scenario*, the DEIR finds that the maximum excess residential child cancer risk of 11.4 in one million would exceed the BAAQMD's significance threshold of 10 in one million and would therefore be significant. For adult cancer risk, the DEIR finds a maximum excess residential adult cancer risk of 0.6 in one million, which does not exceed the BAAQMD's significance threshold and therefore was not found significant by the DEIR.[113] For the *Raintree Applicant Proposed Scenario*, the DEIR finds that the maximum excess residential child cancer risk of 19.7 in one million would exceed the BAAQMD's significance threshold of 10 in one million and would therefore be significant. For adult cancer risk the DEIR finds a maximum excess residential adult cancer risk of 1.0 in one million, which does not exceed the BAAQMD's significance threshold and therefore was not found significant.[114] **B24-30**

As discussed earlier, the estimated exhaust emissions are underestimated due to the unsupported and erroneous assumption that all construction equipment will be Tier 2 compliant or stricter. Accordingly, the DEIR's calculations of cancer risks are also understated and need to be reevaluated.[115]

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[111] Dr. Pless Comments.
[112] DEIR at p. 4.2-40.
[113] DEIR at p. 4.2-43 through 4.2-44.
[114] *Id.*
[115] Dr. Pless Comments.

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In addition, the calculations of construction emission cancer risks are erroneous because the methodology employed by the health risk assessment to compute excess cancer risks is flawed due to its reliance on average daily emissions that were averaged over the length of the Project.[116] Despite the fact that the average daily emissions were improperly averaged over the entire two year construction period, the DEIR calculates cancer risks assuming that residents would be exposed to these average modeled concentrations for only *one* year, 2014.[117] This approach is incorrect on several accounts.

First, because the DEIR averaged emissions over the entire construction period, modeled emissions in 2014 are lower than they would be if evaluated separately for each construction year.[118]

Second, as the DEIR states, "[c]onstruction at the Sares Regis site is anticipated to occur over an approximate 22-month period year period [sic] (January 2014 to October 2015) and construction at the Raintree project site is anticipated to occur over a 2-year period (September 2014 to September 2016)."[119] Thus, DPM construction emissions from the sites occur over at least two years. By evaluating DPM construction emission risk over just one year, the DEIR violates BAAQMD and OEHHA guidance for health risk assessments of construction emissions.[120] **B24-30**

BAAQMD recommends that health risk assessments follow the most recent OEHHA guidance:

> The Exposure Assessment components are based on the procedures developed by the California Office of Environmental Health Hazard Assessment (OEHHA). These calculation methodologies may change over time as OEHHA further refines its exposure guidelines. **It is important that the user apply the most current risk assessment**

[116] Dr. Pless Comments.
[117] *See* DEIR, Appendix D., Tables "Maximum DPM Cancer Risk Calculations from Construction Off-Site Residential Receptor Locations" for Sares Regis Site, Raintree Site and Raintree & Sares Regis Sites.'
[118] Dr. Pless Comments.
[119] DEIR at p. 4.2-41
[120] Dr. Pless Comments.

methodology and toxicity factors from OEHHA's health risk assessment guidelines.[121]

With respect to short-term projects, the most recent OEHHA guidance recommends the following regarding the determining the exposure duration used in health risk assessments:

> We recommend that exposure from projects less than 6 months be assumed to last 6 months (e.g., a 2-month project would be evaluated as if it lasted 6 months). … *We recommend that exposure from projects lasting more than 6 months be evaluated for the duration of the project.* In all cases the exposure should be assumed to start in the third trimester to allow for the use of the Age Sensitivity Factors (OEHHA, 2009). Thus, if the District is evaluating a proposed 5-year mitigation project at a hazardous waste site, the exposure duration for the residents would be from the third trimester through the first five years of life. …[122]

B24-30

Thus, the excess cancer risks for residential receptors are underestimated by a factor of 1.83 for the Sares Regis site[123] and 2.0 for the Raintree site.[124] This is in addition to the risk underestimated due to the DEIR's unsupported assumption that all demolition, grading and construction equipment engines will be Tier 2-compliant or stricter. The cancer risks from Project construction are further underestimated because the DEIR fails to account for emissions related to upsizing the sewer mains.

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[121] Dr. Pless Comments, citing BAAQMD, Recommended Methods for Screening and Modeling Local Risks and Hazards, Version 3.0, May 2012, p. 4, **emphasis** retained; available at http://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/Risk%20Modeling%20Approach%20May%202012.ashx?la=en.

[122] Dr. Pless Comments, citing OEHHA, Air Toxics Hot Spots Program Risk Assessment Guidelines, Technical Support Document for Exposure Assessment and Stochastic Analysis, Chapter 11: Residential and Worker Exposure Duration, Individual vs. Population Cancer Risk, and Evaluation of Short Term Projects, Final August, 2012, *emphasis* added; available at http://www.oehha.ca.gov/air/hot_spots/pdf/2012tsd/Chapter11_2012.pdf.

[123] Dr. Pless Comments; (22 months) / (12 months) = 1.83.

[124] Dr. Pless Comments; (24 months) / (12 months) = 2.00.

Because of these calculation errors, the DEIR significantly underestimates and fails to accurately disclose the scope of potential cancer risks from Project construction.[125] The findings in the DEIR are thus not supported by substantial evidence and must be revised in order to provide the public and the decisionmakers the information they need to meaningfully assess the potential impacts to neighboring residents from Project construction.

2. The Assumption that Proposed Mitigation Will Reduce Construction Emission Cancer Risks below a Level of Significance Is Not Supported by Substantial Evidence

The DEIR concludes that implementation of Mitigation Measure AIR-5a would reduce the maximum residential child excess cancer risk "from each of the projects as well as the combination of both projects to below 9.9 in one million."[126] This conclusion is not supported by substantial evidence and is erroneous. B24-30

The DEIR's determination that the maximum residential child excess cancer risk "from each of the projects as well as the combination of both projects" would be reduced to below 9.9 in one million rests on an erroneous and conclusory assumption that implementation of Mitigation Measure AIR-5a would reduce construction DPM emissions and resulting excess cancer risks by 50 percent.[127] The DEIR provides no quantitative demonstration to support this assumption.

CEQA requires conclusions in an EIR to be supported by substantial evidence.[128] Furthermore, an EIR must provide the reader with the analytic bridge between its ultimate findings and the facts in the record.[129] Conclusory statements unsupported by data or explanatory information are insufficient to support a finding of insignificance.[130]

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[125] Dr. Pless Comments.
[126] DEIR at p. 4.2-45.
[127] Dr. Pless Comments; (Sares Regis: 11.4 in one million) × (0.50 for MM AQ-5a) = 5.70 in one million; (Raintree: 19.7 in one million) × (0.50 for MM AQ-5a) = 9.50 in one million; and (Sares Regis + Raintree: 19.7 in one million) × (0.50 for MM AQ-5a) = 9.85 in one million. For maximum excess residential child cancer risks for each site and for the combination, *see* DEIR, Appendix D "Maximum DPM Cancer Risk Calculation from Construction, Off-Site Residential Receptor Locations."
[128] Pub. Resources Code § 21081.5; CEQA Guidelines § 15091, subd. (b).
[129] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506; see CEQA Guidelines § 15091.
[130] *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842.

The DEIR relies on Mitigation Measure Air-5a to reduce cancer risks to below a level of significance, but provides no calculations or other information to demonstrate that this mitigation measure would actually have this effect. Moreover, a review of Mitigation Measure AIR-5a by Dr. Pless shows that this assumption is erroneous.[131]

Mitigation Measure AIR-5a requires:

A plan shall be developed demonstrating that the off-road equipment (*more than 50 horsepower and on-site for more than two consecutive workdays*) to be used in project construction would achieve an additional 50-percent reduction in exhaust particulate matter emissions, compared to similar equipment that meets U.S. EPA Tier 2 standards. Based on the construction plans presented for this project, *a feasible method to achieve this objective* would be the following:

- All diesel-powered air compressors, welders, forklifts (including rough terrain forklifts), paint spray rigs, and all types of cranes, forklifts or aerial lifts (man lifts, boom lifts, etc.) used during all construction phases shall meet or exceed U.S. EPA Tier 4 standards for particulate matter emissions or substituted with alternatively fueled equipment (e.g., LPG fuel). B24-30

- All other off-road construction equipment used on the site shall, on a fleet-wide average, meet U.S. EPA Tier 2 emission standards.

- Portable diesel generators operating for more than two days shall be prohibited.

- Grid power electricity shall be used to provide power at construction sites, or non-diesel generators (or diesel generators using bio-diesel fuel) may be used when grid power electricity is not feasible.[132]

[131] Dr. Pless Comments.
[132] DEIR at pp. 4.2-44 and 4.2-45, *emphasis* added.

Under this mitigation, the requirement to reduce construction equipment emissions by 50 percent compared to the EPA Tier 2 standard is only applicable to off-road construction equipment more than "*50 horsepower and on-site for more than two consecutive workdays.*" The detailed emission calculations in the DEIR's Appendix D identify numerous pieces of construction equipment that would be exempted from compliance because they would have less than 50 horsepower. For the Sares Regis construction, two 46-hp welders would be exempted.[133] For the Raintree construction, the exempted equipment includes: two 45-hp skid steer loaders during demolition and grading/excavation; one 30-hp excavator during trenching/site preparation; one 46-hp welder during the exterior building phase; and five 30-hp compressors, one 30-hp texture spray rig, and one 30-hp paint spray rig during the interior building/architectural coating phase.[134]

For the Raintree construction, emissions from this exempted equipment account for 15 percent of total emissions from the off-road construction equipment fleet.[135] Thus, the 50 percent emission reduction requirement for the non-exempted remainder of the off-road construction equipment would result in just a 35 percent reduction in total emissions from the off-road construction equipment fleet, not 50 percent.[136] In addition, on-site on-road vehicles, *i.e.*, diesel-powered trucks such as the water, haul, and cement trucks, are not affected by Mitigation Measure AIR-5a because it only applies to off-road equipment.[137] **B24-30**

The actual reductions in emissions that would result from Mitigation Measure AIR-5a have been calculated by Dr. Pless, based on the DEIR's own emission estimates. Dr. Pless finds that total mitigated emissions from construction of the Raintree construction would result in an excess residential child

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[133] Dr. Pless Comments.
[134] Dr. Pless Comments; *see* DEIR, Appendix D, Table "Off-Road Construction Equipment & On-Site Vehicle Exhaust Emissions, Sares Regis Site – 2014-2015 – Construction Emissions with Tier 2 Equipment" and Table "Off-Road Construction Equipment & On-Site Vehicle Exhaust Emissions, Raintree – 2014-2016 – Construction Emissions with Tier 2 Equipment."
[135] Dr. Pless Comments; *Raintree* construction exempted off-road construction equipment PM2.5 emissions: (5.5 + 2.7 + 0.8 + 3.0 + 67.0 + 13.4 + 13.4) pounds = 105.8 pounds; total off-road construction equipment emissions: 711.4 pounds; percentage emissions of exempted equipment/total off-road construction equipment: 105.8/711.4 = 0.149.
[136] Dr. Pless Comments; Including mitigation: [(exempted off-road: 105.8) + (non-exempted off-road: 711.4 × 0.50) + (trucks: 9.5)] /(total 720.9) = 0.653.
[137] Dr. Pless Comments.

cancer risk of 13 in one million.[138] This substantially exceeds the BAAQMD's significance threshold of 10 in one million. Accordingly, the DEIR's conclusion that Mitigation Measure AIR-5a will reduce cancer risks from construction on the Raintree site to below a level of significance is erroneous and not supported substantial evidence. In addition, Dr. Pless finds that when the Project is looked at as a whole, the combined excess child cancer risk from the Raintree construction and the Sares Regis construction would also exceed the BAAQMD's significance threshold.[139]

The failure to disclose, evaluate and identify additional feasible mitigation for these impacts is a violation of CEQA.

3. The Evaluation of Post-Mitigation Cancer Risks from Construction Emissions Fails to Take into Account Errors in Pre-Mitigation Emission Estimates

B24-30

The Project's post-mitigation cancer risks would be even more significant in scope than the 13 in one million calculated above when the errors in pre-mitigation emission estimates discussed previously in this comment letter are taken into account.[140] These errors include the additional emissions from the likely use of older, non-Tier 2, construction equipment and the additional emissions from the North Fair Oaks Avenue sewer replacement activities. As discussed above, it is highly unlikely that all construction equipment engines will meet or exceed the EPA's Tier 2 emission factors. Because older equipment has disproportionately higher emissions, exhaust emissions from this equipment are likely substantially underestimated. As a result, the post-mitigation cancer risks from Project construction will be even greater than calculated by Dr. Pless using the DEIR's understated emission estimates.

The DEIR must be revised to correct these errors and to disclose the actual potential cancer risks from Project construction.

[138] Dr. Pless Comments; 19.9 × 0.653 = 13.0.
[139] Dr. Pless Comments.
[140] Dr. Pless Comments.

G. The DEIR Fails to Require Implementation of Assumed Operational Air Quality Mitigation Measures

The DEIR is also deficient because it fails to follow BAAQMD guidelines for evaluating operational emissions, resulting in an unsupported finding of no significant operational air quality impacts and a failure to require that assumed operational air quality mitigation measures will be undertaken. The BAAQMD's *CEQA Air Quality Guidelines*, which the DEIR claims to have followed[141], recommends determining the significance of emissions during project operation based on the following four steps:

Step 1: Emissions Quantification;

Step 2: Comparison of Unmitigated Emissions with Thresholds of Significance;

Step 3: Mitigation and Emission Reductions; and

Step 4: Comparison of Mitigated Emissions with Thresholds of Significance.[142]

B24-31

As previously discussed for construction emission impacts, the DEIR skips all steps prior to comparing mitigated emissions with the BAAQMD's thresholds of significance for project operation.[143] Because the DEIR finds that (mitigated) operational emissions from any of the buildout scenarios for either the Sares Regis or the Raintree sites would be less-than-significant, it does not require any mitigation.[144] The DEIR fails to require the assumptions it relied upon to model these mitigated emissions. These assumptions include that the Project would have no wood fireplaces, would exceed Title 24 requirements, would install high-efficiency lighting, and would install energy-efficient appliances.[145]

[141] DEIR at p. 4.2-15.
[142] Dr. Pless Comments, citing BAAQMD, *CEQA Air Quality Guidelines*, pp. 4-5 through 4-7.
[143] Dr. Pless Comments.
[144] DEIR at p. 4.2-24.
[145] See DEIR, Appendix D, printouts of CalEEMod runs.

Lead agencies may not rely upon nonbinding or unenforceable mitigation measures to support a finding that impacts will be mitigated below a level of significance.[146] Accordingly, the DEIR's finding that the Project's mitigated operational emissions would be less than significant is not supported by substantial evidence. The City must require implementation of these mitigation measures before it may rely upon these measures to support its findings. B24-31

H. The DEIR Improperly Piecemeals Evaluation of Operational Emissions, Resulting in a Failure to Disclose Potentially Significant Impacts

As discussed *supra* in Section V.C, CEQA requires reviewing the impacts of the "whole of a project" rather than evaluating each of the separate components or phases of a project independently. Accordingly, the DEIR should have evaluated the potential significance of operational emissions from the Raintree site and the Sares Regis site, "combined."[147] As with its evaluation of construction emissions, the DEIR evaluates operational emissions on the Raintree site in isolation from emissions from development of the Sares Regis site.[148] This approach results in a failure to disclose and mitigate potentially significant impacts. When the Project's operational emissions are analyzed as a whole, as required by CEQA, they result in significant, undisclosed impacts on air quality.[149] B24-32

Using the estimates presented in the DEIR,[150] the table below compares the Project's combined operational emissions of ROG, NOx, PM10 and PM2.5 to the BAAQMD's respective daily thresholds of significance for operational emissions.

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[146] See *Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342, 385.
[147] City of Sunnyvale, Notice of Completion of an Environmental Impact Report for the East Weddell Residential Projects at p. 1 (stating that the "project" is defined as "the two development projects *combined*").
[148] Dr. Pless Comments.
[149] Dr. Pless Comments.
[150] DEIR, Tables 4.2-7 (Sares Regis) and 4.2-8 (Raintree).

Operational Emissions (lb/day)

	ROG	NOx	PM10	PM2.5
Applicant Proposed Scenarios				
Sares Regis	17.0	10.0	9.0	1.0
Raintree	37.0	21.0	20.0	2.0
Total Applicant Proposed Scenarios	**54.0**	**31.0**	**29.0**	**3.0**
BAAQMD Threshold	54	54	82	54
Significant?	**YES**	no	no	no
Full Buildout Scenarios				
Sares Regis	20.0	11.0	11.0	1.0
Raintree	52.0	27.0	28.0	2.0
Total Full Buildout Scenarios	**72.0**	**38.0**	**39.0**	**3.0**
BAAQMD Threshold	54	54	82	54
Significant?	**YES**	no	no	no

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The table shows that total ROG operational emissions from the *Sares Regis* and *Raintree* Developments, 54.0 lb/day, are the same as the BAAQMD's threshold of significance for operational emissions of this pollutant and are therefore significant.[151] Further, total operational ROG emissions from the combined *Sares Regis* and *Raintree* Developments are estimated at 72.0 lb/day, which greatly exceeds BAAQMD's threshold of significance. The DEIR must be revised and recirculated to disclose these significant operational air quality impacts and identify feasible mitigation.

I. The Assumption that Proposed Mitigation Will Reduce Health Risks to Future Residents from Nearby Roadway Emissions to Below a Level of Significance Is Not Supported by Substantial Evidence

B24-33

The DEIR is also deficient because it lacks substantial evidence to support its assumption that proposed mitigation will reduce health risks to future residents

[151] Dr. Pless Comments; The BAAQMD's CEQA Air Quality Guidelines state: "If, after proper analysis, the project or plan's air quality impacts are found to be *below the significance thresholds* determined by the lead agency, then the air quality impacts may be considered less than significant." Dr. Pless Comments, citing BAAQMD, CEQA Air Quality Guidelines, p. 1-4, *emphasis* added.

from nearby roadway emissions to below a level of significance. As shown by the comments of Dr. Pless, the proposed mitigation would not, in fact, be sufficient to reduce health risks to future residents to below a level of significance. The Project proposes locating new residences adjacent to two busy roadways, Highway 101 and North Fair Oaks Avenue, and within 1000 feet of five diesel-fired emergency backup generators.[152] The DEIR finds that emissions from Highway 101 traffic would cause significant excess cancer risk for future residents throughout the entire Sares Regis site and across portions of the Raintree site under both *Applicant Proposed* and *Full Buildout* scenarios.[153] Significant annual PM2.5 concentrations would occur across portions of the Sares Regis and the Raintree sites under both *Applicant Proposed* and *Full Buildout* scenarios.[154] In addition, the DEIR finds that annual PM2.5 concentration from cumulative sources would be significant for the Raintree *Full Buildout Scenario*.[155]

To reduce the long-term exposure of future residents to TACs, the DEIR requires implementation of Mitigation Measure AIR-4, which consists of the following five recommendations:

B24-33

1. Provides site layout recommendations to locate windows and air intakes as far as possible from Highway 101 traffic lanes and to plant additional trees along the highway edge.

2. Requires installation of air filtration system rated at a minimum efficiency rating value ("MERV") of 13 or higher where sensitive receptors are predicted to be exposed to PM2.5 concentrations above 0.3 $\mu g/m^3$ and maintained as long as significant excess cancer risks or annual PM2.5 concentrations are predicted.

3. Requires that lease agreement include cleaning, maintenance and monitoring requirements; provide information on ventilation system to owners and tenants; and include provisions that fees associated with owning or leasing a unit include funds for cleaning, maintenance, monitoring, and replacement of the air filtration system.

[152] DEIR at pp. 4.2-24 and 4.2-36.
[153] DEIR at p. 4.2-37.
[154] *Id.*
[155] *Id.*

4. Suggests that applicants "consider" phasing developments located within 330 feet of Highway 101 to "avoid significant excess cancer risks and required installation of filtered ventilation systems."

5. Requires that prior to building occupancy, an authorized air pollutant consultant verify the installation of all necessary measures to reduce toxic air contaminant exposure.

The DEIR finds that that with implementation of these five recommendations, the community risk for sensitive receptors at the two Project sites would be reduced to a less-than-significant level.[156] The DEIR's conclusion is not supported by an adequate quantitative demonstration. Further, the proposed mitigation is not adequate to reduce impacts to less than significance.

1. The DEIR's Reliance on Air Filtration Systems to Reduce Impacts below a Level of Significance Is Not Supported by Substantial Evidence

B24-33

The DEIR's reliance on the installation of air filtration systems and verification by "authorized air pollutant consultants" to reduce operational TAC impacts below a level of significance is not supported by substantial evidence.[157]

Mitigation Measure AIR-4(5) requires that "prior to building occupancy, an authorized air pollutant consultant verify the installation of all necessary measures to reduce toxic air contaminant exposure." This requirement is ill defined and meaningless. The Draft EIR does not define an "authorized" air pollutant consultant and fails to specify what qualifications this air pollutant consultant must possess.

Mitigation Measure AIR-4(5) instructs the "authorized air pollutant consultant" to verify that all residential units would have an air filtration system installed rated at MERV 13 for those units identified by the Draft EIR with cancer risks between 10 and 25 per million and at MERV 16 for those units identified by the Draft EIR with cancer risks above 25 per million. Dr. Pless identifies numerous technical and practical problems with this measure that must be addressed.[158]

[156] DEIR at p. 4.2-20.
[157] Dr. Pless Comments.
[158] Dr. Pless Comments.

First, the measure allows the "authorized air pollutant consultant" to refer to the figures provided by the Draft EIR showing cancer risks for individual buildings (Figure 4.2-2 for Sares Regis site and Figure 4.2-4 for Raintree site).[159] However, these figures show only modeled cancer risks resulting from Highway 101 traffic emissions. Traffic emissions from North Fair Oaks Avenue, another high volume roadway, and nearby stationary sources are not included in the modeling.[160]

Second, the mitigation improperly assumes that a MERV 13-rated filter may be installed for one residential unit and a MERV 16-rated filter for another residential unit. Air filtration systems, however, serve the entire building. Accordingly, they must be properly sized to accommodate the resistance to airflow from the installed filters.[161] A building ventilation system may accommodate one or the other MERV rating, but not both at the same time.[162]

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Further, a MERV designation for the filters alone is insufficient to determine mitigated emissions. The MERV specification represents a designation for only the filter, it does not address the efficiency of the total air filtration system in the building when considered in tandem with the filter holding device.[163]

The use of a MERV-rated filter in a holding frame or housing that has gaps or leaks will substantially reduce the effectiveness of any filter evaluation system. Air flow will follow the path of least resistance.[164] Since a filter offers airflow resistance, gaps or leaks within the holding mechanism will allow air bypass. Therefore, system performance must be evaluated to assure that all the air moving through the system is treated by the filter. To ensure that the building's entire air

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[159] Dr. Pless Comments.
[160] Dr. Pless Comments.
[161] California Air Resources Board, Status of Research on Potential Mitigation Concepts to Reduce Exposure to Nearby Traffic Pollution, August 23, 2012; available at http://www.arb.ca.gov/research/health/traff-eff/research%20status%20-reducing%20exposure%20to%20traffic%20pollution.pdf. ("High efficiency filters associated with central heating, ventilating and air conditioning (HVAC) systems must be carefully selected to assure the mechanical system can handle the increased airflow resistance.")
[162] Dr. Pless Comments.
[163] Dr. Pless Comments.
[164] Dr. Pless Comments.

filtration system would function at the specified efficiency, other aspects of the ventilation system design such as ventilation rates, infiltration rates, and maintenance of positive pressure must be explicitly specified.[165]

Third, the feasibility of using MERV 16-rated filters is speculative. MERV 16 systems are considerably more costly than MERV 13-rated filters and systems and are typically only installed only in hospitals and general surgery.[166] Even superior residential developments typically have a maximum of MERV 13-rated filtration systems installed.[167] The Draft EIR should be revised to discuss the feasibility of a MERV 16-rated filtration system for a residential development.

Fourth, the Draft EIR's assumption that cancer risks would be reduced below the significance threshold of 10 in one million by the respective filtration systems rests on the assumption that the filtration system would be fully operational and effective for 21 hours per day (residents would open their window for one hour per day and spend two hours outdoors) and that the systems would operate at an assumed effectiveness rating of 70 percent for MERV 13 and 90 percent for MERV 16.[168] This assumption is not supported or enforceable. Without posted warning signs or other measures to address wide variants in resident behavior or preferences, many residents may open their windows for longer time periods than one hour per day. B24-33

Fifth, because a large number of particles emitted by motor vehicles are smaller than 50 nanometers[169] (<0.05 micrometers), the effectiveness of filtration systems at reducing cancer risks cannot be assumed to be identical to its specified filtration efficiency.[170] A MERV 13 filter is not effective in removing 0.3 to 1.0 micrometer particles.[171] In contrast, a MERV 16 filter is designed to remove 95 percent of this particle range. Neither rating ensures any removal of ultrafine particles, *i.e.*, those smaller than 100 nanometers (<0.1 micrometers) which are associated with more aggressive health implications than larger particles.[172]

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[165] Dr. Pless Comments.
[166] Dr. Pless Comments.
[167] Dr. Pless Comments.
[168] MERV 13: (cancer risk: 25 in one million)(100%-70%)(21 hours)/(24 hours) = 9.69 in one million.
[169] Kittelson, D.B., Engines and Nanoparticles: A Review, Journal of Aerosol Science, 1998, 29, pp. 575-588.
[170] Dr. Pless Comments.
[171] Dr. Pless Comments.
[172] Dr. Pless Comments.

Sixth, although they can substantially reduce indoor concentrations of pollutants, CARB has long recognized that "mechanical filtration systems alone are insufficient to fully protect occupants from particles and other emissions from nearby roadways."[173] CARB has identified numerous limitations on the effectiveness of air filtration systems, including:

- First, most people tend to open their windows or doors at least part of each day (Offermann, 2009; Phillips et al., 1990), and such natural ventilation involves no filtration of incoming air and can diminish any pollutant reductions attained through the use of the mechanical system. The effectiveness of high efficiency filtration in homes whose occupants open their doors and windows regularly has not been quantified.

- Second, as higher MERV filters are used, greater attention must be paid to the increased air flow resistance that occurs with some filter types; mechanical system motors must be sufficiently sized to accommodate the air flow needs. B24-33

- Third, studies have shown that homeowners are not provided with sufficient information regarding use and maintenance of their central HVAC systems, or do not read and follow instructions for maintaining their filters (EPA, 2009; Offermann, 2009). Filtration is only effective if filters are well-fitted and are replaced or maintained according to the manufacturer's recommendations, and duct leakage is minimized (Thatcher et al., 2001; Wallace et al., 2004). Older (aged) filters have been associated with increased irritant health symptoms and decreased work performance in studies of filtration maintenance in workplaces (Clausen, 2004; Seppänen and Fisk, 2002; Wargocki et al., 2004).

- Finally, as discussed above, gaseous pollutants are not removed by most particle filters, and the technologies for VOC removal in residential applications are limited and still evolving.

[173] Dr. Pless Comments.

2. The DEIR's Inclusion of a "Phasing" Exception to Filtration Requirements Is Not Supported by Substantial Evidence

The DEIR's mitigation for TACs is inadequate because it includes a misleading and inappropriate exception to the requirement to install filtered ventilation systems.[174] Mitigation Measure AIR-4(4) allows elimination of the requirement for air filtration systems if development within a site is phased. Specifically, the measure states:

> Consider phasing developments located within 330 feet of Highway 101 to avoid significant excess cancer risks and required installation of filtered ventilation systems (described above). Note that new United States Environmental Protection Agency (U.S. EPA) engines standards combined with California Air Resources Board (CARB) rules and regulations will reduce on-road emissions of diesel particulate matter (DPM) and PM 2.5 substantially, especially after 2014.

The Draft EIR does not explain how it arrived at 330 feet, nor does it provide a quantitative justification that cancer risks would be reduced to below the significance threshold or a requirement to prepare a health risk assessment in case the Project components are phased. Dr. Pless testifies that just because emission standards will reduce on-road emissions it does not follow that emissions are necessarily reduced to a level that results in cancer risks below the significance threshold by the time the phased Project would be inhabited.[175] B24-34

Because excess cancer risks from Highway 101 alone were estimated at 20.1 in one million for the Sares Regis site and 26.3 in one million for the Raintree site,[176] vehicle emissions would have to be reduced by more than 50 percent to reduce cancer risk below the significance threshold of ten in one million. Dr. Pless testifies that, despite EPA's and CARB's regulations for engine standards, a reduction of 50 percent of emissions over those assumed in the Draft EIR will not occur in the near future.[177]

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[174] Dr. Pless Comments.
[175] Dr. Pless Comments.
[176] Draft EIR, Tables 4.2-10 (Sares Regis) and 4.2-11 (Raintree).
[177] Dr. Pless Comments.

The Draft EIR states that "CARB anticipates a 68-percent reduction in PM2.5 (including DPM) emission from trucks in 2014 with this regulation."[178] CARB's estimate for a 68 percent reduction in emissions by 2014 is based on a comparison of estimated emission reductions by its on-road rule for trucks and buses *compared to a year 2000 baseline*;[179] it is not compared to the 2014 baseline as assumed by the Draft EIR's emission estimates.[180]

Further, while the rule referenced by the DEIR was adopted by CARB in 2007, CARB did not receive authorization from EPA to implement the rule until September 13, 2013.[181] Enforcement of the restrictions on adding Tier 0 and Tier 1 vehicles to existing vehicle fleets will not begin until January 1, 2014. Enforcement of the first fleet average requirements for large fleets (> 5,000 total fleet horsepower) will begin on July 1, 2014. Tier 2 requirements for large and medium fleets will not begin until January 1, 2018, for, and for small fleets until January 1, 2023.[182] Therefore, it will take many years for the rule to fully take effect and emission reductions compared to the 2014 baseline assumed by the Draft EIR will be considerably less than 50 percent by the time any "phased" Project component would be inhabited.[183] Accordingly, this exception to the mitigation measure should be deleted from the document. **B24-34**

[178] Draft EIR, p. 4.2-27.
[179] *See*, for example, CARB, Updated Informative Digest, Adoption of New Regulation to Reduce Emissions of Diesel Particulate Matter, and Other Pollutants from In-Use Heavy-Duty Diesel-Fueled Vehicles as Part of the Public Hearing to Consider Proposed Regulation to Reduce Emissions from In-Use On-Road Diesel Vehicles, and Amendments To The Regulations for In-Use Off-Road Vehicles, Drayage Trucks, Municipality and Utility Vehicles, Mobile Cargo Handling Equipment, Portable Engines and Equipment, Heavy-Duty Engines and Vehicle Exhaust Emissions Standards and Test Procedures and Commercial Motor Vehicle Idling, 2008; available at http://www.arb.ca.gov/regact/2008/truckbus08/pt2uid.pdf.
[180] Dr. Pless Comments.
[181] *See* CARB, In-Use Off-Road Diesel Vehicle Regulation; http://www.arb.ca.gov/msprog/ordiesel/ordiesel.htm.
[182] CARB, Regulatory Advisory, Enforcement of the In-Use Off-Road Vehicle Regulation, September 2013; http://www.arb.ca.gov/msprog/mailouts/msc1325/msc1325.pdf.
[183] Dr. Pless Comments.

3. The DEIR Fails To Evaluate Contamination of Ventilation Systems and Filters during Project Construction

The DEIR fails to ensure that building occupants are protected from pollutants that may enter the ventilation system and contaminate the filters during construction. Dr. Pless recommends that, in order to ensure effective filtration of TACs, the City should require a construction indoor air quality ("IAQ") management plan.[184] The following control measures have been suggested to meet the U.S. Green Building Council Leadership in Energy and Environmental Design ("LEED") Green Building Rating System:

- A common practice used to protect the HVAC system during construction is to shut down the return side of the HVAC system during heavy construction activities, and to replace the ventilation system filters at frequent intervals throughout the construction process. Returns should be shrink-wrapped with plastic or even dampered off during especially disruptive construction activities.

- Temporary barriers should be constructed in an effort to isolate areas under construction from clean or occupied areas. If weather permits, construction areas should also be ventilated directly to the outdoors if particularly dusty operations or installation of VOC-emitting materials are being performed. B24-35

- Ensure that materials stored onsite do not get contaminated by dirt or other particulate matter that is always present on construction sites. An overall jobsite maintenance program should be developed that includes the storage and protection of building materials in a dry, clean location. Ductwork should be delivered to the jobsite shrink-wrapped on both ends until immediately prior to installation, and the returns should be kept wrapped until final installation of the finish grates. Implementing a no smoking policy for the workers during construction, using HEPA vacuums for cleanup, and making everyone on the jobsite aware of the housekeeping plan through onsite training programs.

[184] Dr. Pless Comments.

- Conduct a minimum two-week building flush-out with new MERV 13 filtration media at 100% outside air. After the two-week flush-out is complete, new MERV 13 filters must be replaced in all locations except those that have been processing only outside air during the flush-out.[185] B24-35

J. The DEIR Fails to Evaluate the Project's Inconsistency with the General Plan Goal to "Reduce the Exposure of Its Citizens to Air Pollutants" and the General Plan Policy to Use Site Planning "to Protect Citizens from Unnecessary Exposure to Air Pollutants"

The DEIR is also legally inadequate because it fails to identify the Project's inconsistency with the City's General Plan Goals to "reduce the exposure of its citizens to air pollutants" and to utilize site planning "to protect citizens from unnecessary exposure to air pollutants". CEQA requires an assessment of any inconsistencies between the Project and applicable general plans and regional plans.[186] A significant impact on land use and planning would occur if the Project would "[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect."[187] B24-36

The City's General Plan includes the following goal and policy relevant to the air quality impacts of proposed Project:

> GOAL EM-11 – Improved Air Quality: Improve Sunnyvale's air quality and reduce the exposure of its citizens to air pollutants.
>
> POLICY EM-11.3: Require all new development to utilize site planning to protect citizens from unnecessary exposure to air pollutants.

[185] Abbreviated from: Southwest Contractor, Indoor Air Quality Management Plan to Meet LEED Requirements; available at http://southwest.construction.com/features/archive/0510_feature7.asp.
[186] CEQA Guidelines § 15125, subds. (a), (d).
[187] CEQA Guidelines Appendix G, section IX(b).

While the DEIR identifies the City's General Plan goal and policy for protecting its citizens from air pollution,[188] it fails to evaluate whether the Project would be consistent with the General Plan's goal and policy for air quality. As discussed in the above comments, the Project is inconsistent with the General Plan's goal and policy for air quality and protection of its citizens because the DEIR fails to mitigate impacts with respect to air quality and community health risks to levels below significance.

Changing the General Plan and the zoning on parcels directly adjacent to Highway 101 from industrial/commercial to high density development does the exact opposite of reducing the exposure of the City's citizens to air pollutants. Moreover, constructing residential units within 90 feet of Highway 101 and within 1000 feet of five diesel-fired emergency backup generators[189] does not utilize site planning "to protect citizens from unnecessary exposure to air pollutants."

The Project location is simply too poorly suited to be used entirely for residential development.[190] As discussed by Dr. Pless, community cancer risks for future residents cannot be reduced to less-than-significant levels even with advanced filtration systems. B24-36

In light of these significant and unmitigable impacts, the City should deny approval of any residential project at this particular location. But at a minimum, in order to comply with CEQA, the DEIR must be revised to disclose the Project's inconsistency with the General Plan's polices to protect the City's citizens from these risks.

Furthermore, the proposal by the applicants to include low-income residential units raises environmental justice issues that were not addressed by the DEIR. Because CEQA requires that environmental impacts must be considered in context, the California Attorney General strongly recommends that cities and counties pay special attention to whether a project might cause additional impacts to communities that already are affected by, or particularly vulnerable to, environmental impacts like air and water pollution.[191] In addition, the Governor's

[188] DEIR at p. 4.2-14.
[189] DEIR at pp. 4.2-24 and 4.2-36.
[190] Dr. Pless Comments.
[191] California Office of the Attorney General, CEQA and General Planning: Environmental Justice, http://oag.ca.gov/environment/ceqa/planning.

Office of Planning and Research in its General Plan Guidelines recommends that local governments' planning efforts squarely address environmental justice.[192] If residential development is approved on the Project location, the DEIR should be revised to evaluate the potential environmental justice implications of the Project. In particular, the location of the proposed affordable units should be required to be disclosed and evaluated to ensure they are not disproportionately located in the highest risk areas of the proposed development. B24-36

VI. THE ANALYSIS OF VIBRATION IMPACTS IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The DEIR's analysis of the vibration impacts on future project residents from truck traffic on the adjacently located Highway 101 is legally inadequate because it is not supported by substantial evidence. CEQA requires an EIR to be supported by substantial evidence.[193] Furthermore, an EIR must provide the reader with the analytic bridge between its ultimate findings and the facts in the record.[194] Conclusory statements "unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind" are insufficient to support a finding of insignificance.[195] The public and decision-makers, for whom the EIR is prepared, should also have before them the basis for any statements of fact or opinion asserted in the document so as to enable them to make an independent, reasoned judgment.[196] B24-37

Here, the DEIR states, without any supporting reports, studies or analysis, that the vibration resulting from heavy truck traffic on Highway 101 is projected to be about 0.04 in/sec PPV at the Project boundaries and about 0.02 in/sec PPV at the nearest proposed vibration sensitive location in the Sares Regis development and 0.01 in/sec PPV from the nearest proposed vibration sensitive location in the Raintree development.[197] The DEIR states that it established baseline vibration levels from heavy truck traffic on Highway 101 based upon the 2004 Caltrans

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[192] *Id.*; see also Office of Planning and Research, General Plan Guidelines (2003), available at http://opr.ca.gov/docs/General_Plan_Guidelines_2003.pdf.
[193] Pub. Resources Code § 21081.5; CEQA Guidelines § 15091, subd. (b).
[194] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506; see CEQA Guidelines § 15091.
[195] *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842.
[196] *Santiago Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831.
[197] DEIR at pp. 4.7-7, 4.7-18, 4.7-19.

Transportation-and Construction-Induced Vibration Guidance Manual.[198] The referenced manual, however, does not provide any baseline vibration levels at the Project location or anywhere else along Highway 101. In addition, no explanation or calculations are provided as to how the baseline vibration levels at the Project boundaries and at the nearest vibration sensitive locations were determined.

In addition, the DEIR' evaluation of vibration impacts assumes that the nearest building on the Sares Regis parcel would be 90 feet away from the nearest travel lane on Highway 101 and the nearest building on the Raintree parcel would be 130 feet away. The Full Buildout Scenario, however, does not include any enforceable mitigation measures requiring setbacks of that distance. To the contrary, the Project is proposing to change the parcel's zoning to R-4 or R-5, both of which only require a setback of 9 feet from a side yard or 20 feet for a back or front yard.[199] B24-37

The DEIR also fails to provide any foundation for its conclusion that vibrations would be "below the perception threshold of 0.01 in/sec PPV within the building when accounting for foundation coupling losses and amplification due to resonance of building surfaces." This statement is conclusory and unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind.[200]

VII. THE CONCLUSION THAT PROPOSED MITIGATION MEASURES WILL REDUCE CONSTRUCTION NOISE IMPACT TO BELOW A LEVEL OF SIGNIFICANCE IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

B24-38

The DEIR finds that construction noise impacts from the Project would be significant, but concludes that compliance with Mitigation Measure NOISE-5 will reduce these impacts below a level of significance.[201] The DEIR, however, provides no analysis, data or explanation for how the proposed mitigation measures would reduce construction noise impact below a level of significance.

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[198] DEIR at pp. 4.7-7.
[199] City of Sunnyvale Municipal Code, § 19.34.030.
[200] *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842.
[201] DEIR at pp. 4.7-24, 4.7-25.

The DEIR states that noise levels exceeding 60 dBA Leq and the ambient noise environment by 5 dBA Leq or more at nearby residences for a period of more than one construction season would be considered significant.[202] The DEIR then goes on to find that construction on the Sares Regis parcel would result in average noise levels at nearby residences ranging from 68 to 80 dBA and that this would elevate noise levels by 10 to 20 dBA above ambient traffic noise levels at these nearby noise-sensitive uses.[203] Similarly, the DEIR finds that construction on the Raintree parcel would result in average noise levels at nearby residences ranging from 76 to 86 dBA and that this would elevate noise levels by 20 dBA above ambient traffic noise levels at these nearby noise-sensitive uses.[204]

The DEIR then lists a number of mitigation measures to reduce construction noise impacts and assumes that these mitigation measures would be sufficient to reduce noise impacts below a level of significance.[205] This assumption is not supported by substantial evidence. The DEIR fails to identify any evidence or analysis that shows that these measures would reduce construction noise levels below 60 dBA Leq or reduce the increase in ambient noise environment to less than 5 dBA Leq. As a result, the DEIR's conclusion that noise impacts will be mitigated below a level of significance is conclusory and not supported by substantial evidence. B24-38

In addition, many of the measures that are listed in Mitigation Measure NOISE-5 are vague, improperly deferred and unenforceable. An agency may not put off an analysis of what mitigation measures are required, or call for unspecified, vague, or unenforceable mitigation measures to be defined in the future.[206]

For example, Mitigation Measure NOISE-5 requires Project construction operations to "use available noise suppression devices." This requirement is vague, undefined and unenforceable. Furthermore, without any indication of what noise suppression devices are available and for what equipment, this requirement cannot

[202] DEIR at p. 4.7-22.
[203] DEIR at p. 4.7-24.
[204] *Id.*
[205] DEIR at pp. 4.7-24, 4.7-25.
[206] CEQA Guidelines § 15126.4, subd. (a)(1)(B); *City of Long Beach v. Los Angeles School Dist.* (2009) 179 Cal.App.4th 889, 915; *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 95; *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 669.

be relied upon to determine if construction noise impacts will be mitigated below a level of significance. Similarly, the requirement to use "'quiet' models of air compressors and other stationary noise sources where technology exists" is also vague, undefined and unenforceable. The term "quiet" model is not defined and the DEIR provides no indication if such technology does exist and if it does what its effectiveness will be in reducing overall construction noise.

Finally, the requirement to adopt a "construction noise logistic plan" that specifies noise and vibration minimization measures cannot be relied upon to make a finding that noise impacts will be reduced below a level of significance. This requirement improperly defers identification of specific noise and vibration minimization measures to a future time. Mitigation measures adopted *after* project approval cannot validate the issuance of an EIR, since this deferral denies the public the opportunity to comment on the project as modified to mitigate impacts.[207] An agency may only defer the formulation of mitigation measures when it "recognizes the significance of the potential environmental effect, commits itself to mitigating its impact, and articulates *specific performance criteria* for the future mitigation."[208] Because no specific performance criteria have been identified, this deferral violates CEQA. B24-38

VIII. THE FINDING THAT IMPACTS FROM UPSIZING THE NORTH FAIR OAKS AVENUE SEWER MAIN WOULD BE LESS THAN SIGNIFICANT IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The DEIR's determination that potential impacts from the construction of the upsized sewer main on North Fair Oaks Avenue would be less than significant is legally deficient. This conclusion is not supported by any meaningful analysis or substantial evidence. Furthermore, the analysis of potential impacts from the North Fair Oaks Avenue sewer replacement activities is improperly piecemealed from the analysis of the rest of the Project's impacts. B24-39

[207] *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393]; *Quail Botanical Gardens Foundation v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604, fn. 5.
[208] *Gentry*, 36 Cal.App.4th at 1411 (emphasis provided), citing *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1029.

The DEIR concludes that the increased wastewater generation from the proposed development on the Sares Regis site and the Raintree site requires upsizing the existing sewer main in North Fair Oaks Avenue.[209] In order to ensure adequate sewer main capacity, Mitigation Measure UTIL-3 requires that "*[a]s part of the proposed projects*, the project applicants shall replace the existing 8-inch sewer main in North Fair Oaks Avenue with a 10-inch main."[210]

The DEIR, however, fails to consider the additional construction air quality, traffic, noise, or other impacts from the North Fair Oaks Avenue sewer replacement activities in its analysis of overall Project impacts. Instead of evaluating the North Fair Oaks Avenue sewer replacement activities with the rest of the Project activities, the DEIR instead spends one paragraph looking at the potential impacts of the North Fair Oaks Avenue sewer replacement activities in isolation from the rest of the Project.[211] The failure to include this Project component in the overall analysis of Project impacts improperly segments review of the environmental impacts from the North Fair Oaks Avenue sewer replacement activities from the rest of the Project.[212] B24-39

Moreover, the DEIR's one paragraph, piecemealed analysis of the North Fair Oaks Avenue sewer replacement activities is conclusory and unsupported by any substantial evidence or meaningful analysis. Its entire analysis and discussion of air quality impacts from this activity consists of the following paragraph:

> The impact of construction of the upsized sewer main would not be significant for the following reasons: 1) construction would take place within the right-of-way of North Fair Oaks Avenue; 2) construction noise and air emissions would be short term and would not result in significant air quality or noise impacts; 3) traffic impacts would be mitigated by a City-initiated traffic plan to route traffic as needed during construction; 4) potential erosion impacts related to excavation and spoils management would be covered under the project's SWPPP; and 5) no other impacts related to biological, hydrological or other

[209] DEIR at p. 4.11-9.
[210] DEIR at p. 4.11-11 (emphasis provided).
[211] DEIR at p. 4.11-10.
[212] CEQA Guidelines § 15063, subd. (a)(1).

topics would result. Construction of the wastewater facilities would not have any specific significant environmental impacts requiring mitigation.[213]

CEQA requires conclusions in an EIR to be supported by substantial evidence.[214] Conclusory statements "unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind" are insufficient to support a finding of insignificance.[215] Furthermore, an EIR must provide the reader with the analytic bridge between its ultimate findings and the facts in the record.[216]

Here, each of the listed reasons for concluding that impacts from this activity would be less than significant are conclusory and unsupported:

1) *Construction would take place within the right-of-way of North Fair Oaks Avenue* B24-39

The DEIR fails to explain why this would ensure that there would be no significant impacts. To the contrary, the location of the sewer main will increase the intensity of construction activities because it will require not just digging up and replacing the main, but also digging up and replacing major roadway. In addition, the location of the construction will increase the likelihood of traffic and emergency access impacts.

2) *Construction noise and air emissions would be short term and would not result in significant air quality or noise impacts*

This statement is conclusory and without foundation. No disclosure is provided regarding the type of equipment needed or the length and type of construction activities and no quantification is provided of emissions or noise from these activities.

[213] DEIR at p. 4.11-10.
[214] Pub. Resources Code § 21081.5; CEQA Guidelines § 15091, subd. (b).
[215] *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842.
[216] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506; see CEQA Guidelines § 15091.

3) Traffic impacts would be mitigated by a City-initiated traffic plan to route traffic as needed during construction;

This statement discusses mitigation that is vague and not included as part of the Project mitigation.

4) Potential erosion impacts related to excavation and spoils management would be covered under the project's SWPPP; and

This statement is speculative and without foundation. The DEIR fails to require that the Project's Storm Water Pollution Prevention Plan ("SWPPP") cover potential impacts from this offsite activity. Furthermore, the DEIR suggests that a separate SWPPP will be prepared for the Raintree and the Sares Regis construction activities. It is unclear which, if any, SWPPP would have the responsibility of including the offsite North Fair Oaks Avenue sewer replacement activities under its scope.

B24-39

5) No other impacts related to biological, hydrological or other topics would result. Construction of the wastewater facilities would not have any specific significant environmental impacts requiring mitigation.

This statement is conclusory and unsupported by and facts or analysis.

In sum, the DEIR's analysis of impacts from the North Fair Oaks Avenue sewer replacement activities is unsupported by any citations, data, evidence or meaningful analysis. Accordingly, this analysis cannot be relied upon to support a finding that impacts from this activity would be less than significant, either individually or in combination with the rest of the components of this Project. The DEIR must be revised to provide a meaningful evaluation of these impacts in compliance with the requirements of CEQA.

IX. THE DEIR FAILS TO ASSESS THE PROJECT'S INCONSISTENCY WITH THE GENERAL PLAN RECYCLED WATER POLICY

B24-40

The DEIR is also inadequate because it fails to assess the Project's inconsistency with the Sunnyvale General Plan Policy EM-1.2, which requires development to maximize recycled water use for all approved purposes both within

and in areas adjacent to the City, where feasible. The Project, as described in the DEIR, does not include the use of recycled water and the feasibility of using recycled water has not been assessed.

CEQA requires an assessment of any inconsistencies between the Project and applicable general plans and regional plans.[217] A significant impact on land use and planning would occur if the Project would "[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect."[218] "Environmental effects" include direct and indirect impacts to aesthetics, agricultural resources, air quality, biological resources, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation and traffic, and utilities and service systems.[219] Thus, under CEQA, a project results in a significant effect on the environment if the project is inconsistent with an applicable land use plan, policy or regulation adopted for the purpose of avoiding or mitigating one or more of these environmental effects. B24-40

In the case at hand, the policy to maximize the use of recycled water is critical to ensuring sufficient water supply in the City. The DEIR's conclusion that the City has sufficient water supply for the Project is dependent on the increasing use of recycled water.[220] Accordingly, this policy has been adopted for the purpose of avoiding or mitigating an environmental effect. The failure to assess the Project's consistency with General Plan Policy EM-1.2 is a violation of CEQA and must be corrected in a revised EIR.

X. THE CITY MUST PREPARE AND RECIRCULATE A REVISED DEIR AS A RESULT OF ITS INADEQUACIES

B24-41

CEQA requires a lead agency to recirculate an EIR when significant, new information is added to the EIR following public review, but before certification.[221]

[217] CEQA Guidelines § 15125, subd. (a), (d).
[218] CEQA Guidelines Appendix G, section IX(b).
[219] *Id.*
[220] See DEIR at p. 4.11-1.
[221] Pub. Resources Code § 21092.1.

The CEQA Guidelines clarify that new information is significant if "the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project" including, for example, "a disclosure showing that … [a] new significant environmental impact would result from the project."[222]

B24-41

As discussed above, the proposed Project will have numerous impacts that are different and more severe than those described in the EIR, including air quality impacts, contaminated soil impacts, and noise and vibration impacts. The EIR also lacks adequate mitigation for these potentially significant impacts. A revised and recirculated EIR is required.

XI. CONCLUSION

Sunnyvale Residents for Responsible Development and its individual members thank the City for providing the opportunity to comment on this matter. We urge the City to ensure that the Project's impacts are fully disclosed, evaluated and mitigated before the Project is allowed to proceed.

Sincerely,

Thomas A. Enslow

TAE:ljl

Attachments

[222] CEQA Guidelines § 15088.5.

LETTER B24
Adams Broadwell Joseph & Cardozo (October 23, 2013)

B24-1 These comments are addressed in response to more detailed comments below. Please refer to Responses to Comments B24-11 and B24-12 regarding pesticide residues, Response to Comment B24-13 regarding mitigation of VOCs at the Sares Regis site, and Response to Comment B24-14 regarding benzene at the Raintree site.

B24-2 The intention of the air quality assessment was not to skip any steps outlined in the BAAQMD CEQA Air Quality Guidelines. The OFFROAD/EMFAC2011 modeling was conducted because of an inability of the CalEEMod (v. 2011.1.1) to accurately assess complicated construction projects with detailed lists of equipment and schedules. The CalEEMod (v. 2011.1.1) was the available model at the time of the analysis. Due to shortcomings in this 2011 version of the model, this model could not be used to reliably input the project-specific construction equipment, phasing schedule, horsepower, and load factors, and handle overlapping construction phase schedules. The input values in the modeling could not be verified in the output. Therefore, the emission factors generated by the California Air Resources Board (CARB) OFFROAD and EMFAC2011 model were used. Assumptions in the modeling included construction equipment that was, on average, 8 to 10 years old. This equipment would mostly include Tier 2 engines, due to the manufacturing year. The OFFROAD model used in the Draft EIR required an average year for construction equipment. Some sensitivity analysis conducted with URBEMIS2007 and CalEEMod indicated similar emissions between model defaults and selection of Tier 2 equipment. Therefore, model year 2006 equipment was assumed for OFFROAD/EMFAC2011 modeling as being the unmitigated case and a reasonable conservative scenario for evaluating construction impacts of the proposed projects.

Since preparation of the Draft EIR, CalEEMod (v. 2013.2.2) has been released, which corrected the identified problems with the previous version highlighted above and incorporated the newest emissions factors developed by CARB. Some of these improvements included, but were not limited to, fixes to construction dates and equipment re-loading problems, more architectural coating options, a correction of the unmitigated construction PM_{10} fugitive dust emissions from haul trucks, and modification of the ROG running loss equation to match EMFAC2011 emission factors. At the direction of the City, the projects were remodeled using the new CalEEMod (v. 2013.2.2) for unmitigated and, if appropriate, mitigated conditions. See text revisions for Section 4.2, Air Quality, in **Appendix B** of this document, pages 4.2-17 through 4.2-19; revisions to Tables 4.2-5, 4.2-6, 4.2-7, and 4.2-8; and **Appendix D** for modeling outputs.

The comment also states that the Draft EIR air quality impacts analysis improperly evaluates project components separately rather than as a whole. Each development proposal was considered an independent project and analyzed as such. The projects are not dependent on each other, could be approved separately, and would be developed separately. Their only nexus is this EIR, which the City is using to process two separate development proposals (projects) in proximity to one another. Since each project (Sares Regis and Raintree) could ultimately be developed independently of the other, the air quality assessment used the BAAQMD project-level thresholds for each project to determine impact significance. Page 2-1 of the BAAQMD CEQA Air Quality Guidelines clearly states that, "in developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's *individual* emissions would be cumulatively considerable." Cumulative impacts from these projects are addressed under Impact AIR-7 (pages

4.2-53 through 4.2-55 of Section 4.2, Air Quality, in **Appendix B** of this document). Since the emissions from each development proposal (project) during construction or operation would not exceed the emission significance thresholds (i.e., threshold levels), each project would not significantly contribute to the region's existing or projected adverse air quality conditions for ozone, $PM_{10,}$ and $PM_{2.5}$. This analysis is consistent with how the analysis would be done if the City had prepared two separate EIRs.

The comment also states that the Draft EIR's use of average daily construction emissions violates BAAQMD guidelines. As shown in the Thresholds of Significance table on page 2-2 of the BAAQMD CEQA Air Quality Guidelines, project-level construction emissions are recommended to be evaluated using average daily emissions. Pages B-13 and B-14 of the BAAQMD CEQA Air Quality Guidelines describe the procedure for averaging construction period emissions and clearly state that "the average daily emissions of each pollutant that would occur throughout the *entire* construction period should be identified and compared with the District's threshold of significance." In addition, personal correspondence with BAAQMD staff[4] has confirmed the use of this approach for evaluating construction impacts.

B24-3 Cancer risks from project construction were evaluated using the most recent BAAQMD guidance for health risk assessments.[5,6] The BAAQMD's health risk guidance incorporates Office of Environmental Health Hazard Assessment (OEHHA) methods and procedures.

Cancer risks for each project (Sares Regis and Raintree) were calculated based on the maximum modeled diesel particulate matter (DPM) concentration from each project site at residential receptor locations. DPM concentrations at each receptor location were calculated with an air quality dispersion model that used the total DPM emissions over the entire construction period for each project site. The modeling used total DPM emissions over the entire construction period rather than average daily emissions in order to calculate DPM concentrations representative of the entire construction period of about 2 years. Cancer risks for both child and adult exposures to DPM during construction were calculated based on the maximum DPM concentration associated with each construction site. As recommended by the BAAQMD and OEHHA, evaluation of child cancer risks included application of an Age Sensitivity Factor (ASF) of 10 to account for the increased susceptibility of infants and children to carcinogens, as compared to adults, over the period from the third trimester of pregnancy to 2 years of age. An ASF of 1 was used in calculating the adult cancer risks. Note that the analysis conservatively assumed the presence of an infant at each receptor for the maximum construction period exposure. This exposure was assumed to be almost continuous through the construction period.

As discussed in Response to Comment B24-2, project emissions, including DPM emissions (as exhaust $PM_{2.5}$ emissions), were recalculated for the projects using CalEEMod (v.2013.2.2) for unmitigated conditions. Mitigated construction emissions were also modeled using the CalEEMod model. As such, health risks were evaluated using the recalculated emissions. Cancer risks were found to be less than significant with mitigation. See text revisions for Section 4.2, Air Quality, in

[4] Personal correspondence between James Reyff, Illingworth & Rodkin, Inc., and Sigalle Michael, BAAQMD, January 11, 2012.

[5] BAAQMD, 2012. *Recommended Methods for Screening and Modeling Local Risks and Hazards*. May.

[6] BAAQMD, 2010. *Air Toxics NSR Program Health Risk Screening Analysis (HSRA) Guidelines*. January.

Appendix B of this document, including revisions to Mitigation Measure AIR-5a, item 9; revisions to Tables 4.2-5, 4.2-6, 4.2-7, and 4.2-8; and **Appendix D** for modeling outputs.

To evaluate the effectiveness of Mitigation Measure AIR-5a, CalEEMod modeling was conducted to include the effectiveness of engines that meet U.S. EPA Tier 2 standards as well as selected building construction equipment that would need to meet U.S. EPA Tier 4 particulate matter standards. This analysis relied on the best available information, which is based on CARB's OFFROAD model. CalEEMod (v.2013.2.2) relies on the latest available emissions factors developed for construction equipment. The mitigated emissions computed with CalEEMod (v. 2013.2.2) were input to the dispersion modeling to predict TAC exposure and the associated excess cancer risks with Mitigation Measure AIR-5a implemented.

B24-4 Energy-efficiency measures such as exceeding 2008 California Title 24 standards by 15 percent or more, installing energy-efficient lighting and appliances, and using water-efficient landscaping are proposed by the applicants as part of the project design features and, therefore, were included in the model runs under the unmitigated conditions. These are not mitigated emissions but, due to the nature of the CalEEMod model, these energy-efficiency measures are reported in the mitigated output of the model runs. However, operational air pollutant emissions reported are based on the unmitigated CalEEMod (v. 2013.2.2) output.

The comment also states that the Draft EIR improperly segments its review of operational emissions from the Sares Regis development from its review of operational emissions from the Raintree development, resulting in a failure to disclose potentially significant impacts. Please see Response to Comment B24-2, which explains why the two development projects were properly analyzed separately.

The comment also states that the Draft EIR's assumption that proposed mitigation would reduce health risks to future residents from nearby roadway emissions to below the significance level is not supported by substantial evidence.

The following is a response to comments regarding the feasibility and effectiveness of mitigating TAC exposure from sources of TACs that could affect residents of the projects. Note that the Draft EIR analysis considered exposures to be nearly continuous over a 70-year period. The Draft EIR identified excess cancer risks and $PM_{2.5}$ from U.S. Highway 101 as significant (see Draft EIR Impact AIR-4) for both the Sares Regis and Raintree projects. All other single sources affecting the site were found to have less-than-significant impacts. Cumulative annual concentrations of $PM_{2.5}$ were also found to be significant under the Full Buildout Scenario for the Raintree project. Cumulative excess cancer risks were found to be less than significant.

The Draft EIR followed the BAAQMD CEQA Air Quality Guidelines in identifying mitigation measures to reduce significant excess cancer risks and annual $PM_{2.5}$ concentrations. These guidelines recommend the use of filtration as an effective means to reduce community risks and hazards, such as TACs emitted from highway traffic. Furthermore, the City and County of San Francisco has implemented these measures for projects in San Francisco. In San Francisco, projects with significant exposures to highway TACs are required to filter incoming air to residential units with MERV13 filtration. Mitigation measures to reduce the significant impacts caused by Highway101 traffic are outlined in Mitigation Measure AIR-4. Draft EIR pages 4.2-30 through 4.2-35 described the effects of barriers, vegetation, and filtration in reducing particulate matter

concentrations that lead to significant excess cancer risk and annual $PM_{2.5}$ concentrations. Note that Table 4.2-4 (on page 4.2-16 of the Draft EIR) identified single- and cumulative-source thresholds for excess cancer risk and annual $PM_{2.5}$ that were used to determine the impacts. With implementation of Mitigation Measure AIR-4, the impacts from each single-source would be reduced to below the single-source thresholds (i.e., less-than-significant levels) and the excess cancer risk and annual $PM_{2.5}$ concentrations would be reduced below the cumulative thresholds.

Mitigation Measure AIR-4 includes five components that would reduce particulate concentrations, which also lead to excess cancer risk. This measure identifies the level of filtration necessary to reduce particulate matter levels, such that significant excess cancer risk and annual $PM_{2.5}$ risks would be less than significant. As with noise, the level of impact varies across the site, and therefore so does the design of the mitigation measure.

The final plans for each project would have to be approved by the City in accordance with Mitigation Measure AIR-4. Building ventilation systems would have to meet the California Building Code requirements that meet requirements of ANSI/ASHRAE Standard 62.2. Ventilation and Acceptable Indoor Air Quality in Low-Rise Residential Buildings. In addition, each project intends to meet green building requirements that minimize ventilation leaks to improve air quality and reduce energy usage.[7] Exactly how the ventilation systems with filtration are implemented is yet to be determined. Final design plans that would depict such systems in detail are not available and would be developed during final design. Similar to noise analysis, which does not identify the STC rating necessary for the various units, the mitigation measure does not identify the details of the filtration for each unit. Information is contained in the Draft EIR so that the City can make those determinations during final design. It is not known how affected units would be ventilated and filtered (e.g., centralized or unit-by-unit HVAC system). However, the Draft EIR concludes that it would be feasible to implement this mitigation measure. As previously mentioned, ventilation systems with MERV13 filtration are required in San Francisco where TAC exposure is significant. For example, Lennox Industries distributes the *Carbon Clean 16* as whole home filtration (with MERV16 filter media) that can be incorporated into most residential heating and ventilation systems.[8] Another residential application is the IQ Air Perfect 16 that is suitable for residential HVAC systems.[9] The design to ventilate and filter air on a unit-by-unit or building-by-building basis is yet to be determined. Mitigation Measure AIR-4 provides the minimum standard to be achieved based on TAC exposure. Depending on the ventilation system design, the buildings may accommodate one or more levels of filtration. As is required under Title 24, ventilation systems would be independently leak tested. Air leakage through windows designed to meet Title 24 energy-efficiency requirements and sound ratings would be minimal and would not affect the filtration systems when windows are closed. While ventilation systems that are maintained are the primary effective feature of this mitigation measure, there are other features. For example, the projects would have to enhance the existing vegetative barrier so that particulates emitted from Highway 101 are further reduced.

[7] Each project intends to obtain a minimum 110 points on the Green Point Rated Checklist and would design apartments to be more than 15 percent more energy-efficient than the State 2008 Title 24 energy requirements. To meet this requirement, the projects would minimize air duct leakage, increase insulation, and install air barriers to minimize unit air leakage.

[8] See Lennox Industries Healthy Climate® Carbon Clean 16 Media Cleaner Brochure: Website: http://www.lenox.com/products/indoor-air-quality-systems/CarbonClean16/

[9] See IQ Air Perfect 16 Brochure: Website: http://www.iqair.com/uk/home/wholehouseairpurifiers/

As part of Mitigation Measure AIR-4, the City would have an "authorized air pollutant consultant" verify that the appropriate filtration is provided. This consultant would need to be approved by the City Planning Director. Mitigation Measure AIR-4 has been revised to clarify that the consultant conducting this verification would need to be approved by the City. The following text change has been made to Mitigation Measure AIR-4, item 5 (see Section 4.2, Air Quality, in **Appendix B** of this document, page 4.2-44):

> *5. Require that prior to building occupancy, an authorized air pollutant consultant approved by the City shall verify the installation of all necessary measures to reduce toxic air contaminant (TAC) exposure.*

The purpose of this mitigation measure is to ensure that changes in the final design of the project properly account for TAC exposure to the site. The exposures would be based on Highway 101 traffic emissions, since this is the only source that is above the single-source threshold. All of the other single sources are not considered to have a significant effect. Cumulatively, there would be a significant impact under full build-out of the Raintree project. Implementation of Mitigation Measure AIR-4 would reduce the impact from all single sources to less than significant and the impact from cumulative levels to less than significant.

In addressing exposure, the Draft EIR made the reasonable assumptions that occupants continuously residing at a project residence would be inside 22 hours of the day and have windows open during the day that would equate to an additional hour outside per day. These are reasonable and conservative assumptions, especially in regards to the modeling assumptions that residents would live at the project almost continuously each day for 70 years. Note that the projects propose apartments that are expected to have substantially shorter occupancy durations. Most people do not occupy their residences all day long. In addition, the Draft EIR assumed that infants and small children would occupy each residence. Mitigation Measure AIR-4, item 3, includes assurances that new owners and tenants are provided with information on the ventilation system; this measure has been revised to ensure that owners and tenants of affected residences are notified of the purpose for this ventilation system, as follows (see Section 4.2, Air Quality, in **Appendix B** of this document, page 4.2-44):

> *3. Ensure that the lease agreement and other property documents (1) require cleaning, maintenance, and monitoring of the affected buildings for air flow leaks; (2) include assurance that new owners and tenants are provided information on the ventilation system; and (3) include provisions that fees associated with owning or leasing a unit(s) in the building include funds for cleaning, maintenance, monitoring, and replacements of the filters, as needed; and (4) provide information regarding the ventilation/filtration systems and importance of keeping windows and doors closed to maximize the efficiency of the system.*

B24-5 Please see Response to Comment B24-2. Since preparation of the Draft EIR, a new version of CalEEMod (v. 2013.2.2) has been published that corrected problems with the previous model versions. Emissions were re-calculated for the projects using CalEEMod (v. 2013.2.2) for unmitigated and mitigated conditions. No new significant impacts were identified. Community health risk impacts resulting from implementation of the proposed projects were found to be less than significant with mitigation. Therefore, the projects would not be inconsistent with the City's General Plan goals as summarized above.

B24-6 Please refer to Response to Comment B24-37.

B24-7 Please refer to Response to Comment B24-38.

B24-8 Refer to Responses to Comments B24-29, B24-39, and B24-40.

Since publication of the Draft EIR, more detailed project-specific information has become available about the sewer main upgrade on North Fair Oaks Avenue required as part of the mitigation for utilities impacts. Construction activity related to this sewer upgrade was modeled using CalEEMod (v. 2013.2.2). The sewer main construction would not cause any new significant impacts or require additional mitigation measures. See text revisions in **Appendix B**, pages 4.2-18, 4.2-19, and 4.2-45; revisions to Tables 4.2-5 and 4.2-6; and **Appendix D** for modeling outputs.

B24-9 This comment addresses the need for Draft EIR recirculation. Based on the responses to all the comments on the Draft EIR, the City has decided that the Draft EIR does not need to be recirculated. Under CEQA Guidelines Section15088.5, recirculation is not required when new information added to the EIR merely clarifies or amplifies, or makes insignificant modifications in an adequate EIR. Recirculation generally occurs when (1) there is a new, significant environmental impact that has been identified in association with the project or from a new mitigation measure; (2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted to reduce that impact to a level of insignificance; (3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project proponents decline to adopt it; or (4) the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. None of these conditions apply in this case.

B24-10 No specific issues on specific topics of the Draft EIR are raised in this comment; however, other comments by this same commenter are addressed herein for all of Comment Letter B24.

B24-11 The Draft EIR analysis (Section 4.5, Hazards and Hazardous Materials) cited the 2012 Phase I report, which used the residential human health-based ESL of 34 micrograms per kilogram (µg/kg) for dieldrin,[10] even though 2.3 µg/kg is the "final" ESL for dieldrin, as cited by the commenter. The final ESL of 2.3 µg/kg was selected by the Regional Water Quality Control Board (RWQCB) on the basis that dieldrin at concentrations as low as 2.3 µg/kg can potentially leach and affect groundwater.[11]

As stated in the RWQCB guidance memorandum, ESLs are not intended to be used as cleanup goals, or as a final determination about the safety of a development site, but are intended to provide conservative screening values to quickly review laboratory data and determine if additional review, site investigation, or remediation may be warranted. In the case of the Sares Regis site, 16 shallow soil samples were collected and analyzed for organochlorine pesticides to determine if releases had occurred from historical pesticide mixing and storage. Of the 16 samples, 14 samples did not contain dieldrin above the laboratory reporting limit of 2.0 µg/kg, one sample contained dieldrin at a concentration of 2.6 µg/kg, and one sample contained dieldrin at a concentration of

[10] RWQCB, Environmental Screening Levels, Table K-1. Direct Exposure Soil Screening Levels, Residential Exposure Scenario, February 2013.

[11] RWQCB, Environmental Screening Levels, Table A-1, Shallow Soil Screening Levels for Residential Land Use (groundwater is a current or potential drinking water resource).

30.4 µg/kg.[12] Based on these results, in comparison to the human health risk-based ESL, the Phase I report concluded that pesticides in soil represented a *de minimus* condition and did not represent a recognized environmental condition warranting additional investigation or remediation.[13]
At the Sares Regis site, groundwater is not proposed for use as drinking water and future workers, residents, and nearby members of the general public would not be exposed to groundwater. Therefore, it is appropriate for the Draft EIR to describe human health risks using the human health risk ESL for direct soil exposure instead of the final ESL intended to protect groundwater resources. The Phase I conclusion cited in the Draft EIR is therefore appropriate, and no mitigation is necessary to protect human health from risks due to dieldrin concentrations in soil at the Sares Regis site.

Response to Comment B24-12 below addresses the commenter's concerns regarding pesticide contamination at the Raintree site.

B24-12 Please refer to Response to Comment B24-11 regarding the proper use of ESLs as screening criteria. At the Raintree site, the 2012 site investigation cited in the Draft EIR (Section 4.5, Hazards and Hazardous Materials) collected and analyzed six shallow soil samples for organochlorine pesticides. Of the six samples, four samples did not contain DDE above laboratory reporting limits (ranging from 0.005 mg/kg to 0.17 mg/kg), one sample contained DDE at 0.087 mg/kg, and one sample (from location EB7) contained DDE at 1.8 mg/kg, slightly above the ESL of 1.7 mg/kg.[14]

In response to the comment, the following text change is made to page 4.5-3 of the Draft EIR:

> *Soils contained petroleum hydrocarbons and pesticides at low concentrations, below ESLs for residential land uses, <u>with the exception of one soil sample which contained DDE, an organochlorine pesticide, at 1.8 mg/kg, slightly above the ESL for residential land use of 1.7 mg/kg</u>. Therefore, using the ESLs as screening criteria, no additional review or remediation is required.*

The 2012 site investigation report concluded that mitigation may be required at the Raintree site due to the concentrations of arsenic and vanadium in soils at the Raintree site. The 2012 site investigation report did not include any conclusions or recommendations regarding DDE in soils.[15] Analytical results for arsenic and vanadium were much more consistent in exceeding the screening criteria. Arsenic and vanadium were identified in all six soil samples analyzed for the 2012 site investigation. Arsenic was identified at concentrations ranging from 3.4 to 52 mg/kg, compared to the ESL of 0.39 mg/kg. Vanadium was detected at concentrations ranging from 43 to 200 mg/kg, compared to the ESL of 16 mg/kg.[16]

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[12] West Inc., 2012*, Phase I Environmental Site Assessment, 610 and 630 East Weddell Avenue, Sunnyvale, California,* October.

[13] West Inc., 2012, *Phase I Environmental Site Assessment, 610 and 630 East Weddell Avenue, Sunnyvale, California,* October.

[14] Treadwell and Rollo, 2012, Limited Environmental Site Investigation, Fair Oaks Business Park, 520 to 592 East Weddell Drive, Sunnyvale, California, November 6.

[15] Treadwell and Rollo, 2012, Limited Environmental Site Investigation, Fair Oaks Business Park, 520 to 592 East Weddell Drive, Sunnyvale, California, November 6.

[16] Treadwell and Rollo, 2012, Limited Environmental Site Investigation, Fair Oaks Business Park, 520 to 592 East Weddell Drive, Sunnyvale, California, November 6.

Implementation of Mitigation Measure HAZARDS-1 (Draft EIR page 4.5-10) would adequately protect human health from potential health risks due to DDE in soils. This measure does not need to be amended as the mitigation measure addresses any potential contamination of soils. In addition, this information does not require identification of a new impact that would require recirculation of the Draft EIR. At location EB7 where DDE was detected at 1.8 mg/kg, arsenic was identified at 13 mg/kg and vanadium was identified at 61 mg/kg. By ensuring that construction workers and other members of the public are protected from health risks from arsenic and vanadium in soil at location EB7, the public would also necessarily be protected from health risks from DDE at that location. Meeting the performance standard in Mitigation Measure HAZARDS-1, by ensuring that "any potential added health risks to construction workers, maintenance and utility workers, site users, and the general public as a result of hazardous materials are reduced to a cumulative risk of less than 1×10^{-6} (one in one million) for carcinogens and a cumulative hazard index of 1.0 for non-carcinogens, or as otherwise required by a regulatory oversight agency," would ensure that risks from all hazardous materials at the site, including arsenic, vanadium, and DDE, would be cumulatively less than significant. No additional mitigation is required to protect human health due to DDE concentrations in soil at the Raintree site.

B24-13 Although remediation of the Sares Regis site is not complete, previous environmental investigations have largely defined the nature and extent of the contamination. Based on information available at the time of preparation of this Final EIR, it appears that a minor soil removal action, involving approximately 10 cubic yards of soil, may be sufficient to address contamination issues at the site. Mitigation Measure HAZARDS-2 (Draft EIR page 4.5-11) provides a clear performance standard for the remedial action, requiring that the site achieve case closure from the Voluntary Cleanup Program prior to site occupancy. Please refer to Response to Comment B26-10, which clarifies that case closure from the Voluntary Cleanup Program will require the Department of Toxic Substances Control (DTSC) to certify that hazardous materials conditions at the Sares Regis site are acceptable for the proposed project. No additional performance standards for site remediation are warranted.

B24-14 Please refer to Response to Comment B24-11 regarding the proper use of ESLs as screening criteria. Benzene is a volatile organic compound (VOC) associated with gasoline. The 2012 site investigation collected eight soil gas samples and analyzed them for VOCs. Benzene was detected at concentrations ranging from 3.9 to 30 $\mu g/m^3$,[17] consistently below the 42 $\mu g/m^3$ ESL for residential uses as well as the separate California Human Health Screening Level of 36.2 $\mu g/m^3$ cited in the comment. No rationale is provided in the comment for why additional soil gas samples from the site may have higher concentrations or why the data presented in the Draft EIR do not adequately represent subsurface conditions at the site. Based on available data, no additional investigation or remedial action related to benzene in soil gases at the Raintree site is warranted.

B24-15 Please see all other responses to this comment letter, and specifically Response to Comment B24-2.

B24-16 Please see Response to Comment B24-2.

B24-17 Please see Response to Comment B24-2.

[17] Treadwell and Rollo, 2012, Limited Environmental Site Investigation, Fair Oaks Business Park, 520 to 592 East Weddell Drive, Sunnyvale, California, November 6.

B24-18 Please see Response to Comment B24-2. As shown in the Thresholds of Significance table on page 2-2 of the BAAQMD CEQA Air Quality Guidelines, project-level construction emissions are recommended to be evaluated using average daily emissions.

B24-19 Please see Response to Comment B24-8.

B24-20 Please see Response to Comment B24-3.

B24-21 Please see Responses to Comments B24-2 and B24-4.

B24-22 Please see Response to Comment B24-4.

B24-23 Please see Response to Comment B24-5.

B24-24 Please see Response to Comment B24-2.

B24-25 Please see Response to Comment B24-2. Since preparation of the Draft EIR, a new version of CalEEMod (v. 2013.2.2) has been released that corrected problems with the previous versions. Emissions were re-calculated for the projects using CalEEMod (v. 2013.2.2) for unmitigated and, if appropriate, mitigated conditions. Emission rates for construction equipment were based on the CalEEMod (v. 2013.2.2) model defaults.

B24-26 Please see Response to Comment B24-2. Construction emissions were evaluated for each project using the thresholds identified in the 2011 BAAQMD CEQA Air Quality Guidelines. The thresholds used to evaluate individual project construction and operation emissions also evaluate whether a project's individual emissions would be cumulatively considerable. Construction health risks were evaluated both individually and cumulatively following the 2011 BAAQMD CEQA Air Quality Guidelines that include community risk thresholds for single and cumulative sources.

B24-27 As described in Response to Comment B24-2, the projects were remodeled using the new CalEEMod (v. 2013.2.2). As discussed in the revised Section 4.2, Air Quality, included in **Appendix B** of this document, unmitigated emissions would not exceed the BAAQMD construction significance thresholds for ROG, and mitigation is not required. Dr. Pless incorrectly combines emissions of two separate projects and compares them to the BAAQMD thresholds that apply to individual projects and not multiple projects or cumulative conditions.

B24-28 Please see Response to Comment B24-2. Emissions were re-calculated for the projects using CalEEMod (v. 2013.2.2) for unmitigated. As of August 5, 2013, the BAAQMD has recommended the use of CalEEMod 2013 .2 to conduct air quality studies.

The intention of the air quality assessment was not to skip any steps of the BAAQMD CEQA Air Quality Guidelines. The average daily emissions from construction were quantified using the CalEEMod 2013 model and compared to the significance thresholds. Since construction emissions did not exceed the significance thresholds, no further steps were taken in that portion of the analysis.

As shown in the Thresholds of Significance table on page 2-2 of the BAAQMD CEQA Air Quality Guidelines, project-level construction emissions are recommended to be evaluated using average

daily emissions. The emission-based significance thresholds were developed to address project impacts on ground-level ozone and particulate matter (i.e., PM_{10} and $PM_{2.5}$). Concentrations of these pollutants in the Bay Area are based on a number of complex factors, besides the emissions from various sources. There are both temporal and special factors that need to be considered when evaluating the effects of emissions on adverse levels in the Bay Area. The BAAQMD recommends the use of average daily thresholds when evaluating impacts on these air quality standards. The Draft EIR used this approach.

B24-29 Please see Response to Comment B24-8. The sewer main upsizing was analyzed in Draft EIR, Section 4.11, Utilities and Service Systems, page 4.11-10. More specific information about the sewer main upsizing subsequently became available and is included in the Final EIR. Construction activity associated with the upsizing of the sewer main would result in minor air emissions. The sewer main upsizing would not cause any new significant impacts or require additional mitigation measures. Since the projects are independent and could be built either first or second, the analysis conservatively added the air emissions from the sewer main upsizing to both projects.

B24-30 Please see Responses to Comments B24-2 and B24-3. Cancer risk calculations were revised to include emissions based on unmitigated and mitigated output from CalEEMod (v. 2013.2.2). **Appendix D** provides the CalEEMod output for the construction analysis that includes the mitigated construction levels. **Appendix D** also includes the cancer risk calculations for mitigated conditions. These computations also included construction of the sewer main. Note that Draft EIR Mitigation Measure AIR-5a, item 9, pages 4.2-46 and 4.2-47 is revised as follows (see revised Section 4.2, Air Quality, in **Appendix B**, pages 4.2-50 to 4.2-51):

9. *A plan shall be developed demonstrating that the off-road equipment ~~(more than 50 horsepower and on-site for more than two consecutive workdays)~~ to be used in project construction would achieve an additional 50-percent reduction in exhaust particulate matter emissions, compared to similar equipment <u>based on CARB OFFROAD statewide average emission factors for the projected year of use.</u> ~~that meets U.S. EPA Tier 2 standards~~. Based on the construction plans presented for this project, a feasible method to achieve this objective would be the following:*

   - *All diesel-powered air compressors, welders, forklifts (including rough terrain forklifts), paint spray rigs, and all types of cranes, forklifts or aerial lifts (man lifts, boom lifts, etc.) used during all construction phases shall meet or exceed U.S. EPA Tier 4 standards for particulate matter emissions or substituted with alternatively fueled equipment (e.g., LPG fuel).*
   - *All other off-road construction equipment used on the site shall, on a fleet-wide average, meet U.S. EPA Tier 2 emission standards.*
   - *Portable diesel generators operating for more than two days shall be prohibited. Grid power electricity shall be used to provide power at construction sites, or non-diesel generators (or diesel generators using bio-diesel fuel) may be used when grid power electricity is not feasible.*

In addition, on page 4.2-51 in **Appendix B**, the text is updated to include the excess child cancer risk with Mitigation Measure AIR-5a:

> *Construction emissions with Mitigation Measure AIR-5a were computed using the CalEEMod model. These emissions were input to the ISCST3 dispersion model to predict mitigated DPM and $PM_{2.5}$ concentrations and the corresponding excess cancer risks. As a result, the maximum excess child cancer risk would be reduced to 7.0 chances per million for the Sares Regis Applicant Proposed Scenario and 6.8 chances per million for the Raintree Applicant Proposed Scenario.*

As described in Response to Comment B24-3, the excess cancer risk calculations assumed that residents would be exposed over the entire construction period.

B24-31 Please see Response to Comment B24-4. Energy-efficiency measures such as exceeding 2008 California Title 24 standards by 15 percent or more, installing energy-efficient lighting and appliances, and using water-efficient landscaping are proposed by the applicant as part of the project and, therefore, were included in the model runs under the unmitigated conditions. These are not mitigated emissions but, due to the nature of the CalEEMod model, the effect of these energy-efficiency measures can only be reported in the mitigated output of the model runs. The CalEEMod output that indicates "Mitigated Emissions" is really the emissions with the effects of applicant-proposed features stated above. These are the emissions reported for unmitigated conditions shown in Table 4.4-1 on page 4.4-10. These features would have a small effect on air pollutant emissions, and therefore, were not accounted for in Tables 4.2-7 and Table 4.2-8. The air pollutant emissions reported in the Tables 4.2-7 and 4.2-8 of the Draft EIR are based on the unmitigated output from the CalEEMod model.

B24-32 Please see Response to Comment B24-2.

B24-33 Please see Response to Comment B24-4, which describes the effectiveness of Mitigation Measure AIR-4.

B24-34 Under Impact AIR-4, impacts from Highway 101 traffic on both project sites were modeled over receptor grids. Excess cancer risk and annual $PM_{2.5}$ concentrations were provided for each receptor (see Draft EIR Figures 4.2-2 through 4.2-5, and Draft EIR pages 4.2-29 and 4.2-31 through 4.2-33). Based on this modeling, the distance from Highway 101 to the level of significance was measured and found to be approximately 330 feet. Regarding phasing, the BAAQMD CEQA Air Quality Guidelines, page 5-17, recommend the following:

> Large projects may consider phased development where commercial/retail portions of the project are developed first. This would allow time for CARB's diesel regulations to take effect in reducing diesel emissions along major highways and arterial roadways. Ultimately, lower concentrations would be anticipated along the roads in the near future such that residential development would be impacted by less risk in later phases of the development.

As a result, Mitigation Measure AIR-4 recognizes that exposures would be lower in the future due to reduced emissions caused by regulatory requirements currently in place. The measure was not intended to solely eliminate the need for filtration through phasing. Mitigation AIR-4, item 4, has

been revised to add the following (see page 4.2-44 in the revised Section 4.2, Air Quality, in **Appendix B**):

> *…especially after 2014. Any effects of phasing the project shall be verified by an authorized air pollutant consultant approved by the City.*

B24-35 Except for testing of the system to ensure proper operation, the ventilation systems would not be operated prior to occupancy. Major project construction (e.g., grading activity) is not anticipated subsequent to occupancy of the units for each of the projects. Note that these systems are to ensure reductions in annual and lifetime TAC exposures; thus, minor contamination would have an insignificant effect on the overall performance of the mitigation measure. Mitigation Measure AIR-4 would require maintenance and monitoring of the ventilation systems, which is not typical for residential construction.

B24-36 Please see Response to Comment B24-5. Community health risk impacts resulting from implementation of the proposed projects were found to be less than significant with mitigation (i.e., Mitigation Measure AIR-4). Therefore, the projects would not be inconsistent with the City's General Plan provisions as summarized above.

B24-37 The analysis of the site's exposure to ground vibrations in Section 4.7, Noise, of the Draft EIR used data set forth in the referenced Caltrans Technical Advisory, Vibration TAV-04-01-R0201, Transportation Related Earthborne Vibrations. Figure 2 in the reference, Maximum Highway Truck Traffic Vibration Levels vs. Distance, is a graph of Peak Particle Velocity (PPV) versus distance from the center line of the nearest travel lane. The reference states "The curve was compiled from the highest measured vibrations available from previous studies." The graph is, therefore, a credible worst-case predictor of ground vibration levels along highways in California and appropriate for this analysis. The vibration values reported at various distances were obtained from the graph and converted from metric to English units for consistency with the criteria. The analysis evaluated the proposed development scenarios, and the distances from the near travel lane to the vibration sensitive receiver locations were based on those scenarios, both the Applicant Proposed Scenario and the Full Buildout Scenario.

The effects of foundation coupling losses and floor amplification typically result in substantially lower vibration levels inside a large building as compared to vibration levels on the ground outside the building. Information on these effects was obtained from the Federal Transit Administration, Transit Noise and Vibration Impact Assessment, May 2006, Table 10-8. The analysis concluded that these effects would result in a reduction of approximately 9 VdB (a reduction of about 65 percent). The maximum projected Peak Particle Velocity on the ground (0.02 in/sec PPV) would be about 0.007 in/sec PPV just inside the building, and would below the perception threshold of 0.01 in/sec PPV.

B24-38 This comment refers to Impact NOISE-5 and Mitigation Measure NOISE-5 on Draft EIR pages 4.7-22 through 4.7-25. The approach, analyses, proposed control measures, and finding of a less-than-significant short-term impact after implementation of the mitigation measure are consistent with the policy the City of Sunnyvale adopted in the recent Land Use and Transportation Sub-Element Update of the General Plan, in which the City concluded that "The potential short-term noise impacts associated with construction would be mitigated by the above policy [the mitigation measure for Impact NOISE-5] that requires reasonable noise reduction measures be incorporated

into the construction plan and implemented during all phases of construction activity to minimize the exposure of neighboring properties, and in combination with the limitations on hours set forth in the Municipal Code, would reduce the impact to a less than significant level."

B24-39 The following response provides additional details about the sewer main upsizing and addresses the commenter's concerns regarding its air quality, traffic, noise, and other impacts. The information provided below does not change the Draft EIR's conclusion that the impacts of the sewer main upsizing would be less than significant.

Timing and Extent of Sewer Main Upsizing

The sewer main upsizing would require pipe bursting, which would not require temporary excavation of a trench in North Fair Oaks Avenue immediately northeast of the Raintree site. The bursting process avoids the need for trenching and deep excavations. Instead, special tunneling equipment is used to install a pipe, and there would only need to be small pits dug at the ends of the pipe. This process is very efficient because it destroys (bursts) the old pipe as it installs the new pipe. The work would take approximately 1 to 2 weeks and would likely be completed as part of on-site utility work using the same underground contractor working on either the Sares-Regis site or the Raintree site.

Activities would include demolition, construction of the entrance/exit pits, pipe bursting, repairing manholes and backfill, and cleanup. The crew would likely consist of one operator, two laborers, two traffic control men, one foreman, and one superintendent. Construction equipment would include a concrete walk-behind saw, backhoe, expander head, pulling rods, a pulling machine, a retaining device, and a hydraulic power pack. A temporary bypass system would be needed to divert wastewater around the limits of the work. Pipe material would be HDPE.[18]

Air Quality Issues

The comment states that the finding that air quality impacts from upsizing the North Fair Oaks Avenue sewer main would be less than significant is not supported by substantial evidence. Please see Response to Comment B24-8. Since publication of the Draft EIR, project-specific information has become available about the sewer main upsizing on North Fair Oaks Avenue required as part of the mitigation for utilities impacts. Construction activity related to the sewer upgrade was modeled using CalEEMod (v. 2013.2.2). The sewer main upsizing would not cause any new significant air quality impacts or require additional mitigation measures.

Traffic Issues

The comment addresses the following traffic-related statement in the Draft EIR: "Traffic impacts would be mitigated by a City-initiated traffic plan to route traffic as needed during construction…" The commenter states that "This statement discusses mitigation that is vague and not included as part of the Project mitigation."

The Draft EIR (Section 4.10, Transportation) identifies potential traffic levels and impacts during construction and demolition for the East Weddell Residential Projects. The Draft EIR traffic operations analysis concluded that all study intersections near the project sites are expected to

[18] City of Sunnyvale, 2013, email from Ryan Kuchenig, Associate Planner, Department of Community Development, forwarding information from BKF Engineers, October 29.

operate at level of service (LOS) D or better under Existing-plus-Project Conditions for both the Applicant Proposed Scenarios and the Full Buildout Scenarios for the combined East Weddell Residential Projects. Construction traffic for both sites, including during the worst-case demolition period, is expected to average no more than 23 truck trips per day. As a result, the amount of vehicle trips expected to be added to the study intersections by the completed projects is greater than the level of construction-generated traffic. This would remain true provided that project truck travel is restricted to outside typical weekday commute peak periods.

Based on engineering experience with sewer main replacement construction activity similar to that necessary for the East Weddell Residential Projects, it is anticipated that the truck traffic relative to this activity would also total fewer than 23 truck trips per day. It is also anticipated that the sewer main construction activity would have minimal impacts on local traffic operations during the weekday AM and PM peak commute periods, provided that truck traffic for this activity follows the same approved truck traffic program that would be required for truck traffic relative to the East Weddell Residential Projects demolition and construction. Provisions for sewer main construction are assumed to include truck traffic following City-recommended truck routes, avoiding the AM and PM commute peak periods (7:00 to 9:00 AM and 4:00 to 6:00 PM) to minimize impacts on the local roadway system, and avoiding travel through residential neighborhoods.

In addition to these provisions, and as with other projects, the City construction traffic plan would also require that contractors performing the sewer main upsizing avoid construction activity that affects travel lanes during the AM and PM commute peak periods (7:00 to 9:00 AM and 4:00 to 6:00 PM), so as to minimize congestion and maintain existing roadway traffic capacity on North Fair Oaks Avenue. The construction traffic plan would further require that when the contractor ceases sewer main construction activity, the sewer main roadway opening would be covered as necessary with metal plates or similar materials that are sufficiently sturdy for all types of vehicles to drive over. The contractor would also monitor traffic during off-peak traffic periods to ensure that excessive traffic backups on North Fair Oaks Avenue do not occur for the duration of the sewer main construction activity. As with other projects, the traffic plan and construction hours would be monitored to ensure that traffic is not affected by construction and would be modified as needed.

All of the provisions of the construction truck traffic program detailed above would also be integrated into construction contract specifications.

Noise Issues

Noise from construction activities associated with the upsizing of the North Fair Oaks Avenue sewer main would be temporary, lasting approximately 1 to 2 weeks. Also, as noted above, the work would likely completed as part of the on-site utility work using the same underground contractor working on either the Sares Regis site or the Raintree site. Activities would include demolition, construction of the entrance/exit pits, pipe bursting, repairing manholes and backfill, and cleanup. The crew would likely consist of one operator, two laborers, two traffic control men, one foreman, and one superintendent. Construction equipment would include a concrete walk-behind saw, backhoe, expander head, pulling rods, a pulling machine, a retaining device, and a hydraulic power pack.

These activities would not be noticeably different from the demolition and construction activities occurring on the Sares Regis or Raintree sites and would generate noise levels similar to those documented in the Draft EIR. Further, the construction activities associated with the upsizing of

the sewer main would occur within the North Fair Oaks Avenue right-of-way, where roadway traffic noise dominates the noise environment. No additional mitigation measures would be required.

Biology Issues

No biological impacts would be related to the proposed sewer main upgrade. The construction would take place in a paved area that is devoid of natural features.

Hydrology Issues

No trenching would be required for the sewer main upsizing, as the upsizing would be done by pipe bursting. The commenter is correct that no Storm Water Pollution Prevention Plan (SWPPP) would apply to the sewer main upsizing, as the sewer main upsizing would be physically removed from other project construction and the sewer main upsizing construction area would be significantly less than 1 acre in area. A construction site larger than 1 acre is typically considered to create potential stormwater pollution concerns, and 1 acre is the threshold that triggers requirements of the National Pollutant Discharge Elimination System (NPDES) Construction General Permit, which would require implementation of a SWPPP for the sewer main upsizing. Therefore, potential stormwater impacts related to excavation and spoils management for the sewer main upsizing would be less than significant, as stated in the Draft EIR.

In response to this comment, the following text change is made to page 4.11-10 of the Draft EIR:

> *The impact of construction of the upsized sewer main would not be significant for the following reasons: 1) construction would take place within the right-of-way of North Fair Oaks Avenue; 2) construction noise and air emissions would be short term and would not result in significant air quality or noise impacts; 3) traffic impacts would be mitigated by a City-initiated traffic plan to route traffic as needed during construction; 4) potential erosion impacts related to excavation and spoils management would be less than significant due to the limited area and extent of excavation required ~~covered under the project's SWPPP~~; and 5) no other impacts related to biological, hydrological or other topics would result. Construction of the wastewater facilities would not have any specific significant environmental impacts requiring mitigation.*

This change does not affect the Draft EIR's overall conclusion about the significance of impacts resulting from the sewer main upsizing. No additional mitigation is required to address potential hydrologic concerns identified in this comment.

B24-40 The projects do not include use of recycled water. Use of recycled water at the project sites does not currently appear to be feasible because (1) there is no immediate recycled water connection at the Raintree site, and (2) at the Sares Regis site, the nearest recycled water connection would be in a 24-inch main located far from the site and within Santa Clara Valley Water District (SCVWD) right-of-way.[19] The projects' lack of recycled water use does not necessarily mean the projects are inconsistent with Policy EM-1.2. The policy calls for the City to "maximize recycled water use…where feasible" (emphasis added); it does not require recycled water use, and it implies that use of recycled water will be infeasible in some cases. In the case of the East Weddell Residential Projects, recycled water use is currently infeasible.

[19] City of Sunnyvale, 2013, email from Ryan Kuchenig, Associate Planner, Department of Community Development, October 29.

The commenter also states that "In the case at hand, the policy to maximize the use of recycled water is critical to ensuring sufficient water supply in the City. The Draft EIR's conclusion that the City has sufficient water supply for the Project is dependent on the increasing use of recycled water." The City's Water Supply Report (Draft EIR Appendix E) does not seem to indicate that the City's ability to provide water to the projects depends on increasing use of recycled water, and the commenter does not provide a rationale for this claim. Therefore, no further response is possible.

B24-41 Please refer to Response to Comment B24-9.

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and U.S. Mail

October 23, 2013

Mr. Ryan Kuchenig
City of Sunnyvale
Department of Community Development
456 West Olive Ave.
Sunnyvale, CA 94088-3707

Re: East Weddell Residential Projects
Comments on Draft Environmental Impact Report

Dear Mr. Kuchenig:

We represent Raintree Partners, the project applicant of the "Raintree Applicant Proposed Scenario" as defined in the Draft Environmental Impact Report for East Weddell Residential Projects (State Clearinghouse Number 2013052010) dated September 2013 ("Draft EIR"). Thank you for the opportunity to provide our comments on the Draft EIR. We understand that Sares Regis, the developer of the other residential project analyzed in the Draft EIR, will submit comments regarding its project under separate cover.

Raintree's comments are organized to mirror the organization in the Draft EIR. We wish to underscore that our comments do not question the adequacy of the Draft EIR, which we have determined to be in compliance with the California Environmental Quality Act ("CEQA"). Our comments are simply designed to provide the City with proposed clarifications and suggestions. In the comments below, proposed revisions are depicted with <u>underlined</u> new text and brackets [ ] for deleted text.

1. INTRODUCTION

We have the following clarifying comments for the Introduction section of the Draft EIR:

- Section 1.1 Project Background
  - Please clarify that both the Sares Regis project and the Raintree project will include all six components listed in the bullet points on page 1-1. Currently, only the first

B25-1

two bullet points on page 1-1 provide that such components apply to both projects. It is our understanding that all six components apply to both projects. Thus, please consider revising the language under Section 1.1 on page 1-1 as follows.

- The overall project includes all of the following components for both the Sares Regis project and the Raintree project:
  - General Plan amendments for two sites.
  - Rezoning for [] three sites.
  - Special Development Permits.
  - Potential Vesting Tentative Maps.
  - Potential modifications to the Tasman/Fair Oaks Area Pedestrian and Bicycle Circulation Plan.
  - Potential San Francisco Public Utilities Commission (SFPUC) approval of improvements to the John W. Christian Greenbelt.

  While the "project" is defined as the two development projects combined, separate development applications will be process for each project and decisions on these applications [] could be independent of each other.

B25-1

- Please clarify that the "Full Buildout Scenario" is not the level of development that either Raintree or Sares Regis is proposing. For example, the final paragraph of Section 1.1 should conclude with the following sentence: Neither applicant proposes development under the Full Buildout Scenario.

B25-2

2. SUMMARY

We have the following clarifying comments for the Summary section of the Draft EIR:

- Section 2.1 Project Under Review
  - Please make the same changes to this language as set forth above regarding the changes to Section 1.1 Project Background to clarify that both the Sares Regis project and the Raintree project will include all six components listed in bullet points on page 2-1.

B25-3

- Table 2-1 Summary of Impacts and Mitigation Measures
  - Hazards-5 on page 2-17 of Table 2-1 states that the level of significance without mitigation for Hazards-5 will be Significant. However, in the Hazards section of the

B25-4

Draft EIR, the Hazards-5 impact on page 4.5-14 is listed as Less Than Significant. Please replace the "S" in the Hazards-5 column in Table 2-1 with "LTS". **B25-4**

- To be consistent with the rest of the Table 2-1, in the mitigation section of the table for Transportation-10 on page 2-22 and Transportation-11 on page 2-23, please add a conclusion at the end of the mitigation section discussion that states that: "This measure would reduce the impact to a less-than-significant level." **B25-5**

3. PROJECT DESCRIPTION

We have the following clarifying comments for the Project Description section of the Draft EIR:

- Section 3.1
  - To clarify that there are currently three driveways on East Weddell Drive, please revise the last sentence at the end of the third paragraph on page 3-1 as follows: Currently, three driveways on East Weddell Drive provide access to the Raintree site. **B25-6**
  - In the description of the Proposed Project at the top of page 3-3, please make the same changes to this text as set forth above regarding the changes to Section 1.1 (Project Background) to clarify that both the Sares Regis project and the Raintree project will include all six components listed in the bullet points on page 3-3. **B25-7**
  - To clarify that the landscape setback along E. Weddell Drive will remain, please replace the first paragraph on page 3-21 under the Raintree Site Applicant Proposed Scenario discussion with the following: The Raintree project would include landscaping for the purposes of aesthetic enhancement, driveway sight distance, and stormwater management. Turf would generally be minimized in favor of groundcover, shrubs, and shade trees. The landscaped setback along E. Weddell Drive shall be maintained and will enhance sight distance from the Raintree project driveway on E. Weddell Drive across from Kiel Court. Landscaping would incorporate water-efficient plants to comply with City of Sunnyvale Municipal Code Chapter 19.37, and landscaping plans would also serve to meet stormwater management needs. **B25-8**

4. ENVIRONMENTAL SETTING, IMPACTS, AND MITIGATION MEASURES

We have the following clarifying comments for this section of the Draft EIR:

4.4 GREENHOUSE GAS EMISSIONS

B25-9

- Impact GHG-1: Please revise the last sentence at the end of the paragraph discussing the Construction Emissions for the Raintree Applicant Proposed Scenario on page 4.4-12 as follows: []BAAQMD's suggested best management practices may include, but are not limited to: …." (page 4.4-12.)

4.7 NOISE

B25-10

- Impact NOISE-1: On the bottom of page 4.7-15, please revise the last sentence as follows: "This [ ] would be a significant impact without Mitigation Measure NOISE-1."

5. ALTERNATIVES

We have the following clarifying comments for the Alternatives section of the Draft EIR:

- Please revise the first paragraph on page 5-1 as follows:

  The State CEQA Guidelines (Section 15126.6) require that an EIR describe and evaluate the comparative merits of a range of reasonable alternatives to the project, or to the location of the project, that could feasibly attain most of the basic objectives of the project [ ] and avoid or substantially lessen any of the significant effects of the project. [ ] As provided in this EIR, all potentially significant effects have been mitigated to less than significant levels. Therefore, an alternative is not needed to avoid or substantially lessen any significant effects. The CEQA Guidelines also provide that if the environmentally superior alternative is the "No Project" Alternative, the EIR must also identify an environmentally superior alternative from among the other alternatives.

B25-11

- Please add the following text to the last paragraph of Section 5.4 at page 5-15:

  The Mitigated Alternative was not selected because it would not attain some of the basic objectives of the Project identified on pages 3-34 to 3-35. Under the Mitigated Alternative, rather than the Project's proposed residential uses, the Sares Regis site would include office uses and the Raintree site would include industrial, office, or commercial uses. The Project Objectives expressly provide that the Sares Regis and Raintree sites be redeveloped for residential uses. Thus, some of the Project Objectives that would not be satisfied by the Mitigated Alternative include:

B25-12

- For the Sares Regis Site:
  - Provide desirable apartment homes for people who work or live in the City of Sunnyvale.
  - Replace a vacant industrial building in an underutilized industrial area with a vibrant apartment community.
  - Locate higher density housing with easy access to transportation corridors, rail transit stations, bus corridor stops, commercial services, and jobs.
  - Enhance the high quality character of the residential neighborhood.
- For the Raintree Site:
  - Redevelop the site with an attractive, desirable residential community at a density that results in a community for those working and living in Sunnyvale.
  - Develop a residential community at a density appropriate for the site's close proximity to mass transit and infrastructure.
  - Develop a residential community at a density that can support the public improvements proposed within the SFPUC right-of-way parcel, which help implement the General Plan Open Space sub-element's Key Initiative #2 and Policy LT-8.8.3.
  - Increase the City's stock of affordable housing units at a level that is economically viable for the project.
  - Assist the City with satisfying its Regional Housing Needs Allocation for market rate and affordable housing units.

B25-12

We hope that you find our comments helpful in preparing the FEIR.

Very truly yours,

David H. Blackwell

cc: Jason Check, Raintree Partners