

**SheppardMullin**

Sheppard Mullin Richter & Hampton LLP  
501 West Broadway, 19th Floor  
San Diego, CA 92101-3598  
619.338.6500 main  
619.234.3815 main fax  
www.sheppardmullin.com

John E. Ponder  
Writer's Direct Line: 619-338-6646  
jponder@sheppardmullin.com

File Number: 15BK-151316

May 29, 2012

**Hand-Delivered**

Martha Blake  
Environmental Planner  
City of San Diego Development Services Department  
1222 First Avenue, MS #501  
San Diego, CA 92101  
E-Mail: [DSDEAS@sandiego.gov](mailto:DSDEAS@sandiego.gov)

Re: Draft Environmental Impact Report for One Paseo (Project No. 193036)

Dear Ms. Blake:

On behalf of our client, Donahue Schriber, Inc., owner of the Del Mar Highlands Town Center, we appreciate the opportunity to comment on the Draft Environmental Impact Report ("EIR") for the One Paseo Project (the "Project") located at 12910 Del Mar Heights Place in the Carmel Valley community of the City of San Diego (the "Project site"). We believe, as drafted, the EIR fails to fully comply with the California Environmental Quality Act of 1970 ("CEQA"), due to its failure to accurately and adequately discuss and analyze all of the components required under CEQA, including, but not limited to: (1) a reasonable range of alternatives; (2) traffic impacts and circulation issues; (3) consistency with the City of San Diego General Plan ("General Plan"), the Carmel Valley Community Plan ("Community Plan"), the Carmel Valley Precise Plan ("Precise Plan") and the community character; (4) water supply assessment and analysis; and (5) the potential for urban decay.

The proposed development includes 1,857,400 gross square feet consisting of 270,000 gross square feet of commercial retail, 557,440 gross square feet of commercial office, 100,000 gross square feet for a 150-room hotel, and 930,000 square feet for 608 multi-family residential units at full build out. The Project would also include public spaces, internal roadways, landscaping, hardscape treatments, utility improvements and parking facilities to support these uses. Currently, the Project site consists of primarily graded vacant land. As alternatives to the Project, the EIR considers No Project/No Development, No Project/Development Under Existing Plans Alternative, Commercial Only, Medical Office/Senior Housing Alternative, and No Retail Alternative. The City of San Diego (the "City") is the lead agency for the Project and Kilroy Realty LP is the "Applicant."

We previously submitted extensive comments on the Project's Notice of Preparation ("NOP"). Unfortunately, the EIR reflects many of the same deficiencies that existed in the NOP. The EIR continues to underestimate the serious impact that the Project will have for the Carmel

63.1 This comment summarizes issues discussed in detail in the comment letter. Specific comments pertaining to these issues are individually discussed below.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 2

63.2 Valley community. The EIR fails to fully analyze the Project's significant impacts and offers neither adequate mitigation nor a reasonable range of alternatives that can feasibly reduce its impacts to below a level of significance while preserving the primary goals of the Project and the applicable land use plans. Therefore, the EIR must be revised and recirculated in compliance with CEQA.

Land use experts have been peer reviewing the EIR, so the public and the decisionmakers at the City can adequately understand the environmental impacts, what mitigation measures are truly feasible and what alternatives are truly available to make this Project fit Carmel Valley's character. In conjunction with our extensive review and comments provided in this letter and incorporated attachments, we reserve the right to further comment on the EIR should we discover additional deficiencies.

Experts reviewing the Project along with this firm include Valorie Thompson, Bill Darnell, Gerald Trimble and John Ziebarth. Ms. Thompson is the owner and Principal Engineer of Scientific Resources Associated and is an expert air quality and greenhouse gas emissions engineer. Mr. Darnell is the Firm Principal and Project Manager for Darnell & Associates, Inc. and is an expert transportation planning and traffic engineer. Mr. Trimble is the Managing Principal of Keyser Marston Associates, Inc., San Diego and specializes in providing market and fiscal analysis of real estate development projects. Mr. Ziebarth is the owner and Principal Architect for Ziebarth Associates and is a licensed architect with expertise in land use planning, aesthetics and building design. Each of these experts provided an extensive technical analysis, which are attached hereto as Exhibits A through D. The comments contained in these reports have been incorporated into the body of this letter for your consideration.

63.3 Our primary concern is that the Project's massive density, at almost two million square feet on a constrained 23.6-acre site, is inconsistent with Carmel Valley's primary planning objective of providing a balanced community. The Applicant is proposing a high intensity urban development that is out of character and incompatible with the suburban nature of Carmel Valley. The Project's proposed land use change will result in significant impacts on the community's circulation system which were not planned, designed or constructed to accommodate the traffic generated from a project of this magnitude.

63.4 In addition to traffic, potential impacts arise due to the incompatibility of the proposed Project with the community in the areas of economic decay, visual quality, noise, air quality, recreation and water supply. Many of these impacts can be mitigated to below a level of significance by simply analyzing and adopting a reduced density, mixed-use Project alternative or the Development Under Existing Plans Alternative described in the EIR. Under the Existing Plans Alternative, the Project site would be developed with Employment Center uses (510,000 square feet of corporate office uses and associated parking) and would be consistent with the current land uses and zoning designations of the Community Plan, Precise Plan, and Carmel Valley Planned District Ordinance ("PDO").

63.2 The EIR was prepared in accordance with applicable City and state requirements. As discussed in response to comment 5.6, three new alternatives were developed and analyzed subsequent to the original public review period for the Draft EIR. These alternatives were circulated for additional public review between October 25, 2013 and December 10, 2013, in accordance with Section 15088.5 of the CEQA Guidelines. Responses to the comment received on the new alternatives can be found in responses to comments 326 through 423.

With respect to the concern related to "adequate" mitigation, no feasible mitigation measures, beyond those considered in the Draft EIR, have been identified since the Draft EIR was circulated for public review; nor are any specific measures identified in this comment.

63.3 The proposed development would contribute to a socially and physically balanced community in that it would provide the land uses that were already planned for the site with a land use mix that reflects the types of uses that exist in the community and in the vicinity of the project site. The retail element of the project would assist in creating a greater diversification of employment opportunities than would be provided pursuant to the Employment Center designation. The updated Retail Market Analysis (Appendix B.1) prepared for the project concludes that a net demand for retail uses would remain even if all proposed retail projects in the vicinity were developed. Therefore, the project would not cause substantial closures of businesses leading to urban decay. Additionally, the project would generate more revenue than the office use that could be developed under the existing Community Plan designation. Consistent with the comment, the Final EIR, in Section 5.3.3, recognizes that the Originally Proposed Project would result in significant impacts on traffic and neighborhood character of the area. As discussed in response to comment 5.6 and Section 12.9 of the Final EIR, the Revised Project

---

**COMMENTS**

---

**RESPONSES**

---

- |  |  |
|--|--|
|  | <p>63.3 would reduce the impact of development on traffic and neighborhood cont. with respect to the Originally Proposed Project. However, these impacts would remain significant and not mitigated.</p> <p>63.4 The Final EIR acknowledges that the Originally Proposed Project and the Revised Project would result in significant impacts related to visual quality/neighborhood character and noise, but concludes that the other impacts identified in this comment related to air quality, recreation, urban decay, and water supply would not be significant. The analysis of the two reduced mixed-use alternatives included in the Final EIR concurs with the observation in the comment that a reduced project would reduce impacts related to the Originally Proposed Project. The Final EIR also concludes that development of the property as an industrial/business park would avoid the need to amend the Community Plan, Carmel Valley Employment Center Precise Plan, and the Carmel Valley Planned District Ordinance.</p> |
|--|--|



## SheppardMullin

Martha Blake  
May 29, 2012  
Page 3

### I. General Overview of CEQA

CEQA was enacted to ensure that state and local governmental agencies fully consider the environmental implications of their discretionary governing actions.<sup>1</sup> The California Supreme Court has repeatedly affirmed that CEQA must be interpreted liberally "to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."<sup>2</sup>

Two of the central purposes of CEQA are to inform governmental decisionmakers and the public about the potential significant environmental effects of a proposed project and to identify ways that environmental damage can be avoided or significantly reduced.<sup>3</sup> The EIR is the heart of CEQA.<sup>4</sup> As noted by the California Supreme Court, the EIR:

"is the primary means of achieving the Legislature's considered declaration that it is the policy of this state to 'take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.' (§ 21001, subd. (a).) . . . Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees. The EIR process protects not only the environment but also informed self-government."<sup>5</sup>

An EIR must be "prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences."<sup>6</sup> The EIR must contain facts and analysis, not just the bare conclusions of a public agency. An agency's opinion concerning matters within its expertise is of obvious value, but the public and decisionmakers, for whom the EIR is prepared, must also have before them the basis for that opinion so as to enable them to make an independent, reasoned judgment.<sup>7</sup> The certification of an EIR constitutes a prejudicial abuse of

<sup>1</sup> 14 Cal. Code of Regs. §§ 15000 *et seq.* (the "Guidelines"); Selmi, *The Judicial Development of the California Environmental Quality Act*, 18 U.C.D. L. Rev. 197, 202 (1984).

<sup>2</sup> *Laurel Heights Improvement Ass'n. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376, 390 (*quoting Friends of Mammoth v. Bd. of Supervisors* (1972) 8 Cal.3d 247, 259).

<sup>3</sup> Guidelines §§ 15002(a) and (b).

<sup>4</sup> Guidelines § 15003(a).

<sup>5</sup> *Laurel Heights, supra*, 47 Cal.3d at 392.

<sup>6</sup> Guidelines § 15151.

<sup>7</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736 (*quoting Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831).



## SheppardMullin

Martha Blake  
May 29, 2012  
Page 4

discretion if the failure to include relevant information precludes informed decisionmaking and informed participation, thereby thwarting the statutory goals of the EIR process.<sup>8</sup>

### II. General Comments

#### A. The EIR Lacks of a Reasonable Range of Project Alternatives

CEQA requires that an EIR "produce information sufficient to permit a reasonable choice of alternatives so far as the environmental aspects are concerned." The alternatives analysis must fulfill CEQA's mandate to examine a "reasonable range" of alternatives aimed at avoiding or reducing the significant impacts of the proposed project. An EIR's alternatives analysis should be rejected when it does not include alternatives that would reduce significant impacts and achieve most Project objectives and when the EIR fails to include a reasonable explanation of the decision to exclude that alternative.

63.5 The Project's Alternative analysis fails to comply with the CEQA-mandated requirements because: (1) it contains an overly narrow range of alternatives in light of the primary Project objective and its environmental effects by omitting the consideration of a smaller mixed-use Project; (2) it lacks the required discussion of potential alternative locations for the Project; and (3) it cursorily rejects environmentally superior alternatives that meet most of the basic Project objectives without sufficient reasoning.

#### B. The Project is Inconsistent with Applicable Land Use Plans and Community Character

63.6 CEQA requires an EIR to discuss any inconsistencies between a proposed project and applicable general, specific and regional plans. As currently written, the Project's EIR contains a 105-page summary of the Project's consistencies with the General Plan but omits discussion of any inconsistencies. This ignores the Project's inconsistencies with multiple land use policies within the General Plan including, but not limited to: (1) the requirement to maintain community character; (2) the Project's designation as a "Village Center" when its characteristics match an "Urban Center"; (3) physical characteristics required of the site; and (4) required transit-oriented development.

63.7 The Community Plan and Precise Plan envision employment and industrial uses on the site. The low and moderate scale intended for these uses under the plans creates a horizontal mixed-use community village. The Project would create a dense vertical urban village, in stark opposition to the site's intended purpose. Furthermore, amending the applicable land use plans, as proposed by the EIR, would designate an urban village in a suburban area that would generate several inconsistencies with other elements of the applicable land use plans.

<sup>8</sup> Kings County, *supra*, 221 Cal.App.3d at 712.

63.5 As discussed in response to comment 5.6 the Final EIR includes analysis of two reduced mixed-use alternatives which would retain the same general mix of land uses as the Originally Proposed Project but reduce the overall density and intensity.

Section 12.3.1 of the Draft EIR discusses consideration of an alternative location for the project. Pursuant to Section 15126.6(f)(2) of the State CEQA Guidelines, the key question is "whether any of the significant effects of the project would be avoided or substantially lessened by putting the project in another location." Furthermore, "If the lead agency concludes that no feasible alternative locations exist, it must disclose the reasons for this conclusion." The Draft EIR states that there are no other sites in the project area (i.e., Carmel Valley) that are suitable for the project. Carmel Valley is essentially built out, and there are no other vacant parcels in Carmel Valley similar in size to the project site (23.6 acres) that could support the mix and density of proposed land uses within the development. With respect to the other "potential" locations identified in this comment (e.g., the sports arena and post office sites in the Rosecrans area of the City of San Diego, acquisition of these sites in a timely manner by the project applicant is not considered feasible. Both of these sites are publicly owned and would require a lengthy competitive bidding process, if the landowners decide to sell the properties, which would or would not result in the project applicant being selected to develop the properties. The ability for an applicant to acquire an offsite location in a timely manner is a relevant factor in the determination of the feasibility of an off-site alternative. An alternative would be found

COMMENTS

RESPONSES

63.5 remote and speculative if it is unlikely as a practical matter to be carried out in a reasonable time-frame or is contingent on uncertain future events, such as these proposed off-site alternative suggestions.

Additionally, the discussion of project alternatives in the Final EIR provides a sufficient analysis to compare the impacts of project alternatives with the Originally Proposed Project. Each alternative considered in the Final EIR includes a description, environmental analysis, and overall conclusion comparing the alternative's impacts with the Originally Proposed Project. A table comparing the impact of the Originally Proposed Project with the alternatives has been added to the Executive Summary of the Final EIR (see Table ES-4).

63.6 While this comment claims the project is inconsistent with General Plan policies, it does not cite specific policies. Section 5.1 of the Draft EIR contains a comprehensive policy consistency analysis with applicable land use plans (Table 5.1-1). Refer to updated information contained in Section 5.1.2 of Final EIR.

A similar analysis of the Revised Project is included in Section 12.9 of the Final EIR. Based on this analysis, the Final EIR appropriately concludes that the project would be consistent with General Plan policies and implements the City of Villages strategy.

63.7 It is acknowledged that the project site is currently designated as Employment Center in the Carmel Valley Community Plan and the Carmel Valley Employment Center Precise Plan, which calls for business park office uses on the project site. The project proposes land use plan amendments to change land use designations to accommodate the mix of proposed land uses on the site. Specifically, the proposed Community Plan amendment would designate the site as Community Village not an Urban Village, as indicated in this comment. This comment also claims the project is inconsistent with applicable land use plans, but lacks specificity regarding inconsistencies. Section 5.1 of the Draft EIR contains a comprehensive policy consistency analysis with applicable land use plans (Table 5.1-1). Refer to updated information contained in Section 5.1.2 of Final EIR.

A discussion of the relationship of the Revised Project to applicable land use plans is included in Section 12.9 of the Final EIR. Based on this analysis, the Final EIR appropriately concludes that the Originally Proposed Project and the Revised Project would be consistent with the



---

**COMMENTS**

---

**RESPONSES**

---

63.7 General Plan, the Community Plan and the Carmel Valley Employment  
cont. Center Precise Plan.

Contrary to the comment, there is no “horizontal Mixed-use Community Village” land use designation in any adopted land use plans that regulate the project site, including (among others) the General Plan, Community Plan, and Precise Plan. While land uses that comprise a village, as identified in the General Plan (residential, commercial, employment, and civic uses) exist in the community and in the immediate vicinity of the project site, such uses are compartmentalized and not integrated as called for in the General Plan definition of village. As such, there is no existing designated or de facto “horizontal mixed-use village” in Carmel Valley that meets the criteria of any village type defined in the General Plan.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 5

63.8 The Project's scale, at almost two million square feet on only a 23.6 acre site, is inconsistent with Carmel Valley's primary planning objective of providing a balanced community. The Project's density is nearly four times what is currently allowed and is unlike anything in Carmel Valley. Additionally, the Project's vertical design, consisting of two 199-foot tall buildings, a nine-story, a six-story and a five-story building, obviously contrasts with the community character and existing development, which contains nothing over four stories.

**C. The EIR Does Not Fully Address the Cumulative Impacts of the Project**

63.9 The EIR must analyze both the Project's direct and cumulative impacts.<sup>9</sup> Failing to do so would constitute a form of "piecemealing" which would violate CEQA.<sup>10</sup> "Under CEQA, the agency must consider the cumulative environmental effects of its action before a project gains irreversible momentum."<sup>11</sup> The cumulative impacts analysis should also consider the impacts of past projects.<sup>12</sup> Numerous projects within the Carmel Valley vicinity have already been constructed, approved or are currently pending, which, considered cumulatively, may have substantial environmental impacts. Such projects include the Pacific Highlands Ranch Project, Del Mar Fairgrounds Master Plan, University Town Center Revitalization Project and Black Mountain Ranch North Village Project, in addition to the approved and not built 150,000 square foot expansion of the Del Mar Highlands Town Center.

63.10 The Project may not avoid its fair share of mitigation by improperly relying on mitigation measures from approved projects. Several approved projects in the community have provided mitigation measures to offset full impacts from their entitlements, yet have not fully built out. The Project cannot reduce its legally required mitigation by using mitigation measures from approved projects to offset its environmental impacts.

**D. The EIR Does Not Fully Analyze the Project's Indirect and Displacement Impacts**

CEQA requires lead agencies to consider indirect impacts from a project.<sup>13</sup> "Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects."<sup>14</sup> An indirect environmental impact is a change in the physical environment that is not immediately related to

<sup>9</sup> Guidelines §§ 15126.2(a), 15130.

<sup>10</sup> See *Orinda Ass'n v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171; see also *Las Virgenes Homeowners Fed'n, Inc. v. County of Los Angeles* (1986) 177 Cal.App.3d 300, 306.

<sup>11</sup> *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1333.

<sup>12</sup> See *Env'tl. Prot. & Info. Ctr. v. Cal. Dept. of Forestry & Fire Prot.* (2008) 44 Cal.4th 459, 523.

<sup>13</sup> *Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144 (EIR required for golf course project because adverse impacts would result indirectly from later residential development that might be attracted to area by development of golf course).

<sup>14</sup> Guidelines § 15126.2(a).

63.8 As discussed in response to comment 63.3, the proposed development is considered consistent with the goal of the Carmel Valley Community Plan to foster a balanced community. The Final EIR recognizes that the Originally Proposed Project and the Revised Project would result in significant impacts to the neighborhood character of the area.

63.9 The Final EIR analyzes direct, indirect and cumulative impacts of the Originally Proposed Project and Revised Project. Section 6.0 contains a discussion and analysis of cumulative effects, pursuant to the Section 15130 of the State CEQA Guidelines. Table 6-1 in the Draft EIR includes a list of past, approved, and pending projects that were identified in the project area at the time the Notice of Preparation was circulated. As the Revised Project would result in less development than the Originally Proposed Project, the conclusions of the Draft EIR related to cumulative impacts are applicable to the Revised Project.

63.10 The project does not rely on mitigation measures from other approved projects to mitigate its impacts. Refer to the MMRP in Section 7.0 of the Final EIR.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 6

the project but that is caused indirectly by the project, occurs later in time or is farther removed in distance than direct effects.<sup>15</sup> Additionally, CEQA requires analysis of whether a lead agency's action results in the displacement of development to other areas.<sup>16</sup>

There are several potentially significant indirect or displacement impacts that should have been fully analyzed in the EIR. For example, the Project could foster economic or population growth, which could encourage activities that have a significant effect on the environment, either individually or cumulatively. In addition, the Project could draw retail customers from great distances, thus indirectly causing increased greenhouse gas ("GHG") emissions and exacerbating impacts to air quality. Changing the zoning designation from Carmel Valley Planned District-Employment Center ("CVPD-EC") to Carmel Valley Planned District-Mixed-Use Center ("CVPD-MUC") could displace a commercial or industrial use that will then be sited in another location, with corresponding adverse environmental impacts in that area. However, the EIR does not adequately or correctly discuss and assess the potential for urban decay, increased GHG emissions or other related environmental impacts.

Appendix G to the CEQA Guidelines provides a list of issues that should be considered in preparation of an EIR, which includes "population and housing."<sup>17</sup> The EIR failed to analyze whether the cumulative impacts of additional retail and office uses would induce substantial population growth within the region, or whether eliminating the employment/industrial designation and diverting jobs to other locations would displace substantial population growth to those other areas.<sup>18</sup> Further, decreasing the job base in the City could have significant adverse fiscal, socioeconomic and physical impacts, and the Project could have a significant impact on affordable housing. The EIR failed to properly analyze these potential impacts.

**E. The Project's Massive Size and Density Will Cause Economic and Urban Decay**

The EIR violates CEQA by not fully considering potentially significant impacts to economic and urban decay. The Project could result in economic pressures to nearby and distant retail and office properties, potentially causing those users to go out of business, which could lead to deterioration and blight conditions resulting from vacant buildings and neglect. The City's Community and Economic Development Department has concluded that certain retail centers have the potential to cause urban blight.<sup>19</sup> Moreover, elimination of the Employment Center land use designation and construction of new residential units could exacerbate the current decay resulting from unoccupied housing, partially-constructed developments and

<sup>15</sup> Guidelines §§ 15064(d)(2), 15358(a)(2).

<sup>16</sup> *Muzzy Ranch Co. v. Solano County Airport Land Use Comm'n* (2007) 41 Cal.4th 372, 383.

<sup>17</sup> Guidelines. § 15000 *et seq.*, Appendix G, § XII.

<sup>18</sup> *Id.* at § XII.

<sup>19</sup> Fiscal and Economic Impacts of Large Retail Establishments, City of San Diego Community and Economic Development Department, August 2004.

63.11 Section 11.0 of the Draft EIR discussed the project's potential to foster population and/or economic growth. As the Revised Project would result in less development, the conclusions of the Draft EIR are equally applicable to the Revised Project.

Direct and cumulative impacts related to GHG emissions were evaluated relative to the San Diego Air Basin as a whole, which encompasses the entire San Diego region. Therefore, emissions from vehicles traveling to the project's retail uses were accounted for in the analysis regardless of their origin within the region.

It is speculative to assert that changing the zone classification would result in commercial or industrial uses to be developed at another location. Evaluation of these types of "displacement impacts" is speculative pursuant to Section 15145 of the State CEQA Guidelines.

As discussed in the updated retail market analysis, neither the Originally Proposed Project nor Revised Project would contribute to urban decay.

63.12 The Draft EIR evaluated the impacts of the proposed development including the impacts of the requested land use changes. The proposed development would continue to support employment uses at the site, and does not preclude many of the uses contemplated under the City of San Diego General Plan and Carmel Valley Community Plan. The total square footage of office use proposed in the development is similar to the light industrial maximum square footage that could have been constructed under the prior land use designation and zone, and the expected number of jobs to be supported by the office portion of the development is also similar. Currently the site is vacant, and no employment uses exist; the development would support the increasing employment base within the City, and help meet only a portion of the increasing demand within the area for the uses proposed in the development.



## SheppardMullin

Martha Blake  
May 29, 2012  
Page 7

63.13  
cont.

foreclosed homes. Likewise, the construction of additional office and commercial square footage could compound the existing decay resulting from the high commercial office vacancy in Carmel Valley and surrounding areas.

63.14

The EIR dismisses economic and urban decay as a potentially significant impact based upon the false assumption that there will be excess retail demand in the market area once other planned commercial areas are built out. However, the market and fiscal impact study the Applicant uses to demonstrate excess retail demand is based on inaccurate data regarding retail sales per square foot. One critical inaccuracy regarding net supportable retail space deals with retail sales per square foot annually. The market study uses a sales per square foot ("sales/SF") annually number of \$300/square foot to illustrate a supportable demand of 1,699,300 square feet. If a realistic sales/SF number of \$500 - \$700/square foot is used it reduces the estimated demand by over 50 percent. The Project development of 220,000 square feet plus the approximately 800,000 square feet of proposed retail square feet in the Trade Area would exceed demand which could force retailers to close due to insufficient demand. Accordingly, the EIR provides no substantial evidence to justify a conclusion that there is excess retail demand and no potentially significant environmental impacts from urban decay. The Project proposes to drastically exceed the densities proposed in the applicable land use plans, despite the ongoing and severe economic crisis which has imposed enormous financial constraints on retail, office and residential users, and given that the Project development will admittedly be driven by market conditions. In contrast, a reduced density, mixed-use Project alternative or adoption of the Existing Plans Alternative described in the EIR would reduce potential impacts of urban decay.

### F. The EIR Improperly Defers Analysis of Environmental Impacts

63.15

Moreover, to satisfy the informational requirements of CEQA,<sup>20</sup> the EIR must analyze all reasonably foreseeable impacts.<sup>21</sup> Failing to analyze reasonably foreseeable impacts eviscerates one of CEQA's prime purposes, to have, "at the earliest feasible time, project sponsors . . . incorporate environmental considerations into project conceptualization, design, and planning."<sup>22</sup> "By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process."<sup>23</sup> Accordingly, analysis of indirect and displacement impacts should not be deferred. If the EIR does not consider the potentially significant impacts induced

<sup>20</sup> It is noteworthy that when the informational requirements of CEQA are not complied with, an agency fails to proceed in a "manner required by law," and has therefore abused its discretion. Pub. Res. Code § 21168.5; see also *Galante Vineyards v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 1428.

<sup>21</sup> Guidelines § 15064(d); see also *City of Antioch*, supra, 187 Cal.App.3d 1325.

<sup>22</sup> Guidelines § 15004(b)(1).

<sup>23</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308; see also *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 282; *Mt. Suto Defense Comm. v. Regents of the Univ. of Cal.* (1978) 77 Cal.App.3d 20, 34 (noting that environmental problems should be considered at a point in the planning process "where general flexibility remains").

63.13 As discussed in the updated retail market analysis, neither the Originally Proposed Project nor Revised Project would contribute to urban decay.

63.14 The underlying model in the RMA has been rerun to respond to this and other comments received (see Appendix B.1). Data and assumptions were based on currently available information from the same data sources utilized in the original RMA. Minor changes in methodology and alternative assumptions suggested by comments to the Draft EIR were also evaluated and are discussed below. The data in the RMA are sufficient, nevertheless the requested modifications are provided. The conclusions of the RMA as well as the Draft and Final EIRs with these modifications remain unchanged.

Historic & projected Households: Data indicate a slight increase in 2010 population, from the original estimate of 193,131 households to 196,774. However, the projected growth rate decreased slightly over the life of the analysis, resulting in 2020 figures decreasing from the original 213,006 households in 2020 to 207,461.

Average Household Income Projections: Data on average household incomes indicates an increase in 2010 average household incomes from \$107,165 to \$111,869, and from \$120,278 to \$147,823 in 2020.

PMA & SMA Projected Total Income: Based on the data, total projected income would be slightly reduced, and Table 5.1.3 on page 5.1-30 of the Draft EIR would be revised as follows:

Table 5.1-3 PMA & SMA PROJECTED TOTAL INCOME (US Constant \$000s)				
Area	2015	2016	2017	2020
PMA	4,657,349	4,686,319	4,715,469	4,804,011
SMA	18,237,675	18,336,789	18,436,441	18,738,660
Total Income	22,895,024	23,023,107	23,151,910	23,542,671



63.14 Percent of Income Spent on Retail Goods: Based on household income cont. and expenditure information from the United States Bureau of Labor Statistics. The original RMA estimated that households within the PMA spend approximately 30.95 percent of income on retail goods, and the households within the SMA spend approximately 34.76 percent of income on retail goods. Based on the current data these figures are now 31.22 percent for the PMA and 33.38 percent for the SMA, and Table 5.1-4 on page 5.1-30 of the Draft EIR would be revised as follows:

<b>Table 5.1-4</b> <b>EXPECTED RETAIL SALES WITHIN THE TRADE AREA</b> <b>(US Constant \$000s)</b>				
Area	2015	2016	2017	2020
PMA	2,152,627	2,166,017	2,179,490	2,220,414
SMA	8,823,387	8,871,338	8,919,550	9,065,764
<b>Total</b>	<b>10,976,014</b>	<b>11,037,355</b>	<b>11,099,040</b>	<b>11,286,178</b>

Sales by Retail Category: In the original analysis the estimate of sales by retail category was calculated based on a proration of actual sales within submarkets in the Trade Area based on the land area of those submarkets. It was suggested in comments that a proration based on population would be more appropriate. The proration in the analysis has been revised using data available from ESRI (an original data source), based on population rather than land area, and revised the model accordingly in response to this comment.

A comment on the historic timeframe to include when estimating the distribution of sales by retail category was submitted, and suggested that a longer time horizon should have been considered. A shift in expenditures by retail category in this and other trade areas during the last recession appears to be holding, and older figures less accurately predict future trends. This shift does not dramatically change the distribution over broader categories, such as Shopper Goods, Convenience Goods, etc., and even a shift to potentially less accurate figures from multiple years prior does not significantly change the conclusions in the RMA. Additionally, data for 2010 now available supports the use of more recent figures rather than older figures. For reference, figures for 2009, 2010, and the average for 2005-2010 follow for both a land area-based proration and population-based proration methodology. As shown in the tables (Exhibits 63.14-1 through 63.14-10) below, 2009 and 2010 figures more closely match each other than the average between 2005-2010 and

63.14 either 2009 or 2010. From the perspective of broad retail categories, they cont. are virtually indistinguishable and would not affect the conclusions of the RMA.

**Exhibit 63.14-1  
Land Area Based Proration**

	PMA				SMA			
	2005-10 Average	2009-10 Average	2009	2010	2005-10 Average	2009-10 Average	2009	2010
<i>Shopper Goods (GAFO):</i>								
Apparel	7.3%	9.8%	9.7%	10.0%	6.9%	9.1%	9.0%	9.3%
General Merchandise	12.5%	10.4%	10.4%	10.3%	12.1%	10.4%	10.5%	10.4%
Home Furnishings/Appliances	5.3%	7.1%	7.1%	7.1%	5.4%	6.6%	6.7%	6.6%
Other	13.2%	10.5%	10.7%	10.2%	13.6%	10.5%	10.8%	10.2%
<b>Subtotal</b>	<b>38.3%</b>	<b>37.8%</b>	<b>37.9%</b>	<b>37.7%</b>	<b>38.0%</b>	<b>36.8%</b>	<b>36.9%</b>	<b>36.6%</b>
<i>Convenience Goods:</i>								
Food (Supermarkets/Liquor)	15.7%	17.3%	17.7%	17.0%	16.3%	18.1%	18.5%	17.7%
Eating and Drinking	16.5%	18.2%	18.4%	18.1%	15.5%	17.1%	17.2%	17.0%
<b>Subtotal</b>	<b>32.2%</b>	<b>35.6%</b>	<b>36.0%</b>	<b>35.1%</b>	<b>31.9%</b>	<b>35.2%</b>	<b>35.7%</b>	<b>34.7%</b>
<i>Heavy Commercial Goods:</i>								
Building/Hardware/Farm	6.7%	5.1%	5.1%	5.0%	6.7%	5.5%	5.6%	5.4%
Auto Dealers and Parts	12.7%	11.7%	11.6%	11.8%	13.7%	12.4%	12.2%	12.7%
Service Stations	10.0%	9.9%	9.5%	10.4%	9.9%	10.1%	9.6%	10.6%
<b>Subtotal</b>	<b>29.4%</b>	<b>26.7%</b>	<b>26.1%</b>	<b>27.2%</b>	<b>30.2%</b>	<b>28.0%</b>	<b>27.4%</b>	<b>28.7%</b>

**Exhibit 63.14-2  
Population Based Proration**

	PMA				SMA			
	2005-10 Average	2009-10 Average	2009	2010	2005-10 Average	2009-10 Average	2009	2010
<i>Shopper Goods (GAFO):</i>								
Apparel	7.3%	9.8%	9.6%	10.0%	7.0%	9.2%	9.0%	9.4%
General Merchandise	12.5%	10.4%	10.5%	10.4%	12.1%	10.5%	10.5%	10.5%
Home Furnishings/Appliances	5.3%	7.0%	7.0%	7.0%	5.4%	6.6%	6.6%	6.5%
Other	13.2%	10.5%	10.8%	10.3%	13.5%	10.5%	10.8%	10.2%
<b>Subtotal</b>	<b>38.3%</b>	<b>37.8%</b>	<b>37.9%</b>	<b>37.7%</b>	<b>37.9%</b>	<b>36.8%</b>	<b>37.0%</b>	<b>36.6%</b>
<i>Convenience Goods:</i>								
Food (Supermarkets/Liquor)	15.7%	17.3%	17.7%	17.0%	16.3%	18.1%	18.4%	17.7%
Eating and Drinking	16.4%	18.2%	18.3%	18.0%	15.4%	17.0%	17.0%	16.9%
<b>Subtotal</b>	<b>32.2%</b>	<b>35.5%</b>	<b>35.9%</b>	<b>35.1%</b>	<b>31.7%</b>	<b>35.0%</b>	<b>35.5%</b>	<b>34.5%</b>
<i>Heavy Commercial Goods:</i>								
Building/Hardware/Farm	6.7%	5.1%	5.1%	5.0%	6.6%	5.5%	5.6%	5.4%
Auto Dealers and Parts	12.6%	11.7%	11.6%	11.8%	14.0%	12.7%	12.5%	13.0%
Service Stations	10.0%	10.0%	9.5%	10.4%	9.8%	10.0%	9.5%	10.5%
<b>Subtotal</b>	<b>29.5%</b>	<b>26.7%</b>	<b>26.2%</b>	<b>27.3%</b>	<b>30.4%</b>	<b>28.2%</b>	<b>27.6%</b>	<b>28.9%</b>



---

**COMMENTS**

---

**RESPONSES**

---

63.14 Projected Expected Retail Sales By Retail Category: Based on the cont. aforementioned updates to the data, as well as the two alternative proration methods (land area versus population) and two sales distribution methods (2005-2010 average and 2009-2010 average) tables 5.1-5 and 5.1-6 on page 5.1-31 of the Draft EIR would be revised as shown below. Again, the 2005 and 2009-2010 average sales distribution figures are virtually indistinguishable in terms of total retail sales. Thus, this change would have no effect on the conclusions of the RMA.

63.14  
cont.**Land Area Based Proration, 2005-2010 Average Sales Distributions**

Table 5.1-5 PROJECTED EXPECTED RETAIL SALES BY RETAIL CATEGORY - PMA (US Constant \$000s)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	157,127	158,105	159,088	162,075
General Merchandise	269,075	270,749	272,433	277,548
Home Furnishings/Appliances	114,701	115,415	116,133	118,313
Other	284,247	286,015	287,794	293,198
<b>Subtotal</b>	<b>825,151</b>	<b>830,283</b>	<b>835,448</b>	<b>851,135</b>
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	338,882	340,990	343,111	349,554
Eating and Drinking	355,032	357,240	359,462	366,212
<b>Subtotal</b>	<b>693,914</b>	<b>698,231</b>	<b>702,574</b>	<b>715,766</b>
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	143,399	144,291	145,188	147,915
Auto Dealers and Parts	273,948	275,652	277,367	282,575
Service Stations	216,215	217,559	218,913	223,023
<b>Subtotal</b>	<b>633,562</b>	<b>637,503</b>	<b>641,468</b>	<b>653,513</b>
<b>Total Potential Retail Sales</b>	<b>2,152,627</b>	<b>2,166,017</b>	<b>2,179,490</b>	<b>2,220,414</b>

Table 5.1-6 PROJECTED EXPECTED RETAIL SALES BY RETAIL CATEGORY - SMA (US Constant \$000s)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	607,581	610,883	614,203	624,271
General Merchandise	1,065,087	1,070,875	1,076,695	1,094,345
Home Furnishings/Appliances	479,445	482,050	484,670	492,615
Other	1,196,485	1,202,988	1,209,525	1,229,352
<b>Subtotal</b>	<b>3,348,598</b>	<b>3,366,796</b>	<b>3,385,093</b>	<b>3,440,583</b>
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	1,440,926	1,448,757	1,456,630	1,480,508
Eating and Drinking	1,370,305	1,377,752	1,385,239	1,407,947
<b>Subtotal</b>	<b>2,811,230</b>	<b>2,826,508</b>	<b>2,841,869</b>	<b>2,888,454</b>
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	587,364	590,556	593,766	603,499
Auto Dealers and Parts	1,205,412	1,211,963	1,218,549	1,238,524
Service Stations	870,782	875,515	880,273	894,703
<b>Subtotal</b>	<b>2,663,558</b>	<b>2,678,034</b>	<b>2,692,588</b>	<b>2,736,726</b>
<b>Total Potential Retail Sales</b>	<b>8,823,387</b>	<b>8,871,338</b>	<b>8,919,550</b>	<b>9,065,764</b>

63.14  
cont.**Land Area Based Proration, 2009-2010 Average Sales Distributions**

Table 5.1-5 PROJECTED EXPECTED RETAIL SALES BY RETAIL CATEGORY - PMA (US Constant \$000s)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	211,805	213,123	214,448	218,475
General Merchandise	223,538	224,928	226,327	230,577
Home Furnishings/Appliances	152,434	153,382	154,336	157,234
Other	225,058	226,458	227,866	232,145
Subtotal	812,835	817,891	822,979	838,432
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	373,416	375,739	378,076	385,175
Eating and Drinking	392,444	394,885	397,341	404,802
Subtotal	765,860	770,624	775,417	789,977
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	108,924	109,601	110,283	112,354
Auto Dealers and Parts	251,022	252,584	254,155	258,927
Service Stations	213,985	215,316	216,656	220,724
Subtotal	573,931	577,501	581,093	592,005
Total Potential Retail Sales	2,152,627	2,166,017	2,179,490	2,220,414

Table 5.1-6 PROJECTED EXPECTED RETAIL SALES BY RETAIL CATEGORY - SMA (US Constant \$000s)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	807,135	811,521	815,932	829,307
General Merchandise	921,743	926,752	931,789	947,063
Home Furnishings/Appliances	586,678	589,867	593,072	602,794
Other	927,741	932,783	937,853	953,226
Subtotal	3,243,298	3,260,924	3,278,645	3,332,391
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	1,597,129	1,605,808	1,614,535	1,641,001
Eating and Drinking	1,510,025	1,518,232	1,526,483	1,551,505
Subtotal	3,107,154	3,124,040	3,141,018	3,192,507
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	486,000	488,641	491,297	499,350
Auto Dealers and Parts	1,096,677	1,102,637	1,108,630	1,126,803
Service Stations	890,258	895,097	899,961	914,714
Subtotal	2,472,935	2,486,375	2,499,887	2,540,866
Total Potential Retail Sales	8,823,387	8,871,338	8,919,550	9,065,764



63.14  
cont.**Population Based Proration, 2005-2010 Average Sales Distributions**

Table 5.1-5 PROJECTED EXPECTED RETAIL SALES BY RETAIL CATEGORY - PMA (US Constant \$000s)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	156,705	157,680	158,661	161,640
General Merchandise	269,904	271,583	273,272	278,403
Home Furnishings/Appliances	113,937	114,646	115,359	117,525
Other	284,736	286,507	288,289	293,702
Subtotal	825,282	830,415	835,581	851,271
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	338,810	340,917	343,038	349,479
Eating and Drinking	353,526	355,725	357,937	364,658
Subtotal	692,336	696,642	700,975	714,137
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	143,632	144,526	145,425	148,155
Auto Dealers and Parts	275,102	276,813	278,535	283,765
Service Stations	216,275	217,620	218,974	223,086
Subtotal	635,009	638,959	642,933	655,006
Total Potential Retail Sales	2,152,627	2,166,017	2,179,490	2,220,414

Table 5.1-6 PROJECTED EXPECTED RETAIL SALES BY RETAIL CATEGORY - SMA (US Constant \$000s)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	614,180	617,518	620,874	631,052
General Merchandise	1,065,675	1,071,467	1,077,290	1,094,949
Home Furnishings/Appliances	476,150	478,737	481,339	489,229
Other	1,191,832	1,198,309	1,204,821	1,224,571
Subtotal	3,347,837	3,366,031	3,384,324	3,439,801
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	1,435,908	1,443,712	1,451,558	1,475,353
Eating and Drinking	1,356,861	1,364,235	1,371,649	1,394,133
Subtotal	2,792,769	2,807,946	2,823,206	2,869,486
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	580,369	583,523	586,694	596,311
Auto Dealers and Parts	1,236,705	1,243,426	1,250,184	1,270,677
Service Stations	865,707	870,412	875,142	889,488
Subtotal	2,682,781	2,697,361	2,712,020	2,756,477
Total Potential Retail Sales	8,823,387	8,871,338	8,919,550	9,065,764

63.14  
cont.

**Population Based Proration, 2009-2010 Average Sales Distributions**

Table 5.1-5 PROJECTED EXPECTED RETAIL SALES BY RETAIL CATEGORY - PMA (US Constant \$000s)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	211,126	212,439	213,761	217,774
General Merchandise	224,895	226,294	227,701	231,977
Home Furnishings/Appliances	150,449	151,385	152,326	155,187
Other	226,578	227,987	229,405	233,713
Subtotal	813,047	818,104	823,193	838,650
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	373,384	375,707	378,044	385,142
Eating and Drinking	390,779	393,209	395,655	403,084
Subtotal	764,163	768,916	773,699	788,227
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	109,294	109,974	110,658	112,736
Auto Dealers and Parts	251,844	253,411	254,987	259,775
Service Stations	214,278	215,611	216,952	221,026
Subtotal	575,417	578,996	582,597	593,537
Total Potential Retail Sales	2,152,627	2,166,017	2,179,490	2,220,414

Table 5.1-6 PROJECTED EXPECTED RETAIL SALES BY RETAIL CATEGORY - SMA (US Constant \$000s)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	813,536	817,957	822,402	835,883
General Merchandise	926,701	931,737	936,800	952,157
Home Furnishings/Appliances	579,298	582,446	585,612	595,211
Other	923,912	928,934	933,982	949,292
Subtotal	3,243,447	3,261,074	3,278,796	3,332,544
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	1,593,327	1,601,986	1,610,692	1,637,096
Eating and Drinking	1,495,607	1,503,735	1,511,907	1,536,691
Subtotal	3,088,934	3,105,721	3,122,599	3,173,787
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	481,733	484,351	486,983	494,966
Auto Dealers and Parts	1,122,726	1,128,827	1,134,962	1,153,567
Service Stations	886,547	891,365	896,209	910,901
Subtotal	2,491,006	2,504,543	2,518,155	2,559,433
Total Potential Retail Sales	8,823,387	8,871,338	8,919,550	9,065,764



63.14 Expected Sales Capture: As no comments suggested a change, no changes cont. were made to the capture rates discussed on page 5.1-32 of the Draft EIR.

Expected Net Retail Demand: Based on the aforementioned modifications to the analytical assumptions, Table 5.1-7 on page 5.1-32 of the Draft EIR would be revised as follows:

Table 5.1-7 EXPECTED NET RETAIL DEMAND WITHIN THE PMA (US Constant \$000s)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	61,249	62,217	63,190	66,144
General Merchandise	175,594	177,264	178,945	184,046
Home Furnishings/Appliances	49,948	50,667	51,391	53,588
Other	199,241	201,040	202,849	208,343
<b>Subtotal</b>	<b>486,032</b>	<b>491,188</b>	<b>496,375</b>	<b>512,121</b>
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	151,894	153,864	155,847	161,868
Eating and Drinking	180,904	183,071	185,250	191,868
<b>Subtotal</b>	<b>332,798</b>	<b>336,935</b>	<b>341,098</b>	<b>353,735</b>
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	99,748	100,644	101,546	104,283
Auto Dealers and Parts	9,828	10,592	11,360	13,693
Service Stations	77,147	78,256	79,373	82,762
<b>Subtotal</b>	<b>186,723</b>	<b>189,493</b>	<b>192,279</b>	<b>200,738</b>
<b>Net Retail Demand</b>	<b>1,005,553</b>	<b>1,017,616</b>	<b>1,029,751</b>	<b>1,066,594</b>

Note: the increases in total expected retail sales in the above table relative to the original version in the RMA are primarily due to more recent data and estimates of actual sales within the Trade Area. These data indicate lower existing sales volumes in the PMA, and thus a greater net demand, as fewer expected retail sales appear to be occurring within the PMA.

Expected Net Supportable Retail Space: In the RMA the net supportable retail space was estimated by dividing the figures in Table 5.1-7 by the appropriate sales per-square-foot by retail type (\$300-400 per square-foot for most categories). One comment received suggested that sales of \$500-700 per square-foot would be more appropriate. In determining the appropriate bounds of average sales per square-foot, figures from



---

**COMMENTS**

---

**RESPONSES**

---

63.14 the International Council of Shopping Centers, the Urban Land Institute, cont. and HdL Companies were evaluated, and indicate sales volumes much lower than \$500-700 per square-foot are more typical, and indicative of levels required to support successful ongoing operations. Elevated or higher sales per square-foot figures at an existing retail establishment is typically indicative of market demand for additional retail. The question evaluated in a RMA is not whether the introduction of additional retail would increase competition, but rather whether it is likely that the introduction of additional retail would over-saturate a given trade area.

Regardless, the RMA model was rerun to illustrate the impact on the conclusions of the RMA given even highly elevated sales per square-foot figures. As shown below in the updated Table 5.1-8 from page 5.1-33 of the Draft EIR, even assuming average sales of \$700 per square-foot, the conclusions of the RMA would remain unchanged.

Note: The sales per square-foot figures referenced below were applied to the following categories: Apparel, General Merchandise, Home Furnishings/Appliances, Other, Food, Eating and Drinking, and Building/Hardware/Farm. Auto Dealers and Parts were held at \$600 per square-foot, and Service Stations were held at \$1,200 per square-foot. While neither the Originally Proposed Project or the Revised Project contains the latter retail uses, the figures are customarily included in a RMA and are included for reference.

63.14  
cont.

**Net Supportable Retail at \$500 in Sales Per Square-Foot,  
2005-2010 Average Sales Distributions**

Table 5.1-8 EXPECTED NET SUPPORTABLE RETAIL SPACE WITHIN THE TRADE AREA (square feet)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	140,873	143,098	145,336	152,131
General Merchandise	403,866	407,708	411,573	423,305
Home Furnishings/Appliances	114,880	116,535	118,199	123,253
Other	458,254	462,392	466,554	479,189
<b>Subtotal</b>	1,117,873	1,129,732	1,141,662	1,177,878
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	349,355	353,688	358,449	372,296
Eating and Drinking	416,079	421,063	426,076	441,295
<b>Subtotal</b>	765,435	774,951	784,525	813,591
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	229,421	231,482	233,556	239,850
Auto Dealers and Parts	18,837	20,301	21,774	26,244
Service Stations	73,932	74,996	76,065	79,314
<b>Subtotal</b>	322,191	326,779	331,395	345,408
<b>Net Supportable Retail</b>	2,205,499	2,231,463	2,257,582	2,336,877



63.14  
cont.

**Net Supportable Retail at \$500 in Sales Per Square-Foot,  
2009-2010 Average Sales Distributions**

Table 5.1-8 EXPECTED NET SUPPORTABLE RETAIL SPACE WITHIN THE TRADE AREA (square feet)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	268,084	271,064	274,062	283,163
General Merchandise	304,613	307,862	311,131	321,055
Home Furnishings/Appliances	193,190	195,313	197,448	203,932
Other	309,686	312,948	316,229	326,190
<b>Subtotal</b>	<b>1,075,572</b>	<b>1,087,187</b>	<b>1,098,871</b>	<b>1,134,341</b>
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	427,099	432,102	437,134	452,415
Eating and Drinking	503,684	509,188	514,724	531,531
<b>Subtotal</b>	<b>930,784</b>	<b>941,289</b>	<b>951,858</b>	<b>983,946</b>
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	155,399	157,018	158,646	163,588
Auto Dealers and Parts	-3,230	-1,894	-551	3,526
Service Stations	73,687	74,748	75,815	79,057
<b>Subtotal</b>	<b>225,856</b>	<b>229,871</b>	<b>233,910</b>	<b>246,171</b>
<b>Net Supportable Retail</b>	<b>2,232,212</b>	<b>2,258,348</b>	<b>2,284,639</b>	<b>2,364,459</b>

**Net Supportable Retail at \$700 in Sales Per Square-Foot,  
2005-2010 Average Sales Distributions**

Table 5.1-8 EXPECTED NET SUPPORTABLE RETAIL SPACE WITHIN THE TRADE AREA (square feet)				
Retail Category	2015	2016	2017	2020
<i>Shopper Goods (GAFO)</i>				
Apparel	100,624	102,213	103,812	108,665
General Merchandise	288,476	291,220	293,980	302,361
Home Furnishings/Appliances	82,057	83,239	84,428	88,038
Other	327,324	330,280	333,253	342,278
<b>Subtotal</b>	<b>798,481</b>	<b>806,952</b>	<b>815,473</b>	<b>841,341</b>
<i>Convenience Goods</i>				
Food (Supermarkets/Liquor)	249,540	252,777	256,035	265,926
Eating and Drinking	297,200	300,759	304,340	315,211
<b>Subtotal</b>	<b>546,739</b>	<b>553,537</b>	<b>560,375</b>	<b>581,137</b>
<i>Heavy Commercial Goods</i>				
Building/Hardware/Farm	163,872	165,344	166,825	171,321
Auto Dealers and Parts	18,837	20,301	21,774	26,244
Service Stations	73,932	74,996	76,065	79,314
<b>Subtotal</b>	<b>256,642</b>	<b>260,641</b>	<b>264,665</b>	<b>276,880</b>
<b>Net Supportable Retail</b>	<b>1,601,862</b>	<b>1,621,130</b>	<b>1,640,513</b>	<b>1,699,358</b>

63.14  
cont.

**Net Supportable Retail at \$700 in Sales Per Square-Foot,  
2009-10 Average Sales Distributions**

Table 5.1-8 EXPECTED NET SUPPORTABLE RETAIL SPACE WITHIN THE TRADE AREA (square feet)				
Retail Category	2015	2016	2017	2020
<b>Shopper Goods (GAFO)</b>				
Apparel	191,489	193,617	195,759	202,260
General Merchandise	217,581	219,902	222,237	229,325
Home Furnishings/Appliances	137,993	139,509	141,035	145,666
Other	221,204	223,534	225,878	232,993
<b>Subtotal</b>	<b>768,266</b>	<b>776,562</b>	<b>784,908</b>	<b>810,244</b>
<b>Convenience Goods</b>				
Food (Supermarkets/Liquor)	305,071	308,644	312,239	323,154
Eating and Drinking	359,774	363,705	367,660	379,665
<b>Subtotal</b>	<b>664,845</b>	<b>672,349</b>	<b>679,898</b>	<b>702,819</b>
<b>Heavy Commercial Goods</b>				
Building/Hardware/Farm	110,999	112,156	113,318	116,849
Auto Dealers and Parts	-3,230	-1,894	-551	3,526
Service Stations	73,687	74,748	75,815	79,057
<b>Subtotal</b>	<b>181,456</b>	<b>185,009</b>	<b>188,583</b>	<b>199,432</b>
<b>Net Supportable Retail</b>	<b>1,614,568</b>	<b>1,633,921</b>	<b>1,653,389</b>	<b>1,712,494</b>

Net Supportable Retail in Consideration of Proposed Developments: In addition to the developments listed in the RMA, two additional developments were evaluated in the analysis herein. These two developments are the University Town Center expansion (Westfield UTC in the SMA) and the proposed development at the northwest corner of the intersection of Carmel Valley Road and Carmel Mountain Road. The Westfield UTC expansion is expected to ultimately result an increase of approximately 750,000 square feet of leasable area, and although significant portions are not anticipated to be “retail” uses under the RMA, the full 750,000 square-foot expansion was assumed to be retail and developed between 2013 and 2014. As this proposed development is in the SMA, 10 percent of the total square-footage is deducted to determine net supportable retail space, pursuant to the capture rates in the RMA model. With regard to the proposed Carmel Valley Road and Carmel Mountain Road development, based on the property size, it was assumed that up to 50,000 square feet of retail would be developed on the site, and would be constructed between 2013 and 2014. The net supportable retail space in consideration of these and all other proposed developments discussed in the RMA follows:



63.14  
cont.

**Exhibit 63.14-3**  
**Net Supportable Retail at \$500 in Sales Per Square-Foot w/ Other**  
**Proposed Developments, 2009-2010 Average Sales Distributions**

Total GAFO Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	93,706	89,788	21,288	0	0
Project	30,000	55,000	45,000	0	0
Total w/ Project	123,706	144,788	66,288	0	0

Net Supportable SF	1,052,548	1,064,026	1,075,572	1,087,187	1,098,871
Cumulative SF	123,706	268,493	334,781	334,781	334,781
Surplus Supportable SF	928,842	795,533	740,792	752,406	764,090

Total Eating and Drinking Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	18,450	31,444	34,450	0	0
Project	15,000	22,500	22,500	0	0
Total w/ Project	33,450	53,944	56,950	0	0

Net Supportable SF	492,775	498,213	503,684	509,188	514,724
Cumulative SF	33,450	87,394	144,344	144,344	144,344
Surplus Supportable SF	459,325	410,820	359,341	364,844	370,380

Total Food Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	30,250	47,246	7,500	0	0
Project	20,000	10,000	0	0	0
Total w/ Project	50,250	57,246	7,500	0	0

Net Supportable SF	417,185	422,127	427,099	432,102	437,134
Cumulative SF	50,250	107,496	114,996	114,996	114,996
Surplus Supportable SF	366,935	314,631	312,103	317,105	322,138

63.14  
cont.

**Exhibit 63.13-4**  
**Net Supportable Retail at \$500 in Sales Per Square-Foot w/ Other**  
**Proposed Developments, 2005-2010 Average Sales Distributions**

Total GAFO Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	93,706	89,788	21,288	0	0
Project	30,000	55,000	45,000	0	0
Total w/ Project	123,706	144,788	66,288	0	0

Net Supportable SF	1,094,365	1,106,084	1,117,873	1,129,732	1,141,662
Cumulative SF	123,706	268,493	334,781	334,781	334,781
Surplus Supportable SF	970,659	837,591	783,092	794,952	806,881

Total Eating and Drinking Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	18,450	31,444	34,450	0	0
Project	15,000	22,500	22,500	0	0
Total w/ Project	33,450	53,944	56,950	0	0

Net Supportable SF	406,201	411,125	416,079	421,063	426,076
Cumulative SF	33,450	87,394	144,344	144,344	144,344
Surplus Supportable SF	372,751	323,732	271,736	276,719	281,733

Total Food Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	30,250	47,246	7,500	0	0
Project	20,000	10,000	0	0	0
Total w/ Project	50,250	57,246	7,500	0	0

Net Supportable SF	340,372	344,850	349,355	353,888	358,449
Cumulative SF	50,250	107,496	114,996	114,996	114,996
Surplus Supportable SF	290,122	237,354	234,359	238,892	243,453

63.14  
cont.

**Exhibit 63.14-5**

**Net Supportable Retail at \$700 in Sales Per Square-Foot w/ Other  
Proposed Developments, 2009-2010 Average Sales Distributions**

Total GAFO Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	93,706	89,788	21,288	0	0
Project	30,000	55,000	45,000	0	0
Total w/ Project	123,706	144,788	66,288	0	0

Net Supportable SF	751,820	760,019	768,266	776,562	784,908
Cumulative SF	123,706	268,493	334,781	334,781	334,781
Surplus Supportable SF	628,114	491,525	433,485	441,782	450,127

Total Eating and Drinking Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	18,450	31,444	34,450	0	0
Project	15,000	22,500	22,500	0	0
Total w/ Project	33,450	53,944	56,950	0	0

Net Supportable SF	351,982	355,867	359,774	363,705	367,660
Cumulative SF	33,450	87,394	144,344	144,344	144,344
Surplus Supportable SF	318,532	268,473	215,431	219,362	223,316

Total Food Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	30,250	47,246	7,500	0	0
Project	20,000	10,000	0	0	0
Total w/ Project	50,250	57,246	7,500	0	0

Net Supportable SF	297,990	301,520	305,071	308,644	312,239
Cumulative SF	50,250	107,496	114,996	114,996	114,996
Surplus Supportable SF	247,740	194,023	190,075	193,648	197,242



63.14  
cont.

**Exhibit 63.14-6**  
**Net Supportable Retail at \$700 in Sales Per Square-Foot w/ Other**  
**Proposed Developments, 2005-2010 Average Sales Distributions**

Total GAFO Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	93,706	89,788	21,288	0	0
Project	30,000	55,000	45,000	0	0
Total w/ Project	123,706	144,788	66,288	0	0

Net Supportable SF	781,689	790,060	798,481	806,952	815,473
Cumulative SF	123,706	268,493	334,781	334,781	334,781
Surplus Supportable SF	657,983	521,567	463,700	472,171	480,692

Total Eating and Drinking Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	18,450	31,444	34,450	0	0
Project	15,000	22,500	22,500	0	0
Total w/ Project	33,450	53,944	56,950	0	0

Net Supportable SF	290,143	293,661	297,200	300,759	304,340
Cumulative SF	33,450	87,394	144,344	144,344	144,344
Surplus Supportable SF	256,693	206,267	152,856	156,416	159,997

Total Food Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	30,250	47,246	7,500	0	0
Project	20,000	10,000	0	0	0
Total w/ Project	50,250	57,246	7,500	0	0

Net Supportable SF	243,123	246,321	249,540	252,777	256,035
Cumulative SF	50,250	107,496	114,996	114,996	114,996
Surplus Supportable SF	192,873	138,825	134,543	137,781	141,038

The Revised Project would reduce the amount of retail square-footage by 21,500 square feet compared to the Originally Proposed Project. In the following tables this reduction was estimated to be comprised of a reduction of 15,500 square feet of GAFO square-footage, and 6,000 square feet of Eating and Drinking retail in the last year of development (2015). Based on these adjustments, the above tables would be revised as follows:

63.14

cont.

## Exhibit 63.14-7

Net Supportable Retail at \$500 in Sales Per Square-Foot w/ Other Proposed Developments, 2009-2010 Average Sales Distributions, Revised Project

Total GAFO Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	93,706	99,788	21,288	0	0
Project	30,000	55,000	29,500	0	0
Total w/ Project	123,706	144,788	50,788	0	0

Net Supportable SF	1,052,548	1,064,026	1,075,572	1,087,187	1,098,871
Cumulative SF	123,706	268,493	319,281	319,281	319,281
Surplus Supportable SF	928,842	795,533	756,292	767,906	779,590

Total Eating and Drinking Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	18,450	31,444	34,450	0	0
Project	15,000	22,500	16,500	0	0
Total w/ Project	33,450	53,944	50,950	0	0

Net Supportable SF	492,775	498,213	503,684	509,188	514,724
Cumulative SF	33,450	87,394	138,344	138,344	138,344
Surplus Supportable SF	459,325	410,820	365,341	370,844	376,380

Total Food Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	30,250	47,246	7,500	0	0
Project	20,000	10,000	0	0	0
Total w/ Project	50,250	57,246	7,500	0	0

Net Supportable SF	417,185	422,127	427,099	432,102	437,134
Cumulative SF	50,250	107,496	114,996	114,996	114,996
Surplus Supportable SF	366,935	314,631	312,103	317,106	322,138

63.14

cont. **Exhibit 63.14-8**  
**Net Supportable Retail at \$500 in Sales Per Square-Foot w/ Other Proposed Developments,**  
**2005-2010 Average Sales Distributions, Revised Project**

Total GAFO Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	93,706	89,783	21,288	0	0
Project	30,000	55,000	29,500	0	0
Total w/ Project	123,706	144,783	50,788	0	0

Net Supportable SF	1,094,365	1,106,084	1,117,873	1,129,732	1,141,662
Cumulative SF	123,706	268,493	319,281	319,281	319,281
Surplus Supportable SF	970,659	837,591	798,592	810,452	822,381

Total Eating and Drinking Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	18,450	31,444	34,450	0	0
Project	15,000	22,500	16,500	0	0
Total w/ Project	33,450	53,944	50,950	0	0

Net Supportable SF	406,201	411,125	416,079	421,063	426,076
Cumulative SF	33,450	87,394	138,344	138,344	138,344
Surplus Supportable SF	372,751	323,732	277,736	282,719	287,733

Total Food Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	30,250	47,246	7,500	0	0
Project	20,000	10,000	0	0	0
Total w/ Project	50,250	57,246	7,500	0	0

Net Supportable SF	340,372	344,850	349,355	353,888	358,449
Cumulative SF	50,250	107,496	114,996	114,996	114,996
Surplus Supportable SF	290,122	237,354	234,359	238,892	243,452



63.14

cont.

**Exhibit 63.14-9**

**Net Supportable Retail at \$700 in Sales Per Square-Foot w/ Other Proposed Developments, 2009-2010 Average Sales Distributions, Revised Project**

Total GAFO Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	93,706	89,788	21,288	0	0
Project	30,000	55,000	29,500	0	0
Total w/ Project	123,706	144,788	50,788	0	0

Net Supportable SF	751,820	760,019	768,266	776,562	784,908
Cumulative SF	123,706	288,493	319,281	319,281	319,281
Surplus Supportable SF	628,114	491,525	448,985	457,282	465,627

Total Eating and Drinking Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	18,450	31,444	34,450	0	0
Project	15,000	22,500	16,500	0	0
Total w/ Project	33,450	53,944	50,950	0	0

Net Supportable SF	351,982	355,867	359,774	363,705	367,660
Cumulative SF	33,450	87,394	138,344	138,344	138,344
Surplus Supportable SF	318,532	268,473	221,431	225,362	229,316

Total Food Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	30,250	47,246	7,500	0	0
Project	20,000	10,000	0	0	0
Total w/ Project	50,250	57,246	7,500	0	0

Net Supportable SF	297,990	301,520	305,071	308,644	312,239
Cumulative SF	50,250	107,496	114,996	114,996	114,996
Surplus Supportable SF	247,740	194,023	190,075	193,648	197,242

63.14

cont.

**Exhibit 63.14-10**

**Net Supportable Retail at \$700 in Sales Per Square-Foot w/ Other Proposed Developments, 2005-2010 Average Sales Distributions, Revised Project**

Total GAFO Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	93,706	89,788	21,288	0	0
Project	30,000	55,000	29,500	0	0
Total w/ Project	123,706	144,788	50,788	0	0

Net Supportable SF	781,689	790,060	798,481	806,952	815,473
Cumulative SF	123,706	268,493	319,281	319,281	319,281
Surplus Supportable SF	657,983	521,567	479,200	487,671	496,192

Total Eating and Drinking Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	18,450	31,444	34,450	0	0
Project	15,000	22,500	16,500	0	0
Total w/ Project	33,450	53,944	50,950	0	0

Net Supportable SF	290,143	293,661	297,200	300,759	304,340
Cumulative SF	33,450	87,394	138,344	138,344	138,344
Surplus Supportable SF	256,693	206,267	158,856	162,416	165,997

Total Food Square Footage Proposed within the Trade Area					
	2013	2014	2015	2016	2017
Total w/o Project	30,250	47,246	7,500	0	0
Project	20,000	10,000	0	0	0
Total w/ Project	50,250	57,246	7,500	0	0

Net Supportable SF	243,123	246,321	249,540	252,777	256,035
Cumulative SF	50,250	107,496	114,996	114,996	114,996
Surplus Supportable SF	192,873	138,825	134,543	137,781	141,038

---

**COMMENTS**

---

**RESPONSES**

---

63.14 In consideration of this analysis, the conclusions of the RMA remain unchanged, and based on the existing and projected retail supply and demand, it continues to be unlikely that the Originally Proposed Project or the Revised project would have a significant economic impact on the existing retail establishments within the PMA or the overall Trade Area. The conclusion remains that, even with the assumptions provided in the comments on the Draft EIR, development of the Originally Proposed Project or the Revised Project in conjunction with other currently planned retail developments in the Trade Area, the PMA would be underserved and maintain a net demand for additional retail square-footage. When net demand exists, market conditions are generally favorable for retail businesses, and as a result retailers would not be forced to close for reasons related to insufficient demand caused by either the Originally Proposed Project or the Revised Project. Should existing businesses close, it would likely occur on an intermittent/site-specific basis, and primarily for reasons unique to those businesses. Further, as market conditions remain favorable based on the net demand for additional retail square-footage, it is unlikely the proposed development would cause significant business closures and long-term vacancies, that would cause property owners to cease maintaining their properties and leave decaying, unoccupied shells. As such, based on the original and updated analyses, both the Originally Proposed Project and the Revised Project are unlikely to cause urban decay, and any impact related to urban decay remains less than significant.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 8

63.15 cont. by, or indirectly caused by, approval of the Project, the EIR would impermissibly segment the whole of the Project.<sup>24</sup> Here, the EIR also does not address how traffic will be mitigated between the Project's construction and 2035, when transit is scheduled to be functional.

**III. Specific Comments**

63.16 The EIR is based on little or no analysis of numerous potential environmental impacts, and it misclassifies impacts based upon erroneous information. For example, the EIR does not sufficiently analyze Project impacts with respect to land use, transportation, air quality, water quality or recreation.<sup>25</sup>

**A. Project Description Violates CEQA**

An accurate and stable project description is the *sine qua non* of an informative and legally sufficient EIR.<sup>26</sup> The courts have long held that "[a] curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefits against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal and weigh other alternatives in the balance."<sup>27</sup> In other words, without a stable project description, the entire EIR is rendered inadequate.

63.17 As the California Supreme Court has recognized, if the project description is inadequate because it fails to discuss the complete project, the environmental analysis will probably reflect the same mistake.<sup>28</sup> The absence of a definitive siting configuration, the contradictory statements regarding the scope of the Project, the failure to identify the basic technical and economic characteristics of transportation and circulation deficiencies, instead describing multiple and technically very different possibilities with respect to both, undermine the EIR's impact analyses. Without this technical information, it is impossible to adequately analyze the proposed Project when an infinite number of configurations are possible and its technical characteristics, as well as its timing, are in flux or unknown. Consequently, the Project description is inadequate and corrupts the remainder of the EIR.

63.18 Furthermore, the EIR's failure to include a stable Project description makes it impossible to determine whether the EIR includes a range of reasonable alternatives to the Project that

<sup>24</sup> See *Laurel Heights*, *supra*, 47 Cal.3d at 391 fn. 2.

<sup>25</sup> See, EIR, Vol. I.

<sup>26</sup> *Kings County*, *supra*, 221 Cal.App.3d at 739.

<sup>27</sup> *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193, 197 (CEQA requires that an EIR's project description, and the accompanying analysis, must be consistent throughout the EIR. If the project description is described differently in different sections of the EIR, these inconsistencies prevent the EIR from serving as a vehicle for intelligent public participation in the decision-making process).

<sup>28</sup> See *Laurel Heights*, *supra*, 47 Cal.3d 376.

63.15 The Final EIR provides a comprehensive analysis of potential direct, indirect, and cumulative project impacts. Evaluation of "displacement impacts" due to changing the land use designation and zone classification is speculative pursuant to Section 15145 of the State CEQA Guidelines. As such, the Final EIR does not defer indirect and displacement impacts.

63.16 The Draft EIR was prepared in accordance with the California Environmental Quality Act (CEQA; California Public Resources Code Section 21000 et. seq.) and provides a comprehensive analysis of potential project impacts. This comment does not provide specifics to substantiate the assertion that the Draft EIR does not sufficiently analyze project impacts related to land use, transportation, air quality, water quality, and recreation. Regardless, direct and cumulative project impacts related to land use, transportation, air quality, water quality, and recreation are considered sufficiently analyzed in the EIR.

63.17 Section 3.0 of the Draft EIR includes a detailed description of the Originally Proposed Project and an illustrative site plan (Figure 3-1) that provides the basis for evaluation of potential environmental impacts. A similar discussion of the Revised Project is included in Section 12.9 of the Final EIR. As discussed, the development would be constructed in phases dependent on market conditions, and each anticipated phase is described. The analysis contained in the Draft EIR is based on the anticipated sequence of the described project phasing and the maximum development potential. The Draft EIR also discloses the possibility for modifications to the proposed phasing due to market conditions. If this were to occur, additional environmental review would be required. The project descriptions contained in the Final EIR are consistent with the requirements of Section 15124 of the State CEQA Guidelines and, therefore, are adequate.

63.18 As discussed in response to comment 63.17, the descriptions of the Originally Proposed Project and Revised Project contained in the Final EIR are adequate and provide an appropriate basis for evaluating potential environmental impacts. Section 12 of the Final EIR, which includes two reduced mixed-use alternatives, addresses a "reasonable range" of project alternatives that were developed based on their capability



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 9

63.18 cont. could feasibly accomplish most of the basic objectives of the Project and could avoid or substantially lessen its significant impacts.<sup>29</sup>

63.19 As discussed below, the EIR's project description is littered with unstable elements and inconsistencies, which results in a failure to describe or analyze an important component of the Project. Thus, it is virtually impossible to decipher the true extent or likely configuration of the Project, preventing the EIR from serving as a vehicle for intelligent public participation in the decision-making process.<sup>30</sup>

63.20 First, nowhere in the project description is it disclosed that part of the Project is an offsite pedestrian connection to the Neurocrine site, which includes grading and the construction of a ramp and stair system. This is only mentioned in passing in the Visual Effects section. Because this is a Project component, it should be included as part of the project description and its impacts must be analyzed throughout every section of the EIR and each technical study. This failure to consistently describe the Project improperly minimizes the Project's impacts.<sup>31</sup> Therefore, the EIR's failure to analyze these potentially significant off-site impacts violates CEQA and requires recirculation of the EIR.

63.21 Second, as a fundamental matter, the project description must state the objectives sought by the proposed Project.<sup>32</sup> Instead of including clearly written project objectives aimed at guiding the selection of alternatives to be evaluated, the EIR presents project objectives that have been contrived simply so that the Project can meet them. In the description of discretionary approvals, the EIR lists a Community Plan, Precise Plan<sup>33</sup> and General Plan amendments, thereby admitting that the Project is not fully consistent with any of these plans.

63.22 However, the EIR lists consistency with these current documents as a key project objective within the project description.<sup>34</sup> If the Project's goal is to be consistent with these plans, then they need to be amended. Additionally, in the alternatives analysis, the EIR states that one objective is to "develop a mixed-use project that would adequately serve the community (which would include retail/commercial uses)..." This objective elsewhere in the EIR does not require the inclusion of retail or commercial uses. Either the project objectives should be revised to add the retail/commercial uses requirement or the alternatives analysis should be revised to conclude that the Medical Office/Senior Housing Alternative, which does not have retail/commercial uses, is indeed consistent with this project objective.

<sup>29</sup> Guidelines §15126.6(c).

<sup>30</sup> *County of Inyo, supra*, 71 Cal.App.3d at 197.

<sup>31</sup> *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 655.

<sup>32</sup> Guidelines § 15124(b).

<sup>33</sup> North City West Employment Center Precise Plan: Development Unit Number 2 ("Precise Plan").

<sup>34</sup> EIR, at p. 3-1.

63.18 to reduce or eliminate significant impacts of the Originally Proposed Project, and to meet most of the project objectives (as identified in the Project Description).

63.19 As discussed in response to comment 63.17, the descriptions of the Originally Proposed Project and Revised Project contained in the Final EIR are adequate and provide an appropriate basis for evaluating potential environmental impacts.

63.20 The connection between the project site and the adjacent commercial office development to the south (The Heights at Del Mar, which includes Neurocrine Biosciences) is identified in the Project Description in Section 3.2.6 of the Draft EIR. It is also illustrated in Figure 3-3f in the Draft EIR. The associated environmental impacts of this off-site improvement are analyzed in the Draft EIR. Thus, recirculation of the Draft EIR is not required.

63.21 The project objectives are identified in the Project Description in Section 3.1 of the Draft EIR, and are clearly written yet broad enough to consider project alternatives. In fact, the project alternatives were developed, in part, based on the project objectives. The objectives are not so specific such that only the Originally Proposed Project can achieve them. Refer to Section 12 of the Final EIR for a discussion of the project alternatives, included reduced mixed-use alternatives, and their ability to meet the project objectives.

63.22 The Originally Proposed Project and the Revised Project require land use plan amendments to change the existing land use designations in the General Plan, Community Plan, and Precise Plan to accommodate the proposed mix of uses on the project site. The project objectives include developing a project that is consistent with the goals of the General Plan and Community Plan. Section 5.1 of the Draft EIR contains a comprehensive policy consistency analysis with applicable land use plans, including the General Plan and Carmel Valley Community Plan (Table 5.1-1). Refer to updated information contained in Section 5.1.2 of Final EIR. The Draft and Final EIR conclude that the project would be consistent with General Plan and Community Plan goals and policies.

---

**COMMENTS**

---

**RESPONSES**

---

63.22 Therefore, while the project would require land use plan amendments to cont. change land use designations, it would meet the project objectives stated in Section 3.1 of the Draft EIR.

63.23 The alternative analysis of the Medical Office/Senior Housing Alternative (Section 12.7.3) has been revised in the Final EIR to remove the reference to retail development as an objective.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 10

- 63.24 Third, the description of the physical environment should include both a local and regional perspective.<sup>35</sup> The description should also place special emphasis on environmental resources that are rare or unique to the region and that would be affected by the Project.<sup>36</sup> Here, the EIR only analyzes the environmental setting from a local perspective and omits any analysis from a regional perspective. The physical environment description in the EIR also omits any discussion or inclusion of environmental resources which may be rare or unique to the region that would be affected by the Project, despite the known existence of a historic ranch house and the subsequent acknowledgement of highly sensitive paleontological resources on-site.<sup>37</sup>
- 63.25

**B. The EIR Insufficiently Analyzes the Traffic Impacts and Circulation Issues Associated with the Project**

- 63.26 While the EIR states that the Project will increase traffic volumes and result in direct or cumulative impacts to the local circulation network and the I-5 freeway,<sup>38</sup> the document fails to fully and adequately analyze these impacts, as well as impacts to mass transit and parking. Additionally, the Transportation section of the EIR contains a number of inaccurate statements and deficient assumptions that violate CEQA Guidelines. Such inaccuracies are discussed in more detail below.

- 63.27 Importantly, the EIR does not discuss the Project's integration with the *current* mass transit network, which is nonexistent in the area, despite the requirement of the applicable land use plans to reduce automobile dependence. The General Plan encourages the use of mass transit for compact, mixed-use communities such as the Project.<sup>39</sup> In addition, the Precise Plan states:

"A convenient system of public transportation serving the Industrial-Office Park is necessary if the goal of a balanced transportation network and therefore reduced automotive traffic is to be achieved."<sup>40</sup>

Moreover, the Community Plan states:

"Although it is acknowledged that the automobile will play an important part in providing transportation needs for [Carmel Valley], the major

- 63.24 Section 2.0 of the Draft EIR provides a description of the project site relative to the region, and includes a Regional Location Map (Figure 2-1).

- 63.25 The referenced "ranch house" is not a designated historic resource. This house is located to the southeast across El Camino Real, and would not be directly affected by the proposed development.

As identified in Section 5.8 of the Draft EIR, the project site is underlain, in part, by the Torrey Sandstone formation, which is assigned a high paleontological sensitivity rating in the Carmel Valley area. The presence of this formation does not mean that there are fossils within the project site but rather, the potential exists for such resources. Thus, there are no known paleontological resources that are rare or unique to the region.

- 63.26 This comment lacks specificity regarding how the Draft EIR fails to adequately analyze traffic, mass transit, and parking impacts. As a result, no specific response can be offered to this comment.

- 63.27 The Draft EIR acknowledged that there is no existing transit service in Carmel Valley (Section 5.2.7). Project consistency with General Plan, Community Plan, and Precise Plan goals, objectives, and policies is discussed extensively in Table 5.1-1 in the Draft EIR.

<sup>35</sup> Guidelines § 15125(a).

<sup>36</sup> Guidelines § 15125(a).

<sup>37</sup> EIR, at p. 2-1.

<sup>38</sup> *Id.* at p. 8.

<sup>39</sup> General Plan, at p. SF-3 to SF-5.

<sup>40</sup> Precise Plan, at p. 17.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 11

emphasis of the circulation element is to provide an alternative mode of transportation in order to implement a balanced circulation system."<sup>41</sup>

63.28 The EIR also fails to properly discuss the trip generation resulting from the Project. Specifically, the trip generation for the Project makes use of the office gross leasable area for the purpose of calculating trips generated for the office uses.<sup>42</sup> The total gross square footage should have been used for this calculation which is a larger number and would result in more trips being calculated for the Project, and the impacts would be greater. The EIR should identify the trip generation for the 510,000 square feet of employment center office space allowed under the existing plan and compare that to the traffic generated with the proposed Project. The 536,000 square feet of office space in the Project generates 6,236 average daily trips ("ADTs") per Table 5.2-9 compared with 26,961 ADTs for the entire Project after factoring in a five percent mixed-use reduction factor. Thus, at a minimum the Project is anticipated to generate 4.3 times the amount of traffic than anticipated in the Precise Plan. Such a drastic increase must be disclosed within the EIR. Moreover, even after mitigation measures have been implemented, the Project will have a greater traffic impact on the community when compared to the currently approved 510,000-square-foot employment center.

63.29 The EIR discusses how the freestanding nature of the individual uses in a shopping center is eroded in developments over 100,000 square feet.<sup>43</sup> However, Tables 3-1 and 3-2 separate the individual retail uses to perform the trip generation calculations, as shown in the footnotes to the tables, even when the cumulative size exceeds that limit. This misstates the total trip-making potential of the Project. Furthermore, the method for applying mixed-use discounts to the trips is not reproducible with the information given, particularly for the retail uses.<sup>44</sup> More clarity on the exact mixed-use or other discounts needs to be provided, and the calculations need to be shown in the EIR.

63.30 The EIR also inaccurately discusses the existing conditions, resulting in a skewed baseline. Specifically, the discussion and analysis of intersections within and around the Project site are improper. For example, Intersection One at Via de la Valle at El Camino Real (west) is depicted with future capacity improvements that do not currently exist.<sup>45</sup> The improved condition was assumed in the 2030 base condition calculation of intersection operations, unlike what was assumed for the adjacent segments. It is not appropriate to assume the improvements in the baseline and then identify the improvements as a mitigation measure. Additionally, Intersection 26 at Carmel Valley Road and I-5 northbound ramps is depicted with four southbound approach lanes that do not exist. The inclusion of projects not in existence violates the recent decision *Sunnyvale West Neighborhood Association v. City of Sunnyvale*

<sup>41</sup> Community Plan, at p. 99.

<sup>42</sup> EIR, at p. 5.2-1.

<sup>43</sup> *Id.* at 5.2-2.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

63.28 This comment suggests that the trip generation calculation for the office component of the project should have been based upon total gross floor area (GFA) rather than gross leasable area (GLA). The City's Trip Generation Manual uses GLA for office uses. As illustrated in the trip generation tables in the traffic study (Tables 3-1 through 3-3), the GLA is equal to the GFA for the proposed office uses. In addition, the potential traffic impacts of the proposed development are compared to the potential traffic impacts of development under existing land use regulations in the alternatives analysis in Final EIR Section 12.9.

63.29 This comment questions the separation of the total shopping center square footage into individual trip rates, as referenced in Tables 3-1 and 3-2 of the traffic study. It is an acceptable methodology to use differing generation rates for individual land uses if the nature of those land uses are known. In this instance, separate generation rates are used for grocery, community commercial and specialty retail. The so-called blended rate using this methodology results in a composite trip rate of approximately 66 average daily trips per 1,000 square feet. The traffic study includes an analysis using an alternative trip rate of 70 per 1,000, which is the City's standard community shopping center rate.

To determine whether the Community Commercial trip rate of 70 per 1,000 square feet vs. the Strip Commercial trip rate of 40 per 1,000 square feet in Phase 1 would result in new significant impacts not previously identified, an analysis using the higher trip rate was performed. Refer to the additional traffic analysis of the Revised Project in Appendix C.4 of the Final EIR. The use of the higher trip rate resulted in no new impacts. However, in the Existing + Project scenario, previously identified impacts to Del Mar Heights Road/High Bluff Drive in Near Term + Project Phase 1&2 would occur in Existing + Project Phase 1. And previously identified impacts to Carmel Creek Road/Del Mar Trail in Existing + Project Phase 1&2 would occur in Existing + Project Phase 1.



COMMENTS

RESPONSES

63.29 In the Near Term + Project scenario, previously identified impacts to cont. Del Mar Heights Road / High Bluff Drive and Del Mar Heights Road/ El Camino Real in Near Term + Project Phase 1&2 would occur in Near Term + Project Phase 1. Therefore, the mitigation phasing has been modified to advance appropriate mitigation measures from Phase 1&2 to Phase 1.

The trip generation tables (Tables 3-1 through 3-3) in the traffic study calculate a mixed-use reduction for the residential, commercial office, and commercial retail components of the project per the City of San Diego Traffic Impact Study Manual. For residential, a 10 percent reduction in daily traffic was applied. For commercial office, a 3 percent reduction in daily traffic was applied. For commercial retail, the sum of the residential and commercial office total reductions were applied. Refer to the discussion of how to calculate mixed-use reductions on page 14 of the City's Traffic Impact Study Manual.

63.30 Figure 5-2 will be clarified to accurately reflect existing lane conditions. The near-term analysis of intersection #1 was conducted using existing conditions, not anticipated future conditions.

The long-term cumulative scenario assumes the completion of CIP T-12.3 for which funding is assured. The existing and near-term conditions for the intersection at issue were analyzed with the lane configuration that exists today.

The comment correctly notes that Figure 5-2 of the traffic study mistakenly depicts four southbound approach lanes at the intersection of Carmel Valley Road and I-5 northbound ramps which do not presently exist. However, the analysis undertaken for each scenario in the traffic study includes the current number of lanes, as evidenced by the Synchro worksheets included in Appendix C.1 of the Final EIR. Thus, the analysis for Intersection #26 is correct and the depiction in Figure 5-2 is an error that did not affect the analysis and has been corrected.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 12

- 63.30 cont. *City Council* (2010) 190 Cal.App.4th 1351, which held that CEQA requires an EIR to compare the project's potential traffic impacts to the traffic conditions that currently exist. While a lead agency has some discretion in choosing the baseline used for a project's traffic analysis, it cannot select a point later than the certification of the EIR, even when the evidence shows that the project will not be built for a very long time.<sup>46</sup> However, this is precisely what the EIR has done in regards to traffic and circulation impacts. Under this recent case, the Project baseline and impacts need to be reassessed, and the EIR needs to be recirculated.
- 63.31 The future traffic volumes cited in the Project's traffic study are based on old data (SANDAG Series 10) from the I-5/SR 56 Northbound Connector Study (by LLG) for Caltrans that examined the effect of introducing the north-facing connectors at SR 56 and I-5, among other things.<sup>47</sup> These volumes differ substantially with subsequent SANDAG forecasts in Series 11 and in Series 12, particularly on El Camino Real and Del Mar Heights Road.
- 63.32 For Intersection Nine at Del Mar Heights and northbound I-5 ramps, the EIR calculates the intersection level of service ("LOS") and makes assumptions for the amount of existing plus Project westbound to northbound right turns on red. The EIR reports an excessive 500 plus vehicles per hour in the existing plus full Project scenario and the 2030 scenario.<sup>48</sup> The existing physical conditions could not allow this large amount of right-turning traffic, which inaccurately makes the intersection appear to operate better than it can. The EIR makes a mistake for the opposite left turn from eastbound to northbound to enter this ramp.
- 63.33 For Intersection 31 at Valley Center Drive at Carmel Creek Road, the calculation of LOS in the various scenarios uses incorrect signal timing and phasing that underestimates the true impact.<sup>49</sup> It also identifies some approaches creating an LOS F, which is not acceptable under the City's regulations.
- 63.34 For Intersection 14 at Del Mar Heights Road and Carmel Country Road, the calculation of intersection LOS conditions uses an inconsistent set of assumptions for the peak hour factor that if applied consistently would disclose a significant impact.<sup>50</sup> As calculated, both 0.95 and 0.90 are used, which underestimates the impact when the 0.95 is used. This Peak Hour Factor parameter in the software for determining intersection delay should be consistently applied in order to comply with City regulations.
- 63.35 Furthermore, due to incorrect analysis, the EIR also contains flawed mitigation measures. Specifically, the EIR states "[n]ear-term traffic volumes were derived by (1) adding volumes from other approved, pending, or planned projects in the project vicinity to existing

<sup>46</sup> *Sunnyvale West*, 190 Cal.App.4th at 1357.

<sup>47</sup> EIR, at p. 5.12-1.

<sup>48</sup> *Id.* at Appendix D.

<sup>49</sup> *Id.* at Appendix L.

<sup>50</sup> *Id.* at Table 13-2, Appendix L.

- 63.31 The use of future traffic volumes from the I-5/SR-56 Northbound Connector Study is appropriate in the build-out scenario and consistent with other traffic studies. The future volumes from the I-5/SR-56 Northbound Connector Study are higher than SANDAG forecasts in Series 11 and Series 12, and represent a conservative analysis. In Appendix S of the traffic study, a future (Year 2030) traffic volume comparison of the I-5/Del Mar Heights Road interchange was prepared which illustrates the consistency of future volumes between the I-5 North Coast Corridor, I-5/SR-56 Northbound Connector Study, and the proposed development.
- 63.32 At Intersection #9 (Del Mar Heights Road at I-5 northbound ramps), the proposed project has a significant direct impact by adding 153 trips to the westbound to northbound right-turn movement in the PM peak hour. Therefore, the project will be required to extend the existing westbound right-turn lane to provide additional storage. The extension of the westbound right- turn lane would help prevent vehicles queuing into the westbound through lanes, which occurs today. Table 1-29 in the traffic study discusses the proposed improvements to this intersection.
- 63.33 This comment suggests that incorrect signal timing and phasing were used. The standard of practice for analyzing and reporting signalized intersection LOS is to report the overall LOS and not individual approaches. Nevertheless, as discussed in the additional traffic analysis of the Revised Project in Appendix C.4, the traffic analysis modified signal timing assumptions to reflect actual City signal timing. The updated analysis shows no new impacts. However, certain mitigation measures have been advanced to earlier project phases. Refer to response to comment 63.29 for further details.

---

**COMMENTS**

---

**RESPONSES**

---

- 63.34 At Intersection #14 (Del Mar Heights Road at Carmel Country Road), the peak hour factor (PHF) is different for the AM and PM peak hours based on the existing count data. The existing counts show a PHF of 0.90 in the AM peak, and a PHF of 0.94 in the PM peak. In the AM peak hour in the Year 2030, with- and without-project scenarios, this intersection would operate at LOS D or better. In Year 2030 without-project scenario, the intersection operates at LOS C during the PM peak hour. In the Year 2030 with-project scenario, the intersection operates at LOS D during the PM peak. The projected LOS at this intersection would be unaffected by a change in the PM peak hour factor from 0.95 to 0.94.
- 63.35 As discussed in detail in response to comment 10.158, because additional near-term development at the Town Center is not reasonably foreseeable, no expansion was included in the near-term traffic analysis for the proposed development. However, the potential expansion of the Town Center was taken into account for in the long-term “build-out” scenario.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 13

63.35  
cont.

volumes," but the Traffic Impact Analysis fails to identify approximately 150,000 square feet of additional development to the Del Mar Highlands Town Center that have been entitled and the mitigation already implemented per the conditions of approval.<sup>51</sup> The Project's economic study recognized that Del Mar Highlands Town Center would be expanding.

63.36

Additionally, as a mitigation measure, a triple left turn is proposed for the intersection of Del Mar Heights Road and High Bluff Drive to accommodate northbound to westbound movements.<sup>52</sup> If implemented, this would result in a dangerous condition where the vehicles opposing this movement going left from southbound to eastbound overlap with the northbound to westbound vehicles as assumed in the LOS calculations. This is particularly true for longer wheelbase vehicles. Also, the turning arcs for the inside lanes are too narrow to function safely. The mitigation, as proposed, is infeasible to implement safely.

63.37

In addition to the triple left turn infeasibility, the LOS calculations for Intersection 10 at Del Mar Heights Road and High Bluff Drive assume a turning lane capacity of 1,900 vehicles per hour per lane for the triple turn lanes. This is unrealistically high for any turn lane, much less a slow triple turn lane. Accordingly, this is not a feasible mitigation measure.

63.38

As mitigation, the EIR proposes an extension of the right turn lane on westbound Del Mar Heights Road to northbound I-5.<sup>53</sup> This improvement comes very close to and will conflict with an adjacent AT&T building's service driveway on the western end facing Del Mar Heights Road. Accordingly, this is not a feasible mitigation measure.

63.39

Furthermore, several substantial traffic improvement projects are proposed as mitigation measures that have not been programmed for construction.<sup>54</sup> Yet, a fair share contribution toward their hypothetical construction is proposed along with calculations of the amount of money the project applicant will pay. Paying the fair share percentage of a traffic project is only feasible mitigation once the environmental studies and designs are done, the commitment to construct the traffic project is made, and all the sources of funding have been identified.

63.40

The LOS and delay analysis of the two intersections forming the ramp junctures at I-5 and Del Mar Heights Road have been analyzed using different cycle times. The tables state they are coordinated.<sup>55</sup> Caltrans typically coordinates the signal cycles on either side of an interchange, which the calculations should reflect. Correcting this mistake would disclose longer delays than the EIR shows. In Table 1-3, section 14.2 and in Appendix N of the EIR, it states that the signals along Del Mar Heights Road are coordinated, but the Synchro work sheets show unrelated cycle timing, meaning they are not coordinated. Therefore, the software

<sup>51</sup> *Id.* at 5.2-28.

<sup>52</sup> *Id.* at Appendix N.

<sup>53</sup> *Id.* at Appendix N.

<sup>54</sup> *Id.* at p. 1-46.

<sup>55</sup> *Id.* at Appendix N.

63.36 At Del Mar Heights Road and High Bluff Drive, turning templates were used to ensure that no overlapping would occur for left turns in the northbound and southbound direction. Figure 19-2B in Appendix N of the traffic study demonstrates that northbound and southbound left turns would operate safely.

63.37 The triple northbound left-turn lane concept has been reviewed by the City's engineering staff and accepted as mitigation. The triple left-turn lanes along with other intersection improvements would fully mitigate the impact of the proposed development on this intersection.

63.38 The improvements referenced would be installed within the City right-of-way adjacent to the AT&T building on the north side of Del Mar Heights Road and would be in close proximity to existing private improvements. However, the proposed widening to accommodate a right-turn lane extension is not anticipated to significantly impact access to the service driveway. This driveway is infrequently utilized, especially during peak hours. It should be noted that this driveway is not used for daily traffic or parking, but only for trash pick-up and certain deliveries.

63.39 This comment does not specify the traffic improvements to which it refers. Pursuant to Table 4.2-41 in the Final EIR, certain fair share contributions are identified as potential mitigation. In some instances contribution would not reduce the identified impact to below a level of significance because the improvement cannot be assured. Refer to response to comment 15.a.93.

63.40 Refer to response to comment 63.33.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 14

63.40  
cont.

improperly optimized the timing to show a more advantageous result than otherwise would be obtained. This is particularly problematic when the calculations for the two proposed signals servicing the Project along Del Mar Heights Road are examined. These signals should be synchronized with the more substantial arterial intersection at El Camino Real, as well as the High Bluff Drive intersection.

63.41

The EIR also does not address parking issues inherent to the Project. Historically, parking has been a challenge at existing properties adjacent to the Project Site. Traditionally, office buildings almost always charge for parking as it's a significant revenue stream for property owners. Existing agreements strictly prohibit paid parking on these properties. Neither the parking analysis nor the EIR address whether or not the Project will charge for parking and unfortunately, the Applicant has offered no assurances. If the Project ends up charging for parking, visitors will likely park in adjacent residential areas or at the Del Mar Highlands Town Center.

63.42

Lastly, Attachment Six of the EIR's Appendix Q is supposed to be the intersection delay at build out for the "No Development/Existing Plan" alternative, but the results are exactly the same at every intersection location as those presented for the Project in the traffic study, Appendix C, Table 19-26.<sup>56</sup> This is incorrect given the dramatically differing size of trip making associated with the Project versus the existing plan alternative described. The EIR fails to provide backup details to explain why these values for two very different alternatives with different traffic volumes are the same. Due to these traffic analyses and mitigation inadequacies under CEQA, the EIR must be revised and recirculated.

**C. The Project is Inconsistent with the Existing Visual Quality and Community Character**

A lead agency must include a discussion and analysis of a project's aesthetic impacts in the EIR.<sup>57</sup> Specifically, the EIR must disclose a project's inconsistency with development standards that result in significant aesthetic impacts.<sup>58</sup> Such an analysis must contain substantial evidence supporting the lead agency's impact determination.<sup>59</sup>

63.43

In regards to the Visual Effects/Aesthetic Impacts Section, the EIR is fatally deficient in a number of ways that include, but are not limited to: (i) failure to disclose inconsistency with the General Plan, Community Plan, Precise Plan and development patterns; (ii) inappropriate

<sup>56</sup> *Id.* at Appendix Q.

<sup>57</sup> *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 (the court rejected a mitigated negative declaration based on claims that a housing development would degrade the existing visual character of a parkway greenbelt setting because of excessive massing, insufficient landscaping, and the creation of a tunnel effect by siting houses with minimal setbacks from a narrow street); *Santiago County Water Dist. v. County of Orange* (1981), *supra*, 118 Cal.App.3d 818.

<sup>58</sup> *Pocket Protectors*, *supra*, 124 Cal.App.4th 903.

<sup>59</sup> *Clover Valley Found. v. City of Rocklin* (2011) 197 Cal.App.4th 200, 243.

63.41 Parking for the proposed retail uses would be free to the public. Office parking would be provided as an amenity inclusive of tenant leases.

63.42 The analysis of the "No Project: Employment Center" EIR alternative is correct. Because many of the affected facilities are congested whether or not the project is developed, implementation of the No Project: Employment Center alternative would significantly impact the same segments and intersections as the Originally Proposed Project. However, the delays and LOS are different between the proposed project and No Project: Employment Center Alternative. Attachment 7 of Appendix C.4 of the Final EIR has been revised to more clearly outline the LOS and delay increases associated with the No Project: Employment Center alternative. The delay increases due to this alternative are all less than those associated with the Proposed Project.

63.43 Section 5.3 in the Draft EIR listed relevant visual/community and neighborhood character policies in adopted land use plans and references the comprehensive policy consistency analysis contained in Table 5.1-1 in Section 5.1. Refer to updated information contained in Section 5.1.2 of Final EIR. The Final EIR concludes that both the Originally Proposed Project and Revised Project would be consistent with the relevant goals and policies.

This comment lacks specificity in regards to inappropriate significance determinations, internal inconsistency, and inadequate impact and mitigation measure analysis. As a result, no specific response can be offered.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 15

63.43 cont. significance determinations; (iii) internal inconsistency; and (iv) inadequate impact and mitigation measure analysis.

63.44 The EIR claims the Project site is located at a transition point between land uses within the community and illustrates how the surrounding uses within the community converge at the Project site.<sup>60</sup> However, this is a misrepresentation of the Project site and surrounding area. The surrounding uses converge at the intersection of El Camino Real and Del Mar Heights Road and not at the Project site. The Precise Plan identified this intersection as the convergence of employment center, commercial and multi-family residential uses to create a mixed-use horizontal village. As one approaches the Carmel Valley community from the I-5 east on Del Mar Heights Road, the visual prominence is the Del Mar Highlands Town Center that was envisioned in the Precise Plan. In contradiction to this, the Project proposes to create a singular high intensity "urban village," which duplicates the surrounding land uses within its boundaries and walls itself off from the rest of the community.

63.45 The EIR fails to adequately address the Project's impacts to the visual character of the community, in part because it fails to adequately describe the baseline. For example, the EIR claims the residential development in the community has followed the overall Community Plan principle of concentrating higher densities in the center of the community and lower density residential in surrounding areas, but the EIR fails to define "higher density."<sup>61</sup> The EIR also claims the area is developed with multi-story office buildings ranging between two and twelve stories surrounded by surface parking lots.<sup>62</sup> However, the EIR fails to disclose that the 12-story structure that is referenced is the Marriott Hotel (not a multi-story office building) and that it is located in the Visitor Commercial Zone (not the Employment Center zone) is not near or in sight of the proposed Project. To comply with CEQA, the EIR should identify the maximum height of the office buildings and how many are over four stories high in the area. If the City is using a one-mile threshold, it should also analyze impacts to other sites within one mile such as Torrey Pines High School, Del Mar Heights residential areas, Overlook Park, Crest Canyon Park, Carmel Valley Middle School and Del Mar Heights High School. Additionally, the EIR contains almost no discussion regarding existing civic uses in the vicinity,<sup>63</sup> which is inadequate given the many schools and parks in the area. These misrepresentations result in the EIR's failure to establish a workable baseline, thereby masking the aesthetic impacts.

63.47

#### 1. General Plan Inconsistency

The visual impact is most striking when comparing the existing regulations under the General Plan to the proposed amendments. Existing development regulations for the Project

<sup>60</sup> EIR, at p. 5.3-4 ("The confluence of land uses at the project site in a central location within the community further contributes to the visual prominence of the location of the project site.")

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 5.3-6.

<sup>63</sup> *Id.* at 5.3-8.

63.44 The Draft EIR accurately described the geographical setting of the project site. The project site is located at the southwest quadrant of the Del Mar Heights Road/El Camino Real intersection and, thus, is at the transition point where land uses converge in the community. There has been no misrepresentation on this point. The project proposes a mixed-use "Community Village" (not an urban village as indicted in this comment) that reflects and provides multiple connections with surrounding land uses.

Contrary to the comment, there is no "horizontal Mixed-use Community Village" land use designation in any adopted land use plans that regulate the project site, including (among others) the General Plan, Community Plan, and Precise Plan. While land uses that comprise a village, as identified in the General Plan (residential, commercial, employment, and civic uses) exist in the community and in the immediate vicinity of the project site, such uses are compartmentalized and not integrated as called for in the General Plan definition of village. As such, there is no existing designated or de facto "horizontal mixed-use village" in Carmel Valley that meets the criteria of any village type defined in the General Plan.

Main Street is the central organizing component of the Originally Proposed Project and the Revised Project that would provide a pedestrian-oriented commercial corridor within the project site. Main Street would also connect with off-site areas with proposed walkways, bikeways, and vehicular access points that connect to the roadways within Carmel Valley. To improve the connectivity of the retail portion of the project with the surrounding area to the east, a new street is included in Block A and the buildings have been modified to open up view corridors to the central plaza. In addition, the long edge of the plaza between buildings 9, 10 and 11 has been located adjacent to El Camino Real to accommodate connectivity. Greater connectivity with Del Mar Heights Road and the developed areas to the north would be achieved by adding a stairway and ramp at the end of Third Avenue.

---

**COMMENTS**

---

**RESPONSES**

---

63.45 The statement regarding residential development in Carmel Valley accurately describes the existing baseline conditions. This statement is based on the planning principles contained in the Carmel Valley Community Plan, one of which calls for more intense land uses in the center of communities and less dense uses in the outlying areas (page 6 of the Carmel Valley Community Plan). As with the planning principles, the statement in the Draft EIR is intended to describe existing development in broad terms to portray overall patterns of development, rather than identify specific densities or density categories/ranges. The use of the term “higher density” was intended to be a relative comparison and not intended to imply a specific number of units per acre.

63.46 The Marriott is identified as the 12-story building in the Draft EIR and is pictured in Figure 5.3-5d. It is acknowledged that although a hotel is not an office building, it is a commercial use within the Employment Center. Nonetheless, the Final EIR has been revised to clarify this distinction. This change does not substantially change to conclusion that a significant neighborhood character impact would result from the proposed development.

Section 5.3 of the Draft EIR defined and evaluated the neighborhood character of the surrounding neighborhood and the larger community planning area. Therefore, the description of neighborhood character identified development in the immediately surrounding area and the community as a whole, and disclosed the range of building sizes.

63.47 The Draft EIR disclosed that there are existing civic uses in the community in the neighborhood character discussion in Section 5.3. Specific uses are not identified in Section 5.3, but are listed and illustrated elsewhere in the Draft EIR, including Section 2.0 and Section 5.12.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 16

63.48 site include no maximum structure height, a maximum Floor Area Ratio (FAR) of 0.5 and maximum lot coverage of 50 percent for interior lots and 60 percent for corner lots.<sup>64</sup> Existing setback requirements include no minimum or maximum front or street side setbacks and minimum 10 feet side and rear setbacks.<sup>65</sup> Residences, most commercial, wholesaling, churches, schools, warehousing and storage, and certain manufacturing operations are currently prohibited on the Project site.<sup>66</sup> Build out under the existing zoning and applicable plans would allow for approximately 510,000 square feet of employment center uses.<sup>67</sup> In stark contradiction to these existing regulations, the EIR proposes a maximum of one permitted residential dwelling unit per 1,500 square feet of lot area.<sup>68</sup> When proposing this amendment, the EIR fails to identify the residential density to the north and northwest and northeast of the Project site, which is MF-1 and MF-3 respectively. MF-1 zoning incorporates a seven du/ac minimum and a 15 du/ac maximum. MF-3 zoning incorporates a 15 du/ac minimum and a 29 du/ac maximum. The Project, under the proposed regulation, would result in 29 du/ac. Thus, the Project is at the upper end of the density even allowed in an MF-3 Zone and is well above the density in the surrounding area.

63.49 The visual impacts associated with the Project are also inconsistent with the General Plan despite the EIR's assertion to the contrary. The General Plan requires that buildings be designed to contribute to a positive neighborhood character and relate to neighborhood and community context.<sup>69</sup> With one- and two-story residential to the north, four-story office to the south and west, and one-story commercial to the east; the Project with its proposed 10-story, high-density mixed-use development<sup>70</sup> is outside of the bounds the neighborhood character by two and a half times the size of nearby buildings. The Project would destroy the current neighborhood character with its excessively tall buildings. The General Plan requires that developers recognize that the quality of a neighborhood is linked to the overall quality of the built environment, and the projects should not be viewed singularly but as part of the larger neighborhood or community plan instead.<sup>71</sup> The goal of the General Plan is to ensure design continuity and compatibility. Instead of implementing the General Plan guidelines, the Project attempts to create a development well beyond the bulk and scale that is compatible with the community. The Project walls itself off from the neighboring residential, office and commercial uses by constructing tall buildings between the main street and Del Mar Heights Road.

<sup>64</sup> *Id.* at 5.3-11.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 5.3-12

<sup>69</sup> General Plan, UD-A.5.

<sup>70</sup> EIR, at p. 5.3-13, 14.

<sup>71</sup> General Plan, UD-B.1.

63.48 The Draft EIR discussed the fact that the residential development to the north is located in two-story structures. Although no specific reference is made to units per acre, the structures are two-level buildings and typical of the lower range for the Community Plan's Low/Medium Density Residential designation that applies to this area. The EIR acknowledges and discusses the fact that the density of the proposed development would exceed that of the surrounding development. The conclusion that the project would have a significant unmitigated impact on the local neighborhood character is partially based on this differential because of the taller buildings required to accommodate the proposed density of 29 units per acre. As noted in the Final EIR, this conclusion applies to both the Originally Proposed Project and Revised Project because they include the same proposed residential density. In addition, the EIR acknowledges the fact that an amendment to the Community Plan would be required to permit the proposed residential development.

63.49 The Draft EIR concluded that the Originally Proposed Project would have a significant impact on neighborhood character as suggested in the comment. Additionally, Section 12.9 of the Final EIR reaches a similar conclusion in regard to the Revised Project. However, as described in response to comment 5.6, it is important to note that the revised project includes several features which reduce the neighborhood character impact including: reducing the 10-story residential building to 6 stories, eliminating the hotel and increasing landscaped open space on Block C; reducing the height of other buildings to no more than 9 stories throughout the development; and providing enhanced access from the greenbelt along Del Mar Heights Road.

63.50 As discussed in response to comment 63.49, the Final EIR acknowledges that both the Originally Proposed Project and Revised Project would result in significant neighborhood character impacts. As also discussed in response to comment 63.49, the Revised Project includes improved access to the retail area for pedestrians along Del Mar Heights Road.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 17

- 63.51 Further, the EIR states the Project is consistent with the surrounding uses, in part because it "would connect to the adjacent Del Mar Highlands Town Center."<sup>72</sup> The EIR does not contain any detail regarding this connection and lacks substantial evidence that, if such a connection existed, the linkage would be sufficient to establish consistency within the surrounding community.
- 63.52 The EIR does not include a discussion of signage, even though the NOP said that signage would be included at three access points. The EIR should analyze consistency with the General Plan's requirement to design signs to minimize visual impacts and complement the character of the setting, and include visual simulations of proposed signs, which should be subject to the community's sign ordinance.
- 63.53 Furthermore, the EIR attempts to assure the reader the Project is consistent with the General Plan because the Project is located in an identified transit corridor, and is intended to provide a mix of uses that create a vibrant, active place. The Project is neither located in a designated transit corridor in the Municipal Code, nor is a site designated to be a separate singular village.<sup>73</sup> Additionally, the EIR alleges that Project is consistent because it is designed as a village center that is integrated into existing neighborhoods.<sup>74</sup> As demonstrated above, this is just not true as the bulk and scale of the Project results in a unique island of intense development. Even though the Project may use similar colors and materials as neighboring buildings, colors and materials do not hide the bulk and scale of the Project's buildings, which will stand out as unique, stand-alone visual elements that are out of character with the surrounding community as far as the eye can see. There are no mitigating measures that would mask the fact that all of the buildings in the Project turn their back to the surrounding existing neighborhoods. Only an alternative, less dense, mixed-use project or development according to existing plans can mitigate this impact.
- 63.54
- 63.55
- 63.56 In an effort to shift focus from the admitted bulk and scale impacts, the EIR likens the Project to other urban buildings in the area.<sup>75</sup> There are issues with this statement for two reasons. First, other "urban" buildings in this community are not of this scale and bulk. Further, this statement demonstrates both the EIR's internal inconsistency and the Project's inconsistency with the General Plan. Earlier in the EIR this Project was called a "community village" and yet it has been designed at the scale of an "urban village," as classified in the General Plan.

<sup>72</sup> EIR, at p. 5.3-19.

<sup>73</sup> *Id.* at UD-C.1.

<sup>74</sup> *Id.* at UD-C.2.

<sup>75</sup> *Id.*

- 63.51 The Draft EIR stated on page 5.3-19 that Main Street, the retail component of the project, would extend from the existing intersection of El Camino Real and the Del Mar Highlands Town Center. Main Street would be constructed as the fourth leg of this intersection directly across from the entry to the Del Mar Highlands Town Center and would be one of the primary access points to the project site. As discussed on page 5.3-26 in the Draft EIR, this project entry would have a similar appearance as the Del Mar Highlands Town Center entry directly across El Camino Real. The proposed entry would contain two travel lanes in each direction, a center landscaped median, sidewalks, and landscaping edging both sides of the driveway. These features would be visually consistent with the entry across the street. Additionally, the project land uses would be consistent with surrounding off-site uses. Proposed on-site retail uses in the northeastern portion of the project site would be adjacent to the existing retail uses across the street in the Del Mar Highlands Town Center.
- 63.52 The Draft EIR discussed project signage under the analysis of "Highly Visible Areas" in Section 5.3.3.
- 63.53 In the discussion of the proposed development's consistency with the General Plan City of Villages strategy, the Draft EIR, in Section 5.1.2, disclosed that there are no existing transit services in the project area, but that future Bus Route 473 is identified in the 2050 RTP to serve Carmel Valley. It is acknowledged that the project site is not currently designated as a village. However, as identified in Section 5.1 in the Draft EIR, the project site is identified as having moderate village propensity in Figure LU-1 in the General Plan.
- 63.54 As noted, the Draft EIR concluded that the project is consistent with Urban Design Policy UD-C.2, which calls for village centers to be integrated into existing neighborhoods through pedestrian-friendly site design and building orientation, and the provision of multiple pedestrian access points. Table 5.1-1 in the Draft EIR lists the reasons that the project would be consistent with this policy. With respect to the project's bulk and scale, the Final EIR, in Section 5.3.3, recognizes that the

COMMENTS

RESPONSES

63.54 Originally Proposed Project would result in significant impacts to the cont. neighborhood character of the area because the mass and height of the proposed buildings would be greater than and different from existing surrounding development. Although the Revised Project would reduce the neighborhood character impacts, Section 12.9 of the Final EIR still concludes that the neighborhood character impacts associated with the Revised Project would be significant and not mitigated.

63.55 Section 12 of the Draft EIR included the environmental analysis of a No Project: Employment Center Alternative, which is consistent with the comment. In the analysis, it is concluded that this alternative would avoid the significant neighborhood character impacts resulting from the Originally Proposed Project. In addition, the Final EIR includes two reduced mixed-use alternatives which would retain the same general mix of land uses as the Originally Proposed Project but reduce the overall density and intensity. Although these reductions in density and intensity would reduce the impact of site development on neighborhood character, the impact would remain significant and not mitigated.

63.56 As acknowledged in the comment, the Draft EIR disclosed the differences between the height and bulk of the structures of the Originally Proposed Project and immediately surrounding structures, concluding on page 5.3-23 that a significant unavoidable impact would occur with respect to height and bulk, despite the presence of buildings with comparable heights in the broader Carmel Valley community, the provision of comparable setbacks by the project and, as discussed and illustrated in Figures 5.3-7a and 5.3-7b, substantial topographical differences that minimize the apparent height and bulk of the proposed buildings. Specific terms used to describe tall nearby buildings have no bearing on the type of development proposed under the Originally Proposed Project or Revised Project. Refer to updated information contained in Section 5.1.2 of Final EIR.

The City of Villages section within the Land Use and Community Plan Element of the General Plan describes village types and identifies characteristics for each type. The comment asserts that the Originally Proposed Project more accurately reflects an “urban village,” however, that project does not meet the characteristics of an Urban Village Center as defined in the General Plan. These characteristics include location in “higher density areas located in subregional employment districts. They are characterized by a cluster of more intensive employment, residential, regional, and subregional commercial uses that maximize walkability and



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 18

2. *Community Plan and Precise Plan Inconsistency*

63.57 The Project's visual impacts are also inconsistent with the Community Plan for a number of reasons. First, the EIR incorrectly claims the Project is consistent because it fulfills the Community Plan's goal of establishing self-containment and the feeling of community identity.<sup>76</sup> However, the self-containment in this goal referred to the entire community, and not within a singular project site. Second, the Project will require the removal of 498,400 cubic feet of dirt.<sup>77</sup> This action ruins the natural topography of the site and runs afoul of the Community Plan's goal of preserving the natural environment. Third, the EIR asserts consistency because there are hotels located within approximately one mile of the Project site.<sup>78</sup> However, the Community Plan and Precise Plan purposely sited in the hotel area, referenced as Visitor Commercial, next to the freeway and not in the middle of the community. The applicable plans' specific location of hotels in Visitor Commercial is not addressed in the EIR but must be disclosed as an inconsistency with the Project's location of its hotel.

63.58  
63.59  
63.60 Despite these glaring inconsistencies, the EIR claims the Project and its density (in terms of bulk and scale) would remain compatible with the broad pattern of development in the Community Plan Area, including nearby existing commercial development along El Camino Real.<sup>79</sup> The bulk and scale as well as the development pattern outlined within the Precise Plan and Community Plan would not be consistent.

63.61 The Precise Plan established an FAR of 0.5 for the Project site to limit the bulk and scale and limit the development intensity. However, the EIR attempts to skew the purpose and meaning of this FAR in an attempt to justify the Project. Moreover, the EIR's proposed amendments are an attempt to circumvent the limitations on bulk and scale. The EIR claims that the increase in FAR beyond existing and proposed development alone does not cause a project to be inconsistent with community character.<sup>80</sup> We strongly disagree. Increasing the FAR by 400 percent raises serious questions regarding inconsistency with the community character. In order to divert focus, the EIR highlights a remnant single-family ranch house that has a lower FAR than surrounding development and alleges this house is the different component in the existing neighborhood.<sup>81</sup> However, using a remnant parcel that has not been redeveloped is a poor correlation. It is like saying that a vacant lot in Little Italy is the true character of the neighborhood when clearly the community plan envisions that property to be ultimately redeveloped consistent with the bulk, scale and intensity of the surrounding area as stipulated in the Precise Plan.

<sup>76</sup> *Id.* at 5.3-15.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 5.3-19.

<sup>79</sup> *Id.* at 5.3-23.

<sup>80</sup> *Id.* at 5.3-22.

<sup>81</sup> *Id.*

63.56 support transit.” The project site is not located within a higher density area cont. within a subregional employment district (the General Plan specifically identifies these as Mission Valley/Morena/Grantville and University/Sorrento Mesa). As discussed in detail in Section 5.1 and Section 12.9 of the Final EIR, the Originally Proposed Project and the Revised Project are both consistent with the characteristics of a Community Village, as defined the General Plan.

63.57 Section 5.1 of the Draft EIR provided a comprehensive analysis of the Originally Proposed Project with applicable adopted land use plans and goals, policies, and objectives contained within those plans, including the Community Plan. As concluded in Sections 5.1.2 and 12.9 of the Final EIR, the Originally Proposed Project and the Revised Project are consistent with the overall goals identified on page 50 of the Community Plan (refer to Section 5.1 of the Final EIR and Section 12.9 of the Final EIR). The policy consistency analysis of the overall goals of the Community Plan is not applied to only the project site, but the Carmel Valley community as a whole. As described in response to comment 10.47, the Originally Proposed Project and the Revised Project would be consistent with the overall goals identified in the Community Plan related to maintaining a balance of uses that contribute to community-wide self-containment, and fostering and enhancing community identity in the Community Plan area.

63.58 As discussed in Section 5.3 of the Draft EIR, the project site has been previously graded. Thus, the project site does not possess any “natural” topography which would be subject to the Community Plan’s goal of preserving the natural environment.

63.59 The Draft EIR (on page 5.3-19) acknowledged that no hotels are located in the immediate neighborhood of the project site; however, there are hotels within the Employment Center Precise Plan area, and the discussion of land use compatibility in the Draft EIR explained that a proposed hotel would not be a new land use within the community. The Draft EIR also acknowledged that the project site is currently designated as Employment Center in the Carmel Valley Community Plan and the Precise Plan, which calls for business park office uses on the project site. As discussed in Sections 3.4.3 and 5.1 of the Draft EIR, the Originally Proposed Project proposed land use plan amendments to change land use designations to accommodate the mix of proposed land uses on the site, including the hotel. However, the Revised Project, as described in detail in response to comment 5.6 and Section 12.9 of the Final EIR, no longer includes the hotel use.

---

**COMMENTS**

---

**RESPONSES**

---

63.60 As discussed in Section 5.3 in the Draft EIR, the visual analysis evaluates both the immediate visual setting of the project site and the Carmel Valley community as a whole. The analysis in the Final EIR concludes that the Originally Proposed Project and the Revised Project would be compatible with the overall broad development pattern of Carmel Valley because they would include land uses that already exist in Carmel Valley, and mirror surrounding land uses. Moreover, the development would incorporate project design measures to address bulk and scale, such as (1) the arrangement and design of buildings relative to topography, (2) spatial buffers and setbacks, and (3) building articulation and varied building heights. The Draft EIR also concluded that the proposed buildings would, despite such project design strategies to minimize apparent height and mass of the structures, substantially contrast with portions of the surrounding development in the community, resulting in a significant neighborhood character impact.

The Final EIR recognizes that the Originally Proposed Project would result in significant impacts on traffic and neighborhood character of the area in Sections 5.2 and 5.3. As discussed in response to comment 5.6, the Final EIR concludes that the Revised Project would reduce the impact of development on traffic and neighborhood character with respect to the Originally Proposed Project. However, Section 12.9 of the Final EIR concludes that these impacts would remain significant and not mitigated.

63.61 As discussed in response to comment 10.144, FAR is only one of the many factors potentially affecting neighborhood character analyzed within the Draft EIR. Sections 5.3.3 and 12.9 of the Final EIR, conclude that the Originally Proposed Project and the Revised Project would result in significant impacts to the neighborhood character of the area. This conclusion is based on consideration of all the factors that define neighborhood character, not just FAR.

The mention of the “remnant single-family ranch house” was included in the discussion to illustrate different existing physical forms and development at varying bulk and scale in the project area that contribute to the existing neighborhood character. The fact that it is a remnant parcel that has not been redeveloped per the adopted Community Plan does not mean that it should not be considered in the context of the existing neighborhood character.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 19

The proposed zone associated with the Project (CVPD-MC) has a maximum FAR of 2.0. The EIR claims Project is consistent because it would have a maximum FAR of 1.80 as calculated in accordance with the land development code and the proposed zone. The Carmel Valley PDO includes the following FAR maximums: Visitor Commercial (2.0), Mixed-Use (commercial with residential bonus) (1.5), Multi-family Residential (0.75), Commercial (0.75), and Employment Center (0.5).<sup>62</sup> The EIR must note that Visitor Commercial is located at the perimeter of the community near the freeway, and thus its bulk and scale impact has less impact on the community. Therefore, it is not an appropriate comparison. Even if there was a proportionate allocation of the FAR by land use allowances and application of the mixed-use bonus at 50 percent commercial and 50 percent residential, the resultant FAR would be less than one and that assumes that hotels are an appropriate use outside the Visitor Commercial zone and away from freeways. Thus, the proposed maximum FAR of 2.0 and alleged FAR of 1.80 exceeds a proportionate FAR for the mix of uses.

### 3. Impact Thresholds

Third, the EIR cursorily rejects its responsibility to analyze the Project's impacts on private views by relying on the City's thresholds that do not require analysis of this subject.<sup>63</sup> However, this is a broad generalization. *Ocean View Estates Homeowners Association v. Montecito Water District* (2004) 116 Cal.App.4th 396, 402, states that a local agency is not relieved from CEQA requirements when analyzing impacts to private views when the number of homes affected is significant.

The EIR omits further discussion relating to the visual impacts to scenic resources resulting from its community character inconsistencies. For example, the EIR claims that: (i) the removal of trees would not result in significant visual impacts to scenic resources;<sup>64</sup> and (ii) none of the proposed off-site roadway improvements would impact or block designated scenic routes.<sup>65</sup> These, however, are inaccurate statements that downplay the actual visual impacts related to tree removal. In reality, the EIR does not address the loss of the median trees on Del Mar Heights Road between High Bluff Drive and El Camino Real in order to accommodate the stacking lanes for the new signalized intersections. The removal of these trees, which exist in all other areas of the community, changes the physical image of Carmel Valley, especially when entering from the freeway. Further, the EIR completely omits any discussion on the impacts to views of the coastal bluffs, one of Carmel Valley's keynotes.<sup>66</sup> Lastly, the EIR does not analyze the visual impacts of the proposed parking structures.<sup>67</sup>

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 5.3-16.

<sup>64</sup> *Id.* at 5.3-16.

<sup>65</sup> *Id.* at 5.3-18.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 5.3-25.

63.62 The Originally Proposed Project and the Revised Project are consistent with the proposed zone in terms of FAR. The proposed zone (CVPD-MC) has a maximum FAR of 2.0, and the Originally Proposed Project had an FAR of 1.8 while the Revised Project has an FAR of 1.4. The portions of the Carmel Valley PDO cited in this comment are not applicable to the project site. The comment assumes the project site is being zoned with multiple existing zones from the PDO rather than a single mixed-use zone. Both the Originally Proposed Project and the Revised Project are a vertically integrated mixed-use development, not a number of stand-alone uses each with a separate existing zone within one site. Therefore, the concept of "proportionate FAR," articulated in the comment, does not apply, nor does it presently exist in adopted City documents and regulations. A bonus for additional FAR is not being requested in conjunction with the proposed residential component. FARs were calculated in accordance with the regulations contained in Municipal Code Section 113.0234 (Rules for Calculation and Measurement for Gross Floor Area.)

As discussed in response to comment 5.6, the project applicant has revised the Originally Proposed Project to reduce the overall intensity and density of the project site. The Revised Project reduces the overall square footage by 22 percent from 1,857,440 to 1,454,069 square feet. The total FAR is reduced by 22 percent from 1.8 to 1.4. In addition, the proposed hotel has been eliminated.

63.63 The Draft EIR properly relied on the City's thresholds pertaining to visual impacts. In *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 492, the court wrote "[u]nder CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons." (See also, *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal. App.4th 720, 734.). The court ruled that a lead agency has discretion in determining substantial impacts and that it can utilize local planning thresholds. The Draft EIR properly evaluated visual impacts from public vantage points in accordance with the City's significance thresholds for visual impacts.



---

**COMMENTS**

---

**RESPONSES**

---

63.64 As concluded on page 5.3-18 of the Final EIR, the removal of street trees in the course of developing the site as well as constructing offsite road would not result in a significant visual impact. Additional discussion of the loss of trees is provided in response to comment 10.10. This discussion confirms the lack of significant visual impacts related to the project's effects on street trees, and also describes the applicant's intent to replace impacted trees on a one for one basis.

63.65 Views of the ocean and coastal bluffs do not exist on the project site and, therefore, the visual analysis contained in the Draft EIR did not address potential impacts to these resources.

63.66 Potential impacts associated with proposed parking facilities are discussed on page 5.3-27 in Section 5.3 of the Draft EIR. Proposed on-site parking primarily would be provided in underground garages, which would not be visible from the street level or off-site areas. The proposed above ground parking structure in Block D would be wrapped with adjacent buildings to provide visual screening of the parking structure facades.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 20

63.67 While a lead agency is permitted to determine appropriate significance thresholds, the lead agency is not permitted to ignore the thresholds chosen. The EIR does just that. The City adopted the City's published CEQA Significance Determination Thresholds, which state neighborhood character impacts may be significant if the project would: (i) severely contrast with the existing or planned surrounding neighborhood character; or (ii) exceeds the allowable height or bulk of the existing patterns of development in the vicinity of the project area by a substantial margin.<sup>88</sup> Under these thresholds standards, the Project clearly creates a significant impact. The Project will be a stark contrast to existing and planned surrounding neighborhood character in both density and height. It exceeds the allowable bulk regulations as well as the height and bulk of the existing patterns of development in the vicinity of the Project area by 250 to 400 percent. Under any methodology, it should be safe to conclude that the doubling of height and quadrupling of bulk would be substantial. Further, the City's CEQA Significance Determination Thresholds also state that a significance threshold is met when "the project is located in a highly visible area (e.g., on a canyon edge, hilltop or adjacent to an interstate highway) and would strongly contrast with the surrounding development or natural topography through excessive height, bulk, signage, or architectural projections."<sup>89</sup> The EIR has made a point of the high visibility of this location as a justification for the intensification. This significance threshold indicates that it is especially important due to the visibility to avoid strong contrast with the surrounding development through excessive height and bulk. Therefore, the logical conclusion is that the height and bulk of the proposed Project is a significant impact.

#### 4. *Inconsistency with Development Patterns*

63.68 The EIR asserts that the Project would be consistent with the broad pattern of development in Carmel Valley with respect to land use types and development patterns.<sup>90</sup> While there are similar land uses in the surrounding properties, the Project is not consistent with the broad development in Carmel Valley with respect to development patterns. The intensity, bulk and height are all substantially higher than any existing pattern of development. To be an informative document, the EIR should identify: (i) land area north of Del Mar Heights Road that equates to 608 residential units; (ii) land area to a similar commercial development of 220,000 square feet of commercial development and 50,000 square feet cinema;<sup>91</sup> (iii) land area to accommodate a similar on 150-room hotel; (iv) land area for a similar 536,000 square feet of office use at an FAR of 0.5. The EIR should also identify the total land area associated with current development patterns in this area and analyze how it compares to the proposed development pattern of Project.

63.69 Moreover, the EIR claims that the retail proposed by the Project is merely an organic growth of nearby retail located near the eastern portion of the Project site along Market Plaza

<sup>88</sup> *Id.*

<sup>89</sup> City of San Diego CEQA Significance Determination Thresholds, 2(d).

<sup>90</sup> EIR, at p. 5.3-19

<sup>91</sup> Approximately the size of the Del Mar Highlands Town Center on approximately thirty acres of land.

63.67 The Final EIR, in Sections 5.3.3 and 12.9, recognize that the Originally Proposed Project and the Revised Project would result in significant impacts to the neighborhood character of the area. The EIR concludes that the project site is at a visually prominent location and the proposed buildings would, despite project design strategies to minimize apparent height and mass of the structures, substantially contrast with portions of the surrounding development in the community.

63.68 For analytical purposes, the Draft EIR evaluated potential community character impacts of both the immediate visual setting of the project site and the Carmel Valley community as a whole, and considers numerous factors that comprise community character. Among these factors is the development pattern in terms of land use types and location of uses. The "broad pattern of development," as identified in the Draft EIR, refers to the types of land uses, their location, and how they are configured within the entire Carmel Valley community. As discussed in response to comment 63.60, the Originally Proposed Project and the Revised Project would be compatible with the overall broad development pattern of Carmel Valley because they would include land uses that already exist in Carmel Valley, and mirror surrounding land uses. Sections 5.3.3 and 12.9 of the Final EIR recognize that the Originally Proposed Project and the Revised Project would result in significant impacts to the neighborhood character of the area because proposed buildings would substantially contrast with portions of the immediately surrounding development in terms of building height and bulk, despite the presence of buildings with comparable heights in the broader Carmel Valley community. Identifying land areas associated with other forms of development diversity are relevant to the analysis or conclusion reached in the Draft EIR.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 21

- 63.69 cont. and Market Street, directly across from the Del Mar Highlands Town Center.<sup>92</sup> The EIR should accurately disclose that Market Street and Market Plaza are hidden behind an eight-story office building and that the vehicle connection to Del Mar Highlands Town Center actually is between two high office buildings. Therefore, the Project is not an extension of the retail to the east.
- 63.70 According to the EIR, the Project is compatible with surrounding uses because the Project is intended to serve as "in-fill development" and "would not introduce a new land use."<sup>93</sup> This statement is grossly misleading for two reasons. First, Carmel Valley has no other mixed-use infill, and this Project, if truly infill, would be the first of its kind. Second, if the Project were compatible, than the Applicant would not need to propose a completely new land use designation, CVPD-MUC.
- 63.71 The EIR contains a number of misleading and inaccurate statements, especially related to bulk and scale. These misstatements result in an incorrect visual impact analysis. First, the EIR states that the Project site was identified as a Town Center smart growth area on the SANDAG's Smart Growth Concept Map ("SGCM"), yet the text associated with the map discusses Del Mar Highlands Town Center as the future town center of Carmel Valley.<sup>94</sup>
- 63.72 Second, the EIR claims that current CVPD-EC zone for the Project site does not specify a maximum structure height limit. This is misleading because the 0.5 FAR regulated a trade-off that is intended to achieve less lot coverage with greater height or greater lot coverage with less height, but not both greater lot coverage and greater height, as the Project proposes. Therefore, height limits are not intended for lots with low FARs. Importantly, the other commercial zones do have height limits, and Carmel Valley limits the height of multi-family to 50 feet or four stories, not 159 feet as proposed in the Project. The Town Center commercial zone is limited to 45 feet based on the CC-1-3 zone prescribed in the PDO. If the mixed use Town Center zone from the PDO is used, the height limit would be 45 feet, not 199 feet as proposed.
- 63.73 Third, the EIR conjectures that the lack of a height limit at the Project site "indicates that varying scales were to be expected."<sup>95</sup> There is no basis for this statement, and it is just as likely could show that the planners expected only low height development. What is certain is that the combination of low FAR with no height limit would not allow the out-of-character Project currently proposed. Fourth, the EIR states that because El Camino Real is primarily a commercial corridor, the proposed height of the office buildings is not inconsistent with the character of the community.<sup>96</sup> There is no substantial evidence supporting this conclusion. To
- 63.74 be informational, the EIR should also note that the Precise Plan established height restrictions for residential MF-1 and MF-3 as well as for the Town Center commercial zone. The Project would exceed both of those height restrictions.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 5.3-20.

<sup>94</sup> *Id.* at 5.3-21.

<sup>95</sup> *Id.* at 5.3-22.

<sup>96</sup> *Id.*

- 63.69 Market Street and Market Plaza would not be "hidden" behind proposed office buildings associated with both the Originally Proposed Project and the Revised Project. Market Street would extend from the existing intersection of El Camino Real and the Del Mar Highlands Town Center. Proposed on-site structures along Market Street would be an office building and a large plaza on the southwest side and a smaller retail building on the northeast side. Market Plaza would extend from Market Street and would provide access to two smaller retail buildings and a retail/residential building in the northeast portion of the site. As discussed in response to comment 63.51, the proposed development would be compatible with the existing retail uses across the street within the Del Mar Highlands Town Center.
- 63.70 The proposed development would be considered infill development because the project site is surrounded by existing development on all sides. As previously discussed in response to comment 10.125, Figure LU-4 of the General Plan designates Carmel Valley as an urbanized community, and the community is virtually built out. CVPD-MUC is not a new land use designation proposed for the Community Plan as indicated in the comment; rather, it is proposed as a zoning classification, although the proposed zone is CVPD-MC. As discussed in detail in Sections 5.1 and 5.3.3 of the Draft EIR, the proposed mix of uses is different from the predominantly single-use structures immediately surrounding the project site. Different specific combinations of uses do not represent a severe contrast with surrounding uses, as all of the proposed uses exist in some form throughout Carmel Valley and in the immediate vicinity of the project site. The exception would have been the hotel, which was previously proposed as part of the Originally Proposed Project, but is no longer proposed as part of the Revised Project. While the Originally Proposed Project would be compatible with surrounding uses in terms of land use types, the Draft EIR concluded that the Originally Proposed Project would be sufficiently different in bulk and scale from the surrounding uses to warrant a conclusion of a significant, unmitigated impact on neighborhood character. Similarly, Section 12.9 of the Final EIR reaches the same conclusion with respect to the Revised Project.



63.71 The Draft EIR accurately identified the project site as a Smart Growth area designated by the San Diego Association of Governments (SANDAG). SANDAG's Smart Growth Concept Map, North City and North County Subregion (dated January 27, 2012) clearly identifies the project site as part of the Existing/Planned SD CV-1 Town Center. As pictured below, the project site comprises the western portion of SD CV-1. The full map can be viewed at: [http://www.sandag.org/uploads/projectid/projectid\\_296\\_13996.pdf](http://www.sandag.org/uploads/projectid/projectid_296_13996.pdf).



The corresponding Smart Growth Concept Map Site Descriptions (dated January 27, 2012) describes the location of SD CV-1 Town Center on page 41 as the “General area around intersection of El Camino Real and Del Mar Heights Road.” The description notes that although the Community Plan designates the Del Mar Highlands shopping center as the commercial component of the town center, the “surrounding area also includes high-density housing, employment uses, and community facilities that comprise the core of the community.” The Smart Growth Concept Map Site Descriptions can be accessed at: [http://www.sandag.org/uploads/projectid/projectid\\_296\\_14002.pdf](http://www.sandag.org/uploads/projectid/projectid_296_14002.pdf).

63.72 The statement in the Draft EIR regarding the current absence of a zoning height limit for the project site is correct. Refer to response to comment 10.135 regarding existing building height limitations for the project site and FAR. It is speculative for the comment to imply that a trade-off with the FAR has been made and that height limits are not

COMMENTS

RESPONSES

63.72 intended for lots with low FARs. Other areas in the Employment Center cont. with same 0.5 FAR have height limitations (including the east side of El Camino Real). The intent of Planned District Ordinances is to create special zoning regulations for defined geographic areas that are different from the balance of the City. As an example, The Carmel Valley Planned District Ordinance-Town Center Zone (CVPD-TC), like the proposed CVPD-MC zone, was established for specific purposes and departs from the city-wide code. The use and regulatory standards of the CVPD-TC zone and the other zones cited in the comment are not applicable to the project site.

63.73 The Draft EIR did not claim that the lack of a codified building height limit for the project site means that planners expected buildings at varying scales. The Draft EIR disclosed the fact that there are different building height limitations for properties on the east and west side of El Camino Real. Because of the current zone classifications, buildings developed along this roadway would likely be of varying heights, which is in fact the case.

Regarding the comment about the “out-of-character project,” the Final EIR, in Sections 5.3.3 and 12.9, recognizes that the Originally Proposed Project and the Revised Project would result in significant impacts to the neighborhood character of the area.

63.74 Within the Employment Center, the El Camino Real corridor is lined with a number of multi-story commercial, office, and industrial/business park buildings ranging between 2 and 12 stories. The addition of two more office buildings along this “commercial corridor” would be compatible with existing development patterns within the community in terms of land use types and variations in building height, even though the height and bulk conflict with some immediately adjacent development, as acknowledged in the Draft EIR. Sections 5.3.3 and 12.9 of the Final EIR acknowledge that the Originally Proposed Project and Revised Project would both result in significant impacts to the neighborhood character of the area.

The height limitations included in the Precise Plan for MF-1, MF-3 and the Town Center zone are not applicable to the project site under either the existing or proposed zoning.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 22

63.75 The EIR also makes misleading statements regarding the Project in order to downplay the stark contrast of the Project and the surrounding area. For example, the EIR points out that two proposed office buildings are located at the lowest elevations of the site in an apparent attempt to minimize the projected height of the buildings.<sup>97</sup> In reality, the 199-foot-high office tower building on El Camino Real is still approximately 160 feet above High Bluff Drive, which is approximately the equivalent of a 110-story residential building (159 feet) on High Bluff Drive. Regardless of the siting of the building, it remains out of character with the surrounding buildings. The EIR also asserts that since El Camino Real is primarily a commercial corridor, the taller office buildings in the Project are consistent with the character of the Community Plan Area.<sup>98</sup> These buildings are twice the height of surrounding buildings and are wholly out of the character anticipated by Community Plan for the low- and medium-story development. Additionally, the grade at the bottom of the office buildings is substantially above the grade of the adjacent roadway. Thus, the buildings will seem even taller and even more out of place. The EIR is internally inconsistent on this point as Figure 5.3.11 shows the residential buildings are still projecting up above the trees and the grade is sloping up to the buildings from the street. Thus, the buildings have greater prominence, not less. Despite topographical differences as well as setbacks, parkways and landscaping, the scale is a significant impact towering above the surrounding developments.

5. *The EIR Miscalculates the Allowable Density and FAR*

63.78 Additionally, the EIR miscalculated the Project's density, resulting in an understatement of its true visual impacts. The Project's methodology for calculating residential density understates the actual residential density of the Project. For example, the EIR asserts that, based on the 23.6-acre Project site, a maximum of 685 dwelling units is allowed, and the Project proposes a maximum of 608 residences.<sup>99</sup> The proposed zoning would allow 29 dwelling units per acre and the project proposes a density of 26 dwelling units per acre. However, the project's gross site area was used in calculating the dwelling units per acre (23.6 acres x 26 dwelling units per acre) to justify 608 dwelling units. The gross site area included 1.485 acres that is being dedicated for road widening to mitigate the impacts of the Project. Additionally, 2.81 acres of private streets (not including the sidewalks) are also included in the gross site area. Per Land Development Code Section 143.0410 (b)(4) Density and Intensity, "the areas of the premises that are designated for public or private streets may not be utilized in the calculations of maximum density." Therefore the net site area for calculating density is 19.385 acres. This 19.385 acres x 26 dwelling units per acre would allow 204 dwelling units. The maximum density of the Project (29 dwelling units per acre) would allow 562 dwelling units which is still almost 10 percent less than what the Project proposes.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Id.* at 5.3-33.

63.75 The Draft EIR did not contain misleading statements about the heights of the proposed office buildings. It is true that the proposed office buildings would be constructed at the lowest elevations of the site. Sections 5.3.3 and 12.9 of the Final EIR, also recognize that the Originally Proposed Project and the Revised Project would result in significant impacts to the neighborhood character of the area. The Final EIR concludes that the proposed buildings would, despite project design strategies to minimize apparent height and mass of the structures, substantially contrast with portions of the surrounding development in the community.

63.76 As discussed in responses to comment 63.60 and 63.74, the visual analysis evaluates the immediate visual setting of the project site and the Carmel Valley community as a whole. The portion of El Camino Real within the project area is lined with commercial office and industrial/business park uses. The addition of two more office buildings along this "commercial corridor" would be compatible with existing development patterns within the community in terms of land use types. The Final EIR acknowledges in Sections 5.3.3 and 12.9 that the Originally Proposed Project and Revised Project would both result in significant impacts to the neighborhood character of the area.

63.77 The elevation of the ground floor of the office buildings would be slightly higher than El Camino Real, as conceptually shown in Figure 5.3-8 of the Final EIR. The Final EIR concludes that the proposed buildings with either the Originally Proposed Project or Revised Project would, despite project design strategies to minimize apparent height and mass of the structures, substantially contrast with portions of the surrounding development in the community.

63.78 The Community Village land use designation of the General Plan proposed for the project site permits a maximum residential density of 70 dwelling units per acre. The Municipal Code section cited in this comment is only applicable for projects that request a Planned Development Permit. However, neither the Originally Proposed Project nor Revised Project would require this discretionary permit.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 23

63.79 The Project's approach fails to factor in that approximately half of the building area of the Project is not being used for residential. The calculation is based as if the total site was supporting just residential and not proportionate to the site area that residential is occupying. The site area that includes the office building, cinema, hotel and parking structure should not be used to calculate residential density when there is no residential occupying that area. Second, 63.80 the office area of 536,000 square feet exceeds the FAR of 0.5 based on using the entire site for the calculations. The Project incorrectly treats each of the uses as if the allowable intensity of each should be allowed combined onto the same site. It is evident from properly calculating the densities that the Applicant has not determined a suitable site for this Project. Notably, the Project site is one third smaller than the Del Mar Highlands Town Center but proposes to include a commercial component of the same size as the Del Mar Highlands Town Center, plus 63.81 a 536,000 square feet office complex as originally envisioned to occupy the entire site, plus a 150-room hotel and 608 residential units. Part of identifying a suitable site is identifying one that is big enough to accommodate the intensity in a development pattern that is consistent with the existing development pattern. One purpose of a Community Plan is to help the applicant select such sites.

63.82 Further, the Project proposes to use the site area allocated for only office and hotel development to justify the density of the Project. The site area including common area associated with the residential development retail is approximately 395,704 square feet or 9.08 acres. Utilizing the maximum density under the new proposed zoning (29 DU/acre), only 263 dwelling units would be allowed which is almost 57 percent less than what is proposed. Clearly, even with this proposed high density development, the Project has overstated the number of units that should be allowed.

63.83 Similar to the density analysis, the Project utilizes gross site area of 23.6 acres to justify the FAR of the Project. The methodology claims that the gross leasable area (1,857,400 square feet) divided by the gross site area (23.6 acres or 1,031,500 square feet), equals a FAR of 1.8. First, the Project uses gross leasable area instead of gross floor area as required in the land development code. The reason for utilizing gross floor area is to regulate the bulk and scale of the building. Gross leasable area would understate the impact of the bulk and scale of the buildings. Further, by basing the FAR on gross site area, the Project is allowed additional floor area for the public and private streets that are being dedicated and created which is contrary to the methodology in the land development code. The 1,857,400 square feet is a reduction of 337,460 square feet, or 18 percent less.

63.84 The 10-story office tower (291,000 square feet without ground floor retail) sits on a 38,861 square foot lot which creates a FAR of over 10 without factoring in the bulk and scale impact of the two levels of exposed parking structure or the 15-foot high roof parapet, which creates another story of impact. Even when considering all of the common lot area and surrounding development of Phase 1, it exceeds the 1.8 FAR claimed in the EIR.

63.78 The comment incorrectly calculates residential density for the Originally cont. Proposed Project. The City of San Diego Municipal Code includes several different methods of calculating residential densities. The proposed CVPD-MC zone includes language which is based on Municipal Code Section 143.0410(b)(1), which allows the number of dwelling units or total gross floor area to be based on the entire premises and distributed without regard to lot lines.

63.79 The Originally Proposed Project and the Revised Project would include a zone change because the existing development regulations (including FAR) were designed for business parks rather than mixed-use communities. As discussed in response to comment 63.62, both the Originally Proposed Project and Revised Project are within the maximum FAR standards established by the proposed CVPD-MC zone. The comment miscalculates densities for the project site as if distinct multiple zones rather than a single zone are being proposed. The proposed CVPD-MC zone provides a method for calculating FAR and residential densities that is based on the gross site acreage, and calculations provided for Originally Proposed Project and Revised Project conform with that method.

63.80 Floor area ratios were calculated in accordance with the regulations contained in Municipal Code Section 113.0234 (Rules for Calculation and Measurement for Gross Floor Area), and as stated in response to comment 63.78, the proposed CVPD-MC zone includes language which is based on Municipal Code Section 143.0410(b)(1), which allows the number of dwelling units or total gross floor area to be based on the entire premises and distributed without regard to lot lines.

63.81 As discussed in responses to comments 63.78 and 63.80, densities and FARs were correctly calculated in accordance with specified methods provided in the City's Municipal Code.

Contrary to the comment, the project site is suitable for either the Originally Proposed Project or Revised Project. The proposed development would provide a vertically integrated village center on a vacant developed site identified in the General Plan as having moderate village potential and at a visually prominent location within the community at a confluence of land uses, all of which would be incorporated and contiguous with proposed on-site uses. As discussed in response to comment 63.68, the Originally Proposed Project and the Revised Project would be consistent with the existing broad pattern of development within Carmel Valley. Sections 5.3.3 and 12.9 of the Final EIR, recognize that the Originally

---

**COMMENTS**

---

**RESPONSES**

---

63.81 Proposed Project and the Revised Project would result in significant cont. impacts to the neighborhood character of the area because proposed buildings would substantially contrast with portions of the immediately surrounding development in terms of building height and bulk, despite the presence of buildings with comparable heights in the broader Carmel Valley community.

63.82 Refer to response to comment 63.78 regarding calculation of residential density.

63.83 As stated in response to comment 63.80, FARs were calculated in accordance with the regulations contained in Municipal Code Section 113.0234 (Rules for Calculation and Measurement for Gross Floor Area) rather than gross leasable areas. The floor area that has been used for calculating FAR is greater than the gross leasable area.

63.84 As discussed in responses to comment 63.80, FARs were correctly calculated in accordance with a specified method provided in the City's Municipal Code.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 24

6. *Visual Analysis*

The Visual Analysis segment of this section also contains a number of inconsistencies and inaccurate statements. The EIR continues to minimize the impacts associated with the increased bulk and scale by asserting that the development footprint of the office buildings would be similar to the existing office buildings within the Community Plan Area.<sup>100</sup> The footprint might be the same, but the height is not. If the development footprint of the office building is the same and the other sites are also developed at a FAR of 0.5 without the same height, then the Project would have a complex of lower office buildings with the same footprint. Thus, to maintain the same development pattern as the surrounding office projects, the Project would have to sacrifice part of the other uses. The EIR also claims *the residential building would have a smaller footprint than the other three residential buildings, but would be taller with ten stories.*<sup>101</sup> Despite its smaller footprint, the residential tower footprint is larger than the individual buildings in the surrounding area and is at least five times taller.

7. *Inadequate Impact and Mitigation Measures Analysis*

Despite admitting the Project entails significant visual impacts,<sup>102</sup> the EIR contains an inaccurate impact and mitigation assessment for a myriad of reasons. First, the EIR issues a conclusory statement that the Project site is not visible from I-5.<sup>103</sup> However, the Project's tall buildings will be; thus, the Visual section should analyze impacts to views from I-5. Second, the EIR concludes that there is no feasible mitigation to reduce community character impacts to below a level of significance,<sup>104</sup> but the EIR fails to provide any evidence for why it cannot simply maintain a mixed-use project at a lower density with a lower height that would be consistent with the area's community character. The EIR must provide substantial evidence that there are no feasible mitigation measures or alternatives. Further, the City has an obligation to impose all feasible mitigation measures to reduce the impact even if it is not possible to reduce the impacts to below a level of significance.

Third, the EIR concludes: "design considerations would provide for an organized and visually compatible development that would not create a disorganized visual appearance. Associated visual impacts would be less than significant."<sup>105</sup> However, the EIR fails to explain how the architectural interest of the buildings as viewed by the surrounding area mitigates the significant negative visual appearance of the height, bulk, or coverage regulations which all exceed the zoning regulations as currently applied to this property. Fourth, the assertion that

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 5.3-30.

<sup>103</sup> *Id.* at 5.3-29.

<sup>104</sup> *Id.* at 5.3-30.

<sup>105</sup> *Id.* at 5.3-31.

63.85 The analysis in the Final EIR does not rely on the building footprints for its conclusions regarding neighborhood character. Rather, as the comment suggests, the analysis of neighborhood character was largely based on building heights and the overall bulk and scale. As the comment does not identify any specific inconsistencies or inaccuracies in the analysis of visual quality, no specific response can be offered.

63.86 The project site is located approximately 0.25 mile east of I-5. Given this distance and existing intervening topography, vegetation, and buildings, direct views of the project site in its existing condition do not exist from I-5. Along Del Mar Heights Road, there is an approximate 55-foot grade change between I-5 and El Camino Real as it peaks at the intersection with High Bluff Drive and then slopes down to a low point near the El Camino Real intersection.

The Draft EIR did not claim that views of proposed on-site buildings would not be visible from I-5. Upon implementation of the project, proposed on-site buildings would represent new vertical elements within the viewshed. Upper stories of proposed buildings would likely be visible from certain vantage points along I-5. However, the buildings would not be in the foreground view and would have a short duration. For these reasons, I-5 was not selected as one of the public viewpoints evaluated in Section 5.3 of the Draft EIR. The viewpoints that were analyzed represent those in the immediate area of the project site that would experience a more noticeable change in the visual environment resulting from the project.

63.87 As stated in Sections 5.3 and 12.9 of the Final EIR, there is no feasible mitigation to reduce the development's neighborhood character impacts to below a level of significance. The proposed buildings would incorporate design features and strategies to minimize mass and height, such as building articulation and setbacks, but the height of the buildings would still be sufficiently greater than, and different from, existing surrounding development.



COMMENTS

RESPONSES

63.87 Section 12 of the Final EIR identifies and evaluates project alternatives intended to reduce or avoid significant impacts of the Originally Proposed Project, including the identified significant neighborhood character impact. The Final EIR evaluates the following project alternatives:

- No Project: No Development Alternative;
- No Project: Employment Center;
- Commercial Only Alternative;
- Medical Office/Senior Housing Alternative;
- Reduced Main Street Alternative;
- Reduced-Mixed-use Alternative; and
- Specialty Food Market Retail Alternatives.

The only alternatives evaluated in the Final EIR that would avoid the project significant neighborhood character impact are the No Development/Employment Center Alternative, which entails 510,000 square feet of office uses and parking, and the Specialty Food Market Retail Alternative, which consists of 60,000 square feet of retail.

Although the Reduced Main Street and Reduced Mixed-use Alternatives would reduce the neighborhood character impacts associated with the Originally Proposed Project, the bulk and scale of the buildings would still result in a significant neighborhood character impact. Additional reductions in intensity would be required to reduce the neighborhood character impacts of a mixed-use alternative to below a level of significance. As the Reduced Mixed-use Alternative is considered infeasible, any further reduction in density necessary to avoid a significant neighborhood character impact would be considered infeasible.

No mitigation measures exist which would avoid the neighborhood character impacts other than substantially reducing intensity of the development which, as discussed earlier, is considered infeasible. Refer to Final EIR Sections 12.10 for further details.

63.88 As a review of the significance thresholds applicable to the discussion of Issue 3 of Section 5.3 indicates, there are a variety of disparate individual thresholds which are used to evaluate the visual character impacts of the project. These thresholds, however, are generally related to either impacts to neighborhood character or visual quality.

The visual quality thresholds generally relate to the potential for the development to impact scenic attributes of the property or block views of scenic resources within the project area. The Draft EIR appropriately

---

**COMMENTS**

---

**RESPONSES**

---

63.88 concluded that a graded property in the middle of a developed area does not possess any scenic attributes that would be significantly impacted by the proposed development. Similarly, it appropriately concludes that the proposed development would not block views of scenic resources from surrounding development. Lastly, the statement that the proposed architectural and landscape features would avoid degrading the visual quality of the area is considered valid. Thus, the EIR appropriately concludes that the project would not have a significant visual quality impact.

However, unlike visual quality, the Draft EIR clearly concluded that the bulk and scale of the Originally Proposed Project would result in a significant impact on the neighborhood character. Similarly, Section 12.9 of the Final EIR reaches the same conclusion with respect to the Revised Project.

## SheppardMullin

Martha Blake  
May 29, 2012  
Page 25

63.89 because the Project includes a range of design features to minimize the perceived bulk and scale of the proposed structures, to respond to and harmonize it with adjacent development, and to provide visual interest from on-site and off-site viewsheds, this impact would be less than significant is internally contradicted by Figures 5.3-8 through 5.3-11.<sup>106</sup> The Figures demonstrate that an attempt has been made to use street trees to hide the five-story residential buildings along Del Mar Heights Road, while the eight- and 10-story office buildings and residential towers are not hidden from view. These structures have not been harmonized with adjacent development to less than significant levels. Lastly, the EIR does not analyze whether residents of the Project would be affected by the existing light and glare generated by the surrounding properties, or light and glare of the on-site commercial and retail uses.

### D. Land Use

CEQA requires an EIR to discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans.<sup>107</sup> An "applicable" plan is a plan that has already been adopted and thus legally applies to a project.<sup>108</sup> Thus, the Project EIR must adequately and sufficiently address inconsistency with the San Diego General Plan, Community Plan, Precise Plan and Comprehensive Regional Plan.

Courts have affirmed that, "[a]n action, program, or project is consistent with the [applicable] plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment."<sup>109</sup> Under this rule, the Project is inconsistent with all applicable plans. Despite this, the EIR fails to identify these inconsistencies, as required by law, on a number of occasions.

63.91 Such inconsistencies are not automatically mitigated through General Plan and Community Plan amendments because state law still requires that "the general plan and elements and parts thereof comprise an integrated, internally consistent and compatible statement of policies for the adopting agency."<sup>110</sup> Therefore, an amendment to a land use plan that creates an internal inconsistency is not legally valid. In *Families Unafraid to Uphold Rural El Dorado County (FUTURE) v. Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, the court invalidated the approval of a residential subdivision project and general plan land use designation amendment because the proposed land use designation was inconsistent with *other portions of the land use element* that allowed for use of the designated land use category only when the land was adjacent to land designated for certain other land use categories.<sup>111</sup> The

<sup>106</sup> *Id.* at 5.3-33.

<sup>107</sup> Guidelines § 15125(d).

<sup>108</sup> *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145 n2.

<sup>109</sup> *Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 817.

<sup>110</sup> Govt. Code § 65300.5.

<sup>111</sup> See also, *Hernandez v. City of Encinitas* (1994) 28 Cal.App.4th 1048, 1071; *Concerned Citizens of Calaveras County v. Bd. of Supervisors* (1985) 166 Cal.App.3d 90, 103.

63.89 This comment misinterprets the conclusion of the Draft EIR. As indicated in response to comment 63.88, the Draft EIR clearly concluded that the Originally Proposed Project would result in a significant impact on neighborhood character.

63.90 The City's Significance Determination Thresholds regarding light and glare focus on potential light and glare effects caused by a project on adjacent properties or the nighttime sky. In accordance with the City's thresholds, Section 5.3.5 of the Draft EIR evaluated the potential for proposed on-site sources to cause light and/or glare effects on off-site light-sensitive uses. Analysis of the converse is not required per the City's impact thresholds. As a result, existing light and glare sources associated with off-site properties need not be evaluated for potential impacts to proposed on-site uses. The City's thresholds also do not address light and glare effects of a project to on-site uses proposed by that project. Therefore, the Draft EIR did not evaluate these two conditions. Nonetheless, it is anticipated that future on-site residents would not be significantly impacted by existing off-site light sources or project lighting based on compliance with the City's Outdoor Lighting Regulations. As stated in Section 5.3.5 of the Draft EIR, proposed outdoor lighting would be in compliance with the City's lighting regulations (per Section 142.0740 in the Municipal Code) and would not emit substantial amounts of ambient light. Similarly, adjacent properties are subject to compliance with the same City lighting regulations that place limitations on illumination of outdoor lighting. Consequently, future on-site residents would not be exposed to substantial light that would cause a significant impact.

Glare effects are also regulated via compliance with City regulations, namely the City's glare regulations enumerated in Section 142.0370(a) of the Municipal Code. As stated in Section 5.3.5 of the Final EIR, the Originally Proposed Project would not result in substantial glare effects to on-site residents because proposed building facades would meet light reflectivity factor requirements of the City's glare regulations.



63.91 The comment incorrectly identifies the Originally Proposed Project as designating an “Urban Village Center” on the project site. As described in response to comment 63.56, the Originally Proposed Project does not meet the criteria for an Urban Village. Refer to updated information contained in Section 5.1.2 of Final EIR. The Revised Project, due to its lower development intensity, also would not qualify as an Urban Village. As stated on pages 3-13 and -14 of the Draft EIR, the Originally Proposed Project would amend the Carmel Valley Community Plan and the General Plan to designate the Project site a mixed-use “Community Village,” allowing a mix and intensity of uses consistent with that designation. A rezone would designate the Project site “Carmel Valley Planned District-Mixed-use Center,” which allows a diversity of uses including commercial retail, office, and residential uses, consistent with a Community Village development.

FUTURE v. Board of Supervisors (1990) 62 Cal.App4th 1332, which is cited in the comment is inapposite. As described by the comment, the facts of that case are simply different from the facts that exist here. First, as described above, the project applicant is proposing a Community Village designation, consistent with specific planning directives for the project site. As described on page 5.1-17 of the Draft EIR, the City Planning Commission unanimously directed City staff to evaluate a mixed-use development at the project site. As discussed in detail in responses to comments 10.40 and 75.10, this action is consistent with the City of Villages strategy to focus growth into mixed-use activity centers or villages. As also described in the response to comment 10.40, the General Plan sets forth certain criteria for village sites, and the project site meets those criteria. In fact, as discussed in Section 5.1 of the Draft EIR, General Plan Figure LU-1 (Village Propensity Map) identified the project site as having “moderate” village propensity, and village sites anticipate an intensification of land uses in such sites. No similar factors were true for the development in FUTURE. Rather, in that case, the zoning proposed was allowed only under very specific circumstances that were not met. Here, the Originally Proposed Project and Revised Project would develop the site consistent with the intent of the City’s chosen planning strategy. Refer to updated information contained in Section 5.1.2 of Final EIR.

Thus, the approval of these land use plan amendments sought in this situation would bring the Originally Proposed Project and the Revised Project into conformance with existing long-range planning documents. Section 5.1, Land Use (see Table 5.1-1 on pages 5.1-35 to 5.1-140 of the Draft EIR), contains a comprehensive analysis of the relationship

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 26

63.91  
cont.

Project EIR suffers the same legal flaw because amending the General Plan and Community Plan to designate an Urban Village Center in a suburban area intended for a Community Village Center generates several inconsistencies with other elements of these plans.

Additionally, the EIR is fatally flawed in a number of other regards. The following discussion regarding the numerous fatal flaws in the Land Use section of the EIR is broken down into various components in order to provide some clarity.

1. *General Plan Inconsistency*

A city's general plan acts "as a 'constitution,' or perhaps more accurately a charter for future development."<sup>112</sup> Any decision by a city affecting land use and development must be consistent with the general plan.<sup>113</sup> The EIR at Table 5.1-1 contains 105 pages of analysis summarizing why the City believes the Project is consistent with the General Plan. The City does not identify a single inconsistency with any policy of any applicable land use plan. However, because the purpose of CEQA is to be an accurate informational document for the public and the City's decision-makers, CEQA states, "The EIR shall discuss any *inconsistencies* between the proposed project and applicable general plans..."<sup>114</sup>

The Project is inconsistent with the General Plan on a significant number of land use elements. For example, the General Plan Land Use Policy LU A-2, which states, "[i]dentify sites suitable for mixed-use village development that will *complement the existing community fabric or help achieve desired community character*, with input from recognized community planning groups and the general public."<sup>115</sup> Additionally, the City correctly states that the Project was identified in the General Plan as having moderate village propensity but incorrectly identifies the Project as a "community village" instead of an "Urban Village."<sup>116</sup> There are several issues associated with this designation, and the Project is an "Urban Village" for a number of reasons.

First, the General Plan City of Villages defines "village centers" as community- and neighborhood-oriented areas with local commercial, office and multi-family residential uses, including some structures with office or residential space above commercial space. Village centers are to contain public gathering spaces and/or civic uses. Uses will be integrated to the maximum extent possible in order to encourage a pedestrian-oriented design and encourage transit ridership. The mixed-use village as established by the existing Precise Plan and Community Plan<sup>117</sup> establishes a "community village" of approximately 100 acres that is

63.91 of the Originally Proposed Project to the overall goal and objectives of cont. the Carmel Valley Community Plan to determine the project's overall consistency with the Community Plan. Consistency discussions regarding the General Plan and the Employment Center Precise Plan are provided in same table. Also, as discussed on pages 5.1-15 to -18 of the Draft EIR, the proposed development would remain consistent overall with the planning documents governing development in Carmel Valley. As stated on page 5.1-17 of the Draft EIR, the Originally Proposed Project, would include some uses that are not consistent with the Employment Center designation. The same is true for the Revised Project, however, both versions of the project would still provide employment center uses, including 510,000 square feet of commercial office uses, maintaining the function of the existing designation.

63.92 As discussed in Table 5.1-1 and Section 12.9 of the Final EIR, both the Originally Proposed Project and Revised Project would be consistent with Land Use and Community Planning Policy LU-A.2 because the property would be developed as a mixed-use community village on a site identified in the General Plan as having moderate village potential with uses that would complement the community fabric. Proposed uses would mirror adjacent surrounding uses, and the Main Street component and public plazas would provide gathering places and pedestrian spaces at a strategic and transitional locale within the community.

The definition of a "village" is contained in the City of Villages section within the Land Use and Community Plan Element of the General Plan and reiterated in Section 5.1, Land Use, of the Draft EIR. Quoting verbatim from the General Plan, a village is defined as "the mixed-use heart of a community where residential, commercial, employment, and civic uses are all present and integrated." The General Plan also describes several village types and identifies characteristics for each type. The comment asserts that the project site is an "Urban Village Center"; however, it does not meet the characteristics of an Urban Village Center, which are in "higher density areas located in subregional employment districts. They are characterized by a cluster of more intensive employment, residential, regional, and subregional commercial uses that maximize walkability

<sup>112</sup> *Leshner Commc'n Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.

<sup>113</sup> *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 570-71.

<sup>114</sup> Guidelines § 15125(d) (emphasis added).

<sup>115</sup> Emphasis added.

<sup>116</sup> EIR, at p. 5.1-15.

<sup>117</sup> As reflected in the SANDAG Smart Growth Concept Map.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 27

community-oriented in function and scale while providing a significant employment component. The Precise Plan established a Town Center Zone that allows residential or office above the ground floor commercial. As stated in the EIR, the Del Mar Highlands Town Center provides public gathering places in the plazas people areas while civic functions such as the library, school and park are along Townsgate Drive. Multi-family residential projects of various densities are established north of Del Mar Heights Road. Office employment centers are established west of El Camino Real. In the alternative, "Urban Village" are higher-density/intensity areas located in subregional employment districts. They are characterized by a cluster of more intensive employment, residential, regional and subregional commercial uses that maximize walkability and support transit. Carmel Valley is neither a subregional employment district nor an Urban Village area of the City.

Given these definitions, "community village" is not the proper designation for this Project, as the Project proposes higher density residential than exists in the surrounding area of the community. The PDO includes the following Floor Area Ratio ("FAR") maximums: Visitor Commercial (2.0), Mixed-Use (commercial with residential bonus) (1.5), Multi-family Residential (0.75), Commercial (0.75) and Employment Center (0.5). As evidenced, the FAR for the Project substantially exceeds the 0.5 FAR based on the net acreage allocated to the office buildings. More accurately, the density/intensity of the Project with its proposed FAR of 1.8 is over three times the FAR of any surrounding property. The intensification is consolidated onto 23.6 acres of land reflective of the density of an "urban village" rather than the 100 acres described in the definition of a "community village." The Project is clearly a significant intensification that represents the General Plan's City of Villages Strategy definition for an "urban village" rather than the "community village" that it claims to be. The Project's proposed zone (CVPD-MC) has a maximum FAR of 2.0. The proposed Project would have a maximum FAR of 1.80 as calculated in accordance with the land development code. Therefore, the proposed maximum FAR of 2.0 with an actual FAR of 1.8 exceeds a proportionate FAR for the mix of uses. Visitor Commercial is located at the perimeter of the community near the freeway and, thus, its bulk and scale impact has less impact on the community. Even if there was a proportionate allocation of the FAR by land use allowances and applied the mixed-use bonus at 50 percent commercial and 50 percent residential, the resultant FAR would be less than one, assuming arguing that hotels are an appropriate use outside the Visitor Commercial and away from freeways.

Second, the Precise Plan created the Town Center zone based on the CC-1-3 zone which allows a mixed-used village with commercial, office, residential and civic facilities. The Project based the regulations on CC-5-5 which is intended for "a mix of heavy commercial and limited industrial uses and residential uses"<sup>118</sup> in a "high intensity" development instead of the CC-1-3 zone that the Precise Plan Town Center Zone was based on. The CC-1-3 zone was intended to "allow a mix of community-serving commercial uses and residential uses."<sup>119</sup> The

<sup>118</sup> LDC, Purpose of the CC-zone

<sup>119</sup> LDC, Purpose of the CC-zone

63.92 and support transit." The project site is not located within a higher density area within a subregional employment district (the General Plan identifies these as Mission Valley/Morena/Grantville and University/Sorrento Mesa). As discussed in detail in Sections 5.1, and 12.9 of the Final EIR, the Originally Proposed Project and the Revised Project are both consistent with the characteristics of a Community Village, as defined the General Plan.

63.93 Refer to response to comment 63.92 regarding village designations.

Refer to response to comment 63.62 regarding consistency with the FAR regulations of the proposed zone.

63.94 Refer to response to comment 63.62 regarding consistency with the FAR regulations of the proposed zone.

63.95 The Originally Proposed Project and the Revised Project propose the CVPD-MC zone be added to the Carmel Valley PDO. Neither the CC-5-5 zone, nor the CVPD-TC zone applies to the project site. Furthermore, the Del Mar Highlands Town Center lacks the characteristics of a village, as defined in the General Plan.

Refer to response to comment 63.92 for the definition of a village and a discussion of village designations.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 28

63.95  
cont.

Town Center zone CC-1-3 would be more in keeping with a "community village" concept of the General Plan and the CC-5-5 would be more in line with the intensive "urban village" concept.

63.96

Third, the Project site is identified in the EIR as having moderate village propensity in the General Plan.<sup>120</sup> However, the EIR fails to address that fact the Village Propensity Map<sup>121</sup> identifies the Town Center, library, school and park area to the east of the Project site and El Camino Real combined as having high propensity for a village. Therefore, using the assertions contained in the EIR, the core of the mixed-use community village should remain in the location identified in the Community Plan and Precise Plan rather than in an area of moderate propensity to be a village, as proposed by the Project. Lastly, the EIR's claim that the Project would provide a village center unique to the Carmel Valley Community is unsupported because the Project is wholly out of character with the community goals outlined in the City of Villages Strategy. Therefore, its adoption would create an internal inconsistency with the General Plan in violation of Government Code Section 65300.5.

63.97

Furthermore, regardless of how the Project is labeled, the City incorrectly states in Table 5.1-1 that "[t]he project was designed to blend with the character of the community. The proposed uses of the project site are similar to surrounding uses, and have been sited so that the uses mirror adjacent off-site uses." In reality, the Project does not blend with the community character. On page 5.1-13, the EIR states:

63.98

"[t]he project would integrate land uses on a single site and introduce building forms that are characteristic of a village that would be unique and distinctive to Carmel Valley. As discussed above, the implementation of a mix of different uses on one site could result in development patterns that are different from the immediately surrounding environs. Such is the case for the proposed project. While the project would mirror the surrounding land uses, the product type that would be introduced in the neighborhood would differ from existing surrounding development in terms of integration of land uses and density, bulk and scale. Therefore, although the Project would be consistent with General Plan policies and implements the City of Villages strategy with no associated land use impacts, *the project would result in significant impacts related to community character*. Project impacts on community Character are analyzed in detail in Section 5.3, *Visual Effects and Neighborhood Character*."<sup>122</sup>

The aforementioned General Plan Land Use Policy LU-A-2 explicitly makes community character part of the General Plan, not just a visual impact. It requires that the City identify only mixed-used sites that are suitable and will complement and achieve the community character.

<sup>120</sup> *Id.*

<sup>121</sup> General Plan, Figure LU-1.

<sup>122</sup> Emphasis added.

63.96 According to Figure LU-1 in the General Plan, the area across the street from the project site, generally east of El Camino Real and along Townsgate Drive, is identified as having moderate village propensity, as indicated by the yellow and light orange coloration. Areas with high village propensity are indicated in the figure by red. The project proposes to develop a mixed-use village on a vacant site that is identified as having moderate village propensity, which makes it consistent with the General Plan City of Villages concept. Refer to updated information contained in Section 5.1.2 of Final EIR.

63.97 As discussed in Sections 5.1.2 and 12.9 of the Final EIR, the Originally Proposed Project and the Revised Project would provide a village uniquely suited for Carmel Valley. The development would provide centrally located public gathering and pedestrian spaces for the community, as well as residential, retail, and employment uses within a unified development located at a high-activity transitional point within the community. As discussed in Table 5.1-1 and Section 12.9 of the Final EIR, the Originally Proposed Project and the Revised Project would be consistent with applicable City of Villages goals and policies listed in the Land Use and Community Planning Element. Therefore, the project would not create internal inconsistency within the General Plan.

63.98 While Sections 5.1.2 and 12.9 of the Final EIR recognizes that both the Originally Proposed Project and Revised Project would result in significant impacts to the neighborhood character of the area, the proposed mixed-use development would be consistent with Land Use and Community Planning Policy LU-A.2 for the reasons discussed in response to comment 63.92.

The issue of visual effects/neighborhood character is different from land use policy consistency. As is the case here, it is possible for a project to result in a significant neighborhood character impact while remaining consistent with General Plan policies that include the words "neighborhood character" or "community fabric." The project's significant neighborhood character impacts are the result of the



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 29

63.98  
cont.

Amazingly, the EIR Table 5.1-1 extols the virtues of the Project's consistency with Policy LU A-2, contradicting the earlier admission that the project's density, bulk and scale result in significant impacts to community character.

The Project is not consistent with the physical characteristics for a potential village site identified in Land Use Policy LU-A.3 because the EIR: (i) fails to analyze the capacity to expand existing shopping centers; and (ii) the remaining development capacity at the Project site is not based upon the adopted Community Plan. Specifically, Land Use Policy LU-A.3 states, "Identify and evaluate potential village sites considering the following physical characteristics: *Shopping centers, districts, or corridors that could be enhanced or expanded...Areas that have significant remaining development capacity based upon the adopted community plan.*"

63.99

With regards to the shopping center expansion characteristics, the EIR states, "[t]he Project site is located in an area adjacent to the Del Mar Highlands Town Center, a 31.97-acre shopping center. Proposed construction of additional commercial uses on the project site would result in the expansion of this shopping area." The EIR incorrectly interprets Land Use Policy LU-A.3 to mean the commercial uses should be expanded on the Project site, instead of the Del Mar Highlands Town Center site. The EIR land use analysis should to disclose that the City has already issued Del Mar Highland Town Center a permit allowing it to expand to 425,000 square feet of retail commercial (PDP 85-0178). The EIR should disclose that it is inconsistent with Policy LU-A.3 because it proposed expansion is not based upon the adopted Community Plan. It is based upon a proposed amended Community Plan that is out of character with the reduced density Community Village Center identified in the applicable Village Propensity Map and exports its significant unmitigated traffic, visual, land use and other environmental impacts on the rest of Carmel Valley's residential and commercial landowners.

63.100

One of the General Plan's central goals is to encourage transit-oriented development, defined by the City as "conceptual smart growth development alternatives and include elements such as mixed-use buildings, pedestrian-oriented streetscapes, public transit improvements, higher density and compact housing, and multimodal transportation options."<sup>123</sup> In regards to retaining consistency with the General Plan's transit-oriented development goals, the EIR claims that the Project will be responding to transit-oriented and alternative transportation as identified in the goals of the City of Villages Strategy to have mixed-use villages located throughout the City and connected by high quality transit. The claim that the Project incorporates this sort of development is inaccurate. In compliance with the City of Villages Strategy, a mixed-use village must be connected by high-quality transit. The EIR identifies that the 2050 Regional Transportation Plan ("RTP") envisions mass transit to the area in 2035.<sup>124</sup> However, the Project is scheduled to be completed well before 2035, with the first phase to be completed in 2015. There is currently no mass transit present in or near the Project Site as reflected in the EIR, and no guarantee that it will ever come to fruition. Furthermore, the proposed transit will be a single

<sup>123</sup> San Diego Transit-Oriented Development Design Guidelines, October 1992, pg. 3.

<sup>124</sup> EIR, at p. 5.1-12.

63.98 difference in height and scale of the proposed buildings in relation to those in the immediately surrounding properties. This, in and of itself, does not automatically mean that the project is inconsistent with General Plan policies. It should also be noted that the comment inaccurately paraphrases the language of Land Use and Community Planning Policy LU-A.2, which states that sites should be identified for mixed-use village development that will complement the existing community fabric "OR" help achieve desired neighborhood character, with community input, not "AND" as misstated in the comment. Therefore, consistency with this policy is not dependent on a project's ability to achieve the "desired neighborhood character" (regardless of what that is, or by whom it is defined). The intent of the policy is to identify suitable sites for village centers while factoring in the existing community fabric as a whole, not just a specific element that contributes to neighborhood character (such as building height).

63.99 The Draft EIR evaluated development of the project site as a mixed-use village site and, therefore, the General Plan policy consistency evaluation pertains to the project site. The EIR's analysis does not evaluate, and is not required to evaluate, the consistency of the Del Mar Highlands Town Center or other nearby sites. Moreover, the existence of additional development potential at the Del Mar Highlands Town Center does not render it a potential community village. Therefore, no evaluation of potential expansion of the existing shopping center is required in the EIR.

Land Use and Community Planning Policy LU-A.3 provides criteria related to the physical characteristics of a village site under consideration. This policy does not require all of the conditions be met to qualify as a village site and, in fact, it would not be possible for one site to meet all the identified conditions. This is because some of the criteria identify consideration of properties that have already been developed, while others pertain to undeveloped or vacant properties. One criterion specifically states that vacant or underutilized sites (such as the project site) that are outside of open space or community-planned designated residential areas should be considered as potential village sites. The Originally Proposed Project and the Revised Project would meet this

## COMMENTS

## RESPONSES

63.99 criterion and are consistent with Land Use and Community Planning cont. Policy LU-A.3 for the reasons identified in Table 5.1-1 of the EIR.

The Originally Proposed Project or Revised Project would not preclude development of the Del Mar Highlands Town Center, as demonstrated by the updated Retail Market Analysis, which is included as Appendix B.1 in the Final EIR.

Additionally, contrary to the comment, Figure LU-1 (Village Propensity Map) identifies the project site as having moderate village propensity; it does not identify the project site as a “reduced density Community Village Center.”

Refer to updated information contained in Section 5.1.2 of Final EIR.

63.100 As discussed in response to comment 10.40, the City of Villages Strategy in the City’s General Plan does not require that regional transit service be immediately available to proposed village developments. The General Plan states that future transit service is acceptable as long as the planned transit facilities have an identified funding source. The 2050 RTP, the long-range transportation plan for the region, indicates that funding for Bus Route 473, which would serve the Originally Proposed Project, is anticipated to be available by the year 2030. As a result, the development is consistent with the General Plan and there is no significant land use impact.



## SheppardMullin

Martha Blake  
May 29, 2012  
Page 30

regional line, rather than solely serving the immediate community. Further, if the mixed-used village designation relies on proximity to transit and transit is not scheduled in the RTP until 2035, then there will be a significant, temporary, land-use impact for 20 years until transit is provided, if it is ever provided. The land use section must disclose this inconsistency if the EIR is to serve as an accurate informational document.

Lastly, the EIR's land use analysis should have considered the "transformation" impacts caused by the Project.<sup>125</sup> This analysis must address the direct, indirect and cumulative impacts caused by adding residential and retail to an area that has been designated for industrial and office uses. Because the Project would eliminate the current employment/industrial designation, the General Plan requires an analysis of whether the property could still feasibly support industrial uses.<sup>126</sup> There are potentially significant land use and other environmental impacts resulting from the Project's transformational aspects that should be evaluated in the EIR. Despite these obvious impacts, the EIR improperly classifies the Project and its land use compatibility resulting in inaccurate impact analysis.

Therefore, instead of providing over 100 pages of self-contradicting and flawed analysis regarding the Project's consistency with the General Plan, the EIR must fulfill CEQA's informational purpose and comply with CEQA Guidelines Section 15125(d), which specifically requires the City to own up to where the Project is *inconsistent* with the General Plan. In addition, CEQA requires the EIR to be recirculated to correctly identify this new, significant land use impact related to significant visual and traffic impacts.

### 2. Community Plan and Precise Plan Inconsistency

The Community Plan and the Precise Plan envision employment and industrial uses on the Project Site. These plans carefully located the various components of housing, commercial and employment in an orderly fashion within the community and were the result of extensive research into the physical, social and economic elements of Carmel Valley.<sup>127</sup> Despite this requirement, the EIR fails to sufficiently analyze the impacts of the Project's change in use on these thoughtfully developed plans. Additionally, the Community Plan encourages less density to foster distinctiveness of the community, outside of community centers.<sup>128</sup>

The Community Plan also states that employment centers, such as the Carmel Valley Employment Center where the Project is sited, "will give residents an opportunity to choose a realistic alternative to the typical commuting burden fostered by urban sprawl" by providing nearby employment areas.<sup>129</sup> Yet, the EIR replaces the "Employment Center" designation with

<sup>125</sup> Guidelines § 15355(b); see also *Env't Prot. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 624-25.

<sup>126</sup> General Plan, at p. EP-8 to EP-9.

<sup>127</sup> Precise Plan, at Preface p. B.

<sup>128</sup> Community Plan, at p. 6; see also *id.* at p. 86 (map depicting Project site as outside of town center).

<sup>129</sup> *Id.* at p. 7.

63.101 The Draft EIR evaluated potential direct, indirect, and cumulative impacts for all appropriate environmental issue areas resulting from the Originally Proposed Project. The term "transformational impacts" is not recognized in CEQA.

As shown in General Plan Figure EP-1, the Carmel Valley Employment Center is not designated "Prime Industrial Land," but is designated as "Other Industrial Land." The Economic Prosperity Element of the General Plan states (on page EP-9), "Some of the industrial areas outside of Prime Industrial lands could convert to other non-industrial uses, such as commercial or residential uses, after an analysis of relevant factors to determine if the property could still feasibly support industrial uses and is appropriate for the use requested." Furthermore, policy EP-A.16 states, "In industrial areas not identified as Prime Industrial Lands on Figure EP-1, the redesignation of industrial lands to non-industrial uses should evaluate the Area Characteristics factor in Appendix C, EP-2 to ensure that other viable industrial areas are protected." Policy EP-A.17 states, "Analyze the collocation and conversion suitability factors listed in Appendix C, EP-2, when considering residential conversion or collocation in non-prime industrial land areas." It is acknowledged that these General Plan policies apply to the Originally Proposed Project and the Revised Project and, therefore, the Final EIR, in Table 5.1-1, includes a policy consistency analysis of these two policies, and the required analysis for the conversion of industrial land to mixed-use. However, the proposed land use designation (Community Village) and zoning (CVPD-MC) will continue to permit employment center uses, and the Originally Proposed Project and Revised Project both include the employment uses that were already planned for the project site in addition to other uses that would complement existing uses in the community. The Originally Proposed Project and the Revised Project are both consistent with these General Plan policies, and the analysis of the conversion of industrial land to mixed-use would not result in significant land use impacts based

COMMENTS

RESPONSES

63.101 on the Collocation/Conversion Suitability Factors contained in Appendix cont. C, EP-2 of the General Plan. Refer to updated information contained in Section 5.1.2 of Final EIR.

63.102 In accordance with Section 15125(d) of the State CEQA Guidelines, Section 5.1 of the Draft EIR evaluated the project's consistency with applicable land use plans. This section of the Draft EIR disclosed that the project would require amendments to the General Plan, Community Plan, Precise Plan, and a Rezone to change the project site's existing land use designations and zone classification to accommodate the proposed mix of uses. Section 5.1 of the Draft EIR also contains a comprehensive policy consistency analysis with applicable land use plans (Table 5.1-1). The Draft EIR concluded that the project would be consistent with the General Plan, Community Plan and Precise Plan. Because there are no new significant land use impacts, recirculation of the Draft EIR is not required.

The Final EIR, in Section 5.3.3, recognizes that the Originally Proposed Project would result in significant impacts on traffic and neighborhood character of the area. As discussed in response to comment 5.6, Section 12.9 of the Final EIR concludes that the Revised Project would reduce the impact of development on traffic and neighborhood character with respect to the Originally Proposed Project. However, Section 12.9 concludes that these impacts would remain significant and not mitigated.

63.103 The Draft EIR adequately analyzed the proposed change in land use and associated land use plan consistency impacts. A detailed analysis of project consistency with applicable land use plans, including the Community Plan and Precise Plan, is contained in Section 5.1 of the Draft EIR. Refer to updated information contained in Section 5.1.2 of Final EIR. An analysis of the Revised Project is included in Section 12.9 of the Final EIR.

It is agreed that the Community Plan recommends development patterns with more intense land uses in the community centers, and less dense uses in the outlying areas of the community. As noted in Section 5.3.1 (on page 5.3-2) of the Draft EIR, Carmel Valley has been developed in accordance with this overarching planning principal. Although the project site is not located within the area specifically identified in the Community Plan as "Town Center," it is located immediately adjacent to this area, and is explicitly identified in the Community Plan as a major activity center (page 58). Furthermore, the Community Plan (page 58) calls for "grouping of higher density development around the town center" to

---

**COMMENTS**

---

**RESPONSES**

---

63.103 “create an urban setting and sense of scale and provide housing close cont. to shopping and public facilities.” As concluded in the Final EIR, the Originally Proposed Project and the Revised Project are consistent with the overall planning principals of the Community Plan and Precise Plan.

63.104 The proposed development would provide the employment uses originally envisioned as part of the Employment Center, as well as additional uses that are contiguous and compatible with existing adjacent uses. Thus, both the Originally Proposed Project and Revised Project would result in additional employment opportunities for Carmel Valley residents. As discussed in Section 5.1 of the Draft EIR, the Originally Proposed Project is estimated to result in creation of 8,311 construction jobs, and creation of 1,785 permanent jobs compared to creation of 3,011 construction jobs, and 1,182 permanent jobs associated with the office use alone. Although the Revised Project would generate less employment given the lower intensity, it would generate a substantial number of permanent and construction jobs as well. The proposed development would also provide 608 residential units, which could provide housing for employees of existing and proposed commercial uses in Carmel Valley. No adverse effects on the jobs/housing balance would occur.

The existing land use designations in the General Plan, Community Plan, and Precise Plan would be amended to accommodate the proposed mix of uses. The current land use designations in these adopted plans call for industrial/employment center uses, which the project would provide in addition to other uses that complement the existing uses in the vicinity of the project site.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 31

63.104  
cont.

a "Mixed-Used Center" designation and adds 608 residential units. This will skew the jobs/housing balance that was carefully planned for Carmel Valley. Moreover, the Project will eliminate the employment/industrial designation of the site, which is in conflict with the Community Plan's description of the Project site as "an industrial-office park which emphasizes the area as a unique and permanent feature..."<sup>130</sup> While the EIR admits the Project is inconsistent with the Community and Precise Plans and will necessitate amendment of each, it fails to adequately address the direct and cumulative impacts of the Project's change in land use designation or address the internal inconsistencies such amendments will create. Further, the EIR should evaluate whether the Project would result in the introduction of sensitive receptor uses in an area with industrial operation into areas designated for commercial and industrial operations, which could limit the ability of nearby industrial uses to expand.<sup>131</sup>

63.105

63.106

3. *Regional Comprehensive Plan and Smart Growth Concept Map Inconsistency*

63.107

The EIR states that SANDAG's SGCM, updated January 27, 2012, provides a regional perspective on smart growth opportunity areas and identifies the proposed Project site as a Town Center smart growth area (SANDAG 2012).<sup>132</sup> However, the EIR fails to point out that the Town Center identified on the SGCM includes not only the Project site but also the Del Mar Highlands Town Center, the residential development to the north of the Town Center and the civic spaces to the south of the Town Center. To properly comply with CEQA, the EIR should identify that the Project Site is the missing employment center component needed to complete the much larger horizontal mixed-use village in the Town Center smart growth area on the SGCM.

63.108

The EIR correctly claims the Regional Comprehensive Plan ("RCP") specifically recognizes local planning efforts aimed at intensifying land use near designated Town Centers, but it fails to discuss the appropriate intensity level of development.<sup>133</sup> Such development is out of character with the low scale community village that has historically been developed consistent with the Precise Plan and Community Plan. Nor does the RCP indicate that this Project site should be a mixed village "town center" onto itself. In fact, the SGCM call for just the opposite.

4. *Proposed Amendments to Applicable Plans*

63.109

The Project proposes City approval of a General Plan amendment to change the Project site's land use designation in an effort to eliminate the Project's potential conflicts with the

<sup>130</sup> *Id.* at p. 88-90.

<sup>131</sup> General Plan, at p. EP-8 to EP-9.

<sup>132</sup> EIR, at p. 5.1-10.

<sup>133</sup> *Id.*

63.105 The Final EIR adequately analyzes the proposed change in land use and associated land use plan consistency impacts. A detailed analysis of the consistency of the Originally Proposed Project and the Revised Project with applicable land use plans is contained in Sections 5.1 and 12.9 of the Final EIR. Cumulative land use impacts are discussed in Section 6.2.1. While this comment also claims that the proposed land use amendments will create internal inconsistencies, it does not indicate how or cite any specific examples; therefore, no further response is required.

63.106 Sections 5.13 and 12.9 of the Final EIR evaluate potential impacts related to exposure to hazards/hazardous materials for both the Originally Proposed Project and the Revised Project.

63.107 As discussed in response to comment 63.71, the identified Smart Growth area on SANDAG's Smart Growth Concept Map, North City and North County Subregion (dated January 27, 2012) includes the project site as well as the surrounding area as part of the Existing/Planned SD CV-1 Town Center. However, this map does not require that the project site be developed solely for office use to be in conformance with regional or local policies. The Originally Proposed Project and the Revised Project would provide the "missing employment center" land uses that were already planned for the site within an internally well-balanced land use mix that reflects the types of uses that exist in the community and that complement the existing uses in the vicinity of the project site.

63.108 Section 5.1 (page 5.1-10) of the Draft EIR identified target residential and employment densities for the "Town Center" Smart Growth type, as defined in the Regional Comprehensive Plan. Refer to updated information contained in Section 5.1.2 of Final EIR. Sections 5.3.3 and 12.9 of the Final EIR, recognize that the Originally Proposed Project and the Revised Project would result in significant impacts to the neighborhood character of the area because proposed buildings would substantially contrast with portions of the immediately surrounding development. As discussed on page 5.3-23 of the Draft EIR, these impact

---

**COMMENTS**

---

**RESPONSES**

---

63.108 findings are consistent with the determination in the General Plan EIR  
cont. that intensification associated with implementation of the City of Villages  
concept, consistent with smart growth principles, could be expected to  
result in impacts to community character.

As discussed in response to comment 63.107, it is acknowledged that  
the identified Smart Growth area on SANDAG's Smart Growth Concept  
Map, North City and North County Subregion (dated January 27, 2012)  
covers a larger area than the project site. That acknowledgement does not  
change the conclusions of the Draft EIR with respect to land use impacts.

63.109 The comment generally asserts that the proposed plan amendments  
will result in significant land use impacts, but the comment does not  
reference any specific internal inconsistencies that would result from  
the Originally Proposed Project, or physical impacts associated with  
those claimed inconsistencies. Community plans and precise plans are  
routinely amended. Moreover, as discussed on page 5.3-23 of the Draft  
EIR, the General Plan recognizes that intensification associated with  
implementation of the City of Villages concept, consistent with smart  
growth principles, could be expected to result in impacts to community  
character, and contains policies to help minimize such impacts, such as  
building design and site selection. Refer to updated information contained  
in Section 5.1.2 of Final EIR.



## SheppardMullin

Martha Blake  
May 29, 2012  
Page 32

General Plan.<sup>134</sup> The Project also proposes amendment to the Precise Plan in order to create a new zone with a Planned District Ordinance to facilitate the "community village" that the EIR claims Carmel Valley needs.

If such amendments are passed, the EIR states the associated land use consistency impacts would be less than significant.<sup>135</sup> This is incorrect. The amendments cannot be adopted because they would transform the applicable plans into internally inconsistent plans in violation of the Government Code. Second, because they would create internal inconsistencies, the land use impacts would remain significant and unmitigated.

For example, the Economic Prosperity Element states, "[w]hen updating community plan or considering plan amendments, land use designations contained in the Land Use and Community Planning Element should be appropriately applied to provide for non-base sector employment uses."<sup>136</sup> It further states, "[i]ncrease the allowable intensity of employment uses in Subregional *Employment Areas and Urban Village Centers where transportation and transit infrastructure exist*."<sup>137</sup> Finally, it states, "[c]oncentrate more intense office development in Subregional Employment Areas and in Urban Villages with transit access."<sup>138</sup> While the EIR correctly states that implementation of the City of Village Strategy including the intensification of employment uses will necessitate community plan amendments, such amendments must be internally consistent with the Economic Prosperity Element's policies on how and where such intensification can be located. EP-A.7 is quite clear that this intensification is directed at Urban Village areas and Subregional Employment Areas where transit infrastructure "exists," not where transit infrastructure is planned to be implemented twenty years after build out of the Project. Furthermore, Figure EP-2 identifies the Subregional Employment Areas as Kearny Mesa, Midway-Pacific Highway, Otay Mesa, Mission Valley/Morena/Grantville and University/Sorrento Mesa, not Carmel Valley.

Therefore, just as the Court in *Families Unafraid to Uphold Rural El Dorado County (FUTURE)* held that El Dorado County could not approve a land use designation amendment that generated inconsistencies with other parts of its General Plan, likewise, the City of San Diego cannot create mixed-use zones to densify employment uses in areas outside of designated Urban Village and Subregional Employment Centers where no transit currently exists.

<sup>134</sup> EIR, at p. 5.1-15.

<sup>135</sup> *Id.*

<sup>136</sup> General Plan, Policy EP-A.6.

<sup>137</sup> General Plan, Policy EP-A.7 (emphasis added).

<sup>138</sup> General Plan, Policy EP-A.8.

63.110 The comment asserts that the Originally Proposed Project more accurately reflects an Urban Village Center or a Subregional Employment Area; however, the Originally Proposed Project does not meet the characteristics of an Urban Village Center or Subregional Employment Center, as defined in the General Plan. According to the General Plan (page LU-7), the characteristics of an Urban Village Center include location in "higher density areas located in subregional employment districts. They are characterized by a cluster of more intensive employment, residential, regional, and subregional commercial uses that maximize walkability and support transit." The project site is not located within a higher density area within a subregional employment district (the General Plan specifically identifies these as Mission Valley/Morena/Grantville and University/Sorrento Mesa). Refer to updated information contained in Section 5.1.2 of Final EIR.

According to the General Plan (page LU-7), the characteristics of a Subregional Employment Area include "major employment and/or commercial districts within the region containing corporate or multiple-use office, industrial, and retail uses with some adjacent multi-family residential uses. Existing subregional districts include the Mission Valley/Morena/Grantville and University/Sorrento Mesa areas." The Originally Proposed Project and Revised Project are not consistent with this village type because both propose residential uses, which are not a component of Subregional Employment Areas, and as stated above, the project site is not located within a subregional employment district (as identified on Figure EP-2 in the General Plan).

As discussed in detail in Section 5.1 of the Draft EIR, the Originally Proposed Project is consistent with the characteristics of a Community



---

**COMMENTS**

---

**RESPONSES**

---

63.110 Village, as defined in the General Plan. Additionally, Section 12.9 of the Final EIR concludes that the Revised Project, which is reduced in density from the Originally Proposed Project, would be consistent with applicable City of Villages goals and policies listed in the Land Use and Community Planning Element.

Moreover, as discussed in Section 5.1 of the Draft EIR, General Plan Figure LU-1 (Village Propensity Map) identifies the project site as having moderate village propensity. In concert with the City of Villages strategy, village sites anticipate an intensification of land uses, and the General Plan does not contemplate intensification in only Urban Village Center or Subregional Employment Area village types, but also in areas designated as having village propensity, like the project site.

Policy EP-A.7, which is cited in this response, applies to Urban Village Centers and Subregional Employment Areas. As discussed above, the project site does not fall into either of these categories. Thus, the proximity to existing transit included in Policy EP-A.7 does not apply to the Originally Proposed Project.

63.111 As described in the response to comment 63.91, the cited case, *FUTURE v. Board of Supervisors* (1998) 62 Cal. App 4th 1332, does not apply. Also, as discussed in the response to comment 10.40, the City of Villages Strategy does not require the immediate availability of transit service to the Project site. Rather, all that the General Plan requires is an identified funding source for transit facilities.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 33

5. *Inconsistency with Community Character*

The EIR claims that the Project was designed to blend with the character of the community. The surrounding community consists of two- to three-story buildings, densities in conformance with or less than the community plan calls for. The Project is at odds with all of these characteristics. However, as discussed previously, the Project scale, design and intensity will create an internally focused mixed-use village site incorporating all of the surrounding land uses on a single project site rather than balancing the uses in the community and the needs of the community or blending with the visual character of the community. The EIR unsuccessfully attempts to assert the Project is consistent with the character of the community on numerous levels.

First, the EIR claims the area near the Project Site is developed with multi-story office buildings ranging between two and 12 stories surrounded by surface parking lots. However, the EIR fails to point out that the only 12-story structure is the Marriott Hotel located in the Visitor Commercial Zone and not a multi-story office building located in Employment Center zone. To be accurate, the EIR should identify the maximum height office building in the area and how many office buildings in the area are over four stories high. The EIR should also analyze whether the six-story Del Mar Highlands Corporate Center III, which is located at the far south end of the Employment Center District, is the only office building over four stories. Furthermore, the EIR should disclose the fact the Del Mar Highlands Corporate Center III is adjacent to the 12-story Marriott Hotel in the Visitor Commercial zone, which is far from the Employment Center and is not visible from the Project Site. It should also be noted in the EIR that the Marriott Hotel and Del Mar Highlands Corporate Center have parking structures. The EIR also fails to identify and analyze the following buildings in the area that are well below the bulk and scale the Project is proposing:

- i. East: Del Mar Highlands Town Center and Carmel Country Plaza (one and two stories).
- ii. South: Two office buildings at Heights at Del Mar site (three stories over parking).
- iii. West: Highlands Corporate Center and Highlands Plaza (two to four stories tall).
- iv. Northeast: Signature Point apartment complex (two-story multi-family residential).
- v. North: The East Bluff condominium complex (one- and two-story townhomes).

The Project with its 199-foot office building buildings is out of character with all of these nearby developments.

Second, the EIR's density and intensity is wholly inconsistent with the current community character. Based on the 23.6-acre Project Site, the EIR states a maximum of 685 dwelling units is allowed while Project proposes a maximum of 608 residences. The Project's approach fails to factor in that half of the net building area of the Project is being used for other land uses and

63.112 The Draft EIR did not attempt to conclude that the Originally Proposed Project is consistent with the surrounding neighborhood. To the contrary, the Final EIR concludes that the Originally Proposed Project and the Revised Project would have a significant impact on the neighborhood character of the project area.

The Marriott is identified as a 12-story building in the Draft EIR, and is pictured in Figure 5.3-5d. It is acknowledged that the hotel is not an "office building" and it is located on a site designated as Visitor Commercial, but it is a commercial use within the Neighborhood 2 Employment Center. Nonetheless, the Final EIR clarifies this distinction. A general discussion of existing building heights and ranges is included in Section 5.3.1 of the Draft EIR, which is sufficient for the discussion of the existing visual setting of the project vicinity (including the Employment Center) and community as a whole in a CEQA document. An inventory of every building within the Employment Center is not necessary to characterize the visual setting, especially when the EIR concludes that the neighborhood character impact would be significant.

63.113 Refer to response to comment 63.78 regarding calculation of residential density.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 34

63.113  
cont. internal roads rather than residential. The Project based the density of the entire 23.6 acres of gross site area and thus inflated the allowable density by approximately 50 percent. Even at the high density of 29 dwelling units per acre, only approximately 263 units could be developed.

63.114 Third, the Project proposes 536,000 square feet of new office area which exceeds the currently allowable office area of 510,000 and the 0.5 FAR currently allowed for the whole 23.6-acre site. However, if the office area was based on a 0.5 FAR for Block D and E where the office building is allowed, the allowable result would be an office building of approximately 160,000 square feet instead of 536,000 square feet. In any case, all of the densities in this Project are at multiples of two to three times or more the density of surrounding projects.

63.115 Fourth, the EIR claims landscaping around the perimeter of the site would provide a visual and physical buffer between the buildings and off-site viewers. The discussion following this claim is merely a justification to use visual mitigation to mitigate potential land use impacts. The EIR states, once mature, the trees would partially screen views of the upper stories of proposed buildings. Thus, the partial screening of the buildings only when the street trees mature is inadequate mitigation for the inconsistent bulk and scale impact created by the proposed Project. The EIR does not mitigate these impacts to below a level of significance.

6. *Environmental Impacts Related to Land Use Inconsistency*

63.116 Despite the admitted need for the City to approve a number of applicable plan amendments related to the Project, the EIR incorrectly claims the associated land use inconsistency impacts would be less than significant.<sup>139</sup> However, the EIR fails to include a proper assessment of land use impacts, which should be identified as "significant unavoidable." For example, the Precise Plan establishes a level of intensity that prevents land uses from adversely impacting the community, but the Project proposes to change drastically that intensity level and the EIR fails to assess these impacts to the Precise Plan. Specifically, the EIR fails to identify the part of the Precise Plan planning principles intended to establish a level of intensity for development so as not to adversely impact the community. Further, the EIR identified the impact of the Project on the visual character of the community as significant and unmitigable. For the reasons discussed above, this is both a significant land use impact and visual impact.

63.117 The EIR states the Project will integrate land uses on a single site and introduce building forms that are characteristic of a village that would be unique and distinctive to Carmel Valley.<sup>140</sup> In truth, the bulk and scale of the building forms introduced are unique and distinctive from the rest of Carmel Valley, not to Carmel Valley. The only comparable project in all of Southern California is the Hollywood and Highland development in the highly urbanized setting of Hollywood, along a heavy rail corridor. The EIR's omission of this fact violates CEQA.

<sup>139</sup> EIR, at p. at 5.1-17.

<sup>140</sup> EIR, at p. 5.1-13.

63.114 As discussed in responses to comment 63.80, FARs were correctly calculated in accordance with a method specified in the City's Municipal Code.

63.115 Perimeter landscaping is not proposed as mitigation for the identified significant neighborhood character impacts. The Final EIR in Sections 5.3.3 and 12.9 of the Final EIR recognize that the Originally Proposed Project and the Revised Project would result in significant impacts to the neighborhood character of the area. The proposed buildings would, despite project design strategies to minimize apparent height and mass of the structures including landscaping, substantially contrast with portions of the surrounding development in the community. The Final EIR also concludes that there is no feasible mitigation to reduce this impact to below a level of significance.

63.116 The comment claims the Draft EIR fails to identify Precise Plan principles "intended to establish a level of intensity for development so as not to adversely impact the community," but no reference to specific principles was provided. The Precise Plan does not regulate or control intensity levels at the project site. That is a function of the zone classification of the Carmel Valley PDO. Nonetheless, a detailed analysis of project consistency with applicable land use plans, including the Precise Plan, is contained in Section 5.1 of the Draft EIR. Refer to updated information contained in Section 5.1.2 of Final EIR. An analysis of the Revised Project is included in Section 12.9 of the Final EIR. The Final EIR concludes that the Originally Proposed Project and the Revised Project would be consistent with applicable Precise Plan principles. The issue of neighborhood character is different from land use policy consistency. It is possible for a project to result in significant neighborhood character impacts while remaining consistent with land use plan policies that pertain to community character, particularly where, as here, the General Plan anticipates such impacts as a consequence of achieving other land use goals, as discussed on page 5.3-23 of the Draft EIR.



## SheppardMullin

Martha Blake  
May 29, 2012  
Page 35

### 7. Other Notable Deficiencies Within the Land Use Section

The Land Use section of the EIR contains a number of other deficiencies including: (i) the misrepresentation of the existing Precise Plan's conformity with the City of Villages Strategy; (ii) the misrepresentation of the Project site's topography; and (iii) the failure of the EIR to address the regional impacts of the Project's proposed land uses.

63.118 Despite requiring a General Plan amendment, the Project claims to be creating a vertical mixed-use "community village" in Carmel Valley in accordance with the General Plan's City of Villages Strategy. In reality, it is the existing Precise Plan that is in conformity with the City of Villages Strategy as it already created a horizontal mixed-use "community village" that is consistent with the goals and objectives of the City of Villages Strategy. The General Plan defines "village" as the mixed-use heart of a community where residential, commercial, employment, and civic uses are all present and integrated. Each village will be unique to the community in which it is located.<sup>141</sup> The Carmel Valley Town Center as identified on the SGCM includes the residential to the north<sup>142</sup> and to the south of the park. It includes the commercial element of the Del Mar Highlands Town Center and Carmel Community Center. It includes the employment center with the 510,000 square feet of anticipated office employment on the Project site combined with the existing office development to the south of the property. And finally it includes the civic uses of the Carmel Valley Library, school and Carmel Valley Park. The map identifies the mixed-use village as envisioned in the existing Precise Plan and Community Plan. The low and moderate scale of the village as prescribed in the Precise Plan creates a horizontal mixed-used community village that is a unique expression of Carmel Valley. The dense vertical urban expression of the Project is inconsistent with the General Plan's City of Villages Strategy precisely because it is out of character with the Carmel Valley community.

63.119 The Applicant's claim that the Project will be Carmel Valley's "Main Street," which would be lined with retail uses, is the unifying and organizing element of the Project that would connect to the adjacent Del Mar Highlands Town Center, as it would be constructed as the fourth leg of the existing intersection of El Camino Real and the Del Mar Highlands Town Center.<sup>143</sup> However, the EIR fails to explain what is meant as the fourth leg of the existing intersection of El Camino Real and the Del Mar Highlands Town Center. Per the Precise Plan, the Project Site is intended as the employment center which as the fourth leg completes the mixed-used village intersection with the residential to the north and the retail to the east. Contrary to the Project EIR, this would be a justification for keeping the existing employment center land use designation versus the proposed amendment. The EIR claims there is a "main street" retail connection to Del Mar Highlands Town Center,<sup>144</sup> but the EIR inaccurately describes the Project. In reality, as proposed, two tall office buildings would come between

<sup>141</sup> General Plan City of Village Strategy, LU-6.

<sup>142</sup> Signal Apartments.

<sup>143</sup> EIR, at p. 5.1-16.

<sup>144</sup> *Id.*

63.117 Refer to response to comment 63.97 regarding project consistency with the City of Villages strategy of the General Plan.

The Final EIR, in Sections 5.3.3 and 12.9, recognizes that the Originally Proposed Project and the Revised Project would result in significant impacts to the neighborhood character of the area because proposed buildings would substantially contrast with portions of the immediately surrounding development.

63.118 This comment incorrectly suggests that simply building Employment Center uses on the project site consistent with the existing Community Plan would create a "Community Village," if considered within the larger context of other surrounding uses. In fact, the referenced surrounding uses were built decades before the City embarked on the City of Villages Strategy. Contrary to the comment, development of only office uses on the project site would not meet the General Plan definition of village. The City of Villages section within the Land Use and Community Plan Element of the General Plan defines a village as "the mixed-use heart of a community where residential, commercial, employment, and civic uses are all present and integrated." It is incorrect to assert that existing development consisting of separately developed single-focused land uses would conform to the General Plan policies for "Community Villages," particularly because the City of San Diego has not designated any existing portions of Carmel Valley as a "Community Village" in the Community Plan.

As discussed in Section 5.1 of the Draft EIR, General Plan Figure LU-1 (Village Propensity Map) identified the project site as having moderate village propensity. The currently adopted Precise Plan could not be in conformity with the City of Villages Strategy because General Plan Table LU-4 requires that a Community Village designation must include a residential component. The current Precise Plan, which identifies the project as an Employment Center, does not allow for residential uses. Refer to updated information contained in Section 5.1.2 of Final EIR.

Contrary to the comment, there are no designated village sites in the Employment Center Precise Plan, and there is no "horizontal Mixed-use Community Village" land use designation in any adopted land use plans that regulate the project site, including (among others) the General Plan, Community Plan, and Precise Plan. While land uses that comprise a village, as identified in the General Plan (residential, commercial, employment, and civic uses), exist in the community and in the immediate

COMMENTS

RESPONSES

63.118 cont. vicinity of the project site, such uses are compartmentalized and not integrated as called for in the General Plan definition of village. As such, there is no existing designated or de facto “horizontal mixed-use village” in Carmel Valley that meets the criteria of any village type defined in the General Plan.

The Final EIR, in Sections 5.3.3 and 12.9, recognizes that the Originally Proposed Project and the Revised Project would result in significant impacts to the neighborhood character of the area because proposed buildings would substantially contrast with portions of the immediately surrounding development. This finding is consistent with the determination in the General Plan EIR (that villages could lead to community character impacts).

Lastly, the comment incorrectly asserts that the overall density of the Originally Proposed Project automatically renders that project inconsistent with the City of Villages strategy. In fact, as discussed on page 5.3-23 of the Draft EIR, the General Plan explicitly recognized the potential for neighborhood character impacts stemming from intensification, and provided a policy framework specifically to minimize those impacts.

Nevertheless, as discussed in response to comment 5.6 and in Section 12.9 of the Final EIR, the project applicant has revised the Originally Proposed Project to reduce the overall intensity and density. The Revised Project reduces the overall square footage by 22 percent from 1,857,440 to 1,454,069 square feet. The total FAR is reduced by 22 percent from 1.8 to 1.4. In addition, the proposed hotel has been eliminated. Collectively, these changes reduce the character-related impacts of the project, though not to a less than significant level.

63.119 The existing signalized intersection at El Camino Real and the Del Mar Highlands Town Center has three vehicular approaches including northbound along El Camino Real, southbound along El Camino Real, and eastbound into the shopping center. There currently is no fourth approach to the west. As stated in Section 5.1.2 of the Draft EIR and cited in the comment, the project would construct this fourth approach as one of the project’s access points, and the primary access to the proposed retail uses along Market Plaza and Main Street. It is acknowledged that the Precise Plan designates the project site as a portion of the Employment Center; however, the project proposes a Precise Plan Amendment to accommodate the proposed mix of uses at the project site, which would still include employment uses.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 36

63.120  
cont.

"Main Street" and the entrance to Del Mar Highlands Town Center on El Camino Real. Thus, the retail component really turns down Market Street and dead ends at El Camino Real.

63.121

The Project claims that the varied site topography would largely be retained to reflect existing landforms within the community and that the Project's use of the existing topographic change on the site will help reduce the impact of the bulk and scale of the Project. However, the Project proposes a 10-story residential tower<sup>145</sup> at the high point of the site on High Bluff Drive. The Project also proposes another 10-story building<sup>146</sup> rising on elevated terrain above El Camino Real. This is the equivalent of 13-story office with 14'6" average floor to floor height. The EIR fails to identify that the 10-story office building is sitting on an exposed 32 feet of parking garage and that there is a 15-foot-high parapet on top of the building. Additionally, the EIR fails to point out that the topographic grade is adjusted up on Del Mar Heights Road to screen the parking structure under the level of retail and four stories of residential. The Project has used the topography by removing 498,400 cubic yards of dirt while doing nothing to reduce the height impact from the surrounding streets. In fact, the wall of buildings facing the surrounding community provides little if any indication of the 35 feet of topographic drop across the site. This is not a reduction in the bulk and scale of the Project.

63.122

As stated in the previous section, the EIR fails to assess the Project's impacts on a regional level, specifically as to land use elements. For example, the EIR claims "as a result, the proposed mixed-use project and the variety of uses that it would provide would result in a more internally well-balanced use compared to a single use on the project site."<sup>147</sup> This claim demonstrates that the focus of the EIR is squarely on the internal operation of the site and not the need for balancing the demands of the surrounding community. Despite the EIR's claims to the contrary, this focus results in an inconsistency between the proposed Project and the Community Plan goal of establishing a balanced community.

#### 8. *Inconsistency with SB 375*

63.123

Lastly, the Land Use section of the EIR fails to analyze conformity with California's landmark planning law, SB 375.<sup>148</sup> SB 375 requires that SANDAG prepare a "Sustainable Communities Strategy," which must encourage development that reduces GHG emissions. Although the Project is dense and compact, it is inconsistent with SB 375 because the Project is automobile-oriented and aimed at drawing customers from distant areas, which would have an adverse impact on GHG emissions. The EIR must analyze and disclose these inconsistencies.

<sup>145</sup> 159 feet high.

<sup>146</sup> 199 feet high.

<sup>147</sup> *Id.*

<sup>148</sup> NOP at p. 6-7.

63.120 The retail component of the project would not stop at the end of the "Main Street." The buildings on Block A and E, which would be located across from the Del Mar Highlands Shopping Center, are proposed to contain restaurants and retail shops on the ground level.

Refer to responses to comments 63.51 and 63.69 for additional information about the interconnection of the project site and the Del Mar Highlands Town Center.

63.121 The project site, which has been mass graded for several decades, does not contain natural landforms. While additional grading would be required to construct the proposed development, most of the grading is associated with excavation for the proposed subsurface parking garages. The exhibits and cross-sections provided in Section 5.3 of the Draft EIR illustrated existing and proposed topography, the actual location of existing and proposed development, roads, open space, and vertical and horizontal separations (including actual distance and grade differential between existing and proposed residential uses). These exhibits, specifically Figures 5.3-7a and 5.3-7b illustrate how the appearance of height is minimized with respect to surrounding uses, such as residential and neighboring office uses.

Nevertheless, the Draft EIR disclosed the differences between the height and bulk of the structures of the Originally Proposed Project and immediately surrounding structures, concluding on page 5.3-23 that a significant unavoidable impact would occur with respect to height and bulk, despite the presence of buildings with comparable heights in the broader Carmel Valley community, the provision of comparable setbacks by the project and, as stated above and illustrated in Figures 5.3-7a and 5.3-7b, substantial topographical differences that minimize the apparent height and bulk of the proposed buildings.

As discussed in response to comment 5.6 and Section 12.9 of the Final EIR, the project applicant has revised the Originally Proposed Project to reduce the overall intensity and density. The Revised Project reduces the overall square footage by 22 percent, from 1,857,440 to 1,454,069 square feet. The total FAR is reduced by 22 percent from 1.8 to 1.4,



COMMENTS

RESPONSES

63.121 and the proposed hotel has been eliminated. In addition, the Revised cont. Project substantially reduces the building heights in comparison with the Originally Proposed Project. With the Revised Project, no building would exceed 9 stories. More specifically, the 145-foot-high, 10-story residential building proposed in the northwest corner of the site would be replaced by a 6-story building with a height of 95 feet. The building on Block B would be reduced from a maximum height of 110 feet down to 90 feet. The building on Block A would be reduced from a maximum height of 77 feet down to 67 feet. The building on Lot E would be reduced from 199 feet to 170 feet. However, despite the building height reductions under the Revised Project, Section 12.9 of the Final EIR reaches a similar conclusion of a significant unavoidable impact in regard to the Revised Project.

63.122 The General Plan assessed the potential for a village at the project site within a larger regional context (General Plan Figure LU-1) and determined that the project site has a moderate village propensity.

As discussed in detail in Section 5.1 of the Draft EIR, the Originally Proposed Project is consistent with the characteristics of a Community Village, as defined in the General Plan. Refer to updated information contained in Section 5.1.2 of Final EIR. Additionally, Section 12.9 of the Final EIR concludes that the Revised Project, which is reduced in density from the Originally Proposed Project, would be consistent with applicable City of Villages goals and policies listed in the Land Use and Community Planning Element.

Refer to response to comment 10.60 regarding the Community Plan overall goal of providing a balanced community.

63.123 Senate Bill (SB) 375 is appropriately addressed in Section 5.7 of the Draft EIR. SB 375 requires the California Air Resources Board (CARB) to set regional targets for the purpose of reducing GHG emissions from passenger vehicles for years 2020 and 2035. It also requires regional transportation plans relevant to project areas developed by metropolitan planning organizations, including SANDAG, to incorporate a Sustainable Communities Strategy (SCS) in their regional transportation plans that demonstrates how the region would achieve GHG emission reduction targets set by CARB. For the San Diego area, CARB and SANDAG agreed to adopt 7 percent by 2020 and 13 percent by 2035 in per capita GHG emission reductions from passenger vehicles. The proposed development, being a mixed-use integrated development, along with

---

**COMMENTS**

---

**RESPONSES**

---

63.123 proposed sustainable design features (as identified in Sections 3.2.7 and  
cont. 5.7.2 of the Draft EIR) would not result in significant impacts related  
GHG emissions. Furthermore, the development would be a community  
village, which would not “draw customers from distant areas,” but  
rather would provide services and uses intended to serve the Carmel  
Valley community. The Retail Market Analysis prepared for the project  
concludes that approximately two-thirds of the retail draw is expected  
from within four miles of the project site. Therefore, the project would  
not be inconsistent with SB 375.

## SheppardMullin

Martha Blake  
May 29, 2012  
Page 37

### E. Noise

EIRs should avoid vague, incomplete or untested mitigation measures because mitigation measures must not be remote and speculative.<sup>149</sup> A mitigation measure identified in an EIR will be legally inadequate if it is so undefined that it is impossible to gauge its effectiveness.<sup>150</sup> Thus, to properly reduce the identified significant impacts, the Project must incorporate feasible mitigation measures. In violation with the above-reference requirements, the EIR lists potential mitigation measures for the Project's significant impacts but does not specify which, of any, will be implemented.<sup>151</sup>

Further, the EIR does not adequately address any mitigation measures for the noise impacts on the adjacent properties, as well as noise impacts to an early phase of development from the constriction of a later phase of development. It does not analyze operational noise impacts internal to the Project such as truck, restaurant, or bar noises on the residential uses and surrounding area.<sup>152</sup> The EIR also does not properly evaluate the mixed-use related noise impacts, such as noise from loading areas and hours of use for certain types of uses and the spatial separation between industrial and residential land uses, as is required by the General Plan.<sup>153</sup> Furthermore, the EIR also fails to analyze the relative amount of Project-generated traffic noise compared with existing cumulative traffic noise.<sup>154</sup>

Lastly, the analysis does not use the City's CEQA Significance Determination Threshold for noise/ land use compatibility. Instead the EIR claims this section was updated and superseded by the Noise Element of the 2008 General Plan.<sup>155</sup> However, the Significance Determination Thresholds were effective as of January 2011.

<sup>149</sup> *Fed'n of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260.

<sup>150</sup> *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79 (requirement that fee of undetermined amount be paid for unspecified transit funding mechanism was inadequate mitigation measure); *Kings County, supra*, 221 Cal.App.3d 692, 727 (mitigation agreement that called for purchases of replacement groundwater supplies without specifying whether water was available was inadequate measure for mitigating project's effect on groundwater supplies)

<sup>151</sup> EIR, at p. 5.4-7 through 5.4-10, 5.4-16 through 5.4-17.

<sup>152</sup> General Plan, at p. NE-6, NE-15.

<sup>153</sup> *Id.* at NE-15 to NE-16.

<sup>154</sup> *Los Angeles Unified Sch. Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019 (an EIR's discussion of noise impacts was inadequate for failure to evaluate whether the additional traffic noise should be considered significant in light of the serious existing noise problem).

<sup>155</sup> *Id.* at 5.4-5 through 5.4-6, 5.4-12.

63.124 Future formulation of mitigation measures is appropriate where the measures set performance standards and demonstrate how an impact would be mitigated in the manner described in the Draft EIR. See, e.g., *City of Long Beach v. Los Angeles Unified Sch. Dist.*, 176 Cal. App. 4th 889, 915 (2009). In such circumstances, an EIR must describe the nature of the expected actions and cannot rely on untested measures or measures of unknown efficacy. *Communities for a Better Environment v. City of Richmond*, 2004, 184 Cal. App. 4th 70, 95; *Gray v. County of Madera*, 2003, 167 Cal. App. 4th 1009. Here, the mitigation measures in the Draft EIR that were provided to reduce noise impacts satisfied each of these criteria. Recognizing the absence of plan-level information regarding the proximity of noise-sensitive uses to specific uses within the project that have the potential to generate noise, the analysis assumes direct adjacency of these uses to residential uses and mitigates on the basis of those assumed levels (see pages 5.4-10 and 11 of the Draft EIR). The menu of noise attenuation identified in the mitigation measures are generally accepted as feasible ways to reduce noise impacts by known, quantifiable amounts. The mitigation measures also include performance standards (e.g., maximum noise levels) that the measure must achieve to ensure compliance with the Noise Ordinance. The incorporation of performance standards into mitigation measures, along with examples of specific measures that would achieve those standards, is specifically recognized in Section 15126.4(a)(1)(B) of the CEQA Guidelines, as well as in a large body of case law, as an appropriate way of dealing with impacts which cannot specifically be quantified at the time the EIR was prepared. As further assurance that the maximum noise levels will be achieved, the mitigation measures mandate follow-up noise studies to confirm that the measures achieve the desired noise level reductions within buildings containing noise sensitive receptors, and provide for additional measures if further noise reduction is required.



---

**COMMENTS**

---

**RESPONSES**

---

63.125 The potential for noise related to the Originally Proposed Project to impact surrounding development is addressed on pages 5.4-6 and 7 of the Draft EIR, which concludes that on-site stationary sources related to the project (e.g., HVAC and back-up alarms) would not significantly impact sensitive noise receptors located more than 120 feet from the noise source. Although loading docks potentially associated with retail operations within the project were not explicitly noted, loading dock activity noise is subject to the same determination. The nearest noise-sensitive receptor outside the project site is the multi-family residential development to the north. These homes are well over 120 feet from the project site. Furthermore, traffic noise from Del Mar Heights Road, which would lie between the project and the nearest residential homes, would mask stationary source noise from the project. Thus, the Draft EIR correctly concluded that stationary noise sources associated with the Originally Proposed Project would not have a significant impact on surrounding noise sensitive receptors and no mitigation measures are required. As stated in Section 12.9 of the Final EIR, the Revised Project also would not significantly impact surrounding sensitive noise receptors.

With respect to potential construction noise impacts, the Draft EIR recognized the potential for construction noise to impact noise-sensitive receptors that would exist within the development when subsequent development stages take place. A Mitigation Measure (Mitigation Measure 5.4-4 in the Final EIR) is specifically intended to protect existing on-site noise-sensitive uses from excessive construction noise. This measure would require the implementation of noise attenuation during construction to keep noise within the limit allowed by the City's Noise Ordinance. This measure would also apply to the Revised Project, as indicated in Section 12.9 of the Final EIR.

With respect to the potential for noise impacts to occur within the Originally Proposed Project, the Draft EIR concluded that significant noise impacts could occur within the Originally Proposed Project due to the mixed-use nature of the development (pages 5.4 10 and 11). As indicated in this comment, these internal impacts would be related to retail uses including restaurants and nighttime entertainment venues, as well as HVAC systems. Mitigation Measures 5.4-1 through 5.4-4, as identified in the Final EIR, are specifically intended to assure that adequate noise attenuation techniques are included in future building design to reduce potential internal noise impacts to below a level of significance. As further assurance that the maximum noise levels will be achieved, the mitigation measures mandate follow-up noise studies to confirm that the measures achieve the desired noise level reductions within buildings

COMMENTS

RESPONSES

63.125 containing noise sensitive receptors and provide for additional measures, cont. if additional noise reduction is necessary. As discussed in the Noise Study Addendum (Appendix F.1 to the Final EIR), a noise barrier would be required to protect public and private recreation areas associated with the Revised Project (see Mitigation Measure 12.9-1 of the Final EIR). With implementation of Mitigation Measures 5.4-1 through 12-9.1, potential noise impacts associated with the Revised Project would be less than significant.

The impact of traffic associated with the Originally Proposed Project on traffic noise affecting surrounding development is addressed on page 5.4-13 of the Draft EIR, which concludes that the addition of project traffic would not cause traffic noise levels to increase by more than 3 dBA, the threshold for such impacts. As noise level increases of less than 3 dBA are considered imperceptible to the human ear, the impact of project traffic on surrounding traffic noise would be less than significant. As the Revised Project would generate less traffic than the Originally Proposed Project, it too would not have a significant traffic noise impact on surrounding development.

63.126 The noise significance thresholds specified in the City's 2011 Significance Thresholds were used in the noise analysis. However, as discussed on page 5.4-5, the land use-noise compatibility table (Table K-4) contained in the 2011 Significance Thresholds is based on a previous version of the City's General Plan. To reflect the latest guidance on land use-noise compatibility from the City, the noise analysis in the Acoustic Report used the most recent land use-noise compatibility table as the basis for Table 5.4-1 in the Draft EIR.

## SheppardMullin

Martha Blake  
May 29, 2012  
Page 38

### F. Air Quality

The EIR contains a number of deficiencies that result in CEQA violations. First, the information in Table 5.5.01 is outdated and presents old air quality standards.<sup>156</sup> This leads to inaccurate analysis and impact assessment. Second, the EIR states that the San Diego Air Basin's State Implementation Plans ("SIP") has not been updated since 1994.<sup>157</sup> This statement is not correct as the latest version of the SIP for the San Diego Air Basin ("SDAB") is 2007. An analysis based off such a belief fails to disclose the true air quality impacts. Third, the statement that says that the SDAB has "achieved its attainment goals in a timely manner" is also outdated. Therefore, the Project would conflict with or obstruct implementation of the applicable air quality plan.<sup>158</sup>

Further, the EIR analysis states that "this proposed change in land uses would result in additional traffic trips and associated air emissions that were not accounted for in the ozone attainment demonstration within the SIP."<sup>159</sup> This admission demonstrates the Project conflicts with and obstructs implementation of the applicable air quality plan. Further, no evaluation or demonstration has been made that the construction impacts would be less than significant. The EIR makes no demonstration that this Project is accounted for in the SIP.

Furthermore, the EIR does not properly or sufficiently demonstrate the rationale regarding the Project's dust control measure. Specifically, it does not demonstrate why the Applicant is only proposing to water the site twice daily during grading and cut and fill operations.<sup>160</sup> Further, the construction scenario is based on the assumption that 1.5 acres would be the maximum amount of grading that would occur on any single day at the site.<sup>161</sup> This amount of site grading then results in low emissions of particulate matter. However, there is no enforceable provision requiring the Applicant to limit grading to 1.5 acres a day. This fugitive dust control measure does not appear in the document and is not included as a mitigation measure, but the impact conclusion ignores this.

Table 5.5-7 indicates it is presenting the maximum daily construction emissions during simultaneous construction of Phases 1, 2, and 3. This table contradicts the emissions presented in Table 5.5-5, which presents construction for Phase 1 only, as it is higher than the "maximum daily" emissions presented in Table 5.5-5, which assumes three phases would be constructed simultaneously. This same concern is applicable to Table 5.5-6, which presents construction emissions for simultaneous construction of Phases 1 and 2, and yet presents lower

<sup>156</sup> EIR, p. at 5.5.-5.

<sup>157</sup> *Id.* at 5.5-6.

<sup>158</sup> *Id.* at 5.5-10.

<sup>159</sup> *Id.* at 5.5-11.

<sup>160</sup> *Id.* at 5.5-13.

<sup>161</sup> *Id.*

63.127 The comment correctly states that the State and National Ambient Air Quality Standards have been updated since the air quality analysis was conducted for the project. A technical memorandum, included as Appendix G.1 of the Final EIR, updates the status of these standards, and Table 5.5-1 of the Final EIR has been updated to reflect the most recent standards. The new standards would not affect the emission analysis in the Draft EIR, and the proposed development would not exceed the NAAQS for NO<sub>x</sub> and SO<sub>x</sub>. On January 22, 2010, EPA revised the primary NO<sub>2</sub> NAAQS. Specifically, EPA established a new one-hour standard at a level of 100 ppb (188.68 µg/m<sup>3</sup>), in addition to the existing annual secondary standard (100 µg/m<sup>3</sup>). The maximum recorded one-hour NO<sub>2</sub> concentration during the 2007 to 2010 period was 0.087 ppm in 2007 at the Kearny Mesa monitoring station. The California one-hour NO<sub>2</sub> standard of 0.18 ppm and the federal one-hour NO<sub>2</sub> standard of 0.10 ppm were not exceeded at either monitoring station during this period.

On June 2, 2010, the U.S. EPA revised the National Ambient Air Quality Standards (NAAQS) for SO<sub>2</sub>. A new one-hour SO<sub>2</sub> standard of 75 ppb was established, and the existing 24-hour and annual primary standards were revoked. However, NO<sub>2</sub> and SO<sub>2</sub> are not the pollutants of concern in San Diego County because the area is in attainment for NO<sub>2</sub> and SO<sub>2</sub>. All other NAAQS remain the same. The recent standard established for sulfates (SO<sub>x</sub>) was also added to Table 5.5-1. All other and all California Ambient Air Quality Standards (CAAQS) remain the same. As the state standards are more stringent than the federal standards, the air quality analysis used the state standards as the basis for determining impacts. Thus, the basis for determining impacts in the air quality analysis, as well as the determinations themselves, were unaffected by the recent changes.



COMMENTS

RESPONSES

63.128 Based on the technical memorandum included in Appendix G.1 of the Final EIR, the discussion of the applicable air quality plans in the Final EIR has been updated to reflect the fact that the latest version of the SIP was adopted in 2007. However, recognizing that the SIP was last updated in 2007 has no bearing on the conclusions of the air quality analysis. The SIP does not affect the criteria pollutant calculations or the thresholds upon which significance was based. In addition the SIP does not affect the actual baseline air quality conditions cited in the analysis.

63.129 As discussed on page 5.5-2 of the Draft EIR, “The SDAB is currently classified as a non-attainment area under the CAAQS for ozone (serious non-attainment), PM<sub>10</sub>, and PM<sub>2.5</sub>.” In light of this fact, the statement that the SDAB has achieved attainment in a timely manner has been removed from the Final EIR. This revision, however, does not change the conclusions of the Final EIR relative to air quality impacts associated with either the Originally Proposed Project or the Revised Project, as the analysis is based on a comparison of calculated project emissions to existing thresholds.

63.130 The Final EIR appropriately concluded that neither the Originally Proposed Project nor the Revised Project would not obstruct or substantially interfere with implementation of the SIP or local RAQS.

As discussed on page 5.5-6 of the Draft EIR, the SDAPCD and the San Diego Association of Governments (SANDAG) developed the RAQS to achieve air quality goals within the SDAB. The RAQS outlines SDAPCD’s plans and control measures designed to attain the state air quality standards for O<sub>3</sub>. The SDAPCD has also developed the air basin’s input to the State Implementation Plan (SIP), which is required under Federal Clean Air Act for areas that are in nonattainment of air quality standards. The SIP includes the SDAPCD’s plans and control measures for attaining the O<sub>3</sub> NAAQS, and is also updated on a triennial basis.

The RAQS relies on information from CARB and SANDAG, including mobile, off-road, and area source emissions (which also includes construction equipment activities), as well as information regarding projected growth in the County, to project future emissions and determine strategies necessary for the reduction of emissions through regulatory controls. CARB mobile- source and off-road equipment emissions projections and SANDAG growth projections are based on population, vehicle trends, equipment usage trends, and land use plans developed by the cities and by the County as part of the development of the City’s and County’s General Plans. As such, projects that propose development

## COMMENTS

## RESPONSES

63.130 that is consistent with, or less dense than, the growth anticipated by the  
cont. General Plans could be consistent with the RAQS. However, if a project  
proposes development that is greater than anticipated in the General Plan  
and is greater than the SANDAG's growth projections, the project would  
have the potential to conflict with the RAQS and SIP.

The SIP relies on the same information from CARB and SANDAG to develop emissions inventories and emission reduction strategies that are included in the attainment demonstration for the air basin. The SIP also includes rules and regulations that have been adopted by the SDAPCD to control emissions from stationary sources. These SIP-approved rules can serve as a guideline to determine whether a project's emissions would have the potential to conflict with the SIP and, thereby, hinder attainment of the NAAQS for O<sub>3</sub>.

A proposed change in the land use designations that were in effect at the time the RAQS was formulated, is not, by itself, sufficient to establish a conflict with the RAQS; the effect on anticipated population is also important. With respect to this second factor, it is important to note that the population of San Diego County has not reached the maximum level assumed by the latest version of the RAQS (2009). The 2030 RTP, which was adopted in 2009 (the same year the RAQS was last updated) predicted a population for the year 2010 of 3,245,279 in San Diego County. However, according to the California Department of Finance, the population of San Diego County as of July 1, 2011 was 3,131,254. Because the current population in San Diego County has substantially lagged behind the projected population that was used as the basis for the RAQS, the addition of 608 residential units (1,661 residents) to the SDAB as part of the proposed development would remain well within the regional population forecast used to prepare the 2009 RAQS. Furthermore, it is important to note that in 2003, a parcel which was originally planned for approximately 500 multi-family housing units within the Carmel Valley planning area was purchased by the Solana Beach School District for the Solana Pacific Elementary. As a residential development, the 500-unit project would have generated a population of 915. As a result, the net population increase related to proposed development would actually be about 300 persons from the population which would be forecast under the existing Carmel Valley Community Plan. Thus, the proposed development would be consistent at a regional level with the underlying growth forecasts in the RAQS and would not interfere with implementation of the SIP or RAQS. As the RAQS and SIP are regional rather than local documents, this regional perspective is appropriate.

## COMMENTS

## RESPONSES

- 63.130 cont. Construction impacts on air quality would be comparable with developing the property as an industrial park given the fact the entire property would be graded and developed with buildings under either development scenario.
- 63.131 Rule 55 does not specify the required amount of watering to suppress the dust from the disturbed areas. The City considers watering twice a day to be an adequate approach to complying with SDAPCD Rule 55, Fugitive Dust Rule. Furthermore, use of the twice-a-day factor in the URBEMIS model confirmed that this watering frequency would adequately control construction dust. Lastly, Section 142.0710 of the City's Municipal Code prohibits any emissions to emanate beyond the premises. As a result, all dust is required to be kept on site or a violation of the City's code would result.
- 63.132 In order to calculate anticipated  $PM_{10}$  emissions for a project, URBEMIS requires an assumption for the area of grading. According to the URBEMIS2007 User's Guide, a standard method of estimating the maximum daily acreage disturbed is 25 percent of the total acreage to be graded. There are five blocks proposed to be developed in phases (i.e., Blocks A, B, C, D, and E). Each block covers approximately 4.6 acres. On the assumption that the grading would be limited to one block at a time, the analysis used a daily disturbance area of 1.5 acres, which represents 25 percent of a 4.6-acre block for Scenario 1. However, an analysis of the potential impacts of developing the entire property at one time (Scenario 3) was conducted as a part of the technical memorandum in Appendix G.1 of the Final EIR, and included in Table 5.5-7 of the Final EIR.. Under Scenario 3, the maximum daily acreage disturbed was estimated to be 5.75 acres, which represents 25 percent of the 23 acres to be graded over the entire site. As shown in Table 5.5-7 of the Final EIR, with the assumption of 5.75 acres of grading under Scenario 3 the City's  $PM_{10}$  standard would not be exceeded. Thus, the project need not be limited to a maximum of 1.5 acres of grading at any one time.
- 63.133 With regard to the construction emission data, there are different emission levels because construction emissions were evaluated for three different construction phasing scenarios, including:
- Scenario 1: sequential construction of Phases 1, 2, and 3;
  - Scenario 2: concurrent construction of Phases 1 and 2, followed by construction of Phase 3; and:
  - Scenario 3: concurrent construction of Phases 1, 2, and 3.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 39

63.133 cont. emissions for construction of two phases simultaneously than construction of a single phase. This sort of internal inconsistency undermines the EIR accuracy and the accuracy of its impact conclusions.

63.134 As referenced in our NOP comments, the EIR should fully analyze emissions resulting from construction and increased traffic. Exhaust emissions from diesel trucks have been identified as toxic air contaminants by the California Air Resources Board and are of particular concern. The EIR must include a health/ risk assessment for diesel particulates, including PM<sub>10</sub> and PM<sub>2.5</sub>.

63.135 Lastly, the Neurocrine Biosciences site is located immediately south of the project.<sup>162</sup> Also, a school is located near the Project site, which is a sensitive receptor. Because the Project cannot mitigate its park requirement by paying a fee toward construction of a park that has not been programmed in the Community Plan or Capital Improvement Plan, a park must be conditioned on-site to accommodate the Project's residents. This park site is another sensitive receptor that must be analyzed. The EIR fails to thoroughly analyze whether and to what extent the nearby industrial and commercial users emit pollutants that could be potentially harmful, distasteful or cause other concerns to future residents of the Project, including sensitive receptors such as children at the school, in the on-site homes, and at the future on-site park.

#### **G. Greenhouse Gas Emissions Analysis is Inadequate**

The Project's GHG analysis is inadequate because (i) it lacks enforceable measures proposed to reduce GHG emissions; (ii) it uses 1993 data that contradicts the EIR's definition of "business as usual" thus setting an incorrect baseline; (iii) it overestimates and double counts reductions in GHGs used thereby failing to demonstrate there is substantial evidence to support the conclusion that the Project reduces GHG emissions by at least 28.3 percent below "business as usual"; and (iv) it uses a GHG model that fails to analyze the categories of GHG emissions the City's Interim GHG Guidelines require.

63.136 The EIR states that GHG emissions were calculated using URBEMIS 2007.<sup>163</sup> Under this methodology, the EIR should have disclosed that URBEMIS does not include calculations for many of the GHG-generating activities associated with Project development, such as indirect emissions from electricity use, water and wastewater use, and solid waste handling. According to the City's August 18, 2010 GHG Interim Guidelines, the GHG "analysis should include, but is not limited to the five primary sources of GHG emissions: vehicular traffic, generators of electricity, natural gas consumption/combustion solid waste generation, and water usage." The URBEMIS Model also does not include San Diego-specific emission factors. This was also not disclosed within the EIR. Not only does the EIR not disclose these important exclusions, but the EIR also does not indicate why the URBEMIS Model was used in this analysis. Furthermore,

<sup>162</sup> NOP, at p. 2.

<sup>163</sup> EIR, at p. 5.7-16.

63.133 cont. Scenario 1 assumes durations of 28 months for construction of Phase 1 (occurring within 3 calendar years), 22 months for Phase 2 (occurring within 2 calendar years), and 31 months for Phase 3 (occurring within 4 calendar years). Under Scenario 2, concurrent construction of Phases 1 and 2 is assumed to take 28 months (occurring within 4 calendar years), and Phase 3 would take 31 months (occurring within 4 calendar years). Scenario 3 assumes a total duration of 40 months to concurrently construct Phases 1, 2, and 3 (occurring within 4 calendar years).

The commenter is correct that Scenario 3 (Table 5.5-7) should show higher PM emissions than the other scenarios because grading and construction activities would occur over the entire property at the same time. Table 5.5-7 in Section 5.5 of the Final EIR has been revised to reflect this correction. However, as illustrated in the revised table, construction emissions would still be below applicable thresholds of significance. Therefore, the significance conclusion remains unchanged from the Draft EIR. Due to the fact that construction would be reduced under the Revised Project, it is also concluded that the construction emissions associated with the Revised Project would be below the applicable thresholds of significance as well.

63.134 Potential health risks are primarily associated with the occurrence of toxic air contaminants (TACs) including diesel particulates. The analysis of potential health risks related to TACs contained in Draft EIR Appendix G, Air Quality and Greenhouse Gas Technical Report, and summarized on page 5.5-25 and 26 of the Draft EIR, is considered adequate with respect to TAC impacts, without a quantitative health risk assessment for the following reasons.

In its publication entitled the "Air Quality and Land Use Handbook: A Community Health Perspective", California Air Resources Board (CARB) identifies recommended distances from TAC sources to protect sensitive resources from unacceptable levels of TACs. Examples of CARB's recommendations of the following buffer distances should be considered when locating TAC emitters or sensitive land uses:

COMMENTS

RESPONSES

- 63.134 • Freeways or major roadways – 500 feet  
cont. • Dry cleaners with perchloroethylene – 500 feet  
• Auto body repair services– 500 feet  
• Gasoline dispensing stations with an annual throughput of less than 3.6 million gallons – 50 feet  
• Gasoline dispensing stations with an annual throughput at or above 3.6 million gallons – 300 feet  
• Other TAC sources, including furniture manufacturing and repair services, that use methylene chloride or other solvents identified as a TAC – 300 feet  
• Distribution centers with more than 100 trucks per day; more than 40 trucks with operating transport refrigeration units per day; or where transport refrigeration unit operations exceed 300 hours per week – 1,000 feet  
• Rail yards for major service and maintenance operations – 1,000 feet  
• Chrome platers – 1,000 feet

The potential for the proposed development to generate substantial quantities of TACs is addressed on page 52 of Appendix G of the Draft EIR and page 5.5-12 of the Draft EIR. Two potential sources of TACs are discussed: diesel delivery trucks and rooftop ventilation. With respect to TACs related to rooftop ventilation, minor sources of TACs (most likely volatile organic compounds [VOCs]) are likely to come from multiple sources within the office, residential, hotel, commercial retail, and movie theatre buildings complex. These TAC sources include building materials, fuel-burning appliances, bathrooms, clothing dryers, cleaning products/solutions, and cosmetics. All of these sources are considered minor sources of TACs. Furthermore, the City requires new commercial buildings and residential buildings to install ventilation or other mechanisms, including passive ventilation (e.g. through windows or infiltration), and exhaust vents for sources of contaminants to be diluted and dispersed into the outside air. The American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) Standard 62.1 for commercial buildings, and ASHRAE Standard 62.2 for residential buildings represent the standard of practice for the building industry with respect to ventilation and indoor air quality. Typically, the emissions from rooftop vents or other building exhaust is transported and diluted by the wind as it passes across the proposed development and immediate neighbors.

As concluded on pages 5.5-25 and 26 of the Draft EIR, TACs related to delivery trucks providing goods and services to the proposed development are not considered significant because the number of daily trips would

## COMMENTS

## RESPONSES

63.134 fall below the thresholds recommended by CARB. This conclusion is further supported by information provided by The Orlando Company, based on truck delivery estimates provided by tenants of a comparable development known as the Forum in Carlsbad, California (see memo in Attachment 63.134A). Based on tenant interviews, it is estimated that the proposed development (including retail, office and residential uses) would generate approximately 60 truck trips per day. Of these, an estimated average of 12 of the trucks would be diesel-powered. Of these, no more than half (6) would be refrigerated. The anticipated number of diesel-powered trucks (12) would be well below the 100 diesel-powered trucks per day threshold established by CARB for TAC analysis. Similarly, an average of 6 refrigerated trucks serving the proposed uses on a daily basis would be well below the 40-truck threshold established by CARB. Furthermore, in 2004, CARB adopted an Airborne Toxic Control Measure (ATCM) to limit heavy duty diesel motor vehicle idling in order to reduce public exposure to diesel PM and other TACs and air pollutants. The measure applies to diesel-fueled commercial vehicles with gross vehicle weight ratings greater than 10,000 pounds that are licensed to operate on highways, regardless of where they are registered. This measure does not allow diesel-fueled commercial vehicles to idle for more than 5 minutes at any given time. This ATCM would significantly limit potential emissions from loading dock activity. As such, neither the Originally Proposed Project nor the Revised Project would be considered a substantial source of diesel PM<sub>2.5</sub> and PM<sub>10</sub>.

In light of the minimal TACs generated by the proposed uses, the proposed uses would not pose a significant health risk to the future residents within the proposed development. Nor would it pose a significant health risk to surrounding sensitive receptors, including the schools and residential development.

With respect to the potential for surrounding TAC sources to significantly impact future residents of the proposed development, none of these sources would lie closer than recommended by CARB guidance. Because the Neurocrine facility is not listed in SDAPCD's 2011 Air Toxics "Hot Spots" Program Report for San Diego County (SDAPCD 2011), it is not considered a TAC source by the SDAPCD. Potential TAC sources within the general vicinity of the project are limited to I-5 and a gas station. The freeway is not a TAC risk to future residential uses because it lies approximately 1,500 feet from the project site, which well exceeds the 500-foot setback recommended by CARB. Similarly, the gas station which is located approximately 750 west of the subject property would lie beyond the 50-foot setback as recommended by CARB guidance.



COMMENTS

RESPONSES

63.134 Due to the fact that the recommended buffers for potential TAC sources are cont. exceeded for the proposed development, the number of diesel-powered and refrigerated trucks are far below screening thresholds, and controls imposed upon delivery trucks will substantially limit idling, none of CARB's screening criteria for requiring a health risk assessment are met. Therefore, impacts related to TAC emissions are properly considered less than significant, and a health risk assessment is not warranted.

63.135 As indicated in responses to comments 63.168 through 170, the proposed development does not need to include an onsite park. Nevertheless, as discussed in response to comment 63.169, the Revised Project includes 2.6 acres of recreation area which would be available to the public including a 1.1-acre passive recreation area and 0.4-acre children's play area in the northwest corner of the proposed development.

As discussed in response to comment 6.3.134, surrounding commercial and industrial uses, including the Neurocrine facility, would not pose a significant health risk to future occupants of the proposed development.

63.136 As discussed in Appendix G.1 of the Final EIR, URBEMIS 2007 version 9.2.4 (URBEMIS) continues to be a valid method for estimating GHG impacts associated with development projects. Although the CalEEMod version 2011.1 (CalEEMod) model has been developed, and includes some features that make it easier to use, it has not superseded URBEMIS. URBEMIS has similar emission factors and equation methodologies used in CalEEMod. Emission factors from the CARB's 2007 motor vehicle emission factors model (EMFAC2007) and 2007 off-road heavy duty equipment emission factor model (OFFROAD2007) are used in both the URBEMIS and CalEEMod models. Both models use Institute of Transportation Engineers (ITE) trip generation rates to calculate operational emissions and total vehicle trips. Lastly, both use the OFFROAD2007 equipment emission factors, load factors, and horsepower ratings to calculate construction-related emissions.

The Draft EIR acknowledged, on page 5.7-17, that the URBEMIS model does not provide estimates of emissions of other GHG from construction (such as N<sub>2</sub>O and CH<sub>4</sub>). However, these emissions were considered negligible in comparison with emissions of CO<sub>2</sub>, and were determined to not considerably contribute to the total GHG construction. The emissions calculation does not take into account emissions of N<sub>2</sub>O or CH<sub>4</sub> because construction activities associated with land use development projects are not likely to generate substantial quantities of these GHG compounds.

## SheppardMullin

Martha Blake  
May 29, 2012  
Page 40

63.136 cont. URBEMIS has been superseded by CalEEMod, which has been available since February 2011. Thus, the EIR should discuss why the CalEEMod was not considered or used for the analysis.

63.137 The entire analysis is based on outdated information overestimates "business as usual" ("BAU") energy use, allowing the applicant to take credit for large reductions in GHG emissions.<sup>164</sup> The EIR does not address why electricity use and natural gas use rates from the South Coast Air Quality Management District's 1993 reference document was used to calculate BAU emissions. These values do not reflect Title 24 as of 2005 despite the definition on Page 5.7-16 indicating that BAU condition is defined as the emissions that would have occurred in the absence of reductions mandated under AB 32 (based on the 2005 Building Code standards).<sup>165</sup> There are more recent documents published by the CEC that provide more accurate estimates of energy use from residential and commercial land uses.

63.138 The EIR's analysis of the Project's GHG impact is further inadequate because it relies upon implementation of Rapid Bus Route 473 in Project Design Feature LUT-3 to help achieve a mixed-used development-related reduction in vehicle miles traveled.<sup>165</sup> Table 5.7-8 attributes an annual 828.96 MTCO<sub>2</sub>E reduction from implementation of Project Design Feature LUT-3. The EIR cites to the 2050 RTP for its evidence that the Project will be served by Rapid Bus Route 473.<sup>166</sup> However, the RTP indicates such bus transit service is not planned until at least 2035. A GHG-reducing project design feature not scheduled to be implemented until 2035 cannot logically provide a GHG reduction necessary to assist in meeting AB 32's GHG threshold for 2020. AB 32 establishes an emission target of achieving 1990 levels of GHG by the year 2020. The City's GHG threshold requires project's to demonstrate that their annual GHG emissions will be 28.3 percent of BAU emissions levels in 2020 in order to be consistent with AB 32.<sup>167</sup>

63.139 The EIR adopts the City of San Diego's interim GHG threshold of 28.3 percent below BAU for projects, such as the Project whose annual GHG emissions exceed 900 MTCO<sub>2</sub>E. The EIR states that this BAU percentage is derived from the California Air Resources Board ("CARB") December 11, 2008 Scoping Plan as the percentage reduction in GHG necessary from a project to achieve AB 32's goal of reducing GHGs to year 1990 levels by the year 2020.<sup>168</sup> The EIR fails to inform decision-makers and the public that CARB abandoned the 2008 Scoping Plan after a group of environmental justice advocates sued the state on behalf of a group called the Association of Irrigated Residents ("AIR") alleging that the Scoping Plan's cap and trade program violated state law in a number of ways. The trial court in the case, *Association of Irrigated Residents v. CARB*, issued a ruling upholding much of the state's plan but also held that the board's environmental review of the scoping plan was flawed. More

<sup>164</sup> /d. at 5.7-19.

<sup>165</sup> EIR, at p.5.7-26, 5.7-27.

<sup>166</sup> /d. at 5.1-10.

<sup>167</sup> /d. at 5.7-16.

<sup>168</sup> EIR, at p. 5.7-16, 5.7-10.

63.136 With respect to indirect GHG emission sources from operation of the project, the analysis conducted for the Draft EIR recognized that URBEMIS does not calculate GHG emissions from indirect sources such as energy consumption and solid waste (other than transportation of solid waste). In order to assure that these sources were factored into the overall GHG estimate for project operations, GHG emissions from these sources were calculated separately and included in the GHG analysis. The results of these separate analyses were summarized in Table 5.7-5 of the Draft EIR (Table 5.7-6 of the Final EIR).

The reductions associated with the Low Carbon Fuel Standard are appropriately excluded from URBEMIS because they are over and above the Business As Usual (BAU) assumptions of the CARB 2008 Scoping Plan and are traditionally used as part of the reductions assumed to meet the requirements of AB 32 for a 28.3 percent reduction from emissions under the BAU condition by the year 2020.

As discussed in response to comment 289.18, specific assumptions used in the URBEMIS model were customized to reflect San Diego conditions.

63.137 Table 5.7-6 of the Final EIR has been revised to reflect the BAU conditions based on the more recent information on electricity consumption rates contained in the California Energy Commission's 2006 California Commercial End-Use Survey and the 2004 California Statewide Residential Appliance Saturation Survey. As indicated in Appendix G.1 of the Final EIR and Table 5.7-6 of the Final EIR, the annual GHG emissions related to electricity consumption increased from 5,576 to 6,293 metric tons CO<sub>2</sub>e. This revision does not affect the GHG emission reductions achieved by the proposed development in comparison to the BAU, and does not affect the conclusion of the Final EIR that neither the Originally Proposed Project nor the Revised Project would not generate a significant amount of GHG emissions.

63.138 To provide a revised estimate of the GHG reductions which could be achieved as a result of the mixed-use characteristics of the Originally Proposed Project, a series of calculations were performed in Appendix G.1 of the Final EIR using methodologies developed by CAPCOA. These calculations are included in Section 5.5 of the Final EIR. According

## COMMENTS

## RESPONSES

63.138 cont. to the CAPCOA methodology, a land use index measurement can be applied to the proposed development. The land use index measurement is based on the mix of land uses associated with a development. An index of zero indicates a single land use, while 1 indicates a full mix of uses. Based on the CAPCOA methodology, the Originally Proposed Project land use index was determined to be 0.64, which resulted in an estimated 29.4 percent reduction in VMT for the vehicle emission category. As a result, and as indicated in Table 5.7-9 in the Final EIR, the mixed-use characteristics of the project would result in an annual reduction in GHG emissions of 4,062 MT CO<sub>2</sub>e, which is approximately 29.4 percent reduction from project emissions under the BAU (transportation sector-specific). It should be noted that these reductions are not dependent on Bus Route 473. Thus, the conclusions of the Draft EIR with respect to the ability of the Originally Proposed Project to achieve a 29.4 percent reduction are unaffected by this change. The text in Section 5.5 of the Final EIR has been modified to remove the reference to this bus route.

As discussed in Appendix G.1, the Revised Project would result in proportionately less GHG emissions than the Originally Proposed Project due to the reduced energy consumption and other factors associated with the reduced scale of the Revised Project.

63.139 A discussion of the evolution of the CARB Scoping Plan is included in Appendix G.1 of the Final EIR. As indicated in the comment, the 2011 supplement to the 2008 Scoping Plan takes into account the fact that growth in California is slower than anticipated due to the recession. As a newer document, the 2011 supplement to the Scoping Plan also has integrated recent legislation intended to reduce GHG emissions (e.g., Pavley and the renewable portfolio standard, and the 2008 version of the CBC). However, the City continues to believe that the 2008 Scoping Plan and the 28.3 percent GHG reduction target is the most appropriate threshold for analysis because it provides a conservative estimate of GHG emissions and design features required to achieve the target reduction on a project-level. Thus, the conclusion that the Originally Proposed Project as well as the Revised Project would meet the intent of AB 32 remains valid.

In addition, several factors which occurred after this comment was drafted have altered the information contained in the comment. On June 19, 2012, the California Court of Appeal ruled that the 2008 Climate Change Scoping Plan adopted by the CARB does comply with the requirements of the Global Warming Solutions Act of 2006 (AB 32).



## COMMENTS

## RESPONSES

63.139 cont. This legislation allows CARB to move forward with its designated plan to reduce GHG emissions with GHG reduction measures such as the Low Carbon Fuel Standard (LCFS) and a market-based cap-and-trade program. The decision also found the Scoping Plan to comply with AB 32, which required CARB to prepare a scoping plan to reduce GHG emissions to 1990 levels by the end of 2020.

The 2008 Scoping Plan estimated that the measures proposed in the Plan would reduce annual GHG emissions to 1990 levels by reducing the level of emissions projected in 2020 in the absence of those measures (BAU) from 596 million metric tons of CO<sub>2</sub> equivalent (MMT CO<sub>2E</sub>) to 427 MMT CO<sub>2E</sub>, a reduction of 169 MMT CO<sub>2E</sub>. Subsequent modifications provide a margin of safety by recommending additional strategies to account for measures in uncapped sectors of the economy that do not achieve estimated reductions. The modifications further increase estimated aggregate reductions in 2020 from 169 MMT CO<sub>2E</sub> to 174 MMT CO<sub>2E</sub>. Therefore, the use of the 2008 Scoping Plan in the Draft EIR was both conservative and appropriate.

In order to respond to the litigation associated with LCFS, the Draft EIR estimated GHG emissions related to the project with and without LCFS. Consequently, the discussion of GHG emissions related to the project on page 5.7-30 of the Draft EIR indicated the anticipated reduction from state measures with and without LCFS. As stated on page 5.7-30 of the Draft EIR, depending on the development scenario, the minimum reduction in GHG emissions would be 47.06 percent without the LCFS standard, which would be more than enough to achieve the 28.3 percent reduction required to comply with AB 32.

Although the City continues to rely on the 2008 Scoping Plan and 28.3 percent reduction target, the GHG impacts of the Originally Proposed Project were also evaluated using the 2011 supplement to the Scoping Plan and the lower reduction target of 16 percent. The results of this analysis are contained in Attachment B to Appendix G.1 of the Final EIR. In addition, the results of this analysis are provided in the following tables. As illustrated in these tables, this analysis also concluded that the proposed development would not result in a significant GHG impact. As discussed in Attachment A of Appendix G.1 of the Final EIR, the Revised Project would result in proportionately less GHG emissions than the Originally Proposed Project due to the reduced energy consumption and other factors associated with the reduced scale of the Revised Project. Thus, it is also concluded that the Revised Project would not result in a significant GHG impact.

63.139 **State-wide Greenhouse Gas Emissions**

cont.

As shown in Exhibit 63.139-1, the total estimated operational GHG emissions associated with the Originally Proposed Project under unmitigated BAU conditions (pursuant to the reduced growth assumptions of the 2011 supplement to the Scoping Plan) would be 23,538 MT of CO<sub>2</sub>e emissions per year.

**Exhibit 63.139-1**  
**Total Estimated Operational GHG Emissions**  
**Associated with the Originally Proposed Project**  
**Under Unmitigated BAU Conditions<sup>1</sup>**

Emission Source	Annual Net Emissions (MT Per Year)			
	CO <sub>2</sub>	CH <sub>4</sub>	N <sub>2</sub> O	CO <sub>2</sub> Equivalents
Electricity Use	6,266	0.02614	0.0702	6,293
Natural Gas Use	2,880	0.3203	0.0054	2,889
Water Consumption	448	0.0187	0.0050	450
Solid Waste	90	0.0003	0.0002	90
Vehicular Use	12,604	3.5657	3.6674	13,816
Global Warming Potential Factor	1	21	310	--
	<b>TOTAL</b>			<b>23,538</b>

<sup>1</sup> Based on the 2011 supplement to the Scoping Plan  
 Source: HELIX 2012b

**Project-level GHG Emissions**

The total unmitigated GHG emissions expected from the Originally Proposed Project including construction and operational emissions are summarized in Exhibit 63.139-3.

**Exhibit 63.139-2**  
**Total Project Unmitigated GHG Emissions<sup>1</sup>**  
**Associated with the Originally Proposed Project**

Emissions Source	Construction Scenario 1 (MT Per Year)	Construction Scenario 2 (MT Per Year)	Construction Scenario 3 (MT Per Year)
Amortized Construction	174	173	242
Operations	23,538	23,538	23,538
<b>TOTAL</b>	<b>23,712</b>	<b>23,711</b>	<b>23,780</b>

Source: HELIX 2012c and 2014

63.139 As identified in Exhibit 63.139-3, a total reduction of approximately 7,742 MT per year of GHG emissions would occur from implementation of the state measures (including the LCFS reduction). Without the LCFS reduction, a total reduction of approximately 6,551 MT per year would occur.

**Exhibit 63.139-3**  
**Greenhouse Gas Emissions Reductions**  
**Based on Existing State Measures**  
**Associated with the Originally Proposed Project**

Measure	Sector	Reduction from BAU (Sector Specific) (%)	BAU CO <sub>2</sub> e/Sector (MT Per Year)	CO <sub>2</sub> e Reduction (MT Per Year)
Million Solar Roof	Energy Use	1.21%	6,293	76.15
Energy Efficiency (AB 32)	Energy Use	15.11%	6,293	950.87
Renewable Portfolio Standard (33% by 2020)	Energy Use	12.24%	6,293	770.26
Title 24 Energy Code Requirements (Green Buildings)	Natural Gas/Energy Use	14.94%	9,182	1,371.7
Assembly Bill 1493 (Pavley Standards)	Transportation	18.22%	13,816	2,517.28
Executive Order S-1-07 (Low Carbon Fuel Standard)	Transportation	8.62%	13,816	1,190.94
Medium/Heavy Duty Vehicles (Aerodynamic Efficiency and Vehicle Hybridization)	Transportation	0.80%	13,816	110.53
Regional Transportation-related GHG Targets	Transportation	2.87%	13,816	396.52
Vehicle Efficiency Measures	Transportation	2.59%	13,816	357.83
<b>TOTAL</b>				<b>7,742.17</b>

<sup>1</sup>Percent Reduction from BAU calculated based on the CARB 2008 Scoping Plan reductions for sector-specific activity (e.g., LCFS Reductions Counted Towards 2020 Target is 15 MMT CO<sub>2</sub>e and Projected 2020 BAU emissions are 174 MMT CO<sub>2</sub>e, therefore 15 MMT CO<sub>2</sub>e ÷ 174 MMT CO<sub>2</sub>e = 8.62%). CARB Scoping Plan, December 2008

<sup>2</sup>Emissions available from Table 10, by sector: Total Greenhouse Gas Emissions (Annual) BAU without Consideration of Project Design Features and/or State and Federal Mandates.

<sup>3</sup>CO<sub>2</sub>e Reduction is quantified by multiplying the Percent Reduction from BAU (Sector Specific) by the BAU CO<sub>2</sub>e/Sector mtpy value.

Source: HELIX 2012c and 2014



As illustrated in Exhibit 63.130-4, by complying with the State-mandated reduction standards and implementing GHG reduction features (refer to Exhibit 63.139-5), the Originally Proposed Project would be able to meet the 28.3 percent reduction over BAU goal

**Exhibit 63.139-4**  
Summary of Estimated Total GHG Reductions  
Associated with the Originally Proposed Project

Source	Construction Scenario 1 (%)	Construction Scenario 2 (%)	Construction Scenario 3 (%)
Project Emissions <sup>1</sup>	23,712	23,711	23,780
State Measures Emissions Reductions <sup>2</sup>	-7,742	-7,742	-7,742
GHG Reduction Features Emissions Reductions	-6,038	-6,038	-6,038
Total Reduced Emissions	9,932	9,931	10,000
<b>TOTAL PERCENT REDUCTION</b>	<b>58.11</b>	<b>58.11</b>	<b>57.95</b>

<sup>1</sup> As derived from Table 4.

<sup>2</sup> As derived from Table 2.

Source: HELIX 2012c and 2014

**Exhibit 63.139-5**  
GHG Reduction Features for Greenhouse Gas Emissions Reductions From Design Features  
Associated with the Originally Proposed Project

Category - Feature	Sector	2010 CAPCOA Report Measure	Reduction from BAU (Sector Specific) (%)	BAU CO <sub>2</sub> e/Sector (MT Per Year)	CO <sub>2</sub> e Reduction (MT Per Year)
Building Energy Use – Energy efficient features	Natural Gas/Energy Use	BE-1	20%	9,182	1,836.40
Water Use – Water conservation features	Water Use Related Emissions	WUW-1	30%	450	135.00
Solid Waste Generation – Waste management practices	Municipal Solid Waste Generation	SW-1 and SW-2	5%	90	4.50
Mixed-use Developments – Reduced VMT	Transportation	LUT-3	29.4%	13,816	4,061.90
				<b>TOTAL</b>	<b>6,037.80</b>

Source: HELIX 2012c

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 41

specifically, the trial court held that CARB had failed to thoroughly analyze alternatives to the cap and trade program, including a carbon tax. During the period of time this case has been on appeal, CARB has completed a new environmental review that more extensively analyzes alternatives to cap-and-trade and approved both the new assessment and a new scoping plan in late August 2011. The August 2011 Scoping Plan establishes a new BAU threshold, but assumes implementation of Pavely, the Renewable Portfolio standard and 2008 Title 24 Building Code standards. The EIR does not indicate whether it is above or below the new BAU standards once Pavely, Renewable Portfolio Standard, 2008 Title 24 Building Code standards and the enjoined Low Carbon Fuel Standard are removed from the project's BAU calculation. While the CEQA Guidelines allow the City of San Diego flexibility to establish a GHG threshold based upon expert opinion and substantial evidence, where the experts at CARB violated the law in establishing a BAU percentage in Scoping Plan that they have since abandoned, there is inadequate substantial evidence to support demonstration that a 28.3 percent BAU standard (using Pavely, RPS, but not LCFS) would provide a fair share contribution toward achievement of the AB 32's emission's target.

Additionally, the EIR discusses assumptions regarding reductions in GHGs from state and federal programs to reduce GHG emissions from vehicles. There is no substantial evidence these reductions add up to "as much as 33 percent" as stated in the document.<sup>169</sup> It is also stated in this paragraph that "the determination of whether the project would meet the 28.3-percent reduction target is evaluated both with and without the LCFS," yet there is no further evaluation of this in the document. The LCFS was taken into account in the analysis.

The EIR's GHG impact analysis is further inadequate because it fails to analyze the project's cumulative contribution to global warming through its changes to the albedo effect. There is an albedo effect from the conversion of fallow, light – colored, graded land to one occupied by darker surfaces, such as buildings, streets and landscaping. Albedo is the function of solar radiation reflected back into space by an area of the earth's surface. On a large scale, such a change affects the radiative balance of the earth's surface, and thus contributes to global warming by reducing the amount of sunlight reflected back to outer space, as the project's dark surfaces absorb more and reflect less solar energy than the underlying ground. Historical changes in earth-surface albedo, both positive and negative, have occurred from a number of other human-induced changes, for example, from the conversion of forests to farmland or from the construction of roads and buildings.

Typical surface albedo values range from 0.05 for asphalt to 0.95 for fresh snow, within a global mean planetary albedo of about 0.3 (BLM, 2010). An albedo for desert, which is similar to the project's barren graded surfaces, ranges from 0.2 to 0.4, meaning that 20 to 40 percent of incident radiation is reflected back into space. Dark-colored sunlight-absorbing surfaces contemplated through the site's development, by comparison typically reflect less solar radiation. The EIR fails to identify the project's existing albedo condition and the degree to which the Project reduces the existing albedo effect and the cumulative effect net reductions in

<sup>169</sup> *Id.* at p. 5.7-23.

63.140 As discussed in the response to comment 63.139, LCFS was appropriately addressed in the GHG analysis prepared for the Draft EIR.

The 33 percent reduction for the vehicle classification is based on the data provided in Table 2 in the adopted 2008 Scoping Plan. However, it was determined that the percentages summarized on page 5.7-22 of the Draft EIR were not comprehensive. A new table was included in the Appendix G.1, and has been added to the Final EIR (Table 5.7-1) to summarize the GHG reductions anticipated from state regulations that would apply to operations of the proposed development. Based on this information, Table 5.7-7 in the Draft EIR presented incorrectly low percentage reductions for the state-mandated vehicle standards, thereby overstating the impact of the proposed development. The amount of GHG reduction anticipated by implementation of state transportation-related measures is increased from 2,940 to 4,573 MTCO<sub>2</sub>e, and Table 5.7-8 of the Final EIR has been revised accordingly. These revisions do not affect the conclusion that neither the Originally Proposed Project nor the Revised Project would not have a significant GHG impact.

GHG reductions from AB 1493 (Pavley) have been increased from 14.06 percent to 18.22 percent in recognition of the fact that 2008 Scoping Plan predicted a reduction of approximately 31.7 million metric tons of CO<sub>2</sub> equivalent by year 2020.

COMMENTS

RESPONSES

63.140 GHG reductions from requirements related to aerodynamics and  
cont. hybridization have been increased from 0.62 percent to 0.80 percent in recognition of the fact that the 2008 Scoping Plan predicted a reduction of approximately 1.4 million metric tons of CO<sub>2</sub> equivalent by year 2020.

New state measures related to Regional Transportation related GHG Targets and Vehicle Efficiency Measures have been added to Table 5.7-8 of the Final EIR, resulting in GHG reduction percentages of 2.87 percent and 2.59 percent, respectively.

As discussed in response to comment 63.140, Table 5.7-1 of the Final EIR has been revised to reflect the fact that the GHG reductions from state regulations are anticipated to be on the order of 33.1 percent based on the following reductions: Pavley standards, (18.22 percent), LCFS (8.62 percent), regional transportation-related GHG targets (2.87 percent), vehicle efficiency measures (2.59 percent), and light/heavy vehicle aerodynamic efficiency/hybridization standard (0.80 percent). This change does not affect the conclusion that neither the Originally Proposed Project nor the Revised Project would not have a significant GHG impact.

63.141 In response to the comment, the albedo effect of the Originally Proposed Project was analyzed. As indicated the Exhibit 63.139-8, the Originally Proposed Project would increase the albedo factor associated with the project from the existing condition of 0.23 to 0.50. With the overall reduction in intensity and density, the Revised Project would result in the same or less increase in albedo.



63.141  
cont.

**Exhibit 63.139-8**  
**Albedo Effect Of The Proposed Project**

Land Cover	Surface Cover (%)	Surface Area (sq ft)	Surface Albedo	Weighted Albedo
Proposed development				
Streets and Driveways <sup>1</sup>	11.87	122,019	0.04	0.50
Sidewalk and Parking Structure <sup>2</sup>	12.85	132,103	0.45	
Roof <sup>3</sup>	55.58	571,341	0.70	
Park and Open Space <sup>4</sup>	19.70	202,553	0.23	
Current Condition				
Open Space <sup>5</sup>	100%	1,028,016	0.23	0.23

<sup>1</sup> Assumes an albedo factor of .04

<sup>2</sup> Assumes an albedo factor of .45

<sup>3</sup> Assumes an albedo factor of .70

<sup>4</sup> Assumes an albedo factor of .23

<sup>5</sup> Assumes an albedo factor of .23

Sources:

Surface area data were obtained from Leppert Engineering Vesting Tentative Map for One Paseo, Sheet C-10 of 16. June 2011.

Albedo effect data were obtained from CEC's Energy Efficiency Community Development in California: Chula Vista Research Project. CEC-500-06-004 January 2009.

While the changes to the surface land use of the project site would change the albedo effect of the land, it should be noted that the local meteorological conditions have a very strong influence on the albedo effect of the San Diego region, including the project site. The project site is located within 2 miles of the ocean and, as a result often is affected by marine layer conditions. The Scripps Institute of Oceanography has conducted several studies and found that the solar radiative effect of low marine clouds is dominated by their contribution to the planetary albedo over San Diego (SIO 2012). Thus, the increase in albedo on the project site following development of either the Originally Proposed Project or the Revised Project would be negligible due to the common occurrences of the marine layer in the region.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 42

63.141  
cont.

albedo from other planned development within the Project vicinity, City, County, and state will have on the earth reflectivity and thus global warming. Several modeling tools are available for such measurements, none of which were implemented in the EIR assessment.<sup>170</sup>

63.142

Further, the discussion of solid waste GHG emissions does not provide any information on the methodology used to calculate these emissions.<sup>171</sup> Again, the EIR does not discuss why the URBEMIS Model used as the sole source of emissions from waste management activities. This calculation does not account for the generation of methane from waste handling and does not provide a complete analysis of the overall GHG emissions from this activity.

63.143

The EIR stated that "the difference between cumulative trips and driveway trips was considered in the analysis to account for the placement of mixed office and retail in the vicinity of residential and commercial uses, which would allow for internal trips."<sup>172</sup> There is no documentation of whether reductions were taken in the analysis for this, and what level of reductions was assumed.

63.144

The EIR lacks the quantitative analysis that justifies the assumptions made in the reductions in energy use and natural gas use.<sup>173</sup> The analysis counts twice reductions from energy efficiency, and overestimates the reductions that would be achieved. In fact, the California Energy Commission has published analyses showing the estimated reductions in electricity and natural gas usage that contradict the information in this table; for example, reductions in natural gas usage for meeting Title 24 Energy Code as of 2008 versus 2005 are only in the range of 7.2 to 7.4 percent for a project such as the Project, yet it appears that the analysis took credit for a 15 percent reduction. The reductions assumed in the analysis are not justified and no enforceable measures have been proposed to support the conclusions of the analysis. Furthermore, the category "Electricity Energy Efficiency (AB 32)" is not explained or identified, yet a reduction of 11.67 percent is assumed without any justification. The EIR must discuss how such a reduction could be implemented for the Project.

63.145

Under Project Design Feature BE-1, it is stated that the Project would exceed Title 24 energy efficiency requirements by twenty percent.<sup>174</sup> The analysis already assumed a 15 percent reduction in energy use from Title 24 as of 2005 in Table 5.7-7, which, as stated above, is disputable. The measures identified in the EIR are qualitative and no analysis is provided that shows the energy use reductions that would be achieved. No enforceable measures have been proposed under Project Design Feature BE-1, yet Table 5.7-8 assumes an additional 20 percent reduction from "BAU" energy use, for which credit is taken on top of the 15 percent reduction as

<sup>170</sup> See [http://prhouser.com/houser\\_files/developmentlandsurface.pdf](http://prhouser.com/houser_files/developmentlandsurface.pdf).

<sup>171</sup> *Id.* at p. 5.7-21.

<sup>172</sup> *Id.* at p. 5.7-22.

<sup>173</sup> *Id.* at p. 5.7-24.

<sup>174</sup> *Id.* at p. 5.7-24.

63.142 As discussed in response to comment 63.136, URBEMIS continues to serve as a valid GHG emissions modeling tool. As also discussed, the GHG analysis in the Draft EIR used other tools to calculate emissions not calculated by URBEMIS. Together, these tools provided a complete analysis of the relevant GHG emissions that would result from the propose project.

The reference to 90 MT CO<sub>2</sub>e related to solid waste-related GHG emissions included solid waste handling and transport. Page 5.7-22 of the Final EIR has been modified to confirm this fact, and the conclusions of the GHG analysis remain unchanged.

63.143 The air quality and GHG analyses were based on the driveway trips after applying the mixed-use reduction of 5 percent. Thus, the traffic volume used in these analyses was 26,961 ADT, consistent with the traffic analysis.

63.144 The inference that the energy reduction possible at the project level is limited to 7.2 - 7.4 percent is misleading. The source of this estimate is a CEC document titled, Impact Analysis for the 2008 Update to the California Energy Efficiency Standards for Residential and Nonresidential Buildings. The report indicates that the percent reductions were estimated for the first year electricity and gas savings, and further explains that the savings will accumulate as the Energy Efficiency Standards affect each subsequent year of construction. The term "percent energy saving" can sometimes appear confusing because the Title 24 Energy Codes frequently change from year to year. The state of California's Green Building Standards, first published in July 2008 and updated for publication in 2010, codifies voluntary "reach" standards for energy efficiency by using the percent improvements in the energy performance levels, as compared with mandatory Standards, for newly constructed residential and nonresidential buildings. The Green Building Standards Code established tiered energy performance levels of 15 percent and 30 percent more stringent than the mandatory 2008 Standards.

## COMMENTS

## RESPONSES

63.144 cont. The Green Building Standards Code, CARB's Scoping Plan and the CPUC's Energy Efficiency Strategic Plan all include the concept of a tiered approach to implementing energy efficiency in newly constructed buildings. This concept has been successfully implemented in the New Solar Home Partnership and the California Solar Initiative, where either a Tier I (15 percent) or a Tier II (30 percent) level of energy efficiency beyond mandatory code levels is required before an incentive can be received for the installation of a solar electric system. The Energy Commission intends to carry this concept further in their upcoming 2013 update to the Standards by developing, in parallel, both mandatory and voluntary (or "reach") energy efficiency code requirements. The 15-percent improvement in the energy performance level requirements will be implemented for the proposed development, as appropriate, under the current and updates to the Title 24 codes.

In addition, the comment requested justification for the 11.67 percent reduction for the Electricity Energy Efficiency measure shown in Table 5.7-7 of the Draft EIR. In Table 3, Measures with Flexible Market Compliance Features, of the adopted 2008 Scoping Plan, the energy efficiency measure of 15.2 MT of CO<sub>2</sub>e, divided by the overall total estimated reductions of 130.9 MT of CO<sub>2</sub>e, equates to an 11.67 percent reduction. As previously discussed in response to comment 63.140, Table 5.7-7 of the Draft EIR presented incorrectly low information on the percent reduction outlined in Table 2 of the 2008 Scoping Plan, which underestimated the anticipated reduction. Based on the information in the 2008 Scoping Plan, emissions from energy use would be reduced by 15.11 percent (not by 11.67 percent) through electricity efficiency (i.e., building/appliance efficiency, increase HP generation, and solar water heating) measures mandated by the CalGreen standards. The use of the 2008 Scoping Plan GHG reduction measure in the EIR is adequate. The text on page 5.7-22 and Table 5.7-8 in the Final EIR have been revised to reflect this correction. This revision does not affect the results and conclusions drawn in the Final EIR with respect to GHG emissions related to the Originally Proposed Project or the Revised Project rather, it strengthens them by demonstrating the full reductions of GHG emissions achievable.

The energy reductions based on implementation of state regulations, as presented in Table 5.7-7 of the Draft EIR, have been updated in the Final EIR (see Table 5.7-8) to reflect Table 2 of the adopted 2008 Scoping Plan. The Renewable Portfolio Standard (20 percent by 2020) has been eliminated to avoid double-counting with the RPS (33 percent by 2020). In addition, a GHG reduction from a new state measure requiring the



COMMENTS

RESPONSES

63.144 installation of anchors for solar roofs has been added to Table 5.7-8 of the cont. Final EIR. This correction, however, does not change the conclusions of the Draft EIR relative to the project's GHG emissions, as GHG reduction targets are still met.

The reductions associated with Energy Efficiency (AB 32) have been increased from 11.67 percent to 15.11 percent in recognition of the 2008 Scoping Plan's estimated reduction of approximately 26.3 million metric tons of CO<sub>2</sub> equivalent by year 2020.

The reductions associated with the 2005 version of Title 24 have been eliminated in favor of the additional GHG reductions anticipated from CalGreen. As a result, the GHG reduction from building code measures is reduced from 13.00 percent to 12.24 percent. This smaller percentage is the result of the reduction of approximately 21.3 million metric tons of CO<sub>2</sub> equivalent by year 2020 predicted by the 2008 Scoping Plan.

Based on these updates to Table 5.7-8 in the Final EIR, the amount of GHG reduction anticipated by implementation of state measures is increased from 5,946.76 to 7,742.17 MT per year of CO<sub>2</sub> equivalent, which further strengthens the conclusions in the Draft EIR.

With respect to enforcement of the GHG reduction features referenced in the Final EIR, the City will incorporate these features into the Conditions of Approval for the project, and will require the project applicant to demonstrate that the features included in the detailed building and landscape plans will achieve the target energy reductions, prior to approval of final building and landscaping plans.

63.145 As discussed in response to comment 63.144, the energy efficiency estimates have been updated in the Final EIR to reflect the most recent information. However, the conclusions of the Draft EIR remain valid. As also discussed in response to comment 63.144, energy efficiency features will be required in the Conditions of Approval for the project, and will be confirmed prior to approval of final building and landscaping plans.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 43

63.146 shown in Table 5.7-9. Also, the CAPCOA reference document cited in the EIR<sup>175</sup> contradicts the reduction assumed in the analysis. According to the CAPCOA reference document, for a 10 percent improvement beyond Title 24, the effectiveness ranges from 0.2 to 5.5 percent reduction in energy use for electricity, and the effectiveness ranges from 0.7 to 10 percent for natural gas use. Between double-counting reductions in energy use and overestimating the reduction that would be achieved through exceeding Title 24 standards; the GHG emissions reductions have been greatly overstated in the EIR.

63.147 Moreover, the EIR claims that implementation of "one or more of these GHG emissions reductions features in this category would result in a 20-percent reduction from BAU".<sup>176</sup> However, there is no substantial evidence to support such an assessment. If only one of the measures is implemented (for example, prohibit HVAC, refrigeration, and fire suppression equipment that contain banned chlorofluorocarbons"), this will not result in a 20 percent reduction in electricity and natural gas use on top of the reductions already assumed for implementing Title 24 as of 2008 and other unspecified measures listed in Table 5.7-7 as "Electricity Energy Efficiency (AB 32)" but not quantified or identified.

63.148 The EIR analysis takes credit for a 30-percent reduction in water use for the project.<sup>177</sup> The statement is made that the Project "could include" certain measures to reduce indoor and outdoor water use, but no quantification of individual measures or assurance that the measures will be implemented is provided. In fact, the Project Design Feature WUW-1 in the CAPCOA reference document that is cited in the EIR only applies to indoor water use. The reference document provides a means of calculating GHG emission reductions from each of the measures proposed. If a 30-percent reduction in water use is assumed, this measure needs to be enforceable. No justification is provided for the statement on the following page that "implementation of one or more of these water conservation features would result in a 30-percent reduction from BAU". With only one of the measures employed, it is not possible to result in a 30-percent reduction in water use.

63.149 Further, the EIR does not demonstrate how the five-percent reduction in solid waste generation, and therefore GHG emissions, was calculated.<sup>178</sup> According to the CAPCOA reference document, under Measures SW-1 and SW-2, "no literature references exist which provide default values for percent of waste diverted." The reference goes on to state "To take credit for this measure, the Project applicant would need to provide detailed and substantial evidence supporting the amount of waste reduced or diverted to recycling or composting due to the institution of extended recycling and composting services." No such detailed and substantial evidence is provided in the EIR, yet credit has been taken for the measure.

<sup>175</sup> California Air Pollution Control Officers Association, *Quantifying Greenhouse Gas Mitigation Measures* (August 2010).

<sup>176</sup> *Id.* at p. 5.7-25.

<sup>177</sup> *Id.* at p. 5.7-25.

<sup>178</sup> *Id.* at p. 5.7-26.

63.146 As discussed in responses to comments 63.144 and 63.145, the information relative to GHG reductions anticipated from state measures related to electricity and natural gas consumption has been revised. As discussed response to comment 63.144, these revisions demonstrate that reductions would actually have been understated.

63.147 The comment correctly notes that multiple GHG reduction features will likely be required to achieve the target reductions. The text of the Final EIR on pages 5.7-28 through 5.7-33 has been modified to clarify the design features that will be made Conditions of Approval. These changes do not modify the results and conclusions of the Draft EIR relative to GHG impacts from the proposed development.

63.148 Since the proposed development would be constructed in accordance with CalGreen, the projected water emissions were adjusted to account for the recent CalGreen mandate to reduce water consumption by 30 percent. The CalGreen mandate for water conservation is broken down as follows: the installation of low-flow bathroom faucets (32 percent reduction in flow), low-flow kitchen faucets (18 percent reduction in flow), low-flow toilets (20 percent reduction in flow), low-flow showers (20 percent reduction in flow), and use water-efficient irrigation systems (6.1 percent reduction in flow). Cumulatively, all of these water conservation measures would reduce GHG emissions by 30 percent.

As discussed in response to comment 63.144, the City will require water conservation measures as Conditions of Approval for the project and will require the project applicant to demonstrate that the features included in the detailed building and landscape plans will achieve the target water consumption reductions prior to approval of final building and landscaping plans.

63.149 Waste emissions were similarly calculated using the CalRecycle data for each waste type (e.g., glass, metal, plastic). GHG emissions associated with the generation and disposal of this waste would equal approximately 90 metric tons CO<sub>2</sub>E per year. The GHG emissions reductions from the Scoping Plan landfill gas measures would equal approximately 4.5 metric tons CO<sub>2</sub>E per year (or 5.17 percent reduction)

---

**COMMENTS**

---

**RESPONSES**

---

63.149 for the Originally Proposed Project with GHG reduction design features.  
cont. The reduction does not include the GHG reduction from the truck trips, which is approximately 73 percent of the total GHG emission for the solid waste category. With up to 75 percent waste diversion and recycling program, the solid waste GHG emissions would be reduced by 5 percent, as indicated in the 2008 Scoping Plan, as well as the City's Climate Mitigation and Adaptation Plan.

As indicated in response to comment 63.144, and, as stated in the City's Climate Mitigation and Adaptation Plan, the City will require solid waste reduction measures as Conditions of Approval for the project and will require the project applicant demonstrate that the features included in the building plans will achieve the target solid waste reductions prior to approval of final building plans. These measures will include facilitating recycling in future buildings in accordance with Policy CE-A.10 of the General Plan Conservation Element. Permanent, adequate and convenient space will be provided for recycling waste generated by building occupants and associated refuse storage areas. Recyclable collection areas will be provided that serve the entire building and provide sufficient space for separation, storage and collection of paper, glass, plastic, metals, yard waste and other materials, as allowed. The project will also be required to prepare and implement a Waste Management Plan.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 44

**H. Paleontological Resources**

63.150 While the EIR provides mitigation for impacts to the Project site's paleontological resources, there is no *de minimus* level of impact once a paleontological site is disturbed because future technology and advances in science could discover things about these sites that are lost forever once they are disturbed. Thus, the Project contains unmitigated significant impacts, rather than mitigated impacts as suggested by the EIR.

**I. Hydrology/Water Quality**

63.151 The EIR failed to disclose the Project's non-compliance with the California Regional Water Quality Control Board's storm water standards. On July 14, 2010, the Regional Board adopted Resolution No. R9-2010-0066 establishing hydromodification requirements to control pollutant discharges into watersheds, which became effective in the City of San Diego on January 14, 2011. The EIR evades analysis of these potentially significant water quality impacts by wrongly asserting that the hydromodification requirements do not apply to the Project because the City deemed the Project Application complete before January 2011. This conclusion is contrary to the Regional Board's regulations and the City's hydromodification guidelines. Therefore, the failure to include any analysis of these pollutant discharge impacts violates CEQA, requiring recirculation of the EIR.

63.152 The City's hydromodification guidelines state that if a project has vested rights from a vesting tentative map application that was deemed complete prior to January 14, 2011, applicants must submit an infeasibility analysis documenting why hydromodification compliance is infeasible. The EIR makes several errors in relying on this exemption to avoid analysis and disclosure of water quality impacts. First, the EIR cites to no evidence that the Applicant demonstrated that hydromodification is infeasible, as is required by the City's Guidelines for Determining Exemptions and Infeasibility.

But even if the Applicant were able to demonstrate infeasibility of compliance, it would not exempt the Project from the hydromodification requirements because the Project does not have a vested right to violate these important state pollution control laws. Because the Regional Board's hydromodification requirements are imposed by the state, the Project cannot possibly have a vested right to evade them. A vesting tentative map vests only rights relating to the conditions and requirements of the local agency that approves the map, and does not authorize the local agency to disregard any state laws, regulations, or policies.<sup>179</sup>

63.153 In addition, the Project does not have a vested right to avoid important water pollution laws, such as the hydromodification requirements, because they are necessary to protect the public's health, safety, and welfare. Vested rights are often impaired when the new regulations

<sup>179</sup> Govt. Code § 66498.1(b); see, e.g., *Charles A. Pratt Constr. Co. v. Cal. Coastal Comm'n* (2008) 162 Cal.App.4th 068, 1075.

63.150 The evaluation of paleontological resource impacts in Section 5.8 of the Draft EIR appropriately concluded that project grading would exceed the thresholds in the City of San Diego's CEQA Significance Determination Thresholds, resulting in a potentially significant impact. While there are no known paleontological resources underlying the project site, one of the underlying formations, Torrey Sandstone, is designated with a high sensitivity rating in the Carmel Valley area. Therefore, it is possible that fossiliferous resources could be encountered during grading activities. Mitigation is identified in the Draft EIR (Mitigation Measure 5.8-1) that includes detailed requirements regarding the discovery, handling, recovery, and curation of any fossil remains that are encountered during project grading. Adherence to these mitigation requirements would preserve the scientific knowledge and value associated with any discovered fossil remains. Impacts, if any would occur, would not be unmitigated upon implementation of the identified mitigation measure.

63.151 The issue raised by the comment is the subject of changing requirements of the various regulatory bodies. The Water Quality Technical Report was first submitted with the initial project submittal in December, 2009, when the project application was deemed complete. At that time, the rules in effect exempted projects under 50 acres in size from having to comply with the requirements of hydromodification. Since that time, the Regional Water Quality Control Board adopted on July 14, 2010, Resolution No. R9-2010-0066, which established hydromodification requirements for all Priority Development Projects, regardless of size, that discharges into watersheds. Each of the Co-Permittees created storm water standards which established criteria for the implementation of the many stormwater requirements required under the adopted Resolution No. R9-2010-0066. The City of San Diego Storm Water Standards Manual, dated January 14, 2011, contained an exemption for discretionary projects that were deemed complete prior to the July 14, 2010 action by the Regional Water Quality Control Board. The Water Quality Technical Report for the project, dated June 1, 2011, was approved with the September 28, 2011 Cycle Review Comments for the project. However, on January 20, 2012, the City of San Diego revised their Storm Water Manual to remove the exemption for discretionary projects that were deemed complete.

COMMENTS

RESPONSES

63.151 Hydromodification is generally defined as the change in natural watershed hydrologic processes and runoff characteristics (infiltration and overland flow) caused by urbanization or other land use changes that result in increased stream flows, sediment transport, and morphological changes in the channels receiving the runoff. As land is urbanized, areas of buildings and parking lots create impervious surfaces that increase runoff from sites. That increased runoff changes the stability of naturally occurring streams, either by causing widening of the channel shape, or by down cutting the channel bottom, as the stream tries to adjust to the increased flow.

To address hydromodification, an update to the Water Quality Technical Report has been prepared (see Appendix I). A combination of three underground cisterns are planned for the project that will hold back the runoff from storm events up to a 10-year frequency, and release the runoff at a rate no greater than 10 percent of a 2-year frequency storm event. Runoff from storm events greater than a 10-year storm frequency will be allowed to pass through the system and discharge into the public storm drain system. The size of each of the cisterns has been determined based upon the change in runoff from the site in its existing condition to the proposed condition at the completion of the project, using the BMP Sizing Calculator published by the County of San Diego in the Model SUSMP for the San Diego County Co-Permittees. The site has been divided into three basins, North, East and West. The North Basin collects the runoff from approximately 10.8 acres of the site, and directs it into an underground cistern of 87,765 cubic feet, with a controlled release into the public storm drain system in El Camino Real at approximately Station 122+40. The East Basin collects runoff from approximately 3.5 acres of the site, and directs it into an underground cistern of 30,255 cubic feet, with a controlled release into the public storm drain system in El Camino Real at approximately Station 118+25. The West Basin collects runoff from approximately 9.4 acres of the site, and directs it into a cistern of 77,942 cubic feet, with a controlled release into the public storm drain system in El Camino Real at approximately 114+85. With these three cisterns in place, the site will comply with the hydromodification requirements of Resolution R9 2010 0066. As no inconsistency or impact associated with hydromodification would occur, no recirculation of the Draft EIR is required.

63.152 As stated in the response to comment 63.151, the project, as revised, will comply with the hydromodification requirements of Resolution R9-2010-0066.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 45

are sufficiently important to the public health, safety, or welfare.<sup>180</sup> Here, complying with the hydromodification requirements is of sufficient importance to the public health as to impair any vested rights the applicant might have to follow the prior water quality laws. As the Regional Board stated in its Order No. R9-2007-0001 imposing the new hydromodification requirements, "[p]ollutants in urban runoff can threaten human health. Human illnesses have been clearly linked to recreating near storm drains flowing to coastal waters. Also, urban runoff pollutants in receiving waters can bioaccumulate in the tissues of invertebrates and fish, which may be eventually consumed by humans." Allowing the Applicant to evade these important pollutant control laws would have a serious risk to the public's health. Therefore, the EIR's conclusion that it can rely on a vested rights exemption is deeply flawed and requires recirculation.

The EIR also improperly concludes that because the existing storm system was designed for ultimate build out of Carmel Valley, including development of the Project site, there is adequate capacity for storm water impacts. There is no substantial evidence to support this assumption. The proposed Project greatly exceeds what was planned for in the ultimate build out of Carmel Valley, so the EIR's conclusion is flawed and is a violation of CEQA.

Finally, even if the Applicant had a right to evade the hydromodification rules, this legal right is only a consideration for the City to include in a Statement of Overriding Considerations. The underlying significant environmental impact to water quality from implementation of the new water quality control features on this site must be disclosed with or without a vested right.

**J. Public Utilities**

By statute, an EIR for certain large projects must include an assessment of water supply information.<sup>181</sup> The water supply assessment ("WSA") must discuss whether projected water supplies will meet projected water demands for the Project and other planned growth, and describe its plans for acquiring additional water supplies if it concludes that its existing water supplies are not sufficient to serve the project.<sup>182</sup> The water supply assessment must be included in the EIR prepared for the project.<sup>183</sup> When taking action on the project, the lead agency then must "determine, based on the entire record, whether projected water supplies will be sufficient to satisfy the demands of the project, in addition to existing and planned future uses."<sup>184</sup> If the lead agency determines that water supplies will not be sufficient, it "shall include that determination in its findings for the project."<sup>185</sup> Thus, analyzing the impact of supplying water to a project can be critical to achieving CEQA's goals of informing the public

<sup>180</sup> *Davidson v. County of San Diego* (1996) 49 Cal.App.4th 639, 649.

<sup>181</sup> Pub. Res. Code § 21151.9; Guidelines § 15155(b)(1).

<sup>182</sup> Water Code §§ 10910(b), 10911(a).

<sup>183</sup> Water Code § 10911(b).

<sup>184</sup> Water Code. § 10911(c)

<sup>185</sup> *Id.*

63.153 As stated in the response to comment 63.151, the project, as revised, will comply with the hydromodification requirements of Resolution R9-2010-0066.

63.154 The site as originally planned in the Carmel Valley (formerly North City West) Community Plan was for an Employment Center land use. The Employment Center land use is associated with between Commercial and Industrial land use category in the Drainage Design Manual for the sizing of the storm drain system in El Camino Real. A drainage analysis of this property, in the drainage study entitled "Drainage Study for North City West Employment Center, Entire Precise Plan," dated February, 1984 and prepared by Rick Engineering Company, was used to design the major storm drain lines and the detention basin at the southwest corner of El Camino Real and High Bluff Drive that this project drains into, as referenced on Page 2 of the project hydrology report entitled "Preliminary Drainage Study for Main Street at Carmel Valley," dated June 1, 2011. That 1984 report assigned Runoff Curve Number for Hydrologic Soil-cover Complexes per the City of San Diego Drainage Design Manual, dated April, 1984, between 89 and 91 for the various components that make up the project site, covering a total of 33 acres, larger than the current project's 23.6 acres. The weighted average of the curve number for that area was 90.2, which is in line with the commercial-industrial land use category, adjusted to account for future soils and cover conditions. The proposed land use for the site has a combination of impervious and pervious surfaces that yield similar anticipated runoff rates. Therefore, the flows from the site will be similar to the design flows anticipated in 1984 report and the Hydrology and Water Quality Analysis in the Draft EIR properly and accurately characterized the relationship of project-related runoff to storm drain capacity.

63.155 The potential effects of the proposed development are discussed in Section 5.10 of the Draft EIR.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 46

63.156

and decision-makers about environmental impacts.<sup>186</sup> Here, the EIR and related WSA are deficient for the following reasons: (i) the documents fail to identify and analyze future water supplies that are reasonably likely to prove available; (ii) the documents lack discussion of possible replacement or alternative supply sources in the event the Quantification Settlement Agreement is invalidated; (iii) the EIR fails to identify the environmental consequences of implementing water supply projects; (iv) the WSA includes a water supply verification, which negates the fail safe mechanisms associated with producing two documents analyzing the water supply; and (v) the EIR violates City Council Policy 400-15, which Commissioner Lightner voted to adopt following San Diego's recent development.

In *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, the California Supreme Court identified specific requirements for an adequate analysis of water supply issues in an EIR. The court explained that future water supplies identified and analyzed in an EIR must be reasonably likely to prove available. Speculative sources and unrealistic allocations do not provide an adequate basis for decision making. When a full analysis of future water supplies for a project leaves some uncertainty regarding the availability of future supplies, the EIR must discuss possible replacement or alternative supply sources, and the environmental effects of resorting to those alternative supply sources. It is not sufficient to address issues relating to future water supplies by providing that future development will not go forward in the absence of a sufficient water supply.<sup>187</sup>

The court recognized that the ultimate question under CEQA "is not whether an EIR establishes a likely source of water, but whether it adequately addresses the reasonably foreseeable impacts of supplying water to the project."<sup>188</sup> Accordingly, if uncertainties inherent in long-term planning make it impossible to identify the future water sources, an EIR may satisfy CEQA if it acknowledges the degree of uncertainty involved, discusses the reasonably foreseeable alternatives—including alternative water sources and the option of curtailing the development if sufficient water is not available for later phases—and discloses the significant foreseeable environmental effects of each alternative, as well as mitigation measures to minimize each adverse impact.<sup>189</sup>

63.157

The Project documentation, as written, does not comply with the requirements outlined in the California statutes or in *Vineyard*. First, both the EIR and corresponding WSA claim the Project's increased water demand is accounted for in the 2010 Urban Water Management Plan ("UWMP").<sup>190</sup> However, nothing in chapter six of the WSA indicates the tables are based on the accelerated growth forecast instead of the community plan based forecast. Instead, the City merely relies on Chapter 6 of the City's UWMP, which provides a table comparing demand and

<sup>186</sup> *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182.

<sup>187</sup> 40 Cal.4th at 431.

<sup>188</sup> *Id.* at 450.

<sup>189</sup> *Id.* at 434.

<sup>190</sup> WSA, at pg. 25.

63.156 This comment summarizes the reasons why the commenter claims the Water Supply Assessment (WSA) prepared for the project and the corresponding discussion in the Draft EIR are deficient. Specific comments pertaining to these claims of deficiency are individually discussed below.

63.157 The project documentation does comply with applicable law regarding water supply. The Draft EIR, and Water Supply Assessment (WSA) both explain that the City of San Diego's (City) 2010 Urban Water Management Plan (UWMP) water demand forecasts were based on the SANDAG Series 12 Forecast. These documents acknowledged that the total water demand of the Originally Proposed Project is not reflected in the Series 12 Regional Growth Forecast. (See Draft EIR p. 5.11-9, and WSA [Draft EIR Appendix J] pp. 3-6.) Section 3 of the WSA and page 5.11-9 of the Draft EIR explain that the water demands of the proposed development, in excess of the City's UWMP projections for the subject site, are accounted for in the San Diego County Water Authority's 2010 UWMP under the accelerated forecasted growth (AFG) demand



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 47

- 63.157 cont. supply, in the WSA and the EIR.<sup>191</sup> These water supply demand comparisons are based on the SANDAG Series 12: population and development forecasts based on approved community plans. Therefore, the WSA does not provide any evidence that there is adequate water supply for the Project that exceeds the community plan's development density and water supply.
- 63.158 The EIR is apparently referencing the 10 percent buffer within the UWMP, but does not include any substantial evidence to support whether the buffer exists, how much has been used, and whether the City has a vested right to use up more of the buffer. The public has the right to know how the buffer is used and how it is managed, particularly when it does not appear in any of the UWMP or WSA supply and demand tables. Additionally, neither the WSA nor the EIR provide an accounting for replenishment of this buffer or supply of the increased water demand necessitate by the Project. In short, none of the documents in either EIR or the WSA provide any proof that demand from the Project was accounted for and can support the finding that there is adequate water supply for this and future planned projects for the next twenty years, since it exceeds the development levels assumed in SANDAG Series 12 population forecasts.
- 63.159 Thus, in violation of the *Vineyard* requirement to identify and analyze future water supplies in an EIR that are reasonably likely to prove available, the WSA is simply a boilerplate with an introduction making an unsupported claim that San Diego County Water Authority accounted for the water supply.<sup>192</sup> No effort was made to truly document and show the evidence for how the Project's water supply was planned for.
- 63.160 Regardless of whether the Project's increased water demand is within the forecasted demand, the EIR and WSA still violate *Vineyard*. Specifically, the WSA relies on water provided by the Quantification Settlement Agreement for the Colorado River ("QSA"). While the WSA does disclose the legal risks associated with the QSA,<sup>193</sup> it fails to designate future water supplies should the QSA remain invalidated. In this instance, the WSA states the "impact, if any, which the ruling might have on waters suppliers, cannot be adequately determined at this time."<sup>194</sup> Pursuant to *Vineyard*, when, despite a full analysis, "it is impossible to confidently determine that anticipated future water sources will be available," CEQA requires some discussion of possible replacement or alternative supply sources, and of the environmental consequences of resorting to those sources.<sup>195</sup> Neither the EIR nor the WSA contain any discussion regarding replacements or alternative sources of water. Thus, the Project documentation is inadequate and should be revised and recirculated.

<sup>191</sup> EIR, at p. 5.11-10.

<sup>192</sup> *Vineyard*, 40 Cal.4th at 432 (speculative sources and unrealistic paper allocations do not provide an adequate basis for decision making under CEQA).

<sup>193</sup> WSA, at p. 14.

<sup>194</sup> *Id.* at 15.

<sup>195</sup> *Vineyard*, 40 Cal.4th at 432.

- 63.157 increment. Section 6 (p. 25) of the WSA describes how the Public Utilities cont. Department water demand projections, based on the SANDAG Series 12 Forecast, are incorporated in the City's 2010 UWMP. These projections are then forwarded to the Water Authority for use in the preparation of its UWMP.

The AFG demand increment was included in the Water Authority 2010 UWMP to assist member agencies that are developing WSAs for Originally Proposed Projects not included in the current land-use plans of the local jurisdictions and, therefore, not accounted for in their UWMPs. The Water Authority's 2010 UWMP accounts for the difference between the planned and proposed water demands for the project site under the AFG demand increment. (Water Authority 2010 UWMP, pp. 2-6; Table 2-2 [Total Regional Baseline Demand Forecast].) The comment notes that the AFG demand increment associated with proposed development is not included in WSA Chapter 6 tables. Accordingly, the addendum to the Water Supply Assessment (Appendix J.1 of the Final EIR updates the information contained in Tables 7.1, 7.2 and 7.3 of the original WSA to include the AFG demand increment project supply. Also, note that the Revised Project results in a decrease in water demand from the Originally Proposed Project. Refer to the WSA Addendum in Appendix J.1 of the Final EIR.

- 63.158 This comment asserts that the EIR and WSA included insufficient information regarding the AFG demand increment from the Water Authority 2010 UWMP. As discussed in response to comment 63.157, the AFG increment represents a source of water supply available to the proposed development. The CWA UWMP regional water demand discussion (page 2-6) explains that its member agencies have future potential growth within their service areas not accounted for in local agency General Plans or in the SANDAG Series 12 Forecast. The Water Authority quantified the potential demands associated with such growth, referred to as AFG, after consultation with its member agencies, including the City. The City notified the CWA of the proposed development and its anticipated water demand requirements. The CWA acknowledged that the proposed development qualifies for the AFG demand increment, and that such supplies are available to the City in amounts required to meet

COMMENTS

RESPONSES

63.158 the project's demand. Relevant provisions of the CWA UWMP and City cont. UWMP are included in Appendix H of the Final EIR.

The AFG is intended to account for SANDAG's development currently projected to occur between 2035 and 2050, but with the potential to occur on an accelerated schedule. SANDAG estimates that this accelerated development could occur within the planning horizon of its 2010 UWMP update. Because such development is not yet included in the local jurisdictions' General Plans, their projected demands and necessary supply are incorporated at a regional level. This additional water supply can be used by member agencies to meet the demands of qualifying development projects. The CWA UWMP anticipates 2,224 acre-feet (AF) of such additional demand by 2015 associated with AFG across its member agencies. To date the Water Authority has received requests for less than half of the allocated amount to be accounted for in the AFG demand increment. As noted above, the proposed development has been accounted for by the Water Authority in its AFG demand increment. The CWA UWMP supply projections (see CWA UWMP Section 9.2) document the availability of water supply in normal, single-dry and multiple-dry years to serve the proposed development. The Water Authority will also assist its member agencies by tracking the certified EIRs provided by the agencies that include water supply assessments that utilize the AFG demand increment, to demonstrate adequate supplies for the development.

63.159 For the reasons expressed in responses to comments 63.157 and 63.158, the City has adequately addressed the availability of water to serve the proposed development. The City relies upon the City's 2010 UWMP and the County Water Authority's 2010 UWMP, which document future water supplies reasonably likely to prove available, as required by applicable law.

63.160 The comment suggests that the EIR is inadequate because it fails to address replacement water supplies "should the QSA remain invalidated." The comment refers to the litigation associated with the 2003 approval by numerous Southern California water agencies, including the San Diego County Water Authority, of various agreements collectively referred to as the Quantification Settlement Agreement (QSA). Among other terms, the QSA includes the transfer of conserved water from the Imperial Irrigation District to the Water Authority. As discussed in Section 5.11 of Final EIR, the Water Authority is a wholesale water supplier to 24 member agencies, including the City.



COMMENTS

RESPONSES

63.160 cont. The QSA litigation involves alleged violations of the California Environmental Quality Act, the California Water Code, and other laws related to the approval of the QSA, the water transfer, and related agreements. In January 2010, a Superior Court judge ruled that the QSA and related agreements were invalid because one of the agreements created an open-end financial obligation for the State of California in violation of the California Constitution. This ruling was reversed by the California Court of Appeal, and remanded to the Superior Court for further proceedings. (See Quantification Settlement Agreement Cases (2011) 201 Cal.App.4th 758.) On June 4, 2013, the Sacramento Superior Court upheld the validity of the QSA in its entirety and rejected all legal challenges. It is unknown at this time whether that ruling will be appealed. Water transfers pursuant to the QSA have not been interrupted during the decade of QSA litigation. The water transfers from Imperial Irrigation District to the Water Authority under the QSA began in 2003 with an initial transfer of 10,000 acre feet. The Water Authority received increasing amounts of transfer water each year according to a delivery schedule. In 2010, the Water Authority received 70,000 acre feet. The quantities of transferred water will increase annually to 200,000 acre feet by 2021 and then remain fixed for the duration of the transfer agreement, which has an initial term of 45 years with a provision for extending the term for an additional 30 years. The QSA is described in greater detail in Section 4.2 of the CWA UWMP. The CWA UWMP can be found at: <http://www.sdcwa.org/sites/default/files/files/water-management/2010UWMPfinal.pdf>.

The comment suggests that, as a consequence of the QSA litigation, the Draft EIR and WSA violated the standards for water supply analysis enunciated by the Vineyard case. (Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412.) The facts involved in Vineyard are distinguishable from the present situation. The proposed development accounts for less than one-tenth of one percent of the City's demand for water. The project in Vineyard involved a large development which would account for approximately 4 percent of that county's year 2030 water demand. Analyzing the project's long-term water needs and supply, the EIR in Vineyard relied on a future environmental document, and future agreements and financing for supplemental water supplies not yet implemented. In contrast, the QSA water transfer has been implemented and water has been supplied to the Water Authority under the transfer agreement since 2003. Unlike the so-called "paper allocations" and speculative sources of water described by the court in Vineyard, the Water Authority continues to receive actual water supplies under the QSA transfer agreement. The water source is neither speculative nor a "paper allocation."

COMMENTS

RESPONSES

63.160 With regard to the QSA litigation and its potential effect on future  
cont. supplies, the WSA indicated that the impact of the adverse QSA ruling  
by the Superior Court, if any, could not be determined at that time. As  
described above, the lower court has since been reversed by the court of  
appeal, which ruled that the QSA was not invalid for the reasons cited by  
the lower court, and the Superior Court has rejected all legal challenges  
to the QSA's validity. The Final EIR has been revised to clarify the  
status of the litigation. At no time during the QSA litigation have water  
transfers been impeded, delayed, or reduced by judicial intervention.  
The pendency of the QSA litigation is not expected to adversely impact  
the continuing transfers to the Water Authority from Imperial Irrigation  
District. Moreover, the litigation does not render impossible the City's  
ability to confidently determine the availability of anticipated future  
water sources, as was the case in Vineyard.

As outlined in Section 4 of the CWA UMWP and EIR Section 5.11,  
following the drought years of 1987 through 1992, the Water Authority  
began aggressively taking actions to diversify the region's water supply  
sources. In addition to the QSA, as a means of diversifying regional  
supplies, the Water Authority is under contract to purchase up to 56,000  
acre feet of water annually from the Carlsbad Desalination Project  
presently under construction at the site of the Encina Power Station  
located in the City of Carlsbad. In addition, the Water Authority is also  
exploring the development of two other regional seawater desalination  
projects, including a regional facility located on Camp Pendleton and a  
binational seawater project in Rosarito, Mexico.

The Metropolitan Water District (MWD) also continues to diversify,  
including program development within the CRA, SWP, Central Valley  
transfers programs, conservation, LRP (groundwater recovery, recycling,  
desalination), and groundwater. MWD's mix of imported and local water  
resources available to provide long-term supplies, including a planning  
buffer to address potential future demand and supply fluctuations are  
outlined in its 2010 Integrated Resources Plan. See EIR Section 5.11  
for further discussion of diversified water sources and conservation  
strategies. Both CWA and MWD have contingency plans/scenarios for  
shortages. In the unlikely event of a QSA water transfer interruption, or  
the disruption of any single water source, through the diversity of the  
region's water resources it is expected that adequate water supplies will  
continue to be available for the proposed development.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 48

63.161

Assuming arguendo the EIR and/or WSA does identify alternative or replacement water sources, the EIR fails to identify and assess the environmental consequences of implementing these water supply projects or required by *Vineyard*. Thus, the EIR still violates a fundamental purpose of CEQA, which is to provide an informational document that discloses the potential significant environmental effects of a proposed Project and to identify ways that environmental damage can be avoided or significantly reduced.<sup>196</sup>

63.162

Furthermore, by linking the water supply verification to the WSA, the EIR eliminates the fail safe mechanism that would ensure accountability and existence of an adequate water supply. Senate Bill 221 ("SB 221") mandates developers to obtain affirmative written verification of sufficient water supply prior to approval by a city or county or final map. SB 221 is intended to serve as a mechanism to ensure that collaboration for finding the needed water supplies to serve a new large subdivision occurs before construction begins. A separate water supply verification must be prepared prior to approval of the final map. Due to the deficiencies inherent in the WSA, the verification linked to the WSA is equally flawed. Without a working water supply document, there is no substantial evidence the Project will have access to water that would meet its increased demands, when combined with existing demands and other foreseeable projects.

63.163

City Council Policy 400-15, Comprehensive Policy for a Sustainable Water Supply in San Diego ("Policy 400-15"), was recently enacted in order to prepare the City for challenges facing the City and region. The purpose of this policy was to implement comprehensive policies that contain performance measures and regular review to ensure that they are up-to-date.<sup>197</sup> As of the date the EIR was available for public comment, the UWMP contained the most up-to-date water demand forecasts. The Project exceeds these forecasts. Thus, approving the Project will violate Policy 400-15 by exceeding the performance measures set forth therein. By definition, the Project fails to comply with one of the key objectives of Policy 400-15, which is to balance the water demand and water supply in all future land-use decisions.<sup>198</sup> The Project's increased water demand exceeds what is contained in the UWMP, which is the City's mechanism for balancing the water demand and water supply for future land-use projects. Moreover, by the Policy's very language the EIR and WSA cannot be supported by City Council. First, Policy 400-15 tasks City Council with the responsibility of only supporting decisions that are aligned with the City's UWMP.<sup>199</sup> As demonstrated, the Project is outside the bounds of the water demand forecasted by the UWMP. Second, the Mayor and Intergovernmental Relations Director are responsible for monitoring and reporting court decisions that could affect the City's water supply.<sup>200</sup> A report to City Council pursuant to Policy 400-15 would surely include

63.161 For the reasons outlined in responses to comments 63.157, 63.158, 63.159 and 63.160, the Draft EIR and WSA adequately identified and analyzed future water supplies necessary to serve the project.

63.162 The WSA and water supply verification (WSV) would be prepared concurrently pursuant to applicable law (Cal. Gov. Code § 66473.7(c) (1)). The water supply verification appears in the WSA. (WSA, Section 3, p.7.) As explained in responses to comment numbers 63.157 through 63.159, the City has verified in the WSA that sufficient water supplies are available to serve the project.

63.163 As discussed in response to comment 63.157 through 63.159, adequate water supply exists to serve the proposed development, as demonstrated by the City's 2010 UWMP and the Water Authority's UWMP AFG demand increment. Council Policy 400-15 promotes, among other policies, close coordination between the City and the Water Authority to satisfy the future water demands of the region. The City's coordination with the Water Authority through the AFG demand increment ensures that the City will be able to supply water to the proposed development. Moreover, the project's use of water is designed to advance the policies of the Council Policy 400-15 by incorporating water conservation measures and high-efficiency water fixtures and water-efficient landscape design (WSA Table 3-1, Footnote No. 6).

<sup>196</sup> Guidelines §§ 15002(a) and (b).

<sup>197</sup> Policy 400-15, p. 1

<sup>198</sup> *Id.* at p. 2.

<sup>199</sup> *Id.* at p. 3.

<sup>200</sup> *Id.* at p. 2.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 49

63.163  
cont.

*Vineyard* and its WSA-related requirements. Thus, the City Council will be aware of the court's decision and be bound to follow the mandates articulated in *Vineyard* as described above.

63.164

For the foregoing reasons, the WSA and EIR violate CEQA requirements related to water supply, and therefore the EIR should be recirculated.

**K. Public Services and Facilities/Recreation**

63.165

Under CEQA's definition of environmental impacts, increases in demands on public facilities, services, and utilities that will result from a project are not environmental impacts that must be evaluated in an EIR. An EIR must, however, consider the effects of changes to the environment that can result from an expansion of facilities, services, or utilities.<sup>201</sup> While the EIR states that the Project does not create a direct impact to police and fire services and facilities near the Project site, which the EIR states are able to meet response times to the Project,<sup>202</sup> the EIR lacks data on what the fire response times are throughout the community plan and how the Project will affect these times. Thus, the EIR fails to describe the indirect impacts of the Project on response times to the existing development. Additionally, the EIR provides data on the police response times within the beat, but does not describe what indirect impacts the Project may have on response times to the existing development. For example, because the Project will create and exacerbate significant traffic impacts so the area streets are a failing Level of Service, this will impact police and fire services near the Project from reaching the rest of the County. The EIR does not address response times from police and fire stations operating under a mutual aid agreement,

63.166

63.167

Moreover, the cumulative analysis states that future development will pay impact fees and property taxes necessary to adequately fund the services and facilities needed for new development.<sup>203</sup> However, the EIR also states that the City is below its goal for fire and police staff per 1000 residents. What evidence is there that this development will provide sufficient funds to cover its fair share of staff and operating costs for police and fire stations to meet this goal?

63.168

The EIR violates the above-stated rule in its discussion of the recreational facilities. Specifically, the EIR states that the Project will generate 1,666 residents, requiring 4.6 acres of usable parkland to serve this population.<sup>204</sup> This is a net population increase to the Community Plan, which assumed build out of the Community Plan would generate 13,773 new residents from the other vacant parcels within the community plan.<sup>205</sup> Zoned as industrial, the Community

63.164 As discussed in responses to comments 63.157 through 63.163, the WSA and EIR are not deficient and do not violate CEQA requirements related to water supply. Therefore, recirculation of the Draft EIR is not required.

63.165 As discussed in Section 5.12 of the Draft EIR, the City of San Diego operates Fire Station #24 within 0.3 mile from the project site and a police substation within 0.5 mile of the project site. These stations would be able to provide rapid response to the project site. Thus, as stated in response to comment 8.2, the proposed development would not significantly impact emergency services.

63.166 As stated in response to comment 8.2, the proposed development would not significantly impact emergency services.

63.167 Increases in demand for public services are not considered environmental impacts under CEQA unless accommodating the additional demand results in a physical change in the environment from new construction or other actions which would be required. As stated in Section 5.12 of the Draft EIR, the project would not require the construction or expansion of fire and police facilities. By law, the applicant is required to pay development impact fees that are specifically allocated to fund improvements to public facilities. The amount of these fees imposed on all development projects, including the Originally Proposed Project, is based on approved calculation methodology within the statutes/ordinances that require them. Therefore, the fees required of the project are considered adequate to fund its share of public services operational costs.

63.168 In response to this comment, as well as to the applicant's submittal of the Revised Project, the parks and recreation analysis provided in the Draft EIR has been revised, though the conclusions regarding the significance

<sup>201</sup> *Goleta Union Sch. Dist. v. Regents of Univ. of Cal.* (1995) 37 Cal.App.4th 1025; *El Dorado Union High Sch. Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123.

<sup>202</sup> See EIR, at § 5.12.

<sup>203</sup> EIR, at p. 6-11.

<sup>204</sup> *Id.* at p. 5.12-7.

<sup>205</sup> Carmel Valley Community Plan, at p. 6, Table 1

---

**COMMENTS**

---

**RESPONSES**

---

63.168 of the impacts identified did not change. These revisions are reflected in cont. Section 5.12, Public Services and Facilities/Recreation, of the Final EIR.

As stated in the comment, the Carmel Valley Community Plan, which the City adopted in 1975, did not anticipate the demand for recreational facilities specifically associated with the Originally Proposed Project and Revised Project. This is primarily because the project site is currently designated for employment, rather than residential uses. However, community plans are designed to forecast maximum population levels several decades into the future that are, for a variety of reasons, rarely achieved in reality. Land uses, which are depicted on community plans, are generalized. As more detailed permit-level plans are prepared, residential unit counts are often reduced to accommodate open space, private recreational facilities, utilities, roads, environmental resources, various regulatory requirements, or simply other uses. For example, as described in the Final EIR for the Solana Beach Elementary School District, Elementary School #6 (now known as Solana Pacific), approximately 500 planned and entitled, but not constructed, multi-family housing units were eliminated to accommodate a new school. Thus, the 608 associated with the One Paseo project would constitute an additional 108 units (608-500). Nevertheless, the Community Plan was never amended to provide a concomitant reduction in public facilities, including parks.

Consequently, the Carmel Valley Planning Area falls less than one acre shy of this goal at community build-out per the current Community Plan.

Although implementation of the Originally Proposed Project and Revised Project would each require an amendment to the Community Plan, the project-related demand for recreational facilities would not require an immediate amendment to the Community Plan. The City's primary goal is to obtain land for park and recreation facilities. However, when land cannot be acquired, intensification of recreational uses at existing parks that would expand their use to serve the new residents, such as a specialized sport facility would be pursued. If additional park and recreation facilities are ultimately determined necessary by the City, the land use designations within the existing Community Plan would or would not require an amendment to the Land Use Plan, depending on the location chosen. Any required environmental review would occur at the time sufficient information is available to allow an analysis, but would likely occur concurrently with the amendment process, if necessary.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 50

63.168  
cont.

Plan assumed the Project site would generate no residents.<sup>206</sup> Therefore, Community Plan must be amended to provide public facilities to serve 15,439 new residents (13,773 + 1,666), a 12 percent increase from the planned 13,773 new residents.

The EIR states that "[a]dequate public parks currently exist to serve the proposed Project population increase.<sup>207</sup> The Project would be conditioned to pay applicable FBA fees to fund its park obligations." However, the EIR provides no substantial evidence to support this conclusory statement. If the City calculated that the parks planned in the existing community plan were oversized to accommodate 1,666 new unplanned residents, then the final EIR needs to disclose the analysis that supports this. In addition, if the existing park facilities in Carmel Valley were overbuilt by at least 4.6 net usable acres, then the existing Carmel Valley residents and developer who paid the existing Facilities Benefit Assessments ("FBA") were overcharged since the cost of the planned parks was spread out over 13,773 residents, not 15,439 residents. Through the EIR, the City implies that there has always been a 4.6-acre parkland "buffer" in the Carmel Valley Public Facilities Financing Plan ("PFFP") to accommodate the needs of 1,666 new residents. If such a buffer exists, then the City violated the Mitigation Fee Act when it established the FBA for the PFFP.

63.169

The Mitigation Fee Act requires public agencies imposing fees on the development projects to identify the use of a fee with reference to a capital improvement plan that describes the public facilities for which the fee is charged.<sup>208</sup> It also requires such a fee have a reasonable relationship between the fees use and the type of development for which the fee is imposed. Finally, it needs to determine how there is a reasonable relationship between the need for the public facility and the type of development for which the fee is imposed.<sup>209</sup> Here, if the City identified that the planned parks were really designed for 15,439 residents, instead of the 13,773 residents at the time the FBA was established, then there was no reasonable relationship between the development projects generating 13,773 residents and the need for parks built to serve 15,439 residents.

Conversely, without evidence to support that Carmel Valley planned parks were improperly oversized to account in advance for 1,666 new residents, then adding 1,666 new residents will lead to a deficit in parkland. As written, the EIR contains no evidence of a plan demonstrating how an Applicant's payment of FBA fees will lead to the creation of the 4.6 acres of parkland necessary to serve its new population. The Courts have found that without an approved plan, there is no evidence in the record that payment of fees would provide effective mitigation.<sup>210</sup>

<sup>206</sup> *Id.*

<sup>207</sup> EIR, at p. 5.12-7.

<sup>208</sup> Govt. Code Sect. 66001(a)(3).

<sup>209</sup> Govt. Code Sect. 66001(a)(4).

<sup>210</sup> *Cal. Native Plant Soc'y v. County of El Dorado* (2009) 170 Cal.App.4th 1026.

63.169 As illustrated in Table 5.12-2 of the Final EIR, buildout of the existing community per the current approved Community Plan will require a total of 107.87 acres to meet the 2.8 standard. As illustrated in Table 5.12-3, there are 94.02 acres of parkland that currently exists and 4 acres planned in the future for a total of 98.02 acres within the Carmel Valley Community Plan area at buildout. Thus, the community has a current deficit of 9.85 acres. The Originally Proposed Project would create a demand for 4.67 acres of parkland which would increase the deficit to 14.52 acres.

As the Revised Project would contain the same number of residential units as the Originally Proposed Project, it too would generate a demand for 4.67 acres of parkland. As with the Originally Proposed Project, the additional demand of 4.67 acres, when added to the current buildout demand of 107.87 acres, would create a total demand of 112.54 acres. As with the Originally Proposed Project, this would cause the anticipated supply of 98.02 acre to be exceeded by 14.52 acres.

The City's CEQA Significance Determination Thresholds state that park deficiencies are not considered to be environmental impacts for the purposes of CEQA analysis, unless specific improvements are proposed that would result in physical changes to the environment. As described in the response to comment 63.168, the City has not yet identified any specific park improvements, and analysis of physical impacts therefore are not required at this time.

Additionally, demand created by the Revised Project for recreational facilities would be addressed through the payment of Facilities Benefit Assessment (FBA) fees, which are intended to fund public services, including parks, within the Community Plan Area, and payment of which the City considers to ensure that no significant impacts to parkland would occur. According to the Carmel Valley Public Facilities Financing Plan (PFFP), FBA fees are intended to pay for police, fire, library and recreational needs of the community. The City currently calculates the required FBA for the Revised Project as about \$13.7 million.



---

**COMMENTS**

---

**RESPONSES**

---

63.169 cont. The FBA fees paid by previous development were calculated by forecasting the demand for recreational facilities based on the parkland acreage goal, type and size of the development, and the projected demand for recreational services that existed at the time the FBA fee was established. Although the calculation method remains the same, the City periodically adjusts the FBA fees to reflect changes that have occurred since the original FBA fee was determined. As a result, FBA fees change as conditions warrant.

As Public Facilities Financing Plans (PFFP) updates occur to reflect current and project populations, park needs are re-evaluated, project descriptions are updated, and sometimes new projects are added to keep up with community needs. These changes often affect the amount of the Facilities Benefit Assessment. Separate from this proposed development, a PFFP update was approved by City Council on 7/16/13 and by the Carmel Valley Community Planning Group on 4/25/13. This PFFP update adds additional parkland (up to 15.8 acres), additional park improvements, and a parks study to identify and recommend viable options and alternatives to provide the community with additional park and recreational facilities. With this update, the FBA fee structure did not change. That there is no fee schedule increase is due primarily to lowered land and project costs (multiple completed projects have come in under budget). In addition, the FBA cash balance was and is relatively high due to a previously deleted parks project that had been kept in the FBA cash flow as additional future parks facilities had been anticipated.

Should additional development occur in the Carmel Valley area, additional revenue will be collected and could be expended on additional parkland/facilities. Should additional development not occur, the additional revenue would not be collected or expended. In either case the FBA cash flow would not be negatively affected, nor would a further change to the FBA Fee Schedule be required.

As discussed Section 12.9 of the Final EIR, the Revised Project includes recreational opportunities which would be available to the community as well as the project. These facilities, which would be over and above the FBA fee paid, would include a 1.5 acres of recreation areas located in the northwest corner of the proposed development. The 1.5 acres would be comprised of a 1.1-acre passive recreation area for activities such as picnicking and informal sports, and a 0.4-acre play area located in close proximity to the passive recreation area.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 51

Therefore, the City either needs to condition the Project to provide 4.6 acres of parkland on-site or bring forth PFFP Amendment identifying the location and plan for providing an additional 4.6 acres somewhere in Carmel Valley. There is no basis for deferring this analysis into the future and claiming the location of new public facilities is too speculative. As the Court found in *CBE v. City of Richmond* (2010) 184, Cal.App.4th 96, "we agree with the trial court that the City's decision to approve the Project, after giving the City Council final approval over a mitigation plan that Chevron formulates a year later outside the EIR process, does not satisfy CEQA's requirements. We emphasize once again that the time to analyze the impacts of the Project and to formulate mitigation measures to minimize or avoid those impacts is during the EIR process, before the Project is brought to the Planning Commission and City Council for final approval." In *CBE v. City of Richmond*, the City belatedly acknowledged at the very end of the EIR process that the project's GHG emissions would constitute a significant impact on the environment. The City was obviously unable to gather sufficient information during the EIR process to develop specific mitigation measures. The court's solution was not to defer the specification and adoption of mitigation measures until a year after Project approval; but, rather, to defer approval of the Project until proposed mitigation measures were fully developed, clearly defined, and made available to the public and interested agencies for review and comment.<sup>211</sup> Thus, the EIR should include the appropriate mitigation measures now in order to be compliant with CEQA.

**L. Health and Safety**

The EIR should carefully consider the impacts of the Project on public health, safety, and welfare, including hazards and hazardous materials. The Project is located near industrial and commercial uses which could potentially expose Project residents, hotel guests, and shoppers to health and safety hazards. Located near the Project are both the Neurocrine Biosciences site and a school, which is a sensitive receptor.<sup>212</sup> The Project's need to develop an on-site 4.6 park to accommodate its new residents will become a sensitive receptor site. Particulate Matter and fugitive dust emission from the Project's construction will also impact the school and new park. The EIR fails to include a health risk assessment that analyzes the potential risk of locating residents near existing industrial and commercial uses.

**M. Urban Decay**

Changes to the physical environment caused by a project's economic effects are an indirect effect that must be analyzed in an EIR if they are significant.<sup>213</sup> When evidence suggests that a project's economic effects could ultimately result in urban decay or deterioration, the lead agency must assess any indirect physical impacts rather than "summarily

<sup>211</sup> *Id.*

<sup>212</sup> NOP, at p. 2.

<sup>213</sup> Guidelines §§ 15064(e), 15131(a).

63.170 As discussed in Section 5.12 of the Final EIR, as well as response to comment 63.169, the payment of FBA fees would assure that adequate financial resources exist for the park and recreation needs of the community. The City's primary goal is to obtain land for park and recreation facilities. However, when land cannot be acquired, intensification of recreational uses at existing parks that would expand their use to serve the new residents, such as a specialized sport facility would be pursued. Should the City determine that additional parkland would be beneficial to the community, any physical impacts to the environment resulting from the acquisition and/or development of this parkland would be assessed at the time the City develops a plan for such an expenditure. Insufficient information exists at this time to determine whether, and to what extent, environmental impacts could result from acquisition and/or development of additional parkland because no information is available as to the location and/or type of recreational development. Section 15145 of the State CEQA Guidelines states that potential impacts need not be specifically addressed in an EIR if the assumptions needed to analyze potential effects are too speculative.

Separate from this proposed development, a PFFP update was approved by City Council on 7/16/13 and by the Carmel Valley Community Planning Group on 4/25/13. This PFFP update adds additional parkland (up to 15.8 acres), additional park improvements, and a parks study to identify and recommend viable options and alternatives to provide the community with additional park and recreational facilities. With this update, the FBA fee structure did not change. That there is no fee schedule increase is due primarily to lowered land and project costs (multiple completed projects have come in under budget). In addition, the FBA cash balance was and is relatively high due to a previously deleted parks project that had been kept in the FBA cash flow as additional future parks facilities had been anticipated.

Should additional development occur in the Carmel Valley area, additional revenue will be collected and could be expended on additional parkland/facilities. Should additional development not occur, the additional revenue would not be collected or expended. In either case the FBA cash flow would not be negatively affected, nor would a further change to the FBA Fee Schedule be required.



## SheppardMullin

Martha Blake  
May 29, 2012  
Page 52

dismissing the possibility" of urban decay as a social or economic effect that is outside the scope of CEQA.<sup>214</sup>

The Project contains a number of issues related to urban decay. First, the Kosmont Retail Market Analysis related to the Project ("KRMA") states the estimated percentage of income spent on retail goods is 30.95 percent of income plus fifteen percent for visitor spending, totaling 49.95 percent.<sup>215</sup> In reality, the percentage is actually 49.76 percent. This results in a \$700,000 drop in 2015 secondary market area ("SMA") sales.<sup>216</sup>

Second, in determining the sales figures for the primary market area ("PMA") and SMA, the KRMA employs an improper methodology based on land area for each municipality. This is an incorrect methodology because land use has little basis in determining prorated sales, specifically due to varying land uses and densities throughout the County.

Third, the KRMA allocated sales of future retail shopper goods based on the 2009 figures from the State Board of Equalization.<sup>217</sup> Only the use of historical averages from the market area provides an accurate estimate of retail sales. Thus, the KRMA does not reflect a decrease in average from the amount of retail sales in categories that already are indicating a surplus versus leakage amount.

Fourth, there are number of mathematical errors and inconsistencies. Specifically, these errors are evidenced in KRMA's expected sales capture. For example, the KRMA includes the incorrect number for actual food sales and for eating/drinking sales. Inconsistencies can also be found in the Building/Hardware and Service Station Categories.

Lastly, the expected sales per square foot is grossly underestimated by the KRMA. The trade area commands one of the highest lease rates in the county and proposed development with its high acquisition and development costs would require high lease rates and correspondingly higher sales to support development. KRMA's projected expected sales at \$300 per square foot is infeasible to support lease rates and proposed development costs. Sales at the Del Mar Highlands Town Center and other lifestyle centers show sales between \$600 - \$700 per square foot annually. Furthermore, with the correct \$700 sales per square foot, the Project's development of 220,000 square feet plus 800,000 square feet of proposed retail square feet in the Trade Area would exceed demand, thereby forcing retailers to close due

<sup>214</sup> *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1207; *Am. Canyon Cmty. United for Responsible Growth v. City of Am. Canyon* (2006) 145 Cal.App.4th 1062, 1072; *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 445 (negative declaration case noting that rezoning parcel for commercial and manufacturing uses could cause loss of business and resulting physical deterioration of existing business areas).

<sup>215</sup> Kosmont Retail Market Analysis at pg. 15.

<sup>216</sup> From \$9,000,000 to \$8,300,000.

<sup>217</sup> *Id.* at 17-18.

63.171 Sections 5.13 and 12.9 of the Final EIR evaluate potential impacts related to exposure to hazards/hazardous materials. As stated in response to comment 63.134, there is no evidence to suggest that there is a significant health risk to future tenants of the proposed development or existing uses around the project. Because the project would not exceed screening thresholds for a health risk assessment, there is no need to attempt to more specifically characterize future residents within the project or their sensitivity to air emissions.

63.172 The expected percentage of income spent on retail goods within a given area is dependent on the income levels of households within that specific area. While the estimated percentage of income spent on retail goods in the PMA is 30.95 percent, the estimated percentage of income spent on retail goods for the SMA is 34.7 percent, plus 15 percent for visitor and business spending, or 45.95 percent and 49.76 percent respectively. While the SMA figure is not separately stated in the RMA, the figures are correct within the RMA model and the purported \$700,000 drop in 2015 SMA sales is incorrect. As discussed in response to comment 63.14, current estimates of household expenditures are 31.22 percent for the PMA and 33.38 percent for the SMA, plus 15 percent for visitor and business spending, or 46.22 percent and 48.38 percent respectively. The Final EIR and RMA have been clarified accordingly, showing the correct, higher expected sales within the SMA. These figures further support the conclusions of the original RMA.

63.173 The RMA evaluated the land uses and densities within the Trade Area and concluded that in consideration of the anticipated build-out of the Trade Area, allocation by land area was reasonable and, importantly, accurately determinable with available data. Nevertheless, in responses to comments, the RMA model was run using a population-based allocation, as discussed in response to comment 63.14. As also discussed, the modifications did not affect the conclusions of the RMA.



63.174 As discussed and shown in response to comment 63.14, a shift in expenditures by retail category in this and other trade areas during the last recession appears to be holding and that older figures less accurately predict future trends. As shown in the tables in response to comment 63.14, 2009 and 2010 figures more closely match each other than the average between 2005-2010.

As the assumed sales distributions match recent market trends, they provide an accurate picture of current consumer expenditure patterns and therefore accurately indicate sectors with a surplus of retail versus leakage of retail. Therefore, the conclusions of the RMA remain accurate and unchanged.

63.175 Corrections to the misprints in the RMA have been provided in the Final EIR and in the updated RMA (Appendix B.1).

Table 12 on page 16 of the RMA (Appendix B of the Draft EIR) - Expected Retail Sales for 2020:

Original Table 12:

PMA & SMA Historic & Projected Expected Retail Sales (US Constant \$000's)							
Area	2000	2005	2010	2015	2016	2017	2020
PMA	1,415,767	1,559,709	1,927,535	2,248,176	2,317,474	2,388,908	3,068,631
SMA	6,299,822	7,204,022	8,211,415	9,026,666	9,197,688	9,371,951	6,926,015
Total Expected Sales	7,715,588	8,863,731	10,138,950	11,274,842	11,515,162	11,760,859	9,994,646

Corrected Table 12:

PMA & SMA Historic & Projected Expected Retail Sales (US Constant \$000's)							
Area	2000	2005	2010	2015	2016	2017	2020
PMA	1,415,767	1,559,709	1,927,535	2,248,176	2,317,474	2,388,908	2,616,695
SMA	6,299,822	7,204,022	8,211,415	9,026,666	9,197,688	9,371,951	9,914,801
Total Expected Sales	7,715,588	8,863,731	10,138,950	11,274,842	11,515,162	11,760,859	12,531,496

This correction does not affect any other calculations within the model, nor does it affect the conclusions of the RMA or Draft EIR, and it has been corrected in the Final EIR and the updated RMA.

Table 18 and 19 on pages 23 and 24 of the RMA (Appendix B of the Draft EIR): Expected Sales Capture - figures were calculated based on prior year data within the model.

63.175 Original Table 18:  
cont.

Expected Sales Capture - PMA (US Constant \$000's)						
Retail Category	2009	2010	2015	2016	2017	2020
<i>Shopper Goods (GAFO):</i>						
Apparel	57,131	86,276	130,757	134,788	138,942	152,191
General Merchandise	108,518	124,657	125,231	129,091	133,070	145,759
Home Furnishings/Appliances	41,830	46,528	83,500	86,074	88,727	97,188
Other	253,734	289,689	237,952	245,286	252,847	276,957
Subtotal	481,213	507,151	577,440	595,239	613,587	672,094
<i>Convenience Goods:</i>						
Food (Supermarkets/Liquor)	152,495	229,205	279,441	288,112	296,993	325,312
Eating and Drinking	138,039	155,271	271,558	279,988	288,616	316,136
Subtotal	290,534	384,476	550,999	568,098	585,609	641,448
<i>Heavy Commercial Goods:</i>						
Building/Hardware/Farm	58,531	89,490	84,298	86,294	88,337	74,853
Auto Dealers and Parts	41,518	47,783	54,189	55,870	57,592	63,084
Service Stations	64,146	80,973	112,708	116,205	119,787	131,209
Subtotal	164,194	198,245	231,195	238,369	245,717	269,146
Total Potential Retail Sales	915,940	1,089,872	1,359,634	1,401,708	1,444,913	1,582,688

Corrected Table 18:

Expected Sales Capture - PMA (US Constant \$000's)						
Retail Category	2009	2010	2015	2016	2017	2020
<i>Shopper Goods (GAFO):</i>						
Apparel	57,131	86,276	130,757	134,788	138,942	152,191
General Merchandise	108,518	124,657	125,231	129,091	133,070	145,759
Home Furnishings/Appliances	41,830	46,528	83,500	86,074	88,727	97,188
Other	253,734	289,689	237,952	245,286	252,847	276,957
Subtotal	481,213	507,151	577,440	595,239	613,587	672,094
<i>Convenience Goods:</i>						
Food (Supermarkets/Liquor)	238,048	277,022	296,993	306,148	315,584	345,876
Eating and Drinking	164,234	193,753	288,616	297,512	306,683	335,925
Subtotal	402,282	470,775	585,609	603,660	622,267	681,801
<i>Heavy Commercial Goods:</i>						
Building/Hardware/Farm	71,263	85,345	88,337	70,444	72,615	79,539
Auto Dealers and Parts	46,573	54,630	57,592	59,368	61,198	67,033
Service Stations	88,535	104,524	119,787	123,480	127,286	139,423
Subtotal	206,371	224,500	245,717	253,291	261,098	285,994
Total Potential Retail Sales	1,089,868	1,202,426	1,408,766	1,452,190	1,496,952	1,639,889

63.175 Original Table 19:  
cont.

Expected Sales Capture - SMA (US Constant \$000's)						
Retail Category	2009	2010	2015	2016	2017	2020
<i>Shopper Goods (GAFO):</i>						
Apparel	25,087	33,547	70,789	72,116	73,482	77,739
General Merchandise	76,728	83,060	84,259	85,863	87,490	92,557
Home Furnishings/Appliances	29,496	32,959	52,647	53,648	54,885	57,831
Other	139,924	159,945	140,420	143,092	145,803	154,249
Subtotal	271,235	309,511	348,096	354,719	361,440	382,376
<i>Convenience Goods:</i>						
Food (Supermarkets/Liquor)	53,595	58,428	84,923	86,539	88,179	93,286
Eating and Drinking	75,418	88,084	135,705	138,287	140,907	149,069
Subtotal	129,013	144,511	220,628	224,826	229,086	242,355
<i>Heavy Commercial Goods:</i>						
Building/Hardware/Farm	43,165	53,248	44,241	45,083	45,937	48,588
Auto Dealers and Parts	45,873	51,049	47,938	48,850	49,775	52,658
Service Stations	20,814	27,303	37,789	38,508	39,237	41,510
Subtotal	109,852	131,600	129,967	132,440	134,949	142,766
Total Potential Retail Sales	509,900	585,623	698,691	711,986	725,475	767,497

Corrected Table 19:

Expected Sales Capture - SMA (US Constant \$000's)						
Retail Category	2009	2010	2015	2016	2017	2020
<i>Shopper Goods (GAFO):</i>						
Apparel	35,931	41,858	73,482	74,874	76,293	80,712
General Merchandise	86,068	98,244	87,490	89,147	90,836	96,098
Home Furnishings/Appliances	31,948	32,673	54,665	55,701	56,756	60,043
Other	164,075	171,060	145,803	148,566	151,380	160,149
Subtotal	318,023	343,835	361,440	368,288	375,266	397,002
<i>Convenience Goods:</i>						
Food (Supermarkets/Liquor)	59,188	68,326	88,179	89,950	91,552	96,855
Eating and Drinking	93,721	111,500	140,907	143,577	146,297	154,771
Subtotal	152,909	179,826	229,086	233,426	237,849	251,626
<i>Heavy Commercial Goods:</i>						
Building/Hardware/Farm	54,098	49,130	45,937	46,807	47,694	50,457
Auto Dealers and Parts	47,380	53,850	49,775	50,718	51,679	54,873
Service Stations	30,529	36,163	39,237	39,981	40,738	43,098
Subtotal	132,007	139,142	134,949	137,506	140,112	148,227
Total Potential Retail Sales	602,939	662,803	725,475	739,220	753,226	796,855



63.175 The references underestimated expected sales capture, and flow through the dependent portions of the RMA analysis. The original and corrected versions of Table 24 on page 24 of the RMA follow and show that correcting the calculation results in a substantial increase in net supportable retail space, and does not change the conclusions of the analysis as it indicates stronger retail demand than originally evaluated. Corrected tables have been included in the Final EIR and the updated RMA.

Original Table 24:

Expected Net Supportable Retail Space (Square Feet)						
Retail Category	2009	2010	2015	2016	2017	2020
<b>Shopper Goods (GAFO):</b>						
Apparel	-233,480	-165,991	223,870	244,482	265,646	332,747
General Merchandise	184,650	270,785	277,586	298,529	320,018	388,083
Home Furnishings/Appliances	-57,711	-34,244	128,651	138,931	149,481	182,908
Other	510,593	648,501	451,996	490,355	529,730	654,523
<b>Subtotal</b>	<b>404,051</b>	<b>719,050</b>	<b>1,082,103</b>	<b>1,172,298</b>	<b>1,264,875</b>	<b>1,558,261</b>
<b>Convenience Goods:</b>						
Food (Supermarkets/Liquor)	-217,497	11,187	237,540	267,117	297,383	393,464
Eating and Drinking	-392,760	-276,153	350,162	392,365	435,491	572,271
<b>Subtotal</b>	<b>-610,257</b>	<b>-266,966</b>	<b>587,702</b>	<b>659,482</b>	<b>732,854</b>	<b>965,735</b>
<b>Heavy Commercial Goods:</b>						
Building/Hardware/Farm	103,098	183,757	129,330	140,205	151,313	186,491
Auto Dealers and Parts	-146,652	-124,722	-118,408	-113,437	-108,362	-92,311
Service Stations	-44,427	-21,891	18,571	22,612	26,744	39,868
<b>Subtotal</b>	<b>-87,983</b>	<b>37,144</b>	<b>29,492</b>	<b>49,380</b>	<b>69,695</b>	<b>134,048</b>
<b>Net Supportable Retail SF</b>	<b>-294,190</b>	<b>489,229</b>	<b>1,899,297</b>	<b>1,881,158</b>	<b>2,067,423</b>	<b>2,658,044</b>

63.175 Corrected Table 24:  
cont.

Expected Net Supportable Retail Space (Square Feet)						
Retail Category	2009	2010	2015	2016	2017	2020
<i>Shopper Goods (GAFO):</i>						
Apparel	-191,911	-134,133	234,269	255,056	276,421	344,146
General Merchandise	220,455	328,990	289,968	311,119	332,847	401,655
Home Furnishings/Appliances	-50,662	-35,068	134,453	144,831	155,493	189,268
Other	603,173	691,112	472,631	511,336	551,109	677,141
Subtotal	581,055	850,901	1,131,321	1,222,342	1,315,869	1,612,209
<i>Convenience Goods:</i>						
Food (Supermarkets/Liquor)	44,546	182,870	297,363	326,485	360,510	462,269
Eating and Drinking	-222,186	-40,878	435,491	479,828	525,409	669,990
Subtotal	-177,640	141,992	732,854	806,313	885,919	1,132,259
<i>Heavy Commercial Goods:</i>						
Building/Hardware/Farm	193,814	152,081	151,313	162,724	174,447	211,579
Auto Dealers and Parts	-134,073	-106,230	-108,362	-103,152	-97,803	-80,881
Service Stations	-11,652	9,170	26,744	30,994	35,368	49,261
Subtotal	48,189	55,022	69,695	90,566	112,012	179,958
<b>Net Supportable Retail SF</b>	<b>451,605</b>	<b>1,047,914</b>	<b>1,933,870</b>	<b>2,121,222</b>	<b>2,313,800</b>	<b>2,924,427</b>

As discussed in response to comment 63.172, the estimated percentage of household income spent on retail goods in the model is correct.

63.176 As discussed in response to comment 63.14, in determining the appropriate bounds of average sales per square-foot, figures from the International Council of Shopping Centers, the Urban Land Institute, and HdL Companies were evaluated, and indicate sales volumes much lower than \$500-700 per square-foot are more typical, and indicative of levels required to support successful ongoing operations. Elevated or higher sales per square-foot figures at an existing retail establishment is typically indicative of market demand for additional retail. The question evaluated in a retail market analysis is not whether the introduction of additional retail would increase competition, but rather whether it is likely that the introduction of additional retail would oversaturated a given trade area and lead to urban decay.

The RMA model was rerun to illustrate the impact on the conclusion of highly elevated sales per square-foot figures of \$700 per square-foot for most retail categories. As illustrated in response to comment 63.14, the conclusion of the RMA would remain unchanged.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 53

63.176  
cont.

to insufficient demand, creating visual impacts and health and safety impacts from abandoned store fronts, crime and vandalism.

While the courts review an EIR using an "abuse of discretion" standard, the "reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"<sup>218</sup> As the court state in *Berkeley Jets*:

"A prejudicial abuse of discretion occurs 'if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.'"<sup>219</sup>

#### **N. Alternatives Analysis**

63.177

The Project's Alternative analysis is inadequate because: (i) it contains an overly narrow range of alternatives that reduces significant impacts that omits the consideration of smaller mixed-use projects; (ii) it lacks the required discussion of potential alternative locations for the project; and (iii) it cursorily rejects environmentally superior alternatives that meet most of the basic Project objectives without providing substantial evidence of infeasibility.

CEQA requires that an EIR "produce information sufficient to permit a reasonable choice of alternatives so far as the environmental aspects are concerned."<sup>220</sup> The alternatives analysis must fulfill CEQA's mandate to examine a "reasonable range" of alternatives aimed at avoiding or reducing the significant impacts of the proposed project.<sup>221</sup> An EIR's alternative's analysis should be rejected when an alternative that would reduce significant impacts and achieve most Project objectives is excluded from the analysis and the EIR fails to include a reasonable explanation of the decision to exclude that alternative.<sup>222</sup>

<sup>218</sup> *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1355 (quoting *Laurel Heights*, 47 Cal.3d at 391, fn. 12).

<sup>219</sup> 91 Cal.App.4th at 1355 (quoting *San Joaquin Raptor*, 27 Cal.App.4th at 722; *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th at 946).

<sup>220</sup> *San Bernardino Valley Audubon Soc'y v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750-51.

<sup>221</sup> Guidelines § 15126.6; *Laurel Heights*, *supra*, 47 Cal.3d at 403-04 ("[w]ithout meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles under the CEQA process").

<sup>222</sup> See *Ctr. for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866 (EIR for outdoor composting facility found legally inadequate because it did not consider an enclosed facility that would significantly reduce air quality impacts); *Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal.App.4th 1059 (EIR for new city general plan found legally inadequate because it did not consider a reduced development alternative even though it would have reduced significant impacts and met most of city's stated objectives).

63.177 The alternatives analysis is adequate. Moreover, additional alternatives have been included in the Final EIR to respond to public comment suggesting that reduced mixed-use projects should be considered. Section 12 of the Draft EIR explained why an offsite alternative was not analyzed, and it adequately addressed the fact the environmentally superior alternative resulted significant traffic impacts.

As discussed in response to comment 5.6, two reduced mixed-use alternatives have been developed to evaluate the impact reductions that would occur from a less intense mixed-use development. In general, the Revised Project would result in a 22 percent reduction in the development intensity while the Reduced Mixed-use Alternative would result in an approximately 50 percent reduction.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 54

63.178

In addition, the EIR failed to describe the City's rationale for selecting the alternatives that are discussed, as required by CEQA Guidelines Section 15126.6(c). Merely stating that the alternatives were selected to comply with CEQA, as the EIR does, is not sufficient detail to inform the City Council and the public why these, and no other, alternatives were analyzed.

An EIR will be found legally inadequate if it contains an overly narrow range of alternatives in light of the nature of the project and its environmental effects. Thus, in *Watsonville Pilots Association*, the EIR for a new city general plan included two alternatives with the same level of increased development as the proposed plan, but did not consider any reduced development alternatives.<sup>223</sup> Recognizing that the project's environmental impacts would flow largely from growth, the court concluded the EIR was fatally flawed because it did not include a reduced development alternative that would provide information about how most project objectives could be satisfied without the level of environmental impacts that would result from the project.

63.179

Under the *Watsonville Pilots* standard, the Project EIR fails to provide a reasonable range of alternatives. Instead, because it fails to analyze a project that both reduces density (to mitigate significant bulk and scale and traffic impacts) and promotes the office/retail/residential mixed-use goal that is central to the Project objectives, the Applicant has improperly narrowed the consideration of alternatives to the Project.<sup>224</sup> Specifically, three of the four alternatives are not mixed-use projects. The only mixed-use alternative analyzed (medical office/senior housing) purposefully excludes the stated Project goal to provide a "mix of employment, housing, dining and shopping within the same development."<sup>225</sup> In reality, the alternatives presented in the EIR are just strawman alternatives that do not comply with the requirements outlined in the CEQA Guidelines.

63.180

Under CEQA, the basic purpose of an EIR's discussion of alternatives is to suggest ways Project objectives might be achieved at less environmental cost.<sup>226</sup> Here, it appears that the basic purpose of this EIR's discussion of alternatives is to suggest alternatives that do not meet the fundamental Project objective, and then reject them for not meeting the fundamental Project objective.

63.181

Courts have held that an EIR should not present alternatives that are incompatible with the fundamental Project objectives, but that is precisely what the EIR did here. The project's underlying purpose "to create a 'Main Street' and village center for the Carmel Valley community,"<sup>227</sup> yet only one alternative – the Commercial Only Alternative – includes a Main

<sup>223</sup> 183 Cal.App.4th at 1087.

<sup>224</sup> *Rural Landowners Ass'n. v. Lodi City Council* (1983) 143 Cal.App.3d 1013, 1024 ("[r]esponsibility for a project cannot be avoided merely by limiting the title of description of the project").

<sup>225</sup> EIR, at p. 12-1, 12-18.

<sup>226</sup> *Mira Mar Mobile Cmty. v. City of Oceanside* (2004) 119 Cal.App.4th 477.

<sup>227</sup> P. 5, 1-13.

63.178 The Draft EIR adequately explained why each of the alternatives were developed. As required by Section 15126.6 of the CEQA Guidelines, Section 12 of the Draft EIR briefly described the City's rationale for selecting the alternatives that were analyzed. The basis for selecting the three new alternatives is included in Section 12 of the Final EIR.

63.179 As discussed in response to comment 63.177, the City believes the Final EIR includes a reasonable range of alternatives, particularly with the addition of three new recirculated alternatives. In addition to the No Project/No Development and No Project/Employment Center alternatives, the Final EIR analyzes six project alternatives which were determined to be potentially feasible and thus worthy of inclusion in the EIR. Contrary to this comment, alternatives discussed in an EIR need not be actually feasible in light of all factors ultimately considered by a lead agency—such alternatives need only be potentially feasible. That is, not all alternatives considered must fully accomplish all of the project objectives, nor must they satisfy every key objective of the project. Further, a lead agency would consider and balance a range of factors, including "specific economic, legal, social, technological, or other considerations," in determining the feasibility of a particular alternative (Public Resources Code §21002.1(b), (c)), or whether "specific overriding economic, legal, social, technological, or other benefits" of a project or alternative outweigh the significant environmental effects (Public Resources Code §21081(a)). Thus, a lead agency's ultimate rejection of alternatives as infeasible "does not imply these alternatives were improperly included for discussion." *Mira Mar Mobile Community v. City of Oceanside*, 119 Cal. App. 4th 477, 489 (2004).

Most importantly, an EIR must describe a reasonable range of project alternatives sufficient to permit informed decision making and public participation. For example, the alternatives discussed in an EIR would

COMMENTS

RESPONSES

63.179 include different land uses and different intensities of development, but need not address more intensity levels than those that would allow extrapolation of the effects of densities that are effectively bracketed. Village Laguna of Laguna Beach v. Board of Supervisors, 1234 Cal. App. 3d 1022, 1028–29 (1982). See CEQA Guidelines § 15126.6. As discussed in Section 12 of the Final EIR, the alternatives chosen focus on achieving one or more of the stated project objectives, reducing or avoiding the identified significant impacts of the Originally Proposed Project, responding to public comments regarding specific alternatives, and providing sufficient information regarding alternatives that span a range of development intensities, to decision makers and the public to determine the relatively greater or lesser impacts of alternatives that would fall between those provided in the Draft EIR and in the recirculated alternatives.

The Commercial Only Alternative, analyzed in Final EIR Section 12.6, would reduce project-generated traffic and lessen the neighborhood character impacts relating to the bulk and scale of the Originally Proposed Project. Notwithstanding these benefits, the Final EIR concludes that the Commercial Only Alternative would not meet certain project objectives in that it would fail to develop a mixed-use project to serve the community, would not provide additional housing types in Carmel Valley, nor would it provide a place for public gathering and social interaction. Finally, the Commercial Only alternative would not promote sustainable development (i.e., the coordination of transportation and land use through compact, mixed-use development focused around public transit) by providing a mix of employment, housing, dining and shopping within the same development.

The Medical Office/Senior Housing Alternative, analyzed at Section 12.7 of the Final EIR, would reduce peak-hour traffic trips in comparison to the Originally Proposed Project, and slightly reduce the bulk and scale of the development, while reducing or avoiding paleontological and historical resource impacts to below a level of significance. While this alternative would provide a mix of housing and commercial uses, it would not meet other project objectives because it would fail to provide a place for public gathering and social interaction. Also, this alternative would not promote sustainable development principles and smart growth to the same degree as the Originally Proposed Project, because it would not combine residential uses integrated with retail shopping, dining, and employment opportunities.

63.179 cont. The Reduced Main Street Alternative, also referred to as the Revised Project, studied at Section 12.9 of the Final EIR, would satisfy project objectives while reducing, but not eliminating, significant traffic and neighborhood character impacts. The Reduced Mixed-use Alternative, analyzed at Section 12.10 of the Final EIR, would reduce traffic impacts in comparison to the Originally Proposed Project (and the Revised Project), although significant traffic impacts would remain. In addition, this alternative would reduce, but not eliminate, significant neighborhood character impacts. As described on page 12-44 of the recirculated document, this alternative represents a substantial reduction in massing and height. As with the Originally Proposed Project, and as described on page 5.3-23 of the Draft EIR, this alternative remains broadly consistent with the development pattern in the western portion of Carmel Valley; that is, a mix of lower-scale structures interspersed with taller ones (up to 12 stories for the Marriott Hotel located along El Camino Real). However, as with the Originally Proposed Project, this alternative would be inconsistent with immediately surrounding development of lower scale and intensity resulting in a significant neighborhood character impact similar to the Originally Proposed Project.

While the Reduced Mixed-use Alternative would create a mixed-use development, the City of Villages Strategy requires higher residential and retail densities to feasibly achieve the benefits of a village. The Reduced Mixed-use Alternative would not provide sufficient density to provide a robust, vibrant Main Street experience or feasibly achieve other goals and policies of the General Plan. More specifically, the Reduced Mixed-use Alternative would not contain enough retail space to succeed as a high-quality, mixed-use “lifestyle center” that meets the goals and policies of the City of Villages concept embodied in the General Plan. As discussed in a memo entitled “Retail Market Analysis and Retail Critical Mass Associated with a Reduced Project Alternative” prepared by The London Group, and included as Appendix B.3 in the Final EIR, lifestyle centers are characterized by higher quality “specialty” retail tenants. According to the memo, the 140,000 square feet of retail included in the Reduced Mixed-use Alternative would be insufficient to support a lifestyle retail center. The lifestyle centers analyzed in the memo ranged between 150,000 and 500,000 square feet; although specialty retail tenants associated with lifestyle centers strongly prefer a minimum retail component size of 200,000 to 300,000 square feet. The 140,000 square feet of retail included in the Reduced Mixed-use Alternative would fall below the smallest lifestyle center identified, and outside the strong preferences of the specialty retailers and other tenants associated with lifestyle centers.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 55

Street and village center. None of the other alternatives include a Main Street and village center, so they should have been screened out in the initial review and not included in the more detailed alternatives analysis. This alternatives analysis is similar to an EIR for a football stadium preparing an alternatives analysis with a basketball arena alternative, a baseball ballpark alternative, and a tennis stadium, and then rejecting those alternatives for not meeting the purpose of creating a football stadium.

In addition, the other alternatives are insufficient to meet CEQA's requirement of a range of reasonable alternatives because, apart from the No Project alternatives, only two alternatives – Commercial Only and Medical Offices/Senior Housing – meet “most of the basic project objectives” as is required.<sup>228</sup> The No Retail Alternative should have been screened out and rejected because it meets only three of the six basic Project objectives, not “most” as is required by CEQA. The EIR should be revised to include a properly prepared alternatives analysis that considers a range of alternatives that meet the fundamental purpose of the Project and most of the basic Project objectives, and reduces significant effects of the Project.

Additionally, an EIR must include a discussion of potential alternative locations for the project, when any of the project's significant impacts would be avoided or substantially lessened by locating the project elsewhere.<sup>229</sup> The EIR must first address whether any of the project's significant impacts would be avoided or substantially lessened by locating the project elsewhere.<sup>230</sup> Locations that would be environmentally superior to the project site should be included in the EIR. Only alternative sites that would not eliminate or substantially reduce significant adverse effects should be rejected.<sup>231</sup> When a lead agency concludes that no feasible alternative locations exist, it should include its reasons in the EIR.<sup>232</sup> An agency may determine that no feasible locations exist either because basic project objectives cannot be achieved at another site, or because there are no sites meeting the criteria for feasible alternative sites.<sup>233</sup>

For example, the EIR should consider alternative locations for the Project which would substantially lessen the Project's impacts.<sup>234</sup> It is apparent that the Project is a mixed-used

<sup>228</sup> Guidelines § 15126.6(a)

<sup>229</sup> Guidelines § 15126.6(f)(2); *Citizens of Goleta Valley, supra*, 52 Cal.3d 553.

<sup>230</sup> *Id.*

<sup>231</sup> Guidelines § 15126.6(f)(2)(A).

<sup>232</sup> Guidelines § 15126(f)(2)(B).

<sup>233</sup> *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.App.4th 889, 921.

<sup>234</sup> Pub. Res. Code § 21001(g); see also *See Laurel Heights, supra*, 47 Cal.3d at 403 (noting that EIR, which stated that no feasible alternative sites were available for relocation of university facilities other than site it owned, did not assess possibility of expanding or remodeling other facilities or possibility of purchasing or leasing other facilities).

63.180 As required by Section 15126.6(c) of the CEQA Guidelines, the alternatives analysis in the EIR is focused on alternatives which would avoid or substantially lessen significant impacts associated with the proposed development. As discussed in responses to comments 63.177 and 63.179, the addition of the reduced mixed-use alternatives and specialty food market retail alternative to the Final EIR further enhances the discussion of alternatives.

The comment states that the alternatives cannot meet the “fundamental project objective,” but fails to explain what the comment author believes is the “fundamental project objective.” As such, no response can be made.

63.181 The Main Street component is not included as part of any of the project objectives, and only one of the project objectives uses the word “village” (and not “village center”). Furthermore, alternatives need not meet every project objective to be considered a feasible alternative. Alternatives are evaluated in part on their ability to meet most of the project objectives (CEQA Guidelines 15126.6(f)). As discussed in responses to comments 63.177 and 63.179, the addition of the two reduced mixed-use alternatives to the Final EIR further enhances the discussion of alternatives.

63.182 Inclusion of the No Retail Alternative was appropriate given the high traffic volume associated with retail uses. As discussed in responses to comments 63.177 and 63.179, the discussion of alternatives in the Final EIR has been expanded to include two reduced mixed-use alternatives.

63.183 As discussed in response to comment 63.5, a consideration of other alternative locations for the Originally Proposed Project is not warranted.

**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 56

urban village, and would actually be better suited for an urban setting with existing transit. An urban location is particularly warranted because the Project proposes to amend the Community Plan and Precise Plan in a suburban area to fit an urban-sized project. The EIR failed to evaluate alternative locations closer to the urban core of the City.<sup>235</sup> Community Plan requires the careful consideration of "locations that can most readily accommodate and support realistic future alternative modes of transit other than the automobile."<sup>236</sup> When analyzing the Project's alternative locations, the EIR should evaluate a broad study area, because the Project draws from locations far outside Carmel Valley. In direct contradiction of these requirements, the EIR states that there are no other vacant 23.6 acre sites in the area to suitable for the Project. Other large sites suitable for mixed-use development closer to the City's urban core include the Sports Arena site, the Old County Administration Center site, and the Postal Center site, among others.

Furthermore, the EIR failed to describe the City's rationale for not including several alternatives that would meet most Project Objectives and reduce significant impacts. Courts have deemed an EIR's analysis of alternatives defective when an alternative that would reduce significant impacts and achieve most of the basic Project objectives is excluded from the analysis and the EIR fails to include a reasonable explanation of the decision to exclude that alternative.<sup>237</sup> The EIR should have included the following alternatives: Reduced Retail, Non-Retail Mixed-used with a Main Street, Reduced Bulk, and a Project alternative site. The EIR's failure to do so renders the alternatives analysis defective under CEQA.

The EIR also inappropriately rejected an alternative site without doing an analysis of such an alternative. The EIR rejects an alternative location because it determines that another location is "not applicable." Applicability is not a valid basis for rejecting an alternative under CEQA or CEQA case law. Alternative sites may, however, be rejected if they are "infeasible." If the City meant to reject an alternative location because it is not "feasible" rather than not "applicable," the EIR should correct this error.

Assuming that the City meant to reject an alternative location due to infeasibility, the EIR does not provide a sufficient basis for doing so. The EIR rejects an alternative location "[b]ecause no other vacant approximately 23.6-acre site exists in the area that is suitable for the project." This is an extremely narrow way to define a suitable location for the Project, and the EIR does not explain why only such a site could meet most of the basic Project Objectives. The EIR thus improperly dismisses, without doing any analysis, all alternative locations because they are not "vacant" and "approximately 23.6-acres" and "in the area that is suitable for the project." The EIR should explain why a vacant 25-acre site, or 50-acre site with 23.6 vacant acres, would be unsuitable for the Project. It must also define what is meant by "area" because

<sup>235</sup> See *Citizens of Goleta Valley v. Bd. of Supervisors* (1988) 197 Cal.App.3d 1167, 1179.

<sup>236</sup> Community Plan, at p. 7.

<sup>237</sup> *Ctr. for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866; *Watsonville Pilots Ass'n*, *supra*, 183 Cal.App.4th 1059.

63.184 As discussed in response to comment 5.6, a discussion of two reduced mixed-use alternative has been added to the Final EIR to address the potential benefits of reduced mixed-use development. Responses to comments 63.177 and 63.179 explain how the Draft EIR's range of alternatives was developed consistent with the CEQA Guidelines. Response to comment 63.5 addresses why an alternative location was not analyzed.

63.185 As discussed in response to comment 63.5, offsite alternatives are not considered feasible.

63.186 As discussed in response to comment 63.5, a consideration of other alternative locations for the Originally Proposed Project is not warranted. The term "area" has been clarified in Section 12.3.1 of the Final EIR.



**SheppardMullin**

Martha Blake  
May 29, 2012  
Page 57

63.186  
cont.

it is conclusory to declare that an alternative site is unsuitable because it is not "in the area that is suitable." Without further information, the EIR's definition of a suitable site is without any relevance to the basic Project Objectives. Apparently the EIR would deem an alternative site unsuitable even if it would fully meet all of the Project objectives and substantially reduce significant environmental impacts.

63.187

In addition, the entire analysis of an alternative site comprises just one sentence, which is insufficient to permit an evaluation of its merits. In fact, this one sentence analysis is at odds with the prior sentence in the EIR, a restatement of the law which requires that an alternative site analysis consider Project Objectives, land use designations, and availability of infrastructure. The EIR considered none of these factors. Therefore, the EIR should be revised to include a thorough analysis of an off-site alternative, including whether an alternative site could substantially reduce significant environmental impacts, attain most of the basic Project Objectives, and be consistent with existing land use designations.

63.188

CEQA contains a "substantive mandate" that agencies refrain from approving a project with significant environmental effects if "there are feasible alternatives or mitigation measures" that can substantially lessen or avoid those effects.<sup>238</sup> It "requires public agencies to deny approval of a project with significant adverse effects when feasible alternatives...can substantially lessen such effects."<sup>239</sup> An EIR may not provide such a cursory rejection of an environmentally superior alternative without supporting analysis.<sup>240</sup> In violation of this mandate, the Applicant has determined that the "No Project/Development Under Existing Plans Alternative" is the environmentally superior alternative,<sup>241</sup> but has not provided substantial evidence that this alternative is infeasible or impractical.

63.189

The EIR should have disclosed that this No Project/Development Under Existing Plans Alternative, as pointed out previously, is already in conformity with the goals and objectives of the Project via the Precise Plan. This alternative would create a "horizontal community village" consistent with the City of Villages Strategy and the General Plan as reflected in the SGCM, which includes a number of developments including this Project Site as an employment center and office building. Therefore, to complete this community village, the Project Site should provide the development under the existing plans as envisioned in the Precise Plan and the Community Plan. The result would be the completion of the Carmel Valley "community village" without the significant and unmitigatable impacts of the Project as described in the EIR.

63.190

As the EIR does not include the appropriate alternative analysis, it is fatally deficient and needs to be revised and recirculated.

<sup>238</sup> *Mountain Lion Found. v. Fish & Game Comm.* (1997) 16 Cal.4th 105, 1343; Pub. Res. Code § 21002.

<sup>239</sup> *Sierra Club v. Gilroy* (1990) 222 Cal.App.3d 30, 41.

<sup>240</sup> *Pac. Corp. v. City of Camarillo* (1983) 149 Cal.App.3d 168, 178.

<sup>241</sup> See EIR, at § 12.9.

63.187 As discussed on page 12-2 of the Draft EIR, off-site alternatives are required under CEQA if another site is feasible and would reduce or avoid the significant impacts of the Originally Proposed Project. Factors to be considered when identifying an off-site alternative include project objectives, the size of the site, its location, the General Plan and/or Community Plan land use designation, and availability of infrastructure. Because no other vacant approximately 23.6-acre site exists in the Carmel Valley area that is suitable for the project, constructing the Originally Proposed Project at another location is not feasible. As a result, an off-site location was appropriately not considered as an alternative for further analysis. Refer to response to comment 63.5 for further information regarding an off-site alternative.

63.188 Section 12.5.3 in the Draft EIR included the reasons why the No Project/Employment Center Alternative would not meet the project objectives. While this alternative would lessen traffic impacts compared to the Originally Proposed Project, significant traffic impacts would still occur even with the environmentally superior alternative.

63.189 The No Project/Employment Center Alternative would not be consistent with any of the project objectives identified in the Draft EIR (in Sections 3.1 and 12.2) because it would only provide a singular use of office/business park. Contrary to the comment, development under this alternative would not meet the General Plan definition of village. The City of Villages section within the Land Use and Community Plan Element of the General Plan defines a village as "the mixed-use heart of a community where residential, commercial, employment, and civic uses are all present and integrated." That is what would be accomplished with development of the Originally Proposed Project and the Revised Project.

Refer to response to comment 63.7 regarding the alleged "horizontal community village."



---

---

**COMMENTS**

---

---

**RESPONSES**

	<p>63.190 As discussed in response to comment 63.2, additional alternatives have been evaluated in Section 12 of the Final EIR and were recirculated in accordance with CEQA.</p>
--	---

**SheppardMullin**

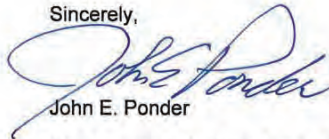
Martha Blake  
May 29, 2012  
Page 58

**Conclusion**

As set forth above, in the record of the Project, and in the prior proceedings, all of which are incorporated herein, the proposed Project is based on an inadequate environmental document and is inconsistent with the General Plan, Carmel Valley Community and Precise Plan. The conclusions upon which the proposed actions are based are inadequate, arbitrary and capricious, and unsupported by the record.

For these reasons, Donahue Schriber respectfully requests that the City of San Diego, as lead agency, adequately describe the Project, recirculate the EIR, analyze alternative locations, and fully and adequately analyze the potential, significant impacts of the Projects in compliance with CEQA, including analyzing feasible project alternatives that actually meet the project objectives. To the extent not already addressed by this letter, please address all points raised in the attached exhibits.

Sincerely,



John E. Ponder

for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:404958326.11

cc: Councilmember Sherri Lightner, District 1  
Council President Pro Tem Kevin Faulconer, District 2  
Councilmember Todd Gloria, District 3  
Council President Tony Young, District 4  
Councilmember Carl DeMaio, District 5  
Councilmember Lorie Zapf, District 6  
Councilmember Marti Emerald, District 7  
Councilmember David Alvarez, District 8  
David Graham, Office of the Mayor  
Cecilia Gallardo, AICP, Assistant Deputy Director, Development Services Department

**SheppardMullin****Exhibit A****Valorie Thompson / Scientific Resources Associated Technical Analysis**

April 26, 2012

Mr. John Ponder  
Sheppard Mullin Richter & Hampton  
501 West Broadway  
19<sup>th</sup> Floor  
San Diego, CA 92101

Dear Mr. Ponder:

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report (Draft EIR)<sup>1</sup> published by the City of San Diego (City) as the lead agency under the California Environmental Quality Act (CEQA) for the One Paseo Project (the Project).

My qualifications include a doctorate in Chemical Engineering from Purdue University and 23 years of environmental consulting experience in the preparation of CEQA and NEPA documents throughout the western United States. I have prepared and reviewed numerous project and plan documents for commercial projects, industrial projects, and infrastructure projects, and am very familiar with the state and local requirements for evaluating air quality and greenhouse gas impacts. My resume is attached to this letter.

**Comments**

SRA is providing comments on both the Air Quality Analysis (Section 5.5) and the Greenhouse Gas Analysis (Section 5.7) presented in the Draft EIR. In my opinion, the Draft EIR does not sufficiently analyze Project impacts on air quality or global climate change. The following are specific comments on the analyses.

Air Quality  
5.5-2, ¶ 4

*On April 15, 2004, the SDAB was classified as a basic non-attainment area for the 8-hour NAAQS for ozone.*

<sup>1</sup> City of San Diego, 2012. *One Paseo, A Main Street For Carmel Valley, Draft Environmental Impact Report*. SCH No. 2010051073, Project No. 193036. March.

63.191 Refer to the response to comment 63.127.

Exhibit A-1



**SheppardMullin**

Mr. John Ponder  
April 27, 2012  
Page 2

The information presented in the Air Quality discussion is outdated. The "basic" classification has been eliminated. Based on this outdated information, it is unclear whether the project's impacts have been evaluated on the basis of the current attainment status of the San Diego Air Basin.

Page 5.5-5, Table 5.5-1 The information in this table is outdated and presents old air quality standards. Based on this outdated information, it is unclear whether the project's impacts have been evaluated on the basis of the current ambient air quality standards.

Page 5.5-6, ¶ 1 *Since then, SIP revisions have been developed and approved for non-attainment areas throughout the state; however, the SIP for the SDAB was not required to be updated, as it has achieved its attainment goals in a timely manner.*

Is this section stating that the San Diego Air Basin's SIP has not been updated since 1994? That is not correct. The latest version of the SIP for the SDAB is 2007.<sup>2</sup> The statement that says that the SDAB has "achieved its attainment goals in a timely manner" is also outdated. Based on this outdated information, it is unclear whether the project's impacts have been evaluated on the basis of the current attainment status, and the current air quality plans for the San Diego Air Basin.

Page 5.5-10, ¶ 1 *The SDAB is considered to be a basic non-attainment area for the 8-hour NAAQS for ozone and a non-attainment area for the CAAQS for both ozone and PM<sub>10</sub>.*

The information presented in this discussion is incorrect. Since the Impact Analysis for this issue reflects whether or not the project would conflict with or obstruct implementation of the applicable air quality plan, given the discussion on Page 5.5-6, it is unclear whether the analysis addressing the current, up to date SIP, or whether it is evaluating outdated air quality plans.

Page 5.5-11, ¶ 2 *This proposed change in land uses would result in additional traffic trips and associated air emissions that were not accounted for in the ozone attainment demonstration within the SIP.*

In that case, it is unclear how an affirmative conclusion can be made that the project would not conflict with or obstruct implementation of the applicable air quality plan. No

<sup>2</sup> San Diego Air Pollution Control District. 2007. *Eight-Hour Ozone Attainment Plan for San Diego County*. May.

63.192 Refer to the response to comment 63.127.

63.193 Refer to the response to comment 63.128.

63.194 Refer to the response to comment 63.129.

63.195 Refer to the responses to comments 63.128 and 63.130.

**SheppardMullin**

Mr. John Ponder  
April 27, 2012  
Page 3

demonstration has been made that this project would not conflict with the SIP.

Page 5.5-11, ¶ 2

*General estimated basin-wide construction-related emissions are included in the SDAPCD emission inventory (which, in part, forms the basis for the air quality plans cited above) and are not expected to prevent attainment or maintenance of the ozone and particulate matter standards within the SDAB. Therefore, construction impacts related to air quality plans for these pollutants from the proposed project would be less than significant, since they are presently estimated and accounted for in the emission inventory.*

No evaluation or demonstration has been provided to reach the conclusion that the construction impacts would be less than significant. No attempt has been made to identify the emissions from this project, and to demonstrate that they are specifically accounted for in the SIP. The conclusion is therefore unsupported.

Page 5.5-13, ¶ 5

*It was assumed that dust control measures (watering two times daily) would be employed to reduce emissions of fugitive dust during site grading and cut and fill operations.*

The applicant is only proposing to water the site twice daily during grading and cut and fill operations. A standard fugitive dust control measure would require site watering a minimum of three times daily, and implementation of additional fugitive dust measures.

Page 5.5-13, ¶ 5

*Other detailed assumptions used on the construction emissions analysis and a copy of the URBEMIS model runs are contained in the Air Quality and Greenhouse Gas Technical Report (Draft EIR Appendix G).*

Because the construction scenario is based on the assumption that 1.5 acres would be the maximum amount of grading that would occur on any single day at the site. This amount of site grading then results in low emissions of particulate matter. It is unclear whether the applicant proposing to limit grading to 1.5 acres on a daily basis. If this is correct, this fugitive dust control measure does not appear in the document and is not included as a mitigation measure, but the applicant must be limited to grading 1.5 acres on a daily basis to support the conclusions made in the document. Otherwise, the PM<sub>10</sub> and PM<sub>2.5</sub> emissions are underestimated in the

1328 Raimundino Lane

San Diego, CA 92109

(858) 488-2987

63.196 Refer to the response to comment 63.130.

63.197 Refer to the response to comment 63.131.

63.198 Refer to the response to comment 63.132.

## SheppardMullin

Mr. John Ponder  
April 27, 2012  
Page 4

Draft EIR and the Draft EIR has not made a full disclosure of the impacts to air quality.

Page 5.5-17, Table 5.5-7 This table indicates it is presenting the maximum daily construction emissions during simultaneous construction of Phases 1, 2, and 3. Based on the information presented in the table, the emissions presented in Table 5.5-5, which presents construction for Phase 1 only, are higher than the "maximum daily" emissions presented in Table 5.5-5, which assumes three phases would be constructed simultaneously. The same question applies to Table 5.5-6, which presents construction emissions for simultaneous construction of Phases 1 and 2 and yet presents lower emissions for construction of two phases simultaneously than construction of a single phase. It appears that the maximum daily emissions associated with simultaneous construction of 2 or 3 phases have not been fully disclosed in the Draft EIR.

Page 5.5-27, ¶ 1 *The predicted level of emissions of PM<sub>10</sub> during all of the analyzed construction phasing scenarios of the proposed project would be below the City of San Diego's significance criteria. Thus, the project construction-related dust emissions would be less than significant.*

If the conclusion is made that emissions will remain below 100 lbs/day of PM<sub>10</sub>, there needs to be an enforceable condition that limits the amount of grading that can be conducted on any single day. As shown in the URBEMIS model runs, this amount is 1.5 acres/day.

#### Greenhouse Gas Analysis

Page 5.7-15, ¶ 4 *In order to serve as a guide for determining when a project triggers the need for a GHG significance determination, the City of San Diego has established an interim screening threshold for GHG emission analysis. Based on guidance in the CAPCOA report "CEQA & Climate Change," dated January 2008, the City is using an annual generation rate of 900 MT of GHG emissions to determine when further GHG analysis is required.*

The City of San Diego has issued guidelines for the analysis of greenhouse gas impacts<sup>3</sup>. This guidance post-dates the 2008

<sup>3</sup> City of San Diego. 2010. "Addressing Greenhouse Gas Emissions from Project Subject to CEQA". August 18.

63.199 Refer to the response to comment 63.133.

63.200 Refer to the response to comment 63.132.

63.201 The City's August 2010 memorandum, as referenced in the comment and on page 5.7-17 of the Draft EIR, is the current guidance document for greenhouse gas emissions analysis in EIRs, and is the guidance used for the analysis in the Draft EIR for the proposed development.



**SheppardMullin**

Mr. John Ponder  
April 27, 2012  
Page 5

CAPCOA report. It is unclear whether the analysis utilized the City's latest recent guidance in the greenhouse gas analysis.

Page 5.7-16, ¶ 5

*GHG emissions were calculated using URBEMIS 2007.*

The report states that GHG emissions were calculated using URBEMIS 2007. URBEMIS does not include calculations for many of the GHG-generating activities associated with a development such as the One Paseo project, such as indirect emissions from electricity use, water and wastewater use, and solid waste handling. The URBEMIS Model does not include San Diego-specific emission factors; yet this was not noted in the document, and no discussion of how the URBEMIS Model was used in the analysis (i.e., which emission factors) were used. Furthermore, URBEMIS has been superseded by CalEEMod, which has been available since February 2011. It is unclear, therefore, that the analysis presented in the Greenhouse Gas Emissions evaluation reflects conditions in San Diego, or current approaches to calculating GHG emissions.

Page 5.7-19, ¶ 4 & 5

*GHG emissions from the proposed project were estimated based on an annual energy use of 13.55 kilowatt-hours (kWh) per sf for commercial and 5,627 kWh per dwelling unit for residential units.... Emissions associated with natural gas usage were calculated based on South Coast Air Quality Management District (SCAQMD) estimated natural gas usage of 2.9 cf of natural gas per sf per month (cf/sf) for commercial, 2.0 cf/sf per month for retail, and 4,012 cf per dwelling unit for residential units.*

The entire analysis is based on outdated information which likely results in overestimating "business as usual" energy use, allowing the applicant to take credit for large reductions in greenhouse gas emissions. The SCAQMD's 1993 reference document<sup>4</sup>, which is the source of the energy use estimates, does not represent conditions based on Title 24 as of 2005 despite the definition on Page 5.7-16 indicating that "BAU condition is defined as the emissions that would have occurred in the absence of reductions mandated under AB 32 (based on the 2005 Building Code standards)."<sup>5</sup> There are more recent documents published by the CEC<sup>5,6</sup> that provide more accurate estimates of energy use from residential and commercial land uses.

<sup>4</sup> SCAQMD. 1993. *CEQA Air Quality Handbook*.

<sup>5</sup> KEMA-XENERGY, Iron, Roper ASW. 2004. *California Statewide Residential Appliance Saturation Survey. Volume 2, Study Results Final Report*. CEC-300-00-004, June.

<sup>6</sup> Iron. 2006. *California Commercial End-Use Survey*. CEC-400-2006-005, March.

63.202 Refer to the response to comment 63.136.

63.203 Refer to the responses to comments 63.137 and 63.144.

## SheppardMullin

Mr. John Ponder  
April 27, 2012  
Page 6

Page 5.7-19, ¶ 4

*Emissions were estimated based on factors from the California Climate Action Registry General Reporting Protocol (Protocol), which assumes that energy use (electricity) would have emissions of 804.54 pounds per MWh (lbs/MWh) of CO<sub>2</sub>, 0.0067 lbs/MWh of CH<sub>4</sub>, and 0.0037 lbs/MWh of N<sub>2</sub>O.*

The emission factors are not based on the latest emission factors recommended for California in the latest version of the General Reporting Protocol.<sup>7</sup> These outdated emission factors were used throughout the analysis and do not reflect "business as usual" conditions. The January 2009 GRP provides updated emission factors for California.

Page 5.7, ¶ 5

*Solid waste generation rates were estimated from the CIWMB's Solid Waste Characterization: Guidelines for Preparation of Environmental Assessment for Solid Waste Management (CIWMB 2010). Based on data from the CIWMB, the residential/commercial mixed uses were assumed to generate 0.0108 tons/sf/year. Waste collection trucks are accounted for in the URBEMIS2007 model, which incorporates diesel trucks that would visit and service the proposed project site. As shown in Table 5.7-5, it is estimated that approximately 90 MT per year of GHG emissions would be generated from the waste collection activities at the project site.*

The discussion of solid waste greenhouse gas emissions does not provide any information on the methodology used to calculate these emissions. If the URBEMIS Model was used as the sole source of emissions from waste management activities, this calculation does not account for the generation of methane from waste handling and does not provide a complete analysis of the overall GHG emissions from this activity.

Page 5.7-22, ¶ 3

*In addition, the difference between cumulative trips and driveway trips was considered in the analysis to account for the placement of mixed office and retail in the vicinity of residential and commercial uses, which would allow for internal trips.*

There is no documentation of whether reductions were taken in the analysis for this, and what level of reductions were assumed.

Page 5.7-22, ¶ 3

*Based on the San Diego County GHG Inventory (SDCGHGI), the percent reductions in GHG emissions anticipated through implementation of the Federal CAFE standards, LCFS, and AB*

<sup>7</sup> California Climate Action Registry. 2009. *General Reporting Protocol*. Version 3.1. Table C.2, Page 95.

63.204 The comment correctly notes that the emissions factors are not based on the latest emission factors recommended in the latest General Reporting Protocol. The California electricity emission factors from Table C.2 of the General Reporting Protocol, California Climate Action Registry, were updated in January 2009. In response to this comment, a revised analysis using the January 2009 emissions factors is provided in the Final EIR. The emission factors for the CO<sub>2</sub> were changed from 804.54 pounds of CO<sub>2</sub> per MWh to 724.12 pounds of CO<sub>2</sub> per MWh, 0.0067 pounds of CH<sub>4</sub> per MWh to 0.0302 pounds of CH<sub>4</sub> per MWh, and 0.0037 pounds of N<sub>2</sub>O per MWh to 0.081 pounds of N<sub>2</sub>O per MWh. Using the corrected emission factors for the new electricity consumption rates, the unmitigated GHG emissions were revised in Table 5.7-8 of the Final EIR, from approximately 5,567 to 6,266 metric tons CO<sub>2</sub>e each year. As demonstrated in that table, use of the revised electricity and natural gas emission factors does not alter the conclusions of the Draft EIR.

63.205 Refer to the responses to comments 63.142 and 63.149.

63.206 Refer to the response to comment 63.143.

63.207 Refer to the response to comment 63.140.

## SheppardMullin

Mr. John Ponder  
April 27, 2012  
Page 7

*1493 fuel efficiency standard (analogous to the Federal CAFE standard), as well as the effect of light/heavy vehicle efficiency/hybridization programs can be estimated. Based on that study, emissions from vehicles would be reduced by 14.06 percent through implementation of the Federal CAFE standard/AB 1493 standard, 6.6 percent through LCFS, and 0.62 percent by the light/heavy vehicle aerodynamic efficiency/hybridization standard. Emissions from vehicles would therefore be reduced by as much as 33 percent from state and federal programs by the year 2020.*

This paragraph discusses assumptions regarding reductions in GHGs from state and federal programs to reduce GHG emissions from vehicles. The reductions cited in the paragraph do not add up to "as much as 33 percent" as stated in the document. It is unclear how the reductions were calculated, and on what basis the reductions were assumed.

Page 5.7-23, Table 5.7-7 The analysis appears to be double-counting reductions from energy efficiency, and overestimating the reductions that would be achieved. In fact, the CEC has published analyses<sup>8</sup> showing the estimated reductions in electricity and natural gas usage that contradict the information in this table; for example, according to the CEC reference, reductions in natural gas usage for meeting Title 24 Energy Code as of 2008 versus 2005 are only in the range of 7.2 to 7.4 percent for a project such as the One Paseo project, yet it appears that the analysis took credit for a 15% reduction. The reductions assumed in the analysis are not justified and no enforceable measures have been proposed to support the conclusions of the analysis. Furthermore, the category "Electricity Energy Efficiency (AB 32)" is not explained or identified, yet a reduction of 11.67% is assumed without any justification. No information is provided to justify how such a reduction would be implemented for the project. The Draft EIR therefore overestimates and double-counts GHG emission reductions that would be achieved through state energy efficiency programs.

Page 5.7-24, ¶ 2  
Page 5.7-25, ¶ 2

*Construction of new buildings shall exceed Title 24 (2005) energy requirements by 20 percent.... As shown in Table 5.7-8, implementation of one or more of these GHG emissions reductions features in this category would result in a 20-percent reduction from BAU (sector specific) and an annual reduction in GHG emissions by approximately 1,573 MT CO<sub>2</sub>e.*

<sup>8</sup> Architectural Energy Corporation. 2007. 2008 Update to the California Energy Efficiency Standards for Residential and Nonresidential Buildings. Prepared for the California Energy Commission. November 7.

63.208 Refer to the response to comment 63.144.

63.209 Refer to the response to comment 63.144.



**Mullin**

Mr. John Ponder  
April 27, 2012  
Page 8

Under Project Design Feature BE-1, it is stated that the project would exceed Title 24 energy efficiency requirements by 20%. The analysis already assumed a 15% reduction in energy use from Title 24 as of 2005 in Table 5.7-7 (which, as stated above, is disputable). The measures identified in the Draft EIR are qualitative and no analysis is provided that shows the energy use reductions that would be achieved. No enforceable measures have been proposed under Project Design Feature BE-1, yet Table 5.7-8 assumes an additional 20% reduction from "business as usual" energy use, for which credit is taken on top of the 15% reduction as shown in Table 5.7-9. It appears that these reductions are double-counted in the GHG analysis. Also, the CAPCOA reference document cited in the EIR (Quantifying Greenhouse Gas Mitigation Measures)<sup>9</sup> contradicts the percent reduction assumed in the analysis. According to the CAPCOA reference document, for a 10% improvement beyond Title 24, the effectiveness ranges from 0.2 to 5.5% reduction in energy use for electricity, and the effectiveness ranges from 0.7 to 10% for natural gas use. Between double-counting reductions in energy use and overestimating the reduction that would be achieved through exceeding Title 24 standards, it appears that the GHG reductions have been overstated in the Draft EIR.

The statement is also made that implementation of "one or more of these GHG emissions reductions features in this category would result in a 20-percent reduction from BAU". If only one of the measures is implemented (for example, "prohibit HVAC, refrigeration, and fire suppression equipment that contain banned chlorofluorocarbons"), how does that result in a 20% reduction in electricity and natural gas use on top of the reductions already assumed for implementing Title 24 as of 2008 and other unspecified measures listed in Table 5.7-7 as "Electricity Energy Efficiency (AB 32)" but not quantified or identified? It appears that the GHG emission reductions have been overstated in the Draft EIR.

Page 5.7-25, ¶ 2  
Page 5.7-26, ¶ 1

*Project Design Feature WUW-1: The proposed project can achieve energy savings and emissions reduction through indoor and outdoor water conservation measures. By specifying the indoor and outdoor water conserving fixtures below, the proposed project would reduce potable water consumption by approximately 30 percent (equivalent to the performance level required to receive*

<sup>9</sup> CAPCOA. 2010. *Quantifying Greenhouse Gas Mitigation Measures*. Page 85. August.

63.207 Refer to the response to comment 63.148.

**SheppardMullin**

Mr. John Ponder  
April 27, 2012  
Page 9

*water efficiency credit under the US Green Building Council Leadership in Energy and Environmental Design for New Construction (version 2.2) (Water Efficiency credit 3.1). Installation of new water features shall exceed the water conservation requirements by 30 percent.... As shown in Table 5.7-8, implementation of one or more of these water conservation features would result in a 30-percent reduction from BAU (sector specific) and an annual reduction in GHG emissions by 106 MT CO<sub>2</sub>e.*

The analysis takes credit for a 30% reduction in water use for the project. The statement is made that the project "could include" certain measures to reduce indoor and outdoor water use, but no quantification of individual measures is provided. In fact, the Project Design Feature WUW-1 in the CAPCOA reference document<sup>10</sup> that is cited in the EIR only applies to indoor water use. The reference document provides a means of calculating GHG emission reductions from each of the measures proposed. If a 30% reduction in water use is assumed, this measure needs to be enforceable. No justification is provided for the statement on the following page that "implementation of one or more of these water conservation features would result in a 30-percent reduction from BAU". If only one of the measures is employed, how does that translate into a 30% reduction in water use?

Page 5.7-26, ¶ 2

*As shown in Table 5.7-8, implementation of one or more of these waste management practices would result in a five-percent reduction from BAU (sector specific) and an annual reduction in GHG emissions by 4.5 MT CO<sub>2</sub>e.*

No information has been provided as to how the 5% reduction in solid waste generation, and therefore GHG emissions, was calculated. According to the CAPCOA reference document<sup>11</sup>, under Measures SW-1 and SW-2, "no literature references exist which provide default values for percent of waste diverted." The CAPCOA reference goes on to state "To take credit for this measure, the Project applicant would need to provide detailed and substantial evidence supporting the amount of waste reduced or diverted to recycling or composting due to the institution of extended recycling and composting services." No such detailed and substantial evidence is provided in the EIR, yet credit has been taken for the measure.

<sup>10</sup> CAPCOA. 2010. *Quantifying Greenhouse Gas Mitigation Measures*. Page 348. August.

<sup>11</sup> CAPCOA. 2010. *Quantifying Greenhouse Gas Mitigation Measures*. Page 392. August.

63.211 Refer to the response to comment 63.149.

## SheppardMullin

Mr. John Ponder  
April 27, 2012  
Page 10

Page 5.7-28, Table 5.7-9

Based on the comments provided above, the Draft EIR does not provide adequate justification for the reductions in GHG emissions assumed in the analysis. There are no enforceable measures proposed to reduce GHG emissions. Furthermore, due to the use of 1993 data in the calculation of baseline "business as usual" emissions and overestimations in the amount of GHG reductions that would be achievable through state and federal programs, it has not been demonstrated conclusively in the analysis that emissions would be reduced by 28.3% below "business as usual" levels.

#### Conclusions

In conclusion, the Draft EIR published by the City for the One Paseo does not adequately disclose impacts to air quality or greenhouse gas emissions. The Draft EIR does not support the conclusion that these impacts are less than significant, and does not specify enforceable mitigation measures that would reduce the significant impacts to a less than significant level. In my opinion the City must disclose all significant impacts, and must include a complete analysis of mitigation measures that will be implemented to reduce or avoid the Project's impacts, and provide a demonstration that the mitigation measures will be effective in reducing the significant impacts for the project.

Sincerely,



Valorie L. Thompson, Ph.D.  
Principal

1328 Kalmia Lane

San Diego, CA 92109

(618) 488-2987

63.212 In responses to comments raised throughout this letter, and as discussed in the respective comments, a number of modifications have been made in the Draft EIR and are reflected in the Final EIR. As discussed in response to comment 63.127, the ambient air quality standards in Table 5.1-1 of the Final EIR have been updated. The discussion of SIP and ozone attainment status in Section 5.5 of the Final EIR has been updated in response to comment 63.128. In order to provide a more precise estimate of the GHG reductions that could be achieved as a result of the mixed-use characteristics of the Originally Proposed Project, a series of calculations were performed using methodologies developed by CAPCOA in response to comment 63.138. In each case, these calculations are included in the Final EIR. Lastly, Table 5.7-10 in the Final EIR has been updated to reflect the GHG percentage reductions from statewide transportation measures as percentage of the overall GHG emissions rather than of the transportation category. Further, as demonstrated in the Final EIR in the discussion associated with the tables listed earlier, none of the revisions alter the conclusion that neither the Originally Proposed Project nor the Revised Project would have a significant GHG impact.

63.213 As discussed throughout the responses to this letter, the analysis contained in the Draft EIR, as modified in the Final EIR, fully supports the conclusion that the neither the Originally Proposed Project nor the Revised Project would have a significant GHG impact. This conclusion is based on the anticipated reductions from implementation of state-wide regulations, project-level design features, and compliance measures listed above and in Section 5.5 of the Final EIR, which have either been proposed as part of the project or would otherwise be required in any case, and would become conditions of approval for the proposed development, and would also be fully enforceable as such.



**SheppardMullin**

**Exhibit B**

**Bill Darnell / Darnell & Associates, Inc. Technical Analysis**

**Darnell & ASSOCIATES, INC.**

TRANSPORTATION PLANNING & TRAFFIC ENGINEERING

May 29, 2012

John Fonder, Esq.  
Sheppard Mullin Richter & Hampton LLP  
501 West Broadway, 19<sup>th</sup> Floor  
San Diego, CA. 921031

D&A Ref. No: 120507

Subject: Review of Traffic Impact Analysis for the One Paseo Project in Carmel Valley.

Dear Mr. Fonder,

As requested, we have examined the Traffic Impact Analysis (TIA) Report for One Paseo dated March 23, 2012 presented in Appendix C of the EIR documents.

Our review included review of project trip generation, existing conditions, cumulative conditions, buildout conditions and the Appendix Q of the TIA addressing the DEIR Project Alternative Analysis.

Our review focused on elements of what goes into a project traffic impact study, but it was not a complete review of every detail. Rather, we put our attention to the project trip generation, trip distribution, Intersection Capacity Worksheets, the conclusion and recommended mitigation measures. With respect to the detailed calculations of levels of service on streets and intersections, we sampled a number of locations, particularly where the level of service (LOS) was approaching a critical level but didn't quite reach it. Generally we found that the report was accurate and reasonable, but we did find a number of things to bring to the attention of the City in our comments that should be addressed since there could be additional impacts that result. Those issues are detailed herein.

**Section 3.1 Trip Generation**

The trip generation for the project makes use of gross leasable area (GLA) for the purpose of calculating trips generated for the offices uses. The total gross square footage (GSA) should have been used and would result in more trips being generated.

The project trip generation for office use shown on Table 3-1 shows 245,000 square feet of Corporate Office use and 291,000 square feet of Multi-Tenant Office space. Use of the Corporate Office rate results in fewer trips being generated when compared to the Multi-Tenant Office rate. How will the City monitor and control the Corporate Office space to insure additional trips are not generated?

Also on Tables 3-1 and 3-2 the report utilizes a Specialty Retail Store rate of 40 trips per KSF for the 100,650 square feet of retail space. Due to the size of the retail space City's Community Shopping Center Rate of 70 trips per KSF should have been used for the Phase Analysis. This will result in 3,020 additional Daily vehicle trips being generated by the project. Correction of Phase 1 trip generation will require the TIA to be revised to reflect the increased traffic volumes.

**Trip Generation, Section 3.1 beginning on pg. 3-1**

The trip generation for the project makes use of the office gross leasable area (GLA) for the purpose of calculating trips generated for the office uses. The total gross square footage (GSA) should have been used for this calculation which is a larger number and would result in more trips being calculated for the project, and the impacts would be greater.

*All Materials and Records shall be kept in controlled access files marked "Privileged and Confidential Attorney-Client Communications and Privileged Attorney Work Product".*

**Exhibit B-1**

63.214 As discussed in response to comment 63.28, the use of GLA in the traffic analysis is appropriate.

63.215 The discretionary permit conditions of approval would regulate for single-tenant versus multi-tenant occupancy uses. The City enforces such conditions through code enforcement procedures and personnel.

63.216 The trip generation rate of 40 daily trips per thousand square feet was used as part of the blended generation rate for the initial 100,000 square feet of retail. An analysis utilizing 70 trips per thousand square feet rather than 40 per 1,000 also was conducted. Refer to response to comment 63.29 for a discussion of the blended rate and alternative rate analysis.

63.217 Refer to response to comment 63.28.

**SheppardMullin**

John Ponder  
Sheppard Mullin Richter & Hampton LLP  
May 29, 2012  
Page 2

**Trip Generation, Section 3.1, page 3-2 and tables 3-1 and 3-2**

The discussion on page 3-2 explains how the freestanding nature of the individual uses in a shopping center begins to be lost in developments over 100,000 sf. But tables 3-1 and 3-2 separate the individual retail uses to perform the trip generation calculations as shown in the footnotes to the tables even when the cumulative size exceeds that limit. This misstates the total trip making potential of the project, especially when the ultimate tenants may not be known, nor should the rate be dependent on a particular tenant.

**Trip Generation, Section 3.1, tables 3-1 and 3-2**

The method for applying mixed use discounts to the trips is not reproducible with the information given, particularly for the retail uses. More clarity on the exact mixed-use or other discounts needs to be provided and the calculations needs be shown.

**Section 5.0 Existing Conditions**

The Level of Service (LOS) reported for the 36 intersections listed on Table 5-2 is based on the Highway Capacity Manual (HCM) using operational analysis procedures. Synchro, a computer program was used for the calculations. Based on our knowledge of the area and discussions with Traffic Engineering staff it was determined that the traffic signal along Del Mar Heights Road and El Camino Road are interconnected and coordinated. Because of the existing coordination of these roadways the analysis of existing conditions in the study area needs to be based on the City of San Diego and Caltrans signal timing plans. Based on my review of the Synchro Intersection Capacity Worksheets for the existing conditions and all subsequent analyses needs to be updated to include:

- City/Caltrans Signal Timings
- Pedestrian Walk Timings
- Pedestrian Clearance Timings
- Coordination Cycles represented for each Corridor.

Review of the Synchro Worksheets identify a variety of actuated cycles along Del Mar Heights Road ranging from a low of 63.3 seconds at El Camino Real, 90.4 seconds at High Bluff Drive, 120 seconds at the I-5 NB ramps and 78.9 seconds at the I-5 SB ramp. The resulting LOS reported for the intersection is therefore suspect and does reflect the actual operating conditions along each transportation corridor.

**Existing Conditions, Table 5-1, page 5-7**

Del Mar Heights Road west of I-5 is described as being a 5 lane major east of Mango and a 5 lane primary arterial roadway east of Portofino. The adopted Torrey Pines Community Plan describes this entire roadway as a four lane major, which is also an identified cross section in the City's Street Design Guidelines. It happens to have an additional trap-right turn lane in the EB direction east of Portofino leading to the I-5 SB ramps. However, to invent a 5 lane major definition for this entire length of roadway is incorrect, particularly for the portion west of Portofino, and it results in overstating the capacity.

**Existing Conditions, Figure 5-2, page 5-8**

Intersection 1 at Via de la Valle at El Camino Real (west) is depicted with future capacity improvements that do not currently exist. The improved condition was assumed in the 2030 base condition calculation of the intersection operations. It would be appropriate to not assume the improvements in the baseline and then identify the improvements as a mitigation measure.

Intersection 26 at Carmel Valley Rd and I-5 NB ramps is depicted with four SB approach lanes that do not exist.

*All Materials and Records shall be kept in controlled access files marked "Privileged and Confidential Attorney - Client Communications and Privileged Attorney Work Product".*

Exhibit B-2

63.218 Refer to response to comment 63.29.

63.219 Refer to response to comment 63.29.

63.220 Refer to response to comment 63.33.

63.221 Del Mar Heights Road, west of I-5, currently functions as a 5-lane Major. The City of San Diego's standard practice is to analyze the entire segment between signalized intersections unless the functionality of the street changes between the signals. Since Del Mar Heights Road exists as 5 lanes from Mango Drive to the I-5 southbound ramps with no signalized intersection in between, the study does not analyze Del Mar Heights Road east of Portofino Drive as a separate street segment.

63.222 As discussed in response to comment 63.30, the analysis undertaken for each scenario in the traffic study does not include four southbound lanes, as evidenced by the synchro worksheets included in Appendix C.1 of the Final EIR. Thus, the analysis for intersection #26 is correct and the depiction in Figure 5-2 is an error which has been corrected.

**SheppardMullin**

John Ponder  
Sheppard Mullin Richter & Hampton LLP  
May 29, 2012  
Page 3

**Section 6.0 Existing with Project Analysis**

Based on our review of Section 5.0, we found that the same discrepancies that need correction. The deficiencies we identified in 5.0 carry over into this section and all the following analyses.

**8.0 Near Term without Project and Section 9.0 Near Term with Project**

The process used to develop near term traffic volumes is reasonable. However the intersection LOS analysis presented on the Synchro Worksheets is flawed and needs to be revised to incorporate:

- City/Caltrans Signal Timings
- Pedestrian Walk Timings
- Pedestrian Clearance Timings
- Appropriate Coordination Signal Cycles
- Use of consistent Peak Hour Factors at all intersections.

The comments above also are applicable to each of the remaining intersection analysis of the TIA.

**Section 12.0 Long Term Cumulative (Year 2030) without Project**

This section establishes the year 2030 conditions for the area without the proposal project. The study on page 12-1 identifies that the project site is represented by Traffic Analysis Zones 4606-4607 of the SANDAG Year 2030 Series 11 Regional Traffic Forecast Model. To confirm this statement the land uses contained in TAZ 4606 and 4607 needs to be provided documenting that accurately depicts the current adopted and permitted land use. A readable copy of SANDAG Model run needs to be provided.

Also as stated previously the intersection analysis needs to be updated to include:

- Pedestrian Walk Timings
- Pedestrian clearance Timings
- Appropriate Coordination Cycle Lengths

With these updates the analysis of the projects impact on the adjusted community and land use plan can be identified in Section 13.

**Chapter 12, page 12-1**

The future traffic volumes that are the background to the study are described as being based on some work done a few years ago called the I-5/SR-56 Northbound Connector Study (by LLG) for Caltrans which were, in turn, based on SANDAG Series 10 work to examine the effect of introducing the north facing connectors at SR-56 and I-5 among other things. These volumes differ substantially with subsequent SANDAG forecasts in Series 11 and in Series 12, particularly on El Camino Real and Del Mar Heights Rd. The differences need to be discussed with Caltrans and corrected.

**Section 13.0 Long Term Cumulative (Year 2030) with Project (Build Out)**

This section may require corrections based on any changes that occur to update section 12 of this report.

*All Materials and Records shall be kept in controlled access files marked "Privileged and Confidential Attorney - Client Communications and Privileged Attorney Work Product".*

63.223 Refer to responses to comments 63.220 through 63.222.

63.224 Refer to responses to comments 63.220 through 63.222.

63.225 A select zone plot was prepared by SANDAG to include the project traffic analysis zones (TAZ) 4606 and 4607. For TAZ 4606, the generated trips in this zone totaled 13,451 ADT, which included the corporate office, multi-tenant office, and half of the regional commercial land uses. For TAZ 4607, the generated trips totaled 12,607 ADT, which included the multi-family, hotel, and half of the regional commercial. The total generated trips for both zones was 26,058 ADT. A legible copy of SANDAG's Series 11 Year 2030 Select Zone Plot can be found in Appendix A of the traffic study appendices.

63.226 Refer to response to comment 63.33.

63.227 Refer to response to comment 63.31.

63.228 Refer to responses to comments 63.225 through 63.227.



**SheppardMullin**

John Ponder  
Sheppard Mullin Richter & Hampton LLP  
May 29, 2012  
Page 4

**Section 15.0 Construction Traffic Analysis/ Adaptive Traffic Control (ATCS)**

The Adapted Traffic Control System Section of this report identifies the use of an ATCS System to be considered to be incorporated into various improvements to be constructed along Del Mar Heights Road to El Camino Real. However there is no documentation of the benefits of implementing such a system and or necessity. Before and after studies have not been completed.

**Figure 19-2A-Del Mar Heights Rd and High Bluff Drive**

One of the projects mitigation measures identifies the creation of a triple left turn lanes for northbound High Bluff Drive to westbound Del Mar Heights Rd. Review of this proposal finds that it proposes to construct improvements without obtaining the necessary rights of way to properly construct the improvements. Review of the drawing indicates that the design exceptions will be required.

The reason for the need to provide the triple left turn lane is caused by the increased east west traffic on Del Mar Heights Road created by the project which creates the suggested the triple left turn lane proposal. A detailed preliminary design needs to be provided to document the actual requirements of the proposal and to be used to quantify any environmental impacts of constructing the project.

**Appendix D Intersection LOS Worksheets**

At intersection 9 at Del Mar Heights at NB I-5 in the calculations of intersection LOS an assumption existing plus project amount of WB to NB right turns on red is excessive at 500 plus vph in the existing plus 11 project scenario and the 2030 scenarios. The existing physical conditions could not allow this large amount of right turning traffic which makes the intersection appear to operate better than it otherwise would be showing. A similar situation exists for the opposite left turn from EB to NB to enter this ramp.

**Appendix L Synchro Sheets**

For intersection 31 at Valley Center Drive at Carmel Creek Rd, the calculation of LOS in the various scenarios uses incorrect signal timing and phasing that masks an impact were it properly done. It shows some approaches with an LOS of F which is not acceptable in the City's guidelines and would require mitigation.

**Table 13-2 on page 13-9 and Appendix L**

At intersection 14 at Del Mar Heights Rd and Carmel Country Rd the calculation of intersection LOS conditions uses an inconsistent Synchro Sheets set of assumptions for the peak hour factor that if applied consistently would indicate an impact. As calculated both 0.95 and 0.90 are used which underestimates the impact when the 0.95 is used. This PHF parameter in the software for determining intersection delay should be consistently applied at all intersections with City approval.

**Mitigation and Appendix N**

As mitigation a triple left turn is proposed for the intersection of Del Mar Heights and Highbluff Drive to accommodate NB to WB movements. If implemented this would result in a potentially dangerous condition where the vehicles opposing this movement going left from SB to EB potentially overlap with the NB to WB vehicles as assumed in the LOS calculations, particularly longer wheelbase vehicles. Also, the turning arcs for the inside lanes appear too narrow to function safely. The mitigation as-proposed appears inappropriate to implement.

*All Materials and Records shall be kept in controlled access files marked "Privileged and Confidential Attorney-Client Communications and Privileged Attorney Work Product".*

63.229 As discussed in response to comment 15a.51, the project applicant proposes to incorporate ATCS as a project feature. The ATCS would allow vehicles to stop less frequently and improve efficiency along Del Mar Heights Road. Added signals would benefit traffic on Del Mar Heights Road by spreading turns throughout several intersections, shortening turn queues at each intersection, and avoiding a concentration of turns from fewer lanes. ATCS increases speeds, reduces stops, reduces energy consumption, and improves air quality.

63.230 Conceptual layouts of the triple left-turn lanes in Figure 14-9 of the original traffic study indicate they are feasible. Final design of the improvements would occur at a later stage, prior to obtaining building permits. The extent of right of way acquisitions, if necessary, and design deviations would be determined when the final design is completed. The potential environmental impacts of all off-site improvements have been analyzed in the EIR.

The claim that the need for northbound triple left-turn lanes is caused by increased east-west traffic on Del Mar Heights Road is not accurate.

63.231 Refer to response to comment 63.32.

63.232 Refer to response to comment 63.33.

63.233 As indicated in response to comment 63.34, the analysis results in the traffic report would not change based on the difference in the PM peak hour factor from 0.95 to 0.94.

63.234 As indicated in response to comment 63.36, the proposed mitigation of the northbound triple left-turn lanes onto Del Mar Heights Road has been conceptually shown to be feasible.

**SheppardMullin**

John Ponder  
Sheppard Mullin Richter & Hampton LLP  
May 29, 2012  
Page 5

In addition to the practicality of the triple left turn concept, the LOS calculations for intersection 10 at Del Mar Heights and Highbluff Drive makes use of a turning lane capacity of 1900 vph per lane for the triple lanes, or any turning lane, which is unrealistically high. This makes the likely operation not as acceptable as the calculation would make it appear, and impacts could have been identified.

As mitigation an extension of the right turn lane on WB Del Mar Heights Rd to NB 1-5 is proposed. This improvement comes very close to an adjacent AT&T building that may be functionally affected since it has a service driveway on the western end facing Del Mar Heights Rd. If so, the cost estimate for this improvement and possible effect upon the building would appear to be understated.

Several substantial projects are proposed as mitigation that does not yet have any official project status. Yet, a fair share contribution is proposed along with calculations of the amount of money that could be paid by the project applicant to satisfy the condition. Paying the fair share percentage of a project should only be acceptable once the environmental and design is done, the required improvements and the commitment to construct made, and all the funding is available.

The LOS and delay analysis of the two intersections forming ramp junctures at 1-5 and Del Mar Heights Rd have been analyzed using different cycle times for these intersections. The tables state they are coordination. It would be typical for Caltrans to coordinate the signal cycles on either side of an interchange, and the calculations should reflect this. The results for delay would therefore change.

**Table 1-30 and Appendix N**

In table 1-30, page 1-14 and sections 14.2 and in Appendix N states that the signals along Del Mar Heights Road are coordinated, but the Synchro work sheets show unrelated cycles timing suggesting that they are not coordinated. Instead, the software was allowed to optimize the timing to show a more advantageous result than otherwise would be obtained.

This particularly is problematic when the calculations for the two 'proposed signals servicing the project along Del Mar Heights Road are examined. These signals should be synchronized with the more substantial arterial intersection at El Camino Real as well as the Highbluff Drive intersection and with the 1-5 on/off ramp signals.

**Appendix O DEIR Project Alternative Analysis**

The One Paseo – EIR Alternatives Analysis prepared by Urban System Associates Inc. dated March 5, 2012 contains discussions on five alternatives. EIR Alternative 2 is described as representing the projects approved land use. Based on Attachment 1 the development of the approved land use is 500,000 square feet of Commercial, Office and Multi-Tenant Office space would generate 6,497 daily trips. The alternative represents a significant reduction of 20,464 daily vehicles when compared to the proposed project.

*All Materials and Records shall be kept in controlled access files marked "Privileged and Confidential Attorney-Client Communications and Privileged Attorney Work Product".*

63.235 Refer to response to comment 63.37.

63.236 Refer to response to comment 63.38.

63.237 As discussed in response to comment 63.39, the use of fair-share contributions as mitigation for cumulative impacts is allowed pursuant to Section 15130(a)(3) of the State CEQA Guidelines as long it can be demonstrated that the roadway improvements toward which the contribution is dedicated would be adequately assured.

63.238 Refer to response to comment 63.40.

63.239 Refer to response to comment 63.33.

63.240 As this comment does not raise any issues with respect to the adequacy of the Draft EIR, no specific response is required.

**SheppardMullin**

John Ponder  
Sheppard Mullin Richter & Hampton LLP  
May 29, 2012  
Page 6

**In Summary**

In Summary the TIA for One Paseo project requires corrections and updates to the TIA to adequately address the projects direct and cumulative and buildout impacts. The approval of the proposed project when compared to the approved land uses will result in adding 20,464 (26, 691- 6,497) additional vehicles to Del Mar Heights Rd and El Camino Real with the approved plan for the property. This additional traffic will create significant impacts to the roadways in the area.

We reserve our right to review the corrected document and make additional comments as needed.

Sincerely,

Sincerely,

DARNELL & ASSOCIATES, INC.

  
Bill E. Darnell, P.E.  
RCE: 22338

BED/jem  
128507\_One Paseo EIR Review.doc



*All Materials and Records shall be kept in controlled access files marked "Privileged and Confidential Attorney-Client Communications and Privileged Attorney Work Product".*


63.241 The traffic analysis does evaluate and disclose the traffic impacts of the proposed project.



## SheppardMullin

## Exhibit C

## Gerald Trimble / Keyser Marston Associates, Inc. Technical Analysis



**KEYSER MARSTON ASSOCIATES**  
ADVISORS IN PUBLIC/PRIVATE REAL ESTATE DEVELOPMENT

**MEMORANDUM**

**To:** John E. Ponder, Esq.  
Sheppard Mullin Richter & Hampton, LLP

**From:** Gerald M. Trimble

**Date:** May 4, 2012

**Subject:** Issues and Questions  
One Paseo – Economic Benefits and Fiscal Impact

For your request, Keyser Marston Associates, Inc. (KMA) has reviewed the Kosmont Retail Market Analysis dated February 9, 2012. The following are issues and questions regarding the report:

- As stated on page 15 of the report, the estimated percentage of income spent on retail goods for the SMA & PMA is 30.95% of income plus 15% for visitor spending and business for a total of 45.95%. But as shown below, the SMA percentage is 49.76%. Potential impact: If 45.95% was applied, 2015 SMA sales would drop from \$9.0 Billion to \$8.3 Billion.

	2000	2005	2010	2015	2016	2017	2020
<b>Total Income (000's)</b>							
PMA	\$ 3,081,102	\$ 3,612,051	\$ 4,184,855	\$ 4,892,658	\$ 5,043,407	\$ 5,198,914	\$ 5,694,656
SMA	\$12,660,414	\$14,477,533	\$16,502,000	\$18,140,311	\$18,484,138	\$18,834,302	\$19,925,152
<b>Retail Sales</b>							
PMA	\$ 1,415,767	\$ 1,659,709	\$ 1,927,535	\$ 2,248,176	\$ 2,317,474	\$ 2,388,908	\$ 3,058,631
SMA	\$ 6,298,822	\$ 7,304,032	\$ 8,711,415	\$ 9,026,666	\$ 9,197,688	\$ 9,271,951	\$ 9,926,015
<b>% of Sales</b>							
PMA	45.95%	45.95%	45.95%	45.95%	45.95%	45.95%	53.89%
SMA	89.76%	89.76%	89.76%	89.76%	89.76%	89.76%	24.76%

- In extrapolating prorated sales figures for the PMA & SMA, Kosmont prorated sales based on land area for each municipality. KMA questions whether this is the proper methodology. Land area has little basis in determining prorated sales, due to varying land uses and densities throughout the County, i.e., 5 acres in Lakeside vs. 5 acres in downtown San Diego. A better approach may be to use the number of

1660 HOTEL CIRCLE NORTH, SUITE 716 • SAN DIEGO, CALIFORNIA 92108 • PHONE 619 718 9500 • FAX 619 718 9508

WWW.KEYSERMARSTON.COM

12065ash  
(301) 604-001

63.242 As discussed in response to comment 63.172, while the SMA figure is not separately stated in the RMA, the figures are correct within the RMA model and the purported \$700,000 drop in 2015 SMA sales is incorrect. The Final EIR and the updated RMA have been clarified accordingly.

63.243 As discussed in response to comment 63.173, Kosmont revised the proration in the analysis based on data available from ESRI (an original data source) so that it is now based on population rather than land area. Despite the modification of the proration method, the conclusion remains unchanged; that even if the Originally Proposed Project or the Revised Project, as well as all other known proposed developments are constructed, a net demand for retail would remain.

## SheppardMullin

To: John E. Ponder, Esq.  
Subject: Sheppard Mullin Richter & Hampton, LLP

May 4, 2012  
Page 2

households in the PMA. Kosmont estimated that based on land area, the PMA contains 7.37% of the City of San Diego's land area but only 5.3% of total households which would reduce expected sales.

- As shown on page 17 & 18 of the Kosmont report, Kosmont allocated sales of future retail shopper goods based on the latest 2009 figures from State Board of Equalization. KMA believes that using the historical averages from last 10 years or 5 years would be more appropriate. For example, apparel goods percentage of retail sales in 2009 rose from 6.1% in 2008 to 8.9% in 2009 but the average from 2005 to 2009 is 6.1%. Utilizing the average would decrease the amount of retail sales in categories that already are indicating a surplus versus leakage. For example, in 2015, apparel sales are estimated to generate \$207M in sales based on 8.9%, this would decrease to \$137M if 6.1% was applied which would only increase current surplus of sales projected in that category.

Retail Sales (000's)		2000	2005	2010	2015	2016	2017
PMA		\$ 1,415,767	\$ 1,659,709	\$ 1,927,535	\$ 2,248,176	\$ 2,317,474	\$ 2,388,908
Apparel	\$ 70,263 5.0%	\$ 81,461 4.9%	\$ 101,964 5.3%	\$ 201,165 8.9%	\$ 207,366 8.9%	\$ 213,757 8.9%	\$ 234,140 7.0%
GM	\$ 158,601 11.2%	\$ 161,436 9.7%	\$ 191,779 9.9%	\$ 192,663 8.6%	\$ 198,601 8.6%	\$ 204,723 8.6%	\$ 224,244 7.3%
Home Furnishings & A/c	\$ 69,446 4.9%	\$ 70,322 4.2%	\$ 71,582 3.7%	\$ 128,462 5.7%	\$ 132,422 5.7%	\$ 136,504 5.7%	\$ 149,520 4.9%
Other	\$ 346,962 24.5%	\$ 373,214 22.8%	\$ 414,907 21.5%	\$ 366,080 16.3%	\$ 377,364 16.3%	\$ 388,996 16.3%	\$ 426,067 13.3%
Eating & Drinking	\$ 212,386 15.0%	\$ 238,879 14.4%	\$ 298,082 15.5%	\$ 444,024 19.8%	\$ 457,711 19.8%	\$ 471,819 19.8%	\$ 516,808 16.8%
Food	\$ 203,327 14.4%	\$ 305,607 18.4%	\$ 369,363 19.2%	\$ 395,991 17.6%	\$ 408,197 17.6%	\$ 420,779 17.6%	\$ 460,901 15.0%
Bldg Mat & Farm	\$ 90,048 6.4%	\$ 106,907 6.4%	\$ 100,531 5.2%	\$ 105,134 4.7%	\$ 108,375 4.7%	\$ 111,715 4.7%	\$ 122,368 4.0%
Auto Dealers & Supp	\$ 166,066 11.7%	\$ 191,130 11.5%	\$ 218,521 11.3%	\$ 230,369 10.2%	\$ 237,470 10.2%	\$ 244,790 10.2%	\$ 268,131 8.7%
Service Stations	\$ 98,686 7.0%	\$ 124,574 7.5%	\$ 160,807 8.3%	\$ 184,288 8.2%	\$ 189,969 8.2%	\$ 195,824 8.2%	\$ 214,496 7.0%

- There appears to be math errors or inconsistencies in Kosmont's expected sales capture. The projected 65% sales capture rate for the PMA, GAFO category is correct on page 20 of the Kosmont Market report but for food, actual sales are 70.5% vs. 65%, for eating drinking 61% vs. 65%. These inconsistencies are also found in

100656111  
10018.004.001

Exhibit C-2

63.244 As discussed in responses to comments 63.14, and 63.174, a shift in expenditures by retail category in this and other trade areas during the last recession appears to be holding and older figures less accurately predict future trends. As shown in the tables in response to comment 63.14, 2009 and 2010 figures more closely match each other than the average between 2005-2010.

63.245 As discussed and shown in response to comment 63.175, corrections to the misprints in the RMA have been incorporated into the Final EIR and the updated RMA.

## SheppardMullin

To: John E. Ponder, Esq.  
Subject: Sheppard Mullin Richter & Hampton, LLP

May 4, 2012  
Page 3

Bldg/Hardware and Service Station categories. In the SMA, the math differences are smaller at 9.1% vs. 10% except for the food category which is showing a 21.45% capture rate vs. the stated 5% capture rate.

- Expected Sales per SF – The expected sales per SF assumed by Kosmont is non-supportable and infeasibly low. The trade area commands one of the highest lease rates in the county and proposed development with its high acquisition and development costs would require high lease rates and correspondingly higher sales to support development. Kosmont's projected expected sales at \$300 per SF are infeasible to support lease rates and proposed development costs. Sales at the Del Mar Highlands and other lifestyle centers show sales exceeding \$600/SF annually. As shown below, KMA has revised expected sales per SF.

Expected Sales per SF	Kosmont	KMA	Diff
Apparel	\$300.00	\$500.00	67%
GM	\$300.00	\$500.00	67%
Home Furnishings & App	\$400.00	\$500.00	25%
Other	\$300.00	\$500.00	67%
Food	\$400.00	\$750.00	88%
Eating & Drinking	\$300.00	\$700.00	133%
Bldg Mat & Farm	\$300.00	\$500.00	67%
Auto Dealers & Supp	\$600.00	\$600.00	0%
Service Stations	\$1,200.00	\$1,200.00	0%

- Based on revised KMA sales per SF, supportable retail SF would drop as shown below.

	2010	2015	2016	2017	2020
Kosmont Supportable Retail SF	489,231	1,699,300	1,881,159	2,067,420	2,658,045
KMA Revised Supportable SF @ \$500/SF	274,983	929,511	1,035,082	1,143,721	1,486,097
Diff	(214,248)	(769,789)	(846,077)	(924,199)	(1,171,948)
% Diff	44%	45%	45%	45%	44%

- If GAFO sales were increased to \$600 and \$700 per SF, supportable retail SF would drop as shown below.

12005mch  
10019.004.001

Exhibit C-3

**Exhibit 63.246-1**  
**Expected Net Supportable Retail Spaces**  
**With Apparel at \$500 PSF**

Expected Net Supportable Retail Space (Square Feet)		2009	2010	2013	2015	2016	2017	2020
Retail Category	Sales/SF							
<b>Shopper Goods (GAFO):</b>								
Apparel	\$500 PSF	250,881	264,680	136,463	140,873	143,098	145,335	152,131
General Merchandise	\$500 PSF	285,696	289,359	396,250	403,866	407,708	411,573	423,305
Home Furnishings/Appliances	\$500 PSF	192,356	184,766	111,600	114,880	116,535	118,199	123,253
Other	\$500 PSF	293,011	281,993	450,052	458,254	462,392	466,554	479,189
Subtotal		1,011,944	1,020,798	1,094,365	1,117,873	1,129,732	1,141,662	1,177,878
<b>Convenience Goods:</b>								
Food (Supermarkets/Liquor)	\$750 PSF	269,802	263,860	226,914	232,904	235,926	238,965	248,197
Eating and Drinking	\$700 PSF	336,182	340,146	290,143	297,200	300,759	304,340	315,211
Subtotal		607,983	604,027	517,058	530,103	536,685	543,306	563,408
<b>Heavy Commercial Goods:</b>								
Building/Hardware/Farm	\$500 PSF	147,366	145,597	225,335	229,421	231,482	233,556	239,650
Auto Dealers and Parts	\$600 PSF	-2,906	-6,205	15,935	18,837	20,301	21,774	26,244
Service Stations	\$1,200 PSF	70,548	78,639	71,824	73,932	74,996	76,065	79,314
Subtotal		215,007	218,030	313,095	322,191	326,779	331,395	345,408
<b>Net Supportable Retail SF</b>		<b>1,834,934</b>	<b>1,842,855</b>	<b>1,924,517</b>	<b>1,970,167</b>	<b>1,993,196</b>	<b>2,016,363</b>	<b>2,066,694</b>

- 63.246 As discussed in responses to comments 63.14, and 63.176, the RMA model was rerun to illustrate the impact on the conclusion, given the \$500 sales per square-foot values for apparel, as suggested in the comment, as well as the average distribution of sales between 2005-10. Pursuant to comment 63.244, the net supportable retail space is illustrated in Exhibit 63.246-1.

- 63.247 As discussed and shown in response to comment 63.246, the RMA model was rerun to illustrate the impact on the conclusion given the sales per square-foot values suggested in the comment, as well as the average distribution of sales between 2005-10. The conclusions of the RMA remain unchanged.



## SheppardMullin

To: John E. Ponder, Esq.  
Subject: Sheppard Mullin Richter & Hampton, LLP

May 4, 2012  
Page 4

	2010	2015	2016	2017	2020
Kosmont Supportable Retail SF	489,231	1,699,300	1,881,159	2,067,420	2,658,045
RMA Revised Supportable SF @ \$600/SF for GAFO	204,219	817,013	913,221	1,011,751	1,324,178
Diff	(285,012)	(882,288)	(967,938)	(1,055,669)	(1,333,871)
% Diff	58%	52%	51%	51%	50%
Kosmont Supportable Retail SF	489,231	1,699,300	1,881,159	2,067,420	2,658,045
RMA Revised Supportable SF @ 700/SF for GAFO	151,874	716,856	826,118	917,644	1,208,514
Diff	(337,357)	(982,444)	(1,054,982)	(1,149,776)	(1,449,530)
% Diff	69%	57%	56%	56%	55%

As shown at \$700/SF, the proposed One Paseo development of 220,000 SF plus the approximately 800,000 SF of proposed retail SF in the Trade Area would exceed demand which could force retailers to close due to insufficient demand.

12065mwh  
(951)9.004.001

Exhibit C-4

63.248 The RMA model was rerun to illustrate the impact on the conclusion given the \$700 sales per square-foot values for apparel, as suggested in the comment, as well as the average distribution of sales between 2005-10, pursuant to response to comment 63.244 the net supportable retail space are illustrated in Exhibit 63.248-1, and the conclusions of the RMA remain unchanged.

**Exhibit 63.248-1**  
**Expected Net Supportable Retail Spaces**  
**With Apparel at \$700 PSF**

Expected Net Supportable Retail Space (Square Feet)		2009	2010	2013	2015	2016	2017	2020
Retail Category	Sales/SF							
<b>Shopper Goods (GAFO):</b>								
Apparel	\$700 PSF	179,201	199,057	97,473	100,624	102,213	103,812	108,665
General Merchandise	\$700 PSF	204,069	206,666	283,036	288,476	291,220	293,980	302,361
Home Furnishings/Appliances	\$700 PSF	130,254	131,976	79,714	82,057	83,239	84,426	88,038
Other	\$700 PSF	209,294	201,424	321,466	327,324	330,280	333,253	342,278
Subtotal		722,617	729,142	781,689	798,481	806,952	815,473	841,341
<b>Convenience Goods:</b>								
Food (Supermarkets/Liquor)	\$750 PSF	269,802	263,880	226,914	232,904	235,926	236,966	248,197
Eating and Drinking	\$700 PSF	338,182	340,146	290,143	297,200	300,759	304,340	315,211
Subtotal		607,983	604,027	517,058	530,103	536,685	543,306	563,408
<b>Heavy Commercial Goods:</b>								
Building/Hardware/Farm	\$500 PSF	147,366	145,597	226,335	229,421	231,482	233,566	239,850
Auto Dealers and Parts	\$600 PSF	-2,906	-6,205	15,935	16,837	20,301	21,774	26,244
Service Stations	\$1,200 PSF	70,548	78,539	71,824	73,932	74,996	76,065	79,314
Subtotal		215,007	218,030	313,095	322,191	326,779	331,395	345,408
Net Supportable Retail SF		1,545,607	1,551,199	1,611,842	1,650,775	1,670,416	1,690,174	1,750,158

**SheppardMullin**

**Exhibit D**

**John Ziebarth / Ziebarth Associates Technical Analysis**



**Ziebarth Associates**

May 4, 2012

John Ponder, Esq.  
Sheppard, Mullin, Richter & Hampton, LLP  
19<sup>th</sup> Floor  
501 W. Broadway  
San Diego, CA 92101

**Re: One Paseo Land Use Inconsistency Table**

Per your request, I have reviewed the One Paseo Project ("Project") Draft EIR to determine whether it is consistent with the applicable land use policies. It is my expert opinion based on my experience as a planner and licensed architect for 29 years, who has spent 8 years on the Citizen's Advisory Committee on developing the current San Diego Land Development Code, 12 years on the Code Monitoring Committee for the City of San Diego, and my familiarity with the facts of the Project, the vicinity of the Project, the City's General Plan, Carmel Valley Precise Plan, and other applicable land use plans, that the One Paseo Project is overall incompatible with the applicable land use plans.

The Project's proposed amendments to the applicable plans make those plans internally inconsistent with the plan's goals and policies. Among the most critical inconsistencies are that (1) the Project proposes an Urban Mixed-Use Village in an area the planning documents designated for a horizontal Community Mixed-Use Village and (2) the EIR mislabels the Project as a Community Mixed-Use Village even though its densities are characteristic of an Urban Mixed-Use Village. This Project is ill-suited for the site in Carmel Valley and should have been proposed in the City of San Diego's downtown core or a Sub-regional Employment Centers. The table below identifies how the project is overall inconsistent with the applicable land use goals and policies and the resulting significant environmental impact.

If you have further questions or comments, please do not hesitate to contact me.

Sincerely,

John Ziebarth, AIA, LEED AP

**Architecture / Planning**

2900 Fourth Ave Ste 204 San Diego, CA 92103 Phone 619.233.6450 Fax 619.233.6449

Exhibit D-1

63.249 This comment claims the project is "incompatible" with applicable land use plans for specific reasons described in subsequent comments. While the City believes that the proposed development would result in a significant neighborhood character impact, the City believes that the proposed development is not inconsistent or incompatible with the applicable land use plans. The basis for this conclusion is offered in responses to each of the related comments which follow.

63.250 The project site is currently designated as Employment Center in the Carmel Valley Community Plan and the Carmel Valley Employment Center Precise Plan, which calls for business park office uses on the project site, not a "horizontal Mixed-use Community Village" as the comment claims. There is no "horizontal Mixed-use Community Village" land use designation in any adopted land use plans that regulate the project site, including (among others) the General Plan, Community Plan, and Precise Plan. Both the Originally Proposed Project and Revised Project include land use plan amendments to change land use designations to accommodate the mix of proposed land uses on the site. Specifically, the proposed Community Plan amendment would be amended to designate the site as Community Village not an "Urban Mixed-use Village" that is indicated in this comment.

The definition of a "village" is contained in the City of Villages section within the Land Use and Community Plan Element of the General Plan and reiterated in Section 5.1 of the Draft EIR. Quoting verbatim from the

---

**COMMENTS**

---

**RESPONSES**

---

63.250 General Plan, a village is defined as “the mixed-use heart of a community  
cont. where residential, commercial, employment, and civic uses are all present  
and integrated.”

The General Plan also describes several village types and identifies characteristics for each type. The comment incorrectly asserts that the proposed development is characteristic of an Urban Village Center. First, Urban Village Centers in the General Plan do not have density calculations associated with them, so the comment’s assertion is inaccurate. Second, the proposed development does not meet the general characteristics of an Urban Village Center, which the General Plan identifies as being found in “higher density areas located in subregional employment districts. Urban Village Centers are characterized by a cluster of more intensive employment, residential, regional, and subregional commercial uses that maximize walkability and support transit.” The project site is not located within a higher density area within a subregional employment district (the General Plan identifies these as Mission Valley/Morena/Grantville and University/Sorrento Mesa).

In contrast, and as discussed in detail in Sections 5.1 and 12.9 of the Final EIR, the Originally Proposed Project and Revised Project are both consistent with the characteristics of a Community Village, as defined the General Plan.