

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



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OCT 21 2013

PLANNING DIVISION

SCL101921
SCL-101-44.825
SCH# 2013052010

October 21, 2013

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.



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

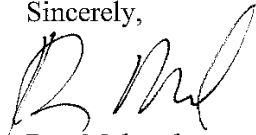
City of Sunnyvale
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Page 2

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

ADAMS BROADWELL JOSEPH & CARDOZO

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JAMIE L. MAULDIN
ROBYN C. PURCHIA
ELLEN L. TRESCOTT

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.

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

B1-1

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).

October 9, 2013

Page 2

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

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).

October 9, 2013
Page 3

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.
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]**.

B1-1

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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).
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, Baseline⁸ re *Hazards, Hydrology and Geology* (Referenced at DEIR p. 7-1.)

B1-1

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.

October 9, 2013

Page 5

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:lj1

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

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 ~~334~~ 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 ~~449~~ 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.

Fwd:

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

Dear Ryan Kuchenig,

LETTER B4

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. 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.

B4-5

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 over 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.

B6-2

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 Fair Oaks and Tasman and 97 apartments being built right now across the street on Fair Oaks. I just read about plans for 50 more units on Persian Ave and even more development between Morse and Fair Oaks.

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

-----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

Fwd: Oppose Housing

LETTER B6

> the city.
>
> Gina Senzatimore
>

| **B6-4**

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.

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

B7-1

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.

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

B8-1

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](tel:4087307431)
rkuchenig@sunnyvale.ca.gov

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

> Ryan,
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> I'd like to add that I completely agree with Sunnyvale resident Debra
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B8-2

Fwd: Oppose Housing

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.

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., San 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.

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

Sincerely

Mary Anne Lock
Space # 105

RECEIVED

OCT 11 2013

PLANNING DIVISION

B10-1

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.

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LETTER B11

OCT 15 2013

4 Oct 2013

PLANNING DIVISION

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 Fairbairns. 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 Senzakovic - 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 only entrance and with added residents traffic will become a major issue.. We have enough apartments, etc in Sunnyvale already.		
Actions	<div><div>Action</div><div>Date</div><div>From</div><div>To</div><div>Subject</div><div>Message</div></div> <div><div>Reassign</div><div>10-17-13 10:00 am</div><div>Deborah Gorman - Community Development</div><div>Ryan Kuchenig - Planning</div><div>Web Request - Reassign 28995 from: Deborah Gorman to: RKuchenig, subject: construction apartments/c</div><div>E Weddell comment. Thank you.</div></div>		
Ratings			

B12-1

B12-1

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.

SILICON VALLEY
BICYCLE
COALITION



Promoting the bicycle for everyday use.

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Suffolk Construction

David Dutton

Carl Guardino
President and CEO
Silicon Valley Leadership Group

Rick Wallace
President and CEO
KLA-Tencor

Tom Werner
President and CEO
SunPower Corp.

PRESIDENT AND
EXECUTIVE DIRECTOR
Corinne Winter

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.

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

B13-1

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 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.

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

B14-1

LETTER B14

Fwd: Apartment Developments In Sunnyvale...

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 Fair Oaks and Weddell down to the green park between El Dorado Mobile Home Park and old Applied Materials site.

We have another issue at the stoplight at E. Weddell Dr. and Fair Oaks. Traffic going North on Fair Oaks 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 Fair Oaks. Cars make a quick right hand turn on Fair Oaks 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 Fair Oaks 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 Fair Oaks to get to side walk close to 101. W. Weddell traffic making right hand turns going North on Fair Oaks 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.

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

B15-1

B15-2

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 senzatiore** <senzatiore@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

LETTER B16

rd: E Weddell

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:

1. Geology and Soils
2. Hydrology and Water Quality

B17-1

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 contaminants can move and/or dislodge.

LETTER B17

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.

B17-3

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 Magnitude 10 (MW) 6.7 or greater earthquakes will occur in the San Francisco Bay Area between 2002 and 2031, this is a grave concern.

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.**

B17-5

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.

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

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 towners GIGANTIC developers who want to make even more money at our expense.

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

B18-4

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.

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.

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.

B19-1

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

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

B20-1

LETTER B20

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.

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

B21-1

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
ATTN: RYAN KUCHENIG
DEPARTMENT OF COMMUNITY DEVELOPMENT
RE: EAST WEDDELL RESIDENTIAL PROJECT

Oct. 23, 2013

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.

B22-1

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.

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. There 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 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.

RECEIVED

OCT 20, 2013

OCT 22 2013

To Trudi Ryan,

PLANNING DIVISION

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 Fair Oaks.) 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 Fair Oaks 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 Fair Oaks 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.

ADAMS BROADWELL JOSEPH & CARDOZO

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JAMIE L. MAULDIN
ROBYN C. PURCHIA
ELLEN L. TRESMOTT

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

Ryan Kuchenig
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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.

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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;
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;

B24-1

B24-2

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

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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;	B24-2
7. The DEIR's evaluation of the significance of average daily construction emissions is arbitrary and violates BAAQMD Guidelines;	
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;	B24-3
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;	
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;	B24-4
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;	
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

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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.

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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.

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.

B24-10

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.

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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

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.

B24-11

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”).

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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 site¹⁴ 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

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

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.

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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.

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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.

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.

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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.

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

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

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

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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.

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 the 12 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

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

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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.

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

B24-13

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

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/m³³⁹ and the residential ESL of 42 ug/m³ that additional sampling is warranted.⁴⁰

B24-14

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

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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").

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(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");	B24-20
(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;	
(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;	B24-21
(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;	

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- (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 followed⁴³, 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.

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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.

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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.)

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

B24-25

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.

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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

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.

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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

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.

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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

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

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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

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

- General Plan amendments for two sites⁷¹
- 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.

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- 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

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.

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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.

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 diameter⁷³ 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).

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Mitigated Construction Emissions (lb/day)				
	ROG	NO_x	PM₁₀	PM_{2.5}
<i>Applicant Proposed Scenarios</i>				
Sares Regis	6.9	13.0	0.9	0.4
Raintree	35.6	32.2	2.3	1.9
<i>Total Applicant Proposed Scenarios</i>	52.5	45.2	3.2	2.3
BAAQMD Threshold	54	54	82	54
Significant?	no	no	no	no

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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.

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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

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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

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

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.

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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.

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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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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.

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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

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 NO_x 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

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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.

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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 PM_{2.5} concentrations; state ambient air quality standards exist for 8-hour ozone, 24-hour PM₁₀, and 24-hour and annual PM_{2.5} 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

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 not "[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.

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⁹⁵ Dr. Pless Comments.

⁹⁶ Dr. Pless Comments.

⁹⁷ Dr. Pless Comments.

⁹⁸ Dr. Pless Comments.

⁹⁹ Dr. Pless Comments.

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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 estimates¹⁰³ 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.

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.

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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

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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

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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.

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 PM_{2.5}) 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

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.

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

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**

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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.

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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

Thus, the excess cancer risks for residential receptors are underestimated by a factor of 1.83 for the Sares Regis site¹²³ 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.

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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.

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

¹²⁵ Dr. Pless Comments.

¹²⁶ DEIR at p. 4.2-45.

¹²⁷ Dr. Pless Comments; (Sares Regis: 11.4 in one million) \times (0.50 for MM AQ-5a) = 5.70 in one million; (Raintree: 19.7 in one million) \times (0.50 for MM AQ-5a) = 9.50 in one million; and (Sares Regis + Raintree: 19.7 in one million) \times (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.

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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).
- 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

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¹³¹ Dr. Pless Comments.

¹³² DEIR at pp. 4.2-44 and 4.2-45, *emphasis* added.

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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

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: $[(\text{exempted off-road: } 105.8) + (\text{non-exempted off-road: } 711.4 \times 0.50) + (\text{trucks: } 9.5)] / (\text{total } 720.9) = 0.653$.

¹³⁷ Dr. Pless Comments.

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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 by 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

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.

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¹³⁸ Dr. Pless Comments; $19.9 \times 0.653 = 13.0$.

¹³⁹ Dr. Pless Comments.

¹⁴⁰ Dr. Pless Comments.

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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 followed¹⁴¹, 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

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

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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.

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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.

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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

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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.

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).

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Operational Emissions (lb/day)				
	ROG	NO _x	PM ₁₀	PM _{2.5}
<i>Applicant Proposed Scenarios</i>				
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
<i>Full Buildout Scenarios</i>				
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

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

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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.

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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 PM_{2.5} 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 PM_{2.5} 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:

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 PM_{2.5} concentrations above 0.3 µg/m³ and maintained as long as significant excess cancer risks or annual PM_{2.5} 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.*

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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

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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.

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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

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.

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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.

Fifth, because a large number of particles emitted by motor vehicles are smaller than 50 nanometers¹⁶⁹ (<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

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.

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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.
- 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.

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¹⁷³ Dr. Pless Comments.

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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

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

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.

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The Draft EIR states that “CARB anticipates a 68-percent reduction in PM_{2.5} (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.

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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.

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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.
- 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.

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¹⁸⁴ Dr. Pless Comments.

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- 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

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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

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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).

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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 generators¹⁸⁹ 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.

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 policies 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>.

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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.

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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

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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

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.

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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

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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

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.

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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.

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.

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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.

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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).

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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*

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.

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- 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.

- 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 any 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

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

B24-39

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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

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

B24-41

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.

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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:lj

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 PM₁₀ 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, PM₁₀, 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 staff⁴ 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 Highway 101 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.lennox.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 Section 15088.5, 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 ($\mu\text{g}/\text{kg}$) for dieldrin,¹⁰ even though 2.3 $\mu\text{g}/\text{kg}$ is the “final” ESL for dieldrin, as cited by the commenter. The final ESL of 2.3 $\mu\text{g}/\text{kg}$ was selected by the Regional Water Quality Control Board (RWQCB) on the basis that dieldrin at concentrations as low as 2.3 $\mu\text{g}/\text{kg}$ 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 $\mu\text{g}/\text{kg}$, one sample contained dieldrin at a concentration of 2.6 $\mu\text{g}/\text{kg}$, 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, 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. 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

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 $\mu\text{g}/\text{m}^3$,¹⁷ consistently below the 42 $\mu\text{g}/\text{m}^3$ ESL for residential uses as well as the separate California Human Health Screening Level of 36.2 $\mu\text{g}/\text{m}^3$ 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., PM₁₀ 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 based on CARB OFFROAD statewide average emission factors for the projected year of use, 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 be 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 be 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.

Allen Matkins

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Via Email (rkuchenig@sunnyvale.ca.gov)
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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 underlined 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

Allen Matkins Leck Gamble Mallory & Natsis LLP
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Mr. Ryan Kuchenig
October 23, 2013

Page 2

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.

B25-1

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.

- 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.
- 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

B25-3

B25-4

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

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Page 3

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

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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

- 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.)

B25-9

4.7 NOISE

- 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."

B25-10

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

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- 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

No.	Page #; paragraph	Comment	Suggested Resolution
1.	1-2; 1 st para	The description of the project as a development with a base density of 36.3 du/ac but also indicating the project will have 38.6 du/ac and 465 du's may be confusing.	Clarify in FEIR - Should state that the project is 465 du's and has a gross density of 35.4 including the SFPUC ROW or 38.6 net density not including the SFPUC ROW.
2.	1-3; last paragraph	The paragraph should state that no additional comments were received during the NOP that requested additional analysis on the scoped out issue areas.	Clarify in FEIR
3.	2-13; MM Bio 2	Raintree provided information on trees in June.	Clarify in FEIR
4.	2-22; MM Trans 9	The project has emergency access; should state that it currently meets standards	Clarify in FEIR
5.	3-1	Description of Raintree site as 2 parcels plus MWD ROW confuses the project—it includes all three projects. Should clarify	Clarify in FEIR
6.	3-11	Corrections to change Initial study references to EIR. 2nd paragraph, 2nd sentence--parking numbers are not correct—there are a total of 790 spaces. This total meets SMC requirements.	Clarify in FEIR
7.	3-19	Parking numbers not correct--there are 400 spaces on Parcel A and 390 spaces on Parcel B, which totals to 790 spaces.	Clarify in FEIR
8.	3-21	Total trees is incorrect—should be 113 surveyed of which 104 are on site. Clarification: 33 trees remain, 44 are removed, 27 may be removed or relocated if feasible. 9 other trees are included in the study as potentially removed but are on the Caltrans ROW	Clarify in FEIR
9.	4.1-9	Elevations have been prepared counter to 1 st para and should state in 2 nd para that the project is compatible with surroundings due to compliance with ex. standards and design guidelines	Clarify in FEIR
10.	4.1-10	Should add statements about dated designs of ex. buildings and that project complies with dev standards and arch. Treatments	Clarify in FEIR
11.	4.2-16	Table 4.2-4 is incorrect—title should be BAAQMD Significance Thresholds	Clarify in FEIR

B25-13

LETTER B25

12.	4.2-21	Under Trip Gen rates, should describe why higher density has lower ADT/DU – ITE	Clarify in FEIR
13.	4.2-31 – 33	Figures show sites in meters and not in feet but text describes feet	Clarify in FEIR
14.	4.2-39	Under #5, the description is confusing and does not indicate requirement.#2 seems to be the requirement -- MERV 13	Clarify in FEIR to state specific requirement—item 2 requires MERV 13 or higher, which sufficiently mitigates the impact
15.	4.3-8	Need to address findings in ordinance. Valuation was provided to City	Clarify in FEIR
16.	4.4-7	Explain lower ADT/DU—ITE allows lower rate	Clarify to city in discussion/meeting
17.	4.5-4	Add statement that Raintree site will not be impacted	Clarify in FEIR
18.	4.5-12; MM Haz 3	Is the analytical data referenced available?	Send this MM to the haz mat consultant to request info
19.	4.6-5	Please provide Futures Study	Please provide Futures Study <i>Received</i>
20.	4.7-24	MM Noise 5 what noise suppression devices?	Please provide examples of such devices
21.	4.9-2	JWC greenbelt does not bisect site. Along Weddell	Clarify in FEIR

B25-13

LETTER B25**Allen Matkins**

B25-1 The requested Draft EIR text changes are made as follows on pages 1-1 and 2-1 of the Draft EIR:

The overall project includes all of the following components for both the Sares Regis project and the Raintree project.

- *General Plan amendments ~~for the two sites~~ for the Sares Regis project and Parcel B of the Raintree project.*
- *Rezoning ~~for the two sites~~ for the Sares Regis project and Parcel B of the Raintree project.*
- *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.*

It should be noted that the Draft EIR analysis addresses the two projects individually, and the cumulative impacts of the two projects together.

The following sentence is also added for clarification on pages 1-1 and 2-1 of the Draft EIR:

While the “project” is defined as the two development projects ~~combined~~ to be studied in the same EIR, separate development applications will be processed for each project and decisions on the General Plan amendments and rezonings ~~could be~~ are completely independent of each other. For this reason, the EIR addresses the projects individually and when appropriate, the impacts of the two projects together are also addressed in the cumulative analysis.

B25-2 The following change to the text is made on Draft EIR page 1-2 at the end of the second paragraph:

....throughout this EIR. Neither applicant proposes the level of development that would be allowed under the Full Buildout Scenario.

B25-3 Please refer to Response to Comment B25-1 regarding text changes.

B25-4 Draft EIR page 2-17, Table 2-1 is corrected as follows: the “S” is changed to “LTS” in the second column under Impact HAZARDS-5 to be consistent with the text in Chapter 4.5, page 4.5-14.

<u>HAZARDS-5: Operation of the projects would require the use of hazardous materials, which could be released due to improper use, storage, handling, or disposal, creating a potential hazard to public health or the environment.</u>	S <u>LTS</u>	<u>HAZARDS-5: No mitigation would be necessary.</u>	LTS
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B25-5 The requested text change of adding the sentence “This measure would reduce the impact to a less-than-significant level” has been added to the end of every mitigation measure where this was not already done and where the initials “LTS” were used in the Summary table (Table 2-1). The text change for the mitigation measures are shown in the Mitigation Monitoring and Reporting Program table found in Chapter IV of this EIR.

B25-6 The last sentence of the third paragraph on page 3-1 of the Draft EIR is changed to read as follows:

Currently, three driveways on East Weddell Drive provide access to the Raintree site.

B25-7 Please refer to Response to Comment B25-1 regarding text changes.

B25-8 The fifth paragraph on Draft EIR page 3-21 is amended as follows:

The Raintree project would include landscaping for the ~~dual-purpose~~ 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 East Weddell Drive would be maintained and would enhance sight distance from the Raintree project driveway on East Weddell Drive across from Kiel Court. Landscaping would incorporate....

B25-9 The comment suggests revision of Impact GHG-1 on Draft EIR page 4.4-12 to state “[] BAAQMD’s suggested best management practices may include, but are not limited to: ...”

Comment noted. The text has been revised. See **Appendix C** of this document, which contains the revised Section 4.4, Greenhouse Gas Emissions. The revised text appears on pages 4.4-13 and 4.4-14 of revised Section 4.4.

B25-10 Comment noted. The requested change is not considered necessary because the Draft EIR text (pages 4.7-14 through 4.7-18) already makes it clear that the impact would be significant and that the mitigation would reduce the impact to a less-than-significant level.

B25-11 While it is true that all identified impacts would be reduced to less-than-significant levels, CEQA still requires the evaluation of alternatives that may further reduce a project’s potential impacts. Alternatives are not only required when there are significant and unavoidable impacts. To clarify this point, the first paragraph on Draft EIR page 5-1 is changed as follows:

...attain most of the objectives of the project. The Guidelines further require that the discussion focus on alternatives capable of avoiding or substantially lessening any of the significant effects of the project, including the “No Project” Alternative. Furthermore, As provided in this EIR, all potentially significant effects have been mitigated to less-than-significant levels. However, the EIR evaluates a Mitigated Alternative that is intended to further reduce some of the identified impacts, especially as related to air quality. The CEQA Guidelines also provide that if the environmentally superior alternative is....

- B25-12 Not all of the requested text changes have been made because it is the lead agency's decision about selecting the project or an alternative. The following new text is added to the bottom of page 5-5 of the Draft EIR:

...of the proposed project as discussed above. 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. Some of the project objectives that would not be satisfied by the Mitigated Alternative include the following.

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.
- 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.

- B25-13 Some but not all of the requested changes have been made in response to these editorial comments.

The following text is added to the end of the first paragraph on page 1-2 of the Draft EIR:

...on the 12.04-acre site. If the San Francisco Public Utilities Commission (SFPUC) right-of-way acreage is not included, the Raintree site would have a net density of 38.6 du/ac.

No changes to the text on page 1-3 of the Draft EIR are considered necessary. The NOP comment letters are addressed throughout the Draft EIR. No text changes to Mitigation Measure BIO-2 are considered necessary.

Mitigation Measure TRANSPORTATION-9 does not require changing. This measure does not deal with existing conditions, but with future project-related conditions.

On page 3-1, the first paragraph is changed as follows:

....12.04 acres, and a third parcel that contains the San Francisco Public Utilities Commission (SFPUC) right-of way (1.1 acres). A 1.1-acre parcel that is owned by the San Francisco Public Utilities Commission (SFPUC) for the Hetch Hetchy right-of-way separates Parcel A from Parcel B

On page 3-11, the second paragraph is changed as follows:

A total of approximately ~~811~~ 790 parking spaces....

On page 3-19, the third paragraph is changed as follows:

Parcel A would include approximately ~~400~~ 413 parking spaces..... Parcel B would include a three-story parking structure with ~~390~~ 398 parking spaces...

On page 3-21, the sixth paragraph is changed as follows:

....~~44~~ 27 on-site trees are likely to be relocated if feasible, and 44 trees would be removed for project construction. Nine (9) additional trees within the Caltrans right-of-way (ROW) may also be removed. The trees currently on the site....

At the time of preparation of the Draft EIR, elevations were not available and thus were not evaluated in the Draft EIR. Thus, the requested changes to pages 4.1-9 and 4.1-10 are not considered necessary.

The commenter states that, on Draft EIR page 4.2-16, "Table 4.2-4 is incorrect – title should be BAAQMD Significance Thresholds." The title of Table 4.2-4 has been corrected; please refer to page 4.2-16 in the revised Section 4.2, Air Quality, in **Appendix B** of this document.

The commenter states that, on Draft EIR page 4.2-21, "under Trip Gen rates, should describe why higher density has lower ADT/DU – ITE." Trip generation rates are based on ITE equations for multi-family residences and are dependent on the size of the project. Please refer to page 4.2-23 in the revised Section 4.2, Air Quality, in **Appendix B** of this document.

The commenter states that, on Draft EIR pages 4.2-31 through 4.2-33, "figures show sites in meters and not in feet, but text describes feet." The text is revised to include values in meters; please refer to pages 4.2-31, 4.2-37, and 4.2-42 through 4.2-44 in the revised Section 4.2, Air Quality, in **Appendix B** of this document.

The commenter states that, on Draft EIR page 4.2-39, "under #5, the description is confusing and does not indicate requirement. #2 seems to be the requirement – MERV13." The following text change is made to Mitigation Measure AIR-4, item 5 (see Section 4.2, Air Quality, in **Appendix B** of this document, page 4.2-45):

In summary, residential units where excess cancer risk is 10 to 25.0 chances per million would require MERV13 or higher filtration and residences with higher excess cancer risk would require MERV16 filters to mitigate levels to less-than-significant levels. Mitigating for excess cancer risk would mitigate significant annual $PM_{2.5}$ concentrations to less-than-significant levels. Figures 4.2-4 and 4.2-5 show the unmitigated exposure that can be used as a guide to identify the level of mitigation required.

The comment regarding page 4.3-8 does not require text changes for the Draft EIR as the valuation that was provided to the City would not change the identified impact or mitigation measure.

The comments regarding clarifications and changes for pages 4.4-7 and 4.5-4 are not clear and thus no changes to the text of the Draft EIR have been made.

The comment regarding page 4.5-12 does not address any needed changes to the Draft EIR.

The City provided a copy of the Futures Study to the applicant.

The comment regarding page 4.7-24 requested examples of noise suppression devices. These include mufflers for internal combustion engines.

The comment about the John W. Christian Greenbelt is not clear. The greenbelt is shown correctly in Figure 3-14 of the Draft EIR.

October 23, 2013

Mr. Ryan Kuchenig
City of Sunnyvale – Community Development Department
456 W. Olive Avenue
Sunnyvale, CA 94086

Re: Comments on Draft Environmental Impact Report for East Weddell Residential
Projects SCH#2013052010

Dear Ryan:

On behalf of the entire Sares Regis team, I would like to thank you, the City of Sunnyvale, and all parties involved in preparing the Draft EIR. We look forward to working with the City and the community to bring our 610/630 East Weddell community to fruition.

We appreciate the thoroughness of the draft EIR, and just want to point out some fine points as they relate to analysis of the 610/630 East Weddell Drive project. Note that all impacts are reduced to a Less Than Significant level with mitigation measures that are included in the Draft EIR – No impacts are unavoidable.

Our comments:

1. Section 1.1 Project Background – List of Approvals

Please clarify that all of the approvals listed on page 1-1 apply to both projects – Sares Regis and Raintree as follows:

- i. The overall project includes all of the following components for both the Sares Regis project and the Raintree project:
 1. General Plan amendments for two sites.
 2. Rezoning for [] three sites.
 3. Special Development Permits.
 4. Potential Vesting Tentative Maps.
 5. Potential modifications to the Tasman/Fair Oaks Area Pedestrian and Bicycle Circulation Plan.
 6. 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, Sares Regis and Raintree will file separate development applications and decisions on these applications [] will be independent of each other.

2. Neither Raintree nor Sares Regis is proposing the level of development described in the "Full Buildout Scenario." The final paragraph of Section 1.1 should conclude with the following sentence: Neither applicant proposes development under the Full Buildout Scenario.

B26-2

Project Description – These comments apply to the Sares Regis Site

3. Page 3-5 states the SFPUC right of way contains "a" below-ground transmission pipeline. Actually, two pipelines are contained within this right of way.
4. Page 3-8 states "the building will be less than 55 feet tall with one tower element that may reach 55 feet tall." The proposed project may include one or two tower elements.
5. Page 3-8 states that there will be "A total of 331 parking spaces," and later in this paragraph it describes "Fifty-two bicycle parking spaces." It is more accurate to state that the community will contain a *minimum* of 331 vehicle parking spaces and a *minimum* of 52 bicycle parking spaces.
6. The "Affordable Housing and Green Bonuses" section references that the level of affordability within the community may be modified if a density reduction is required. The level of affordability may also be revised based on the final number of units included in the project as required by the State Density Bonus Law.
7. The Transportation Demand Measures (TDM) associated with the Sares Regis site, as described on page 3-16, are voluntary elements to be included in our property management program. They are not required as part of the Green Building Program.
8. The guest suite referenced in the project description on pages 3-8 and 3-18 may or may not be included in the proposed project.
9. Although we do not propose the "full buildout" scenario, the garage in this scenario would be 5 stories not 4 stories, as stated on page 3-19.
10. Page 4.5-2 states that the Sares Regis site is subject to a Voluntary Assessment (rather than a Voluntary Cleanup Program) with DTSC to provide review of the environmental conditions of the property. Based on this, we request refinements to Mitigation Measure HAZARDS-2 on page 4.5-11 to reflect our agreement with DTSC. The first sentence of Mitigation Measure HAZARDS-2 should be revised to state: "Occupancy permits for the Sares Regis site shall be contingent upon

B26-3

B26-4

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B26-7

B26-8

B26-9

B26-10

the site receiving confirmation from DTSC that the conditions of the site are acceptable for multi-family residential site development.”

B26-10

Alternatives Section

11. Regarding alternatives, all of the significant impacts associated with the Sares Regis project are reduced to Less Than Significant by incorporating the mitigation measures included in the Draft EIR. This is the prescribed standard for the proposed project under CEQA- CEQA does not require one to evaluate choosing a feasible alternative or overriding the impacts based on the benefits of the project if the project results in Less Than Significant impacts. Evaluating an alternative in the Draft EIR is not required since the project results in Less Than Significant impacts.

B26-11

12. On p. 5-9 under “Air Quality”, the air quality impacts of Alternative 2 (R-3 zoning – smaller project) are described as similar to the Applicant Proposed Scenario (R-4 zoning). It goes on to state that there would be fewer sensitive receptors subject to TAC emissions from Highway 101. However, construction of a project with a lower number of housing units under Alternative 2 may require a different building layout on the site or different construction type. For instance, the proposed project puts the housing in the middle of the site away from the freeway and Fair Oaks and puts the garage all along the adjacent streets, creating a greater distance from housing and lowering the impact of auto emissions on residents. Therefore, depending on the design of an Alternative 2 project, the proposed Sares Regis project actually may mitigate the air quality impacts to a greater extent than that of the lower density alternative.

B26-12

- i. Alternative 2 also may limit the viability of the affordable housing units due to the economics attendant to the reduced scale of the project.

B26-13

13. As to the “environmentally superior alternative” discussed on p. 5-15, that “mitigated alternative” proposes solely office uses on the Sares Regis site. Sares Regis proposes a new residential community, and will not be building a commercial center. There is no reason to defer to this alternative because all of the significant impacts identified in connection with the R-4 zoning residential application are mitigated to Less Than Significant effects. In addition, the Sares Regis project’s objectives would not be met as follows:

B26-14

- i. Provide desirable apartment homes for people who work or live in the City of Sunnyvale.
- ii. Replace a vacant industrial building in an underutilized industrial area with a vibrant apartment community.

- iii. Locate higher density housing with easy access to transportation corridors, rail transit stations, bus corridor stops, commercial services, and jobs.
- iv. Enhance the high quality character of the residential neighborhood.
- v. Create a sustainable residential community featuring a distinctive and attractive building with landscaping appropriate for this location.

B25-14

As an overall comment, it is interesting to note that the Sares Regis site now has an approximately 63,000SF older vacant industrial building on it, in conformance with the site's zoning and general plan designations. Should it be able to be occupied for industrial use, that would be a permitted use that would generally not require environmental review, and mitigation measures would not be imposed. It seems that at least there should be some acknowledgement and credit given for the former trips and emissions associated with that use, in considering this project.

B25-15

Thank you for the opportunity to comment on the Draft EIR. We look forward to working with you on this project. Please contact me at _____ or kbusch@srgnc.com with any questions.

Sincerely,



Ken Busch
Vice President
Sares-Regis Group of Northern California

LETTER B26**Sares Regis Group of Northern California, LLC**

B26-1 Refer to Response to Comment B25-1.

B26-2 Refer to Response to Comment B25-2.

B26-3 On Draft EIR page 3-5, the second paragraph is changed as follows:

The right-of-way contains two ~~a~~ below-ground transmission pipelines....

B26-4 The first paragraph on Draft EIR page 3-8 is changed as follows:

The majority of the building would be less than 55 feet tall with one or two tower element(s) that may reach 55 feet.

B26-5 On Draft EIR page 3-8, the fourth paragraph is changed as follows:

~~A total of 331~~ minimum of 348 vehicle parking spaces.....A minimum of fifty-two bicycle parking spaces....

B26-6 The following text is added to the end of the third paragraph on Draft EIR page 3-15:

...number of affordable units may not be provided. The level of affordability may also be revised based on the final number of units included in the project as required by the State density bonus law.

B26-7 TDM is not required for the project. TDM plans are typically required for higher-density industrial developments. The project would be subject to a parking management plan.

B26-8 On Draft EIR page 3-18, the sixth bulleted item in the first paragraph is changed as follows:

Guest suites for overnight visitors (optional).

On page 3-8, the second paragraph is changed as follows:

... resident storage, outdoor barbecue area, guest suites (optional), and a pet wash area.

B26-9 The first paragraph on Draft EIR page 3-19 is changed as follows:

...except that the parking structure would be five ~~four~~ stories in height....

B26-10 The comment notes that the Sares Regis site is subject to a Voluntary Assessment Agreement with the Department of Toxic Substances Control (DTSC) as part of the DTSC Voluntary Cleanup Program, and requests an amendment to the text of Mitigation Measure HAZARDS-2 to clarify that "case closure" under the Voluntary Cleanup Program would constitute receiving a certification from

DTSC that the hazardous materials conditions at the site are acceptable for the proposed multi-family residential development.

In response to this comment, the following text change is made to clarify Mitigation Measure HAZARDS-2 on page 4.5-11 of the Draft EIR:

Occupancy permits for the Sares Regis site shall be contingent upon the site receiving closure with certification from DTSC that hazardous materials conditions at the Sares Regis site are acceptable for the proposed project in the Voluntary Cleanup Program. Currently, remedial action is expected to be limited to excavation and off-site disposal of a small volume of soil. Under Voluntary Cleanup Program guidelines, DTSC shall review the remedial action using its Exemption Evaluation Checklist to determine if any additional CEQA review may be required to evaluate potential impacts related to the remedial action.

B26-11 While it is true that the project would not result in any significant, unavoidable impacts, alternatives to the project must still be considered in order to comply with Section 15126.6 of the CEQA Guidelines. This section of the CEQA Guidelines states: "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." The alternatives were selected to address some of the identified significant impacts that would occur prior to mitigation.

B26-12 The comment states that, depending on the design of an Alternative 2 project, the proposed Sares Regis project actually may mitigate air quality impacts to a greater extent than the lower-density Alternative 2 would.

Comment noted. It is possible that the design of development under Alternative 2 (R-3 Zoning Alternative) would affect residents' exposure to air emissions. However, it would be speculative to assume that the air quality impact due to development design would be greater or less than that of the project. Overall, the air quality impacts of Alternative 2 would be expected to be similar to but slightly less than those of the project, for the reasons described in the Draft EIR (page 5-9).

B26-13 Comment noted. The issue of housing affordability is not an environmental issue requiring analysis in the EIR; thus, this topic was not discussed in Chapter 5 of the Draft EIR.

B26-14 The fact that the Mitigated Alternative would not meet all of the identified objectives for the projects is addressed on pages 5-14 and 5-15 of the Draft EIR. See also Response to Comment B25-12.

B26-15 TJKM collected traffic counts of motor vehicles, bicycles, and pedestrians at the study intersections in the East Weddell Residential Projects vicinity in November 2012 and March 2013 during typical weekday AM and PM commute peak periods (7:00 to 9:00 AM and 4:00 to 6:00 PM). At the time these traffic counts were collected, the Sares Regis site was vacant. Consequently, no credit could be taken with regard to vehicle trips generated by the previous industrial use on this site. Similarly, no air emissions associated with the previous vehicle trips from the Sares Regis site would need to be evaluated.

Subject: Fwd: 610-630 E. Weddell Drive (Sares-Regis project)
From: Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>
Date: 10/23/2013 11:10 AM
To: Amy Skewes-Cox <amysc@rtasc.com>, Trudi Ryan <tryan@sunnyvale.ca.gov>

Hello Ryan

Regarding the Sares-Regis project 610-630 E. Weddel Drive. I've read the article by Alicia Wilson.

Comparing 500 vs 600 E Weddell developments, the Sares-Regis project will easily be the better of two living environments, and living in the area holds all the answers to that debate... I live on Lakehaven Terrace and my buddy for over 30 years lives on Munich Terrace.

Here is my feedback about 600 E. Weddell, and I'll touch on 3 topics, what is exciting, concerning, and frightening - then my requests.

A) What's exciting

- + having the apartments will help to encourage a steady flow of young families and will bring improvements to the schools by attracting more students.
- I lived on Remington next to Sunnyvale Middle and as the school improved my apartment neighbor population changed from majority BMR and Section 8 to young families. (Teenagers a different story and different problems)
- + more neighbors means improved services and survival of needed shops
- like Tasman Light Rail, Fresh and Easy, and Specialties... enough said there.
- + hoping for a more bicycle and pedestrian friendly area.
- Trail to the Sunnyvale baylands, like Stevens Creek Trail in Mountain View/Sunnyvale/Cupertino.
- I walk along Lawrence everyday to Tasman Square - it's not comfortable.
- The walk along Fair Oaks to my buddy's place could be safer.
- Using Tasman - between Fair Oaks and Lawrence at dawn and dusk is the best way to get hurt on a bike.

B) What's concerning me: Parking Management (parking that's it - seriously)

- + parking on Lakehaven Dr and Terrace is tough
- trespassers park on Lakehaven Terrace for 1-4 hours on a daily basis. I am concerned we will become accidental overflow parking for 600 E. Weddell.
- Solution close the walking path

B27-1

C) frightening

+ Pressurized Gas Line

- I am scared that poor construction methods will blow-up our community.

+ Even more Dog Feces.

- the green belt is a Dog Toilet, our property is part of that toilet system.

- - More people, more dogs, more feces.

- - I am starting to find large piles in the paved walking paths, because the grassy edges are full.

+ peaceful neighborhood will be lost

- Noise

- - noisy car exhaust systems echoing from an elevated parking garage

- - multiple car alarms echoing from an elevated parking garage (you only need 1 to spoil the peace)

- - - Solution keep parking far from Lakehaven Terrace. - very far and in a contained closed wall building.

- - Sounds, like Low Frequency Bass Signal from the apartments will enter my home... (like the concerts at Shoreline)

- - - I don't believe the police will actually hunt down which unit is producing the noise.

- Litter

- - More Scavengers hunting for cans and bottles will enter our property

- - - at least 2-3 times a month our garbage cans are toppled and contents scattered (I clean it up pretty often)

- - - Solution close the walking path that these folks use to enter the property

- - More people will have Midnight Picnics at the Hetch Hetchy system and toss even more bottles and cans over the fence into our property.

- - even more teenagers and vagrants will hang-out on our property drinking and littering - sometimes using our cars as picnic benches

- - - Solution Close the walking path

- Privacy

I enjoy this place because of it's park-like setting, and there are no buildings looking into the setting.

I am frightened to lose the peace that comes with privacy.

Requests:

1) Please close the walking path, as it will cut down on the unwanted effects from uninvited visitors accessing our Lakehaven setting and using it as their own.

2) Please improve the greenbelt walking path area near the Hetch Hetchy system and the concrete structures that attract partiers who litter our property by tossing bottles and cans over the fence. And please do not install a taller fence which will challenge them to toss even more.

3) Please work with the developer/architects to design a beautiful and thoughtful setting with structures that improve the lives of surrounding neighbors. Especially please design them to eliminate noise and privacy intrusion.

4) Please provide me with civilized methods of settling problems during construction, and for the

B27-1

Fwd: 610-630 E. Weddell Drive (Sares-Regis project)

many years I will live with the property managers as my neighbor.

B27-1

LETTER B27**Anonymous**

- B27-1 These comments address the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA.

Jeni Pfeiffer

Secretary of Livable Neighborhoods of South Bay

10275 N De Anza Blvd,

Cupertino, CA 95014

byjeni@yahoo.com

Re: East Weddell DEIR Comments_2

It is inadvisable and unconscionable, at this time, to rezone the Sares Regis and Raintree Sites, located at 520-592 E. Weddell Ave. and 610 – 630 E. Weddell Ave, Sunnyvale, from commercial to high density residential, given the existing contaminated soil conditions located in a geological liquefaction and FEMA Flood Hazard Zone area that was not disclosed in the East Weddell Projects DEIR. Additionally, there has been limited notification and inadequate disclosure to the nearby residents to warn them of the following significant hazardous impacts.

The East Weddell Projects Draft Environmental Impact Report (DEIR) states (and not limited to):

- Arsenic was identified at concentrations up to 4.77 milligrams per kilogram (mg/kg), which is above the ESL, but the report noted that this concentration was consistent with naturally occurring concentrations of arsenic in the site vicinity (WEST, 2012).
- Arsenic was identified in soils up to 52 mg/kg, which is above the ESL for residential soils of 0.39 mg/kg, and above the naturally occurring background level, which the report stated was 11 mg/kg (Treadwell & Rollo, 2012)
- Regulatory agencies do not typically require there mediation of constituents below concentrations that are naturally occurring, as these concentrations are considered to be background for the area

To justify the levels of arsenic exceeding ESL for residential soils thereby increasing the baseline does not minimize the investigation report that concluded that arsenic and vanadium in soils may present a potential risk to future occupants at the project site and could require remediation (Treadwell & Rollo, 2012) and should be considered inhumane.

This is a dangerous site to build 670 apartment buildings and should not be rezoned to accommodate such usage. Arsenic, a known human carcinogen, is notoriously poisonous to multicellular life, and is a common n-type dopant in semiconductor electronic devices, and the optoelectronic compound gallium arsenide is the most common semiconductor in use after doped silicon. This DEIR does not state the cause of the high levels of arsenic, and proposes to “sweep into a background level” thus exceeding advisable levels acceptable for residential usage.

How can you claim the arsenic is “natural” when the area has, indeed, been in use by

B28-1

commercial computer companies? And in fact, registered 610 East Weddell Drive, formerly Analog Devices, for example. This is **not** “a natural condition” causing justification to raise advisable levels to be classified as “background conditions” and is unacceptable.

Described under “Environmental Setting” the soils at the Raintree site contained arsenic at concentrations up to 52 mg/kg and vanadium at concentrations up to 200 mg/kg. These concentrations are above screening levels for residential land uses, and could potentially pose a risk to construction workers and future residents, who may come into direct contact with those soils. Arsenic is a known human carcinogen (ATSDR, 2007a). Vanadium is associated with lung, gastrointestinal, and neurological effects and is possibly carcinogenic to humans (ATSDR, 2012)

The DEIR recommends as mitigation measure, the placement of a cap consisting of pavement or a layer of clean soils and implementation of an operation and maintenance plan to ensure that the cap is maintained and no maintenance take place affecting the affected soils without proper health and safety precautions.

Have you noticed huge, deep, long cracks in concrete driveways or patios, where one side “depresses and sinks” 4”- 6” lower than it’s adjoining side? This is a common occurrence in liquefaction areas near the bay such as in Milpitas, Alviso, some areas of Sunnyvale when the ground is settling and shifting.

To “cap” does not reasonably seem logical to contain, indefinitely, hazardous toxins that could be dislodged when the soil shifts due to liquefaction. Not only was the geological and soils category omitted from this DEIR, neither is consideration for rising sea levels, as this is near the bay.

Another metal, vanadium, was identified at concentrations up to 200 mg/kg, above the ESL of 16 mg/kg and the background concentration of up to 129 mg/kg (Treadwell & Rollo, 2012). This is “off the charts” and the mitigation proposed is inadequate.

The groundwater contained petroleum hydrocarbons in the diesel and motor oil range at concentrations of up to 4.6 milligrams per liter (mg/L), above the ESLs of 0.1 mg/L for groundwater that is a potential drinking water source.

These are serious contaminants, which place the nearby homeowners, residents, workers and renters at serious health risks. This site **should not** be considered for residential building until the soils has been cleaned up, the notification area has been extended beyond Tasman, and an adequate Environmental Impact Report completed after the soil is free from hazardous contaminates.

B28-1

LETTER B28**Jeni Pfeiffer**

- B28-1 The comment expresses concerns that contamination identified at the project sites would create a hazard for future residents. The comment specifically identifies arsenic and vanadium in soils and petroleum hydrocarbons in groundwater as potential issues. The comment suggests that some of the arsenic in soils identified as “background” levels could have resulted from releases of gallium arsenide from semiconductor manufacturing. The comment further suggests that liquefaction could render potential remedial options, such as a cap over contaminated soils, ineffective.

The background concentrations of arsenic and vanadium cited in the environmental investigations and the Draft EIR are based on studies of uncontaminated sites in the region and are understood to reflect the concentrations of metals that are naturally occurring in area soils as a result of regional geology. Since these metals are not present as a result of human activity or hazardous material releases and are present at similar concentrations in soils throughout the area, regulatory agencies do not typically require the remediation of soils to levels below background concentrations.

Please refer to Response to Comment B6-1, which outlines how the mitigation measures in Section 4.5, Hazards and Hazardous Materials, of the Draft EIR are designed to mitigate contamination at the site to a less-than-significant level. Please also refer to Response to Comment B17-2 regarding potential liquefaction hazards at the project sites. Also note that Mitigation Measure HAZARDS-1, addressing contamination at the Raintree project site, would require that an Operations and Maintenance Program be implemented for any institutional control or engineering control implemented as a remedial measure. This would require periodic inspections of a physical barrier, such as a cap, placed over contaminated soils, and repairs if necessary. This would serve to ensure that remedial actions protect future workers and residents throughout the life of the project. Similar measures would be required by regulatory agencies as part of the Voluntary Cleanup Program, as discussed in Mitigation Measure HAZARDS-2, addressing contamination at the Sares Regis project site. No additional mitigation is necessary to address the potential hazardous materials concerns identified in this comment.



Ryan Kuchenig <rkuchenig@sunnyvale.ca.gov>

520-592 E. Weddell & 610 - 630 E. Weddell questions

Carol Kaylene <caroltk3@yahoo.com>

Wed, Oct 2, 2013 at 11:25 PM

Reply-To: Carol Kaylene <caroltk3@yahoo.com>

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.

B29-1

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

[Quoted text hidden]

LETTER B29**Carol Eyring**

B29-1 This letter addresses the merits of the project rather than the Draft EIR, and therefore no response is necessary under CEQA.

C. COMMENTS RECEIVED AT OCTOBER 21, 2013 PLANNING COMMISSION PUBLIC HEARING



**APPROVED MINUTES
SUNNYVALE PLANNING COMMISSION
October 21, 2013
456 W. Olive Avenue, Sunnyvale, CA 94086**

**Study Session
NONE**

8:00 PM - Public Hearing – Council Chambers

CALL TO ORDER

SALUTE TO THE FLAG

ROLL CALL

Members Present: Chair Maria Dohadwala; Vice Chair Russell W. Melton
Commissioner Gustav Larsson; Commissioner Glenn Hendricks; and Commissioner
Ken Olevson.

Members Absent: Commissioner Bo Chang (excused).

Staff Present: Trudi Ryan, Planning Officer; Kathryn Berry, Senior Assistant City
Attorney; Ryan Kuchenig, Associate Planner; and Recording Secretary, Cristina Pfeffer.

SCHEDULED PRESENTATION - None.

PUBLIC ANNOUNCEMENTS/PUBLIC COMMENTS

Speakers are limited to three (3) minutes. If you wish to address the Planning
Commission, please complete a speaker's card and give it to the Recording Secretary or
you may orally make a request to speak. If your subject is not on the agenda, you will be
recognized at this time; but the Brown Act (Open Meeting Law) does not allow action by
Planning Commission Members. If you wish to speak to a subject listed on the agenda,
you will be recognized at the time the item is being considered by the Planning
Commission.

CONSENT CALENDAR

1.A. Approval of Minutes: October 14, 2013

**ACTION: Vice Chair Melton moved to approve the items on the Consent
Calendar. Comm. Larsson seconded. Motion carried, 5-0 with
Commissioner Chang absent.**

*Any agenda related writings or documents distributed to members of the Planning Commission regarding
any open session item on this agenda will be made available for public inspection in the Planning Division
office located at 456 W. Olive Ave., Sunnyvale CA 94086 during normal business hours, and in the
Council Chambers on the evening of the Planning Commission meeting pursuant to Government Code
§54957.5.*

PUBLIC HEARINGS/GENERAL BUSINESS

2. **FILE #:** 2013-7240
Location: 520-592 & 610-630 East Weddell Avenue (APNs: Various)
Proposed Project: **COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT**
The purpose of the meeting will be to gather public input on the Draft Environmental Impact Report (DEIR) for the East Weddell Residential Projects, which includes projects by two developers (Sares-Regis and Raintree Partners) on separate sites. The projects include General Plan Amendments from Industrial to High Residential High Density for the two parcels located adjacent to U.S. Highway 101 and Rezoning applications of each site to High Density Residential / Planned Development (R-4/PD). The projects also include Special Development Permits for 465 apartment units on a 12.04 acre site (two parcels) and a 205 apartment units on a 4.04 acre site (one parcel). Additional information is available online at EastWeddell.inSunnyvale.com
Environmental Review: Draft Environmental Impact Report (DEIR)
Staff Contact: Ryan Kuchenig, (408) 730-7431, rkuchenig@sunnyvale.ca.gov
Note: No action will be taken at this meeting. This public hearing is an opportunity for the public to provide comments on the DEIR. Written comments may be submitted until 5:00 p.m. on Wednesday, October 23, 2013.

Ryan Kuchenig, Associate Planner, presented information on the proposed project, and noted that the purpose of the public hearing is not for the Planning Commission to make a recommendation or decision, but rather to gather public input regarding the E. Weddell Draft EIR. Mr. Kuchenig said all written and oral comments will be included in the Final Subsequent Environmental Impact Report (SEIR), and that the project will be brought back before the Planning Commission for action on December 2, 2013.

Chair Dohadwala opened the public hearing.

Joseph Coelho, a Sunnyvale resident, presented illustrations from the DEIR with outlines of his suggestions. He said he uses the green belt often and thinks Planning should look at it as an alternative transportation corridor as there will be more high density coming up on the north side of town. He said page 62 of the report shows a public pathway but access appears to be private at the corner of Weddell and Fair Oaks, which he sees as a problem because the current green belt is not contiguous and the on-street portion is Weddell Avenue which he thinks is subpar because the bike lane is narrow and includes a gutter, there is tree debris in the street and people regularly

take the curve faster than they should. He said with hundreds or thousands more vehicle trips daily along Weddell, he thinks it is important for Planning and Traffic to consider a green belt that is contiguous and to come up with a way to move forward with that in conjunction with upcoming projects. He said he wishes these projects were medium density, but as they are high density which increases traffic, he suggests something like a cycle track on the east side of Weddell with blocked right turns on red because cyclists and pedestrians cross there. He also suggested the possibility of a bike and pedestrian bridge similar to the one at Borregas that crosses highways 101 and 237. He said he wonders if these developments may prevent these suggestions in the future, and said this might be something to consider when looking at boundaries, fencing and right-of-ways with developments. He said the green belt is a great amenity for the area, and he thinks developers see the green belt and trail system as amenities.

C-1

Bessie Jane Carter, a Sunnyvale resident who lives in the mobile home park on Weddell, said she does not think the traffic coming out of the park onto Fair Oaks was reviewed. She said the traffic is a nightmare. She said that the road planned for on Weddell comes in where residents of the mobile home park go in, and she can envision head-on collisions. She said going onto Fair Oaks from highway 101, a yield sign does not cut it as people do not know what "yield" means, and suggested installing a traffic light that makes drivers stop before they come onto Fair Oaks because it is dangerous.

C-2

Chair Dohadwala closed the public hearing.

Vice Chair Melton commented on the nomenclature of the draft EIR. He said in chapter four there is a sentence describing what the particular impact is and there is a code in parentheses citing "S" for "significant," which is the way he likes to see it. He said at the conclusion of the potential mitigations it says "the combination of the above measures would reduce this potential impact to a less than significant level," and next to that sentence in parentheses it says "LTS" which is another example of how he likes to see it coded. He said he found other examples where the impact score was not listed which demonstrates inconsistent nomenclature. He said there was another example where after the mitigation, it was not specified that the mitigations would take care of the impact; rather it just listed in parentheses "LTS." He requested the consultant go through the different mitigations shown in chapter four with a fine-tooth and make sure the nomenclature is synchronized throughout. Vice Chair Melton said he is not a California Environmental Quality Act (CEQA) expert and will leave it to others to determine the feasibility of an alternative he would like to suggest. He said he would call it the Public Safety/Public Service alternative which could have impacts on air quality, greenhouse gas emissions, land use and planning, noise, public service and transportation. He said the alternative would include lowering the speed limit on Fair Oaks to 35 miles per hour, re-signalizing or reworking the signal at Weddell and Fair Oaks for greater pedestrian and bike safety, potentially including islands and/or sanctuaries and lastly, to have the Fremont Union High School District (FUHSD) reopen Sunnyvale High School as a public high school.

C-3

Comm. Hendricks said he would like to make a comment similar to the comments he made on the draft EIR last week having to do with the full build-out pages. He said

C-4

those pages would be easier for everyone to read by highlighting the differences from the baseline and what is different from page A to the corresponding page.

C-4

Trudi Ryan, Planning Officer, said the comment period closes at 5:00 p.m. on Wednesday, October 23 and written comments will be accepted up until that point. She said all comments will then be reviewed by City staff and consultants and responses to comments and modifications to the draft EIR will be prepared.

3. Standing Item Potential Study Issues (2015)

No potential study issues were discussed.

NON-AGENDA ITEMS AND COMMENTS

- COMMISSIONERS ORAL COMMENTS

Vice Chair Melton requested to staff provide any update to the Balanced Growth Profile (BGP) in light of upcoming large commercial development projects. **Ms. Ryan** said staff will be preparing items where there is a proposed General Plan Amendment, Rezoning or a Use Permit for additional Floor Area Ratio. She said there is an item on the Council agenda tomorrow night that a Councilmember requested for an updated BGP, which would be emailed to all Commissioners.

- STAFF ORAL COMMENTS

City Council Meeting Report

Ms. Ryan, Planning Officer, provided information on City Council actions and upcoming items.

INFORMATION ONLY ITEMS – None.

ADJOURNMENT

With no further business, the Planning Commission meeting adjourned at 8:20 p.m.

COMMENTS RECEIVED AT OCTOBER 21, 2013 PLANNING COMMISSION PUBLIC HEARING

- C-1 The comment from Joseph Coelho included a PowerPoint slide presentation that is included as **Appendix E** of this document. Mr. Coelho's comments address potential future improvements for bicyclists and pedestrians such as cycle tracks and bicycle/pedestrian bridges. The potential need for these improvements is not directly related to the projects, and the feasibility of the improvements is subject to City review. These potential improvements may be considered by City staff but would not require any revisions to the Draft EIR.

The comment refers to page 62, but there is no such page in the Draft EIR. Impact TRANSPORTATION-11 on Draft EIR page 4.10-62 addresses potential impacts related to bicycle facilities. Figure 3-7 on page 3-17 of the Draft EIR shows the proposed bicycle and pedestrian paths on the Sares Regis site and Figure 3-8 on page 3-20 of the Draft EIR shows the proposed private and public pedestrian and bicycle paths on the Raintree site. Figure 3-8 shows a public path connecting the interior portions of the Raintree site to East Weddell Drive in two locations.

- C-2 Please refer to Responses to Comments B12-1, B15-1, and B15-2, which address traffic and other concerns related to the existing mobile home park on North Fair Oaks Avenue.

- C-3 It is true that not all mitigation measures end with a statement saying that the measure would reduce the impact to a less-than-significant level. Rather, the Draft EIR relies on the use of the "LTS" symbol at the end of the mitigation measures. The statement mentioned by the commenter is usually added when there are multiple measures for one impact and it is important to note that the combination of the measures would reduce the impact to a less-than-significant level. In response to this comment, however, the statement has been added to all of the mitigation measures as shown in Chapter IV of this document in the Mitigation Monitoring and Reporting Program table.

An additional alternative could be considered in the EIR, but the issues identified by the commenter do not necessarily relate to specific impacts that were identified in the Draft EIR. These are issues that the City may want to consider as conditions of approval for the projects.

- C-4 The Commissioner's request was to compare traffic level of service (LOS) of Existing (Baseline) Conditions without project with future year Background and Cumulative Conditions (also without project). Consistent with established VTA and City traffic impact analysis (TIA) guidelines, the intersection LOS tables in the EIR compare LOS without project to LOS with project for each analysis year (e.g. Baseline without project vs. Baseline with project; Background without project vs. Background with project). This method addresses the primary concern of VTA and City staff, which is the differential impact of proposed project traffic on the corresponding no project condition. It should be noted that the TIA guidelines do not require comparison of LOS across no project conditions from different analysis years.

Chapter III

DRAFT EIR TEXT CHANGES AND ERRATA



This chapter lists changes to the text of the Draft EIR made in response to comments received, as well as errata identified by the EIR authors. New text is shown with underlining, and removed text is shown with ~~strikeout~~.

Because there were so many text changes made to Draft EIR Section 4.2, Air Quality, and Section 4.4, Greenhouse Gas Emissions, these two sections have been included in their entirety in **Appendix B** and **Appendix C** of this document, respectively.

A. CHANGES TO DRAFT EIR CHAPTER 1, INTRODUCTION

The following text change is made on page 1-1 of the Draft EIR:

The overall project includes all of the following components for both the Sares Regis project and the Raintree project:

- General Plan amendments ~~for the two sites~~.
- Rezoning ~~for the two 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.

The following change is made on page 1-1 of the Draft EIR:

While the “project” is defined as the two development projects ~~combined~~ to be studied in the same EIR, separate development applications will be processed for each project and decisions on the General Plan amendments and rezonings ~~could be~~ completely independent of each other. For this reason, the EIR addresses the projects individually and when appropriate, the impacts of the two projects together are also addressed in the cumulative analysis.

The following change is made to the end of the first paragraph on page 1-2 of the Draft EIR:

...on the 12.04-acre site. If the San Francisco Public Utilities Commission (SFPUC) right-of-way acreage is not included, the Raintree site would have a net density of 38.6 du/ac.

The following change is made to the second paragraph on page 1-2 of the Draft EIR:

....throughout this EIR. Neither applicant proposes the level of development that would be allowed under the Full Buildout Scenario.

B. CHANGES TO DRAFT EIR CHAPTER 2, SUMMARY

The following change is made on page 2-1 of the Draft EIR:

The overall project includes all of the following components for both the Sares Regis project and the Raintree project:

- General Plan amendments for the two sites for the Sares Regis project and Parcel B of the Raintree project.
- Rezoning for the two sites for the Sares Regis project and Parcel B of the Raintree site.
- 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.

The following change is made on page 2-1 of the Draft EIR:

While the “project” is defined as the two development projects combined to be studied in the same EIR, separate development applications will be processed for each project and decisions on the General Plan amendments and rezonings could be completely independent of each other. For this reason, the EIR addresses the projects individually and when appropriate, the impacts of the two projects together are also addressed in the cumulative analysis.

The following change is made to Table 2-1 is made on page 2-17 of the Draft EIR:

<u>HAZARDS-5: Operation of the projects would require the use of hazardous materials, which could be released due to improper use, storage, handling, or disposal, creating a potential hazard to public health or the environment.</u>	<u>S</u>	<u>HAZARDS-5: No mitigation would be</u>	<u>LTS</u>
	<u>LTS</u>	<u>necessary.</u>	

C. CHANGES TO DRAFT EIR CHAPTER 3, PROJECT DESCRIPTION

The following change is made to the first paragraph on page 3-1 of the DEIR:

....12.04 acres, and a third parcel that contains the San Francisco Public Utilities Commission (SFPUC) right-of way (1.1 acres). A 1.1 acre parcel that is owned by the San Francisco Public Utilities Commission (SFPUC) for the Hetch Hetchy right-of way separates Parcel A from Parcel B

The following change is made to the last sentence of the third paragraph on page 3-1 of the Draft EIR:

Currently, ~~three~~ driveways on East Weddell Drive provide access to the Raintree site.

The following changes are made to Tables 3-2A and 3-2B on page 3-4 of the Draft EIR:

Table 3-2A SUMMARY OF PROPOSED GENERAL PLAN AMENDMENTS AND REZONINGS FOR APPLICANT PROPOSED BUILDOUT SCENARIOS

Project	Existing General Plan Designation	Studied General Plan Designation	Existing Zoning	Studied Zoning
Sares Regis	Industrial	RHI (Residential High Density) (27-45 du/ac)	M-S/PD (Industrial and Service/Planned Development)	R-4/PD (High Density Residential/Planned Development)
Raintree Parcel A (North)	ITR (Industrial to Residential Medium to High Density)	NO CHANGE	M-S/ITR/R-3/PD (Industrial and Service/Industrial-to-Residential/Medium Density Residential/Planned Development)	R-4/PD (High Density Residential/Planned Development) No change
Raintree Parcel B (South)	Industrial	RHI (Residential High Density) (27-45 du/ac)	M-S/POA (Industrial and Service/Place of Assembly)	R-4/PD (High Density Residential/Planned Development)

Note: du = dwelling units per acre.

Source: City of Sunnyvale, 2013.

Table 3-2B SUMMARY OF PROPOSED GENERAL PLAN AMENDMENTS AND REZONINGS FOR FULL BUILDOUT SCENARIO

Project	Existing General Plan Designation	Studied General Plan Designation	Existing Zoning	Studied Zoning
Sares Regis	Industrial	RVH (Residential Very High Density) (45-65 du/ac)	M-S/PD (Industrial and Service/Planned Development)	R-5 Very High Density Residential
Raintree Parcel A (North)	ITR (Industrial to Residential Medium to High Density)	NO CHANGE	M-S/ITR/R-3/PD (Industrial and Service/Industrial-to-Residential/Medium Density Residential/Planned Development)	R-4 High Density Residential No change
Raintree Parcel B (South)	Industrial	RVH (Residential Very High Density)(45-65 du/ac)	M-S/POA (Industrial and Service/Place of Assembly)	R-5 Very High Density Residential

Note: du/ac = dwelling units per acre.

Source: City of Sunnyvale, 2013.

The following change is made to the second paragraph on page 3-5 of the Draft EIR:

The right-of-way contains two ~~a~~-below-ground transmission pipelines....

The following change is made to the first paragraph on page 3-8 of the Draft EIR:

The majority of the building would be less than 55 feet tall with one or two tower element(s) that may reach 55 feet.

The following change is made to the second paragraph on page 3-8 of the Draft EIR:

... resident storage, outdoor barbecue area, guest suites (optional), and a pet wash area.

The following change is made to the third paragraph on 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.~~

The following change is made to the fourth paragraph on page 3-8 of the DEIR:

~~A total of 331~~ minimum of 348 vehicle parking spaces.....A minimum of fifty-two bicycle parking spaces....

The following change is made to the second paragraph on page 3-11:

A total of approximately ~~844~~ 790 parking spaces....

The following change is made to the third paragraph on page 3-15 of the Draft EIR:

...number of affordable units may not be provided. The level of affordability may also be revised based on the final number of units included in the project as required by the State density bonus law.

The following 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:

Circulation and parking under the Full Buildout Scenario would be similar to the Applicant Proposed Scenario, except that the parking structure would be five ~~four~~ stories in height and a total of ~~419~~ 436 on-site 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 following change is made to the fifth paragraph on page 3-21 of the Draft EIR:

The Raintree project would include landscaping for the ~~dual purpose~~ 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 East Weddell Drive would be maintained and would enhance sight distance from the Raintree project driveway on East Weddell Drive across from Kiel Court. Landscaping would incorporate....

The following change is made to the sixth paragraph on page 3-21 of the Draft EIR:

....~~44~~ 27 on-site trees are likely to be relocated if feasible, and 44 trees would be removed for project construction. Nine (9) additional trees within the Caltrans right-of-way (ROW) may also be removed. The trees currently on the site....

D. CHANGES TO DRAFT EIR SECTION 4.2, AIR QUALITY

Please refer to the revised Section 4.2, Air Quality, in **Appendix B** of this document.

E. CHANGES TO DRAFT EIR SECTION 4.4, GREENHOUSE GAS EMISSIONS

Please refer to the revised Section 4.4, Greenhouse Gas Emissions, in **Appendix C** of this document.

F. CHANGES TO DRAFT EIR SECTION 4.5, HAZARDS AND HAZARDOUS MATERIALS

The following 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, 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. Therefore, using the ESLs as screening criteria, no additional review or remediation is required.

The following change is made to the end of the first paragraph on page 4.5-5 of the Draft EIR:

....distance away. All of the residences at the Raintree site would be located more than 750 feet west of the transmission line right-of-way and would have lower EMF exposures from that source than the Sares Regis residences.

The following change is made to Mitigation Measure HAZARDS-2 on page 4.5-11 of the Draft EIR:

Occupancy permits for the Sares Regis site shall be contingent upon the site receiving ~~closure with certification from DTSC that hazardous materials conditions at the Sares Regis site are acceptable for the proposed project in the Voluntary Cleanup Program.~~ Currently, remedial action is expected to be limited to excavation and off-site disposal of a small volume of soil. Under Voluntary Cleanup Program guidelines, DTSC shall review the remedial action using its Exemption Evaluation Checklist to determine if any additional CEQA review may be required to evaluate potential impacts related to the remedial action.

G. CHANGES TO DRAFT EIR SECTION 4.10, TRANSPORTATION

The following text change is made to page 4.10-61 of the Draft EIR:

...For the Raintree site, new public sidewalk facilities would be provided along the northern, southern, and western project frontages...

H. CHANGES TO DRAFT EIR SECTION 4.11, UTILITIES AND SERVICE SYSTEMS

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.

I. CHANGES TO DRAFT EIR CHAPTER 5, ALTERNATIVES

The following change is made on page 5-1 of the Draft EIR:

...attain most of the objectives of the project. The Guidelines further require that the discussion focus on alternatives capable of avoiding or substantially lessening any of the significant effects of

the project, including the “No Project” Alternative. ~~Furthermore, As provided in this EIR, all potentially significant effects have been mitigated to less-than-significant levels. However, the EIR evaluates a Mitigated Alternative that is intended to further reduce some of the identified impacts, especially as related to air quality. The CEQA Guidelines also provide that if the environmentally superior alternative is....~~

The following change is made to the bottom of page 5-5 of the Draft EIR:

...of the proposed project as discussed above. 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. Some of the project objectives that would not be satisfied by the Mitigated Alternative include the following.

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.
- 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.

J. ERRATA

The following statement was added to the end of a number of mitigation measures to clarify when the impact was reduced to a less-than-significant level.

This measure would reduce the *[topic name added]* impact to a less-than-significant level.

The above statement was added for the following mitigation measures:

- AESTHETICS-1
- AIR-2
- AIR-5
- BIO-1
- BIO-2
- HAZARDS 1, 2, 3 AND 4
- TRANSPORTATION-10 AND -11

Chapter IV

MITIGATION MONITORING AND REPORTING PROGRAM



This Mitigation Monitoring and Reporting Program (see Table 4-1) has been prepared to comply with the requirements of State law (Public Resources Code Section 21081.6). State law requires the adoption of a mitigation monitoring program when mitigation measures are required to avoid significant impacts. The monitoring program is intended to ensure compliance during implementation of the project.

This Mitigation Monitoring and Reporting Program has been formulated based upon the findings of the Draft EIR and the comments received on the Draft EIR and addressed herein. The Mitigation Monitoring and Reporting Program identifies mitigation measures recommended in the EIR to avoid or reduce identified impacts and specifies the agencies/party responsible for implementation and monitoring. Mitigation measures identified in the Initial Study are also included in the MMRP.

The first column identifies the mitigation measure. The second column entitled "Party Responsible for Ensuring Implementation" refers to the person(s) who will undertake the mitigation measures. The third column entitled "Party Responsible for Monitoring" refers to the person/agency responsible for ensuring that the mitigation measure has been implemented and recorded. The fourth column entitled "Monitoring Timing" identifies when and/or for how long the monitoring shall occur.

For the East Weddell Residential Projects, many of the mitigation measures will be overseen by the City of Sunnyvale Planning Department and Public Works Department.

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
AESTHETICS						
<u>AESTHETICS-1:</u> The applicants for both projects shall incorporate the following specifications into all construction contracts for the proposed projects:						
<ul style="list-style-type: none">Construction staging areas and the storage of large equipment shall be located in the interior of the project sites as much as possible, and whenever feasible away from East Weddell Drive.Construction staging areas shall be on-site and shall remain clear of trash, weeds, and debris.Construction fencing shall be placed around the sites and shall include green fabric screening to screen portions of the site from view. The fencing shall be located at the northern and western edges of the Raintree site and the northern and eastern edges of the Sares Regis site.	Applicants	Sunnyvale Community Development Department	At time of contract specifications.			
This measure would reduce the aesthetics impact to a less-than-significant level.						
<u>AESTHETICS-2:</u> No mitigation would be necessary.						
<u>AESTHETICS-3:</u> The applicants for both projects shall incorporate the following specifications into the proposed projects:						
<ul style="list-style-type: none">All lighting shall be shielded so that lighting is cast downward and “spillover” is minimized.Lighting for exterior locations shall be designed primarily for public safety and shall not result in unnecessary glare for nearby residences.Whenever possible, lighting for pathways shall be low path lighting.All garage lighting shall be shielded to minimize spillover to adjacent areas and roadways.The overall lighting design approach shall be to provide 1-foot candle of light on all parking lots and major pathways, while ½-foot candle could be provided at minor pedestrian paths.Over-lighting shall be prevented and full-cut off fixtures shall be used to minimize light pollution and trespass.	Applicants	Sunnyvale Building Division	At time of review of final drawings.			
The combination of the above measures would reduce this potential impact to a less-than-significant level.						

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
AIR QUALTY						
<u>AIR-1:</u> No mitigation would be necessary.						
<u>AIR-2:</u> When construction information is available for the Full Buildout Scenarios, a complete air emissions analysis for construction emissions shall be completed by the project applicants to address annual and average daily construction emissions of reactive organic gases (ROG), nitrogen oxides (NO _x), coarse particulate matter (PM ₁₀) exhaust, and fine particulate matter (PM _{2.5}) exhaust during construction of the Sares Regis and Raintree projects. Average daily emissions shall be computed from total emissions. Total emissions shall be the sum of the annual emissions. If predicted average daily emissions would exceed the Bay Area Air Quality Management District (BAAQMD) thresholds, the applicants shall identify mitigation measures that would reduce construction-related emissions to below the BAAQMD thresholds. Such measures may include: <ul style="list-style-type: none">▪ Phasing of the project to reduce daily emissions;▪ Use of newer or retrofitted construction equipment that has low emission rates;▪ Use of alternatively fueled equipment; and modification of construction techniques to avoid use of diesel-powered equipment. Compliance with thresholds shall be verified by the City prior to issuance of any building permits. This measure would reduce the air quality impact to a less-than-significant level.	Applicants	Sunnyvale Community Development Department and Sunnyvale Building Division	Prior to issuance of building permits.			
<u>AIR-3:</u> No mitigation would be necessary.						
<u>AIR-4:</u> The two projects shall include the following measures to minimize long-term toxic air contaminant (TAC) exposure for new residences. <ol style="list-style-type: none">1. Design buildings and sites to limit exposure from sources of TAC and fine particulate matter (PM_{2.5}) emissions. The site layout shall locate windows and air intakes as far as possible from Highway 101 traffic lanes and provide additional tree plantings along the highway edge to maintain a uniform and continuous vegetative barrier per Bay Area Air Quality Management District (BAAQMD) recommended plantings. Any modifications to the site design shall incorporate buffers between residences and the freeway.2. Install air filtration in residential or other buildings that would include sensitive	Applicants (working with air pollutant consultant)	Sunnyvale Community Development Department and Sunnyvale Building Division	At time of review of building permit applications and prior to issuance of occupancy permits.			

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>receptors that have predicted PM_{2.5} concentrations above 0.3 micrograms per cubic meter (µg/m³) or excess lifetime cancer risk of 10.0 per million or greater. Air filtration devices shall be rated MERV13 or higher. To ensure adequate health protection to sensitive receptors, a ventilation system shall meet the following minimal design standards (Department of Public Health, City and County of San Francisco, 2008):</p> <ul style="list-style-type: none"> ▪ A MERV13 or higher rating ; ▪ At least one air exchange(s) per hour of fresh outside filtered air; ▪ At least four air exchange(s) per hour recirculation; and ▪ At least 0.25 air exchange(s) per hour in unfiltered infiltration. <p>As part of implementing this measure, an ongoing maintenance plan for the buildings' heating, ventilation, and air conditioning (HVAC) air filtration system shall be required. Recognizing that emissions from air pollution sources are decreasing, the maintenance period shall last as long as significant excess cancer risk or annual PM_{2.5} exposures are predicted. Subsequent studies could be conducted to identify the ongoing need for the ventilation systems as future information becomes available.</p>						
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; (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..						
4. Consider phasing developments located within 101 meters (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. Any effects of phasing the project shall be verified by an authorized air pollutant consultant approved by the City.						
5. Require that prior to building occupancy, an authorized air pollutant consultant						

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>approved by the City shall verify the installation of all necessary measures to reduce toxic air contaminant (TAC) exposure.</p> <p>A properly maintained vegetative barrier could reduce particulate concentrations, including DPM, by an estimated 30 percent. Combined with the vegetation barrier along the freeway, a properly installed and operated ventilation system with MERV13 air filters may reduce PM_{2.5} concentrations from DPM mobile and stationary sources by approximately 70 percent indoors when compared to outdoors. A ventilation system with MERV16 filters could achieve reductions of 90 percent. The air intake for these units should be located as far away as possible from Highway 101. The overall effectiveness calculations take into consideration time spent outside and the outdoor exposure of each affected unit. The U.S. EPA reports that people, on average, spend 90 percent of their time indoors (US EPA 2001). The overall effectiveness calculations should take into effect time spent outdoors. Assuming 2 hours of outdoor exposure plus 1 hour of open windows (calculated as outdoor exposure) per day, the overall effectiveness of filtration systems would be about 60 percent for MERV13 systems and about 80 percent for MERV16 systems.</p> <p>A ventilation system with MERV13 filtration would be necessary to reduce cancer risk to less-than-significant levels for areas where cancer risk is between 10 and 25.0 per million. A more efficient filtration system would be required for cancer risks that exceed 25.0 per million. A ventilation system with MERV16 filters would result in cancer risk of less than 10 per million where outdoor cancer risk is predicted to be 50.0 per million or less. A system with MERV14 or MERV15 could also be used, but those systems were not evaluated.</p> <p>PM_{2.5} concentrations would also be reduced with the ventilation system that uses a MERV13 filter or greater. Maximum annual PM_{2.5} concentrations of 0.75µg/m³ or less could be mitigated using ventilation systems with MERV13 filters.</p> <p>In summary, residential units where excess cancer risk is 10 to 25.0 chances per million would require MERV13 or higher filtration and residences with higher excess cancer risk would require MERV16 filters to mitigate levels to less-than-significant levels. Mitigating for excess cancer risk would mitigate significant annual PM_{2.5} concentrations to less- than- significant levels. Figures 4.2-4 and 4.2-5 show the unmitigated exposure that can be used as a guide to identify the level of mitigation</p>						

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
required.						
The above measures would reduce the potential air quality impact to a less-than-significant level.						
<p><u>AIR-5a</u>: The projects shall include the following measures recommended by the Bay Area Air Quality Management District (BAAQMD) (i.e., Best Management Practices) to reduce construction dust and on-site construction exhaust emissions by 5 percent:</p> <ol style="list-style-type: none"> 1. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day. 2. All haul trucks transporting soil, sand, or other loose material off-site shall be covered. 3. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited. 4. All vehicle speeds on unpaved roads shall be limited to 15 miles per hour (mph). 5. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used. 6. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California Airborne Toxics Control Measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points. 7. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation. 8. A publicly visible sign shall be posted with the telephone number and person to contact at the City of Sunnyvale regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Bay Area Air Quality Management Air District's phone number shall also be visible to ensure compliance with applicable regulations. 9. A plan shall be developed demonstrating that the off-road equipment to be used in project construction would achieve an additional 50-percent reduction in exhaust particulate matter emissions, compared to similar equipment based on CARB 						
	Applicants and contractors	Sunnyvale Community Development Department and Sunnyvale Building Division	Prior to issuance of grading and/or building permits (review contract specifications).			

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>OFFROAD statewide average emission factors for the projected year of use. Based on the construction plans presented for this project, a feasible method to achieve this objective would be the following:</p> <ul style="list-style-type: none"> 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. <p>The above measures, which apply to both project-specific and cumulative impacts, shall be included in contract specifications for both projects.</p> <p>The mitigation measures listed above, applied to the Raintree Applicant Proposed Scenario and the Sares Regis Applicant Proposed Scenario, would reduce the child excess cancer risk from each of the projects as well as the combination of the two projects to below 9.9 per million.</p> <p>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.</p> <p>Since construction techniques, equipment usage, and schedules have not been identified for the Full Buildout Scenarios, Mitigation Measure AIR-5b is included below.</p>						
<p><u>AIR-5b:</u> When construction information is available for the Full Buildout Scenario, a complete air emissions analysis for construction emissions shall be completed by the project applicants to address health risk impacts (i.e., excess cancer risk, annual PM_{2.5} concentration and Hazard Index) during construction of the Sares Regis and Raintree</p>	Applicants	Sunnyvale Community Development	Prior to issuance of building permits.			

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>projects. If predicted excess cancer risk, annual PM_{2.5} concentration or Hazard Index exceed the BAAQMD thresholds, the applicants shall identify mitigation measures that would reduce construction-related health risks to below the BAAQMD thresholds. Such measures may include:</p> <ul style="list-style-type: none"> ▪ Use of newer or retrofitted construction equipment that has low emission rates; ▪ Use of alternatively fueled equipment; and ▪ Modification of construction techniques to avoid use of diesel-powered equipment. <p>Compliance with thresholds shall be verified by the City prior to issuance of any building permits. The above measures would reduce the air quality impact to a less-than-significant level.</p>		Department				
AIR-6: No mitigation would be necessary.						
AIR-7: The projects would be required to comply with Mitigation Measures AIR-4 and AIR-5; no additional mitigation would be necessary.	See AIR-4 and AIR-5					
BIOLOGICAL RESOURCES						
<p>BIO-1: Tree removal and building demolition shall be performed in compliance with the Migratory Bird Treaty Act and relevant sections of the California Fish and Wildlife Code. This shall be accomplished by preferably scheduling tree removal and building demolition outside of the bird nesting season (which occurs from February 1 to August 31) to avoid possible impacts to nesting birds if new nests are established in the future. Alternatively, if tree removal and building demolition cannot be scheduled during the non-nesting season (September 1 to January 31), then a preconstruction nesting survey shall be conducted. The preconstruction nesting survey shall include the following:</p> <ul style="list-style-type: none"> ▪ A qualified biologist (Biologist) shall conduct a pre-construction nesting bird (both passerine and raptor) survey within seven days prior to tree removal and/or building demolition. ▪ If no nesting birds are observed, no further action is required and tree removal and construction activities shall occur within seven days of the survey to prevent take of individual birds that could begin nesting after the survey. ▪ Another nest survey shall be conducted if more than seven days elapse between the 	Applicants	Sunnyvale Community Development and Sunnyvale Building Division				<p>Prior to removal of any on-site trees; verify completion of study prior to issuance of grading permit; verify restrictions for construction activities at time of site visits.</p>

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>initial nest search and the beginning of tree removal and construction activities.</p> <ul style="list-style-type: none"> If any active nests are encountered, the Biologist shall determine an appropriate disturbance-free buffer zone to be established around the nest location(s) until the young have fledged. Buffer zones vary depending on the species (i.e., typically 75 to 100 feet for passerines and 300 feet for raptors) and other factors such as on-going disturbance in the vicinity of the nest location. If necessary, the dimensions of the buffer zone shall be determined in consultation with the California Department of Fish and Wildlife (CDFW). Orange construction fencing, flagging, or other marking system shall be installed to delineate the buffer zone around the nest location(s) within which no construction-related equipment or operations shall be permitted. Continued use of existing facilities such as surface parking and site maintenance may continue within this buffer zone. No restrictions on grading or construction activities outside the prescribed buffer zone are required once the zone has been identified and delineated in the field and workers have been properly trained to avoid the buffer zone area. Construction activities shall be restricted from the buffer zone until the Biologist has determined that young birds have fledged and the buffer zone is no longer needed. A survey report of findings verifying that any young have fledged shall be submitted by the Biologist for review and approval by the City of Sunnyvale Planning Division prior to initiation of any tree removal or other construction activities within the buffer zone. Following approval by the City, tree removal and construction within the nest-buffer zone may proceed. <p>This measure would reduce the biological resources impact to a less-than-significant level.</p>						
<p><u>BIO-2:</u> The proposed projects shall comply with the City's Tree Preservation Ordinance. As necessary, additional information shall be provided by the applicants regarding valuation of trees to be preserved and tree preservation guidelines during and after construction. Further review shall be provided to demonstrate adequate replacement plantings, establish an appropriate bond value for trees to be protected, and determine whether soil mitigation and other requirements are necessary.</p> <p>This measure would reduce the biological resources impact to a less-than-significant level.</p>	Applicants	Sunnyvale Community Development Department	Prior to issuance of grading and/or building permit.			

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
GREENHOUSE GAS EMISSIONS						
<u>GHG-1</u> : No mitigation would be necessary.						
<u>GHG-2</u> : No mitigation would be necessary.						
HAZARDS AND HAZARDOUS MATERIALS						
<u>HAZARDS-1</u> : Regulatory oversight shall be initiated to develop and implement measures to eliminate potential health risks related to soils containing elevated levels of arsenic and/or vanadium at the Raintree site. This oversight may be provided by Santa Clara County Department of Environmental Health (SCCDEH), the Regional Water Quality Control Board (RWQCB), or Department of Toxic Substances Control (DTSC) and may require the project applicant to submit an application to the State Site Designation Committee for assignment of an appropriate local or state oversight agency. As a condition of approval for construction, demolition, or grading permits, the applicant shall incorporate measures to ensure 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. The evaluation of risk would be subject to review and/or approval by regulatory oversight agencies. These agencies could also require additional site investigation to more fully delineate the extent of contaminants of concern at the site.						
<p>The potential risks to human health in excess of these goals must be reduced either by remediation of the contaminated soils (e.g., excavation and off-site disposal) and/or implementation of institutional controls and engineering controls (IC/EC). If extensive on-site excavation and/or soil off-haul is determined to be the appropriate response action, additional CEQA review may be required to evaluate potential impacts related to air quality, noise, and traffic and to recommend mitigation measures, as necessary. IC/EC may include the use of a Construction Risk Management Plan (for mitigating exposures during construction and maintenance of the project), placement of new fill or pavement over contaminated soils, and/or deed restrictions. If IC/EC are implemented, an Operations and Maintenance Program must be prepared and implemented to ensure that the measures adopted are maintained throughout the life of the project. The Operations and</p>						
	Raintree Applicant (working with listed state and regional agencies)	Sunnyvale Community Development (to ensure compliance with regulatory agencies)	Prior to issuance of grading permit.			

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>Maintenance Program would be subject to review and approval by regulatory oversight agencies.</p> <p>This measure would reduce the hazards and hazardous materials impact to a less-than-significant level.</p>						
<p><u>HAZARDS-2:</u> Occupancy permits for the Sares Regis site shall be contingent upon the site receiving certification from DTSC that hazardous materials conditions at the Sares Regis site are acceptable for the proposed project. Currently, remedial action is expected to be limited to excavation and off-site disposal of a small volume of soil. Under Voluntary Cleanup Program guidelines, DTSC shall review the remedial action using its Exemption Evaluation Checklist to determine if any additional CEQA review may be required to evaluate potential impacts related to the remedial action.</p> <p>This measure would reduce the hazards and hazardous materials impact to a less-than-significant level.</p>	Sares Regis Applicant (working with DTSC)	Sunnyvale Community Development Department and Sunnyvale Building Division	Prior to issuance of occupancy permit.			
<p><u>HAZARDS-3:</u> Construction at the project sites shall be conducted under a project-specific Construction Risk Management Plan (CRMP) to protect construction workers, the general public, and the environment from subsurface hazardous materials previously identified and to address the possibility of encountering unknown contamination or hazards in the subsurface. The CRMP shall summarize soil and groundwater analytical data collected on the project sites during past investigations and during site investigation and remediation activities described in Mitigation Measure HAZARDS-1 for the Raintree site; delineate areas of known soil and groundwater contamination, if applicable; and identify soil and groundwater management options for excavated soil and groundwater, in compliance with local, state, and federal statutes and regulations.</p> <p>The CRMP shall:</p> <ol style="list-style-type: none"> (1) Provide procedures for evaluating, handling, storing, testing, and disposing of soil and groundwater during project excavation and dewatering activities, respectively. (2) Require the preparation of a project-specific Health and Safety Plan that identifies hazardous materials present, describes required health and safety provisions and training for all workers potentially exposed to hazardous materials in accordance with state and federal worker safety regulations, and designates the personnel responsible for Health and Safety Plan implementation. 	Applicants	Sunnyvale Community Development Department	Review and approval of CRMP prior to issuance of grading, demolition, or building permits.			

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>(3) Require the preparation of a contingency plan that shall be applied should previously unknown hazardous materials be encountered during construction activities. The contingency plan shall include provisions that require collection of soil and/or groundwater samples in the newly discovered affected area by a qualified environmental professional prior to further work, as appropriate. The analytical results of the sampling shall be reviewed by the qualified environmental professional and submitted to the appropriate regulatory agency. The environmental professional shall provide recommendations, as applicable, regarding soil/waste management, worker health and safety training, and regulatory agency notifications, in accordance with local, state, and federal requirements. Work shall not resume in the area(s) affected until these recommendations have been implemented under the oversight of the City or regulatory agency, as appropriate</p> <p>(4) Designate personnel responsible for implementation of the CRMP.</p> <p>The CRMP shall be submitted to the City of Sunnyvale for review and approval prior to the issuance of construction and demolition permits.</p> <p>This measure would reduce the hazards and hazardous materials impact to a less-than-significant level.</p>						
<p><u>HAZARDS-4:</u> Hazardous building materials surveys shall be conducted by a qualified and licensed professional for all structures that were not previously inspected or abated and that are proposed for demolition or renovation at the project sites. Lead-based paint shall be included in all hazardous material surveys. All loose and peeling lead-based paint and asbestos-containing materials (ACM) shall be abated by certified contractor(s) in accordance with local, state, and federal requirements. All other hazardous materials, such as "universal wastes," shall be removed from buildings prior to demolition in accordance with Division of Occupational Safety and Health (DOSH) regulations. The completion of the abatement activities shall be documented by a qualified environmental professional(s) and submitted to the City of Sunnyvale prior to the issuance of construction and demolition permits.</p> <p>This measure would reduce the hazards and hazardous materials impact to a less-than-significant level.</p>	Applicants	Sunnyvale Building Division	Prior to issuance of grading or demolition permits.			
<p><u>HAZARDS-5:</u> No mitigation would be necessary.</p>						

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

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				Initial	Date	Project/ Comments
<u>HAZARDS-6</u> : No mitigation would be necessary.						
<u>HAZARDS-7</u> : No mitigation would be necessary.						
LAND USE AND PLANNING						
<u>LAND-1</u> : No mitigation would be necessary. Refer to other sections of the EIR as related to potential environmental impacts, specifically air quality and noise.						
NOISE						
<u>NOISE-1</u> : The following mitigation measures shall be included in each project to reduce the impact to a less-than-significant level:						
<ul style="list-style-type: none">When refining the project’s site plan, continue to locate common outdoor use areas away from roadways and shield noise-sensitive outdoor spaces with buildings whenever possible.Incorporate building design and treatments to ensure compliance with State of California and City of Sunnyvale noise standards. A project-specific acoustical analysis shall be required by the City of Sunnyvale to ensure that the design of the project incorporates controls so that interior noise levels would be reduced to 45 dBA DNL or lower. Building sound insulation requirements shall include the provision of forced-air mechanical ventilation for all residential units, so that windows could be kept closed at the occupant’s discretion to control noise. Special building construction techniques (e.g., sound-rated windows and doors and building facade treatments) may be required for many residential units facing adjacent roadways. These treatments may include sound-rated windows and doors, sound rated wall constructions, and acoustical caulking. Pursuant to the State Building Code, the results of the analysis, including a description of the necessary noise control measures, shall be submitted to the City along with the building plans and approved prior to issuance of a building permit. Feasible construction techniques such as these would adequately reduce interior noise levels to 45 dBA DNL or lower.A qualified acoustical consultant shall review final site plans, building elevations, and floor plans prior to construction to calculate expected interior and exterior noise levels and ensure compliance with City of Sunnyvale policies and State of California noise						
	Applicants (working with acoustical consultant)	Sunnyvale Community Development Department	During design review and during final building permit applications.			

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
regulations.						
The above measures would reduce the potential noise impact to a less-than-significant level.						
<u>NOISE-2</u> : No mitigation would be necessary.						
<u>NOISE-3</u> : No mitigation would be necessary.						
<u>NOISE-4</u> : No mitigation would be necessary.						
<u>NOISE-5</u> : To mitigate potential short-term construction noise impacts, each project shall be required to comply with the following:						
1. Project construction operations shall be required to use available noise suppression devices and techniques and to limit construction hours per the Sunnyvale Municipal Code.						
2. A construction noise logistics plan that specifies hours of construction, noise and vibration minimization measures, posting or notification of construction schedules, and designation of a noise disturbance coordinator who would respond to neighborhood complaints shall be required to be in place prior to the start of construction and implemented during construction to reduce noise impacts on neighboring residents and other uses. The construction noise logistics plan shall include, but not be limited to, the following measures to reduce construction noise levels as low as practical:	Applicants and Contractors	Sunnyvale Community Development Department and Building Division	Review plan prior to issuance of grading or building permit; review contract specifications.			
▪ Use "quiet" models of air compressors and other stationary noise sources where technology exists.						
▪ Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.						
▪ Locate all stationary noise-generating equipment, such as air compressors, portable power generators, and crushing/recycling operations, near U.S. Highway 101 and as far away as possible from adjacent land uses.						
▪ Locate staging areas and construction material areas as far away as possible from adjacent land uses.						
▪ Prohibit all unnecessary idling of internal combustion engines.						
▪ Designate a "disturbance coordinator" who would be responsible for responding to any local complaints about construction noise. The disturbance coordinator						

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>would determine the cause of the noise complaint (e.g., starting too early, bad muffler, etc.) and would require that reasonable measures warranted to correct the problem be implemented.</p> <ul style="list-style-type: none"> Conspicuously post a telephone number for the disturbance coordinator at the construction site and include it in the notice sent to neighbors regarding the construction schedule. <p>The potential short-term noise impacts associated with construction would be mitigated by the above measures 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 Sunnyvale Municipal Code. The impact would be mitigated to a less-than-significant level with the implementation of the above measures.</p>						
<u>NOISE-6:</u> No mitigation would be necessary.						
PUBLIC SERVICES						
<u>SERVICES-1:</u> The environmental impact would be less than significant, and no mitigation is necessary.						
<u>SERVICES-2:</u> The environmental impact would be less than significant, and no mitigation is necessary.						
<u>SERVICES-3:</u> The environmental impact would be less than significant, and no mitigation is necessary. As a condition of project approval, the project applicants would be required to pay standard school impact fees. As provided by state law, the payment of these fees is deemed to fully mitigate the impacts of new development on school services.	Applicants	Sunnyvale Community Development Department and Sunnyvale Building Division	At time of building permit application.			
RECREATION						
<u>REC-1:</u> As a condition of project approval, each project shall be required to comply with applicable City of Sunnyvale parkland dedication and in-lieu fee requirements. Compliance with these requirements would ensure that the impact of each project on existing parks and demand for new parkland would be reduced to a less-than-significant level.	Applicants	Sunnyvale Community Development Department	At time of building permit application.			

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
REC-2: Each project shall comply with Mitigation Measure REC-1 and all other applicable mitigation measures identified in this EIR. Compliance with these measures would ensure that the impact of recreational facilities included in each project would be reduced to a less-than-significant level.	See REC-1					
TRANSPORTATION						
TRANSPORTATION-1: No mitigation measures would be necessary under Baseline-Plus Project Conditions.						
TRANSPORTATION-2: No mitigation measures would be necessary under Baseline-Plus Project Conditions.						
TRANSPORTATION-3: No mitigation measures would be necessary under Baseline-Plus Project Conditions.						
TRANSPORTATION-4: No mitigation measures would be necessary under Baseline-Plus-Project Conditions.						
TRANSPORTATION-5: No mitigation measures would be necessary under Baseline-Plus-Project Conditions.						
TRANSPORTATION-6: No mitigation measures would be necessary under Baseline-Plus-Project Conditions.						
TRANSPORTATION-7: No mitigation measures would be necessary under Background-Plus-Project Conditions.						
TRANSPORTATION-8: No mitigation measures would be necessary under the Cumulative-Plus-Project Conditions.						

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<u>TRANSPORTATION-9:</u> Both project sites shall be designed to incorporate emergency vehicle access that 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 is approved by the City Fire Marshal. This mitigation would reduce the impact on emergency access to a less-than-significant level.	Applicants	Sunnyvale Community Development Department, working with Sunnyvale Department of Public Safety	During site plan review.			
<u>TRANSPORTATION-10:</u> Both project sites shall be designed to integrate improvements with existing pedestrian facilities to accommodate potential increases in pedestrian activity. If the SFPUC does not approve the proposed pedestrian improvements, the site plans for both projects shall be adjusted to maximize pedestrian use near the SFPUC right-of-way (ROW), and this shall occur prior to issuance of any building permits. This measure would reduce the transportation impact to a less-than-significant level.	Applicants	Sunnyvale Community Development Department and City Traffic Engineer	Prior to issuance of building permits.			
<u>TRANSPORTATION-11:</u> Both project sites shall be designed to integrate with existing bicycle facilities to accommodate potential increases in bicycle activity. On-site facilities for bicycles shall be consistent with VTA and City of Sunnyvale guidelines for such facilities, including parking and storage on both project sites. If the SFPUC does not approve the proposed bicycle improvements, the site plan for the Raintree site shall be adjusted to maximize bicycle use near the SFPUC right-of-way, and this shall occur prior to issuance of any building permits. This measure would reduce the transportation impact to a less-than-significant level.	Applicants	Sunnyvale Community Development Department and City Traffic Engineer	Prior to issuance of building permits.			
<u>TRANSPORTATION-12:</u> No mitigation measures would be necessary.						
<u>TRANSPORTATION-13:</u> Each project applicant shall prepare a construction truck traffic program for approval by the City of Sunnyvale. The program shall recommend city-designated truck routes and avoids AM and PM commute peak periods (7:00-9:00 AM and 4:00-6:00 PM) in order to avoid impacts on the local roadway system and also to avoid residential neighborhoods. This program shall be integrated into contract specifications. With implementation of this program, each project would result in a less than significant impact.	Applicants	Sunnyvale Community Development Department and City Traffic Engineer	Review and approval of contract specifications prior to issuance of building permits.			

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Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<u>TRANSPORTATION-14</u> : No mitigation measures would be necessary.						
UTILITIES AND SERVICE SYSTEMS						
<u>UTIL-1</u> : The impact would be less than significant, and no mitigation is necessary.						
<u>UTIL-2</u> : The impact would be less than significant, and no mitigation is necessary.						
<u>UTIL-3</u> : As 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, in accordance with City of Sunnyvale Department of Public Works requirements. This measure would reduce the impact to a less-than-significant level.	Applicants (likely to be via funding mechanism with the City)	Sunnyvale Public Works Department	Prior to issuance of occupancy permit.			
<u>UTIL-4</u> : The impact would be less than significant, and no mitigation is necessary.						
<u>UTIL-5</u> : The impact would be less than significant, and no mitigation is necessary.						
<u>UTIL-6</u> : Each project applicant shall prepare a Waste Management Plan for City approval. The Waste Management Plan shall include provisions for deconstructing existing buildings to facilitate salvaging their reusable components, recycling demolition wastes, reusing or recycling unused construction materials, and ensuring that residents participate in the multi-family recycling service provided by the City to the project after it is occupied. The Waste Management Plan shall describe the projected quantities of waste generated during demolition and construction; indicate how much of those materials will be reused, recycled, or otherwise diverted from landfills; and indicate where un-recycled materials will be disposed. The Waste Management Plan shall also describe where and how post-occupancy discarded materials will be stored and moved to collection points and how residents and project staff (e.g., maintenance workers) will be informed and motivated, on an ongoing basis, to handle discarded materials to support the City's diversion goals. Upon completion of each project, each project applicant shall document implementation of the Waste Management Plan by providing the City with a report summarizing the waste type, quantity, disposition (e.g., recycled or landfilled), and the facility used. This measure would reduce the impact to a less-than-significant level.	Applicants	Sunnyvale Community Development Department and Sunnyvale Building Division	Prior to issuance of demolition permit.			

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Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
MEASURES IDENTIFIED IN INITIAL STUDY FOR EAST WEDDELL RESIDENTIAL PROJECTS (MAY 2013)						
<p><u>CULTURAL-1:</u> Each project applicant shall retain a qualified archaeologist to monitor project ground-disturbing activities. Prior to project ground-disturbing activities, the archaeologist shall prepare a Monitoring Plan for the project. The Monitoring Plan shall describe the specific methods and procedures that will be used in the event that archaeological deposits are identified.</p> <p>Archaeological monitors shall be empowered to halt construction activities at the location of a discovery to review possible archaeological material and to protect the resource while the finds are being evaluated. Monitoring shall continue until, in the archaeologist's judgment, cultural resources are not likely to be encountered.</p> <p>If archaeological materials are encountered during project activities, all work within 25 feet of the discovery shall be redirected until the archaeologist assesses the finds, consults with agencies as appropriate, and makes recommendations for the treatment of the discovery. If avoidance of the archaeological deposit is not feasible, the archaeological deposits shall be evaluated for their eligibility for listing in the California Register of Historical Resources. If the deposits are not eligible, mitigation is not necessary. If the deposits are eligible, adverse effects on the deposits shall be mitigated. Mitigation may include excavation of the archaeological deposit in accordance with a data recovery plan (see CEQA Guidelines Section 15126.4(b)(3)(C)) and standard archaeological field methods and procedures; laboratory and technical analyses of recovered archaeological materials; preparation of a report detailing the methods, findings, and significance of the archaeological site and associated materials; and accessioning of archaeological materials and a technical data recovery report at a curation facility.</p> <p>Upon completion of the assessment, the archaeologist shall prepare a report to document the methods and results of the assessment. The report shall be submitted to the City of Sunnyvale and the Northwest Information Center at Sonoma State University upon completion of the resource assessment.</p>	Applicants and Contractors	Sunnyvale Community Development Department	Review and approval of Monitoring Plan prior to issuance of grading permit. Review and approval of assessment report, if applicable, prior to issuance of building permit.			
<p><u>CULTURAL-2:</u> On each project site, should paleontological resources be encountered during project subsurface construction activities, all ground-disturbing activities within 25 feet shall be redirected and a qualified paleontologist shall be contacted to assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. If found the resources are to be significant, and project activities cannot avoid the resources, adverse effects on paleontological resources shall be mitigated. Mitigation may include monitoring, recording of the fossil locality, data recovery</p>	Applicants and Contractors	Sunnyvale Community Development Department	Review of contract specifications prior to issuance of grading permit. Review and approval of			

TABLE 4-1 MITIGATION MONITORING AND REPORTING PROGRAM

Mitigation Measure	Party Responsible for Ensuring Implementation	Party Responsible for Monitoring	Monitoring Timing	Compliance Verification		
				Initial	Date	Project/ Comments
<p>and analysis, a final report, and accessioning the fossil material and technical report to a paleontological repository. Public educational outreach may also be appropriate. Upon completion of the assessment, a report documenting methods, findings, and recommendations shall be prepared and submitted to the City of Sunnyvale for review. If paleontological materials are recovered, the report shall also be submitted to a paleontological repository, such as the University of California Museum of Paleontology.</p> <p>Each project applicant shall inform its contractor(s) of the sensitivity of the project area for paleontological resources. The City shall verify that the following directive has been included in the appropriate construction documents:</p> <p>“The subsurface of the construction site may be sensitive for paleontological resources. If paleontological resources are encountered during project subsurface construction and a paleontologist is not on-site, all ground-disturbing activities within 25 feet shall be redirected and a qualified paleontologist contacted to assess the situation, consult with agencies as appropriate, and make recommendations for the treatment of the discovery. Project personnel shall not collect or move any paleontological materials. Paleontological resources include fossil plants and animals, and such trace fossil evidence of past life as tracks. Ancient marine sediments may contain invertebrate fossils such as snails, clam and oyster shells, sponges, and protozoa; and vertebrate fossils such as fish, whale, and sea lion bones. Vertebrate land mammals may include bones of mammoth, camel, saber tooth cat, horse, ground sloth, dire wolf, and bison. Paleontological resources also include plant imprints, petrified wood, and animal tracks.”</p>			assessment report, if applicable, prior to issuance of building permit.			
<p>GEO-1: For each project, prior to the issuance of any grading or construction permits, a design-level geotechnical investigation shall be prepared by a licensed professional and submitted to the City Engineer for review and approval. The investigation shall verify that the project plans comply with CBC and City requirements and incorporate the recommendations for design contained in preliminary geotechnical reports. All design measures, recommendations, design criteria, and specifications set forth in the design-level geotechnical investigation shall be implemented as a condition of project approval.</p>	Applicants	Sunnyvale Community Development Department, Sunnyvale City Engineer, and Sunnyvale Building Division	Prior to issuance of grading or building permit.			