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RE: Response to Draft Response to Comments for the Moraga Canyon Sports Fields EIR

Dear Mayor and City Council:

The following are my comments on the "Draft Response to Comments" for the Moraga Canyon Sports Fields EIR. As there is no provision in CEQA for a "Draft Response to Comments," I hope that the City Council will direct their EIR consultant to respond to these comments as, in my opinion, the DRTC fails to meet the minimum requirements of CEQA for many of the same reasons that the DEIR did not do so. As time does not allow me to fully respond to the 700 page DRTC, the following are my initial comments in relation primarily to the response to my comment letter (78) and that of Mr. Grasseti (42).

Inadequate range and assessment of feasible alternatives

The Draft EIR's lack of assessment of a reasonable range of alternatives and the dismissal of feasible alternatives outside Piedmont continues in the DRTC. It begins with the statement on page 20 of the DRTC that "the off-site alternatives described in the Draft EIR are not viable." This is a surprising statement for two reasons: first, because no off-site alternatives are evaluated in the DEIR; and second, because at least one of the off-site alternatives that is finally described in the DRTC is potentially viable, as the DRTC itself acknowledges on page 51:

" . . . using space at a future Merritt College facility is a possibility."

The DRTC then goes on to indicate that because there is no guarantee that this space can be developed, this alternative is "speculative."

The potential for Merritt College to provide for need for sports fields is not speculative, it has simply not been evaluated. Because the DEIR has failed to undertake any meaningful evaluation of Merritt or any other outside-Piedmont alternative, the DRTC simply asserts that they are infeasible and/or speculative. Let's be clear: the proposed

Blair Park project is speculative. It will cost many millions of dollars (how many million, no one knows because there is no reliable estimate of cost). According to the soccer clubs, it will be a "gift" from them, even though it hasn't raised the first million of many millions. The City does not have enough money for the Coaches Playfield improvements, much less Blair Park, and has consistently indicated that it has no plans to seek funding from the voters. Yet exploring the potential of building much less costly fields (both in terms of the environment and dollars because the fields would be on less constrained land) at Merritt College is "speculative," as opposed to the completely speculative assumption that soccer clubs in Piedmont can raise millions of dollars for fields that will not even meet the projected need (as noted below). The option of offering to pay the City of Alameda additional funds to guarantee the availability of sites in the location where they have historically played is equally unexplored. Instead of exploring real options, the EIR simply asserts that they are infeasible.

According to the DRTC, the "project sponsor" defines the project objectives (page 33) Who exactly defined the project objective for the Project as "field facilities located in, owned by, and controlled by the City of Piedmont"? There was no such direction from the Council in its authorization of the EIR, and there is no City policy stating that the only way to address sports field needs is by having them in Piedmont. Did City staff decide to make this arbitrary judgment and does staff now establish policy for the City? This is an arbitrary statement for many reasons, but most blatantly because the need for sports fields for Piedmont sports clubs has for many years been met - and will have to continue to be met whether the Blair Park fields are built or not - outside of Piedmont. The "Project Need" description in the DRTC refers to the need for "full size regulation fields" (page 16), and yet as documented by Bill Blackwell's letter of November 15, 2010, the proposed project is too small to satisfy the need for regulation fields, and both fields will not satisfy all of the alleged need for sports fields. Meeting the need in Piedmont is clearly an arbitrary project objective placed in the EIR solely for the purpose of not having to fully evaluate alternatives outside Piedmont because "they don't meet the project objective." This is simply a CEQA trick, not based in policy or related to project need, and has not provided the community or the City Council with the opportunity to evaluate this project and its impacts in relation to true alternatives.

Because of this arbitrary and capricious limitation to the City of Piedmont, a reasonable range of alternatives, including options outside the City limits - one of which the DRTC acknowledges is "possible"- are not evaluated in the EIR.

Inadequate description and analysis of the impacts of the revised project design elements

What exactly is "the project?" The DRTC discusses various mitigations that would significantly alter the project without showing how those mitigations would be implemented and without assessing the impact of those changes on the environment. Once again, assertions are not the same as analysis and this EIR now fails at its most fundamental purpose: providing a clear description of "the project," and information to

the public on the environmental impacts of that project. Three of the more significant changes proposed in the project as mitigations are the following:

Fifty Percent More Parking. The DRTC refers to the 21 additional parking spaces provided on site - a 50 percent increase - as a "modest expansion of the parking areas." According to the DRTC, this can occur on this highly constrained site within modifying the retaining walls or the existing grading. No site plan or evidence has been provided to support this statement. According to the DRTC, this conclusion is based solely on the representations of "the design team" (C42-13, page 313). It is, as it has been from the beginning, very troubling that one of the main project advocates is a partner in the design firm making these assertions. There is no indication that the EIR consultant has seen a revised plan and has independently verified the claims of the design team/project advocate. The site plan in the DEIR (e.g., DEIR, Figure 3.5.8) shows little available area for a 50 percent increase in parking without additional grading, new retaining walls or other major site-work. The public is expected to accept representations by a major project advocate without an opportunity to review or comment on the assertions.

Even if the claim that the site can accommodate 21 new parking spaces without significant modifications to the project design is true, there is no assessment of the impacts of the revised plan. How does the increased number of parking spaces affect the analysis of the driveways which are already at an unacceptable level of service (DEIR page 253). More parking means more cars waiting to get off the site - more stacking, etc. This will further exacerbate an already unacceptable condition. The consultant now proposes to accommodate 10 spaces on-street. How would cars parallel parking on Moraga Avenue affect safety and level of service? How will people in those cars safely access the fields? There was no sidewalk proposed on Moraga Avenue at this location and based on project designs seen by the public, there is little or no space for a sidewalk.

Perhaps equally egregious is the fact that the DEIR used a one-day survey of parking at Coaches field (DEIR page 255) to estimate parking needs rather than the standard of the Institute of Traffic Engineers (ITE) for this type of facility. According to the DRTC, the ITE manual that is the basis of most parking impact analyses states that there is typically a demand for 58.8 vehicles per field (DRTC, C48-27 page 435) for this type of sports facility. Since there are two fields proposed at the Blair site, that would be a need for roughly 117 spaces. The project proposes to provide 61 spaces on-site and ten on-road (the feasibility of which is in question, as described above). The EIR consultants find excuses why the standard parking need measure is not used, and dismisses the eye-witness statements of neighbors (such as myself) who regularly have cars parked in front of their homes during Coaches field-use days - which has 44 spaces available on weekends (DEIR, page 255).

This is not a small safety matter. While lack of parking is not an environmental impact per se, the safety impacts that will result from lack of parking clearly are a significant safety impact in this particular project location. There is no safe access from parking anywhere near the proposed fields. The closest access is from Oakland with no sidewalks on a very dangerous street. From Maxwellton Rd, there is no safe access and

the EIR consultants suggest that people use a very dangerous, steep and poorly maintained walkway. Typically, some cars park hundreds of yards down from the site on both sides of Moraga (and Pala) where there is no safe street crossing to the only sidewalk on the north side of the street. An underestimate of parking need will result in numerous and serious accidents and injuries from people parking in almost universally unsafe locations. Certainly a one-day survey is not sufficient evidence upon which to base a finding that just a little over half (on-site) of the normal parking requirement for this kind of facility is sufficient to meet the need for this facility.

New Crosswalk. The concept of a crosswalk instead of a pedestrian bridge over Moraga Avenue first appeared in the DEIR, with little analysis of how it would affect the remainder of the project. Clearly, having some number of pedestrians crossing a very dangerous street with inadequate site distances is a significant safety concern, especially considering that the vast majority of people crossing the street are likely to be children. The DRTC fails to analyze the impacts of the new crosswalk.

This failure begins with a lack of analysis of whether the cross walk can be safely implemented. On this curvy, steep road, the amount of time a driver needs to see and respond to a crosswalk signal is an essential safety concern. Rather than identify a location for the crosswalk, the site distances necessary to safely establish it, (if it can be safely established), and the impacts on roadway function of this new design element, the EIR impermissibly passes it off as design details to be worked out later (DRTC, C42-32, page 313). There is only a small area where a crosswalk could be placed to meet the need, and since the EIR has not assessed site distance adequacy, it is not at all clear that a crosswalk can be safely constructed at this location. The DRTC asserts that cross walk warning signs placed somewhere on this difficult road can mitigate any sight deficiencies, without any actual analysis. In other words, the EIR fails to evaluate either the feasibility or the impacts of its proposed mitigation.

The DEIR heavily relies on its analysis of gaps in the traffic on Moraga Avenue to find that traffic out of Blair Park parking areas can be safely accommodated and that excessive "stacking" at the exits would not occur (DEIR page 252-253). The Level of Service at the driveways is clearly related to the ability of cars to exit the two parking lots (and the number of parking spaces being accommodated). Yet the DRTC dismisses the gap analysis as "a qualitative assessment of whether sufficient gaps in traffic along Moraga Avenue would be present for traffic to turn left out of the Blair Park driveways." (DRTC, page 43). The EIR wishes to have it both ways: claim that its analysis finds no significant safety, operational or design problems as a result of its "gap analysis," and then find that the gap analysis is not necessary to come to that conclusion. How exactly will cars turn left on to Moraga Avenue from these driveways if there are relatively few gaps in traffic? In fact, gaps are critical to the evaluation of the safety of these driveways and "[i]mplementation of a pedestrian signal could reduce the number of gaps on Moraga Avenue." (Response C78-24, page 436). A change in the average gap caused by this pedestrian signal (which the DRTC acknowledges) has the potential to change the overall traffic analysis and perhaps make this already significant detrimental condition

even worse. Unfortunately, we don't know, because the DRTC fails to undertake this basic analysis.

Continuing this troubling lack of basic impact analysis of its mitigations, the DRTC states that the actual number of pedestrians crossing Moraga Avenue cannot be accurately forecasted. This is true. It then goes on to claim that the "Draft EIR takes a very conservative approach on this issue and acknowledges that there will be some interaction between Blair Park and Coaches Field." (C78-29, page 436). The DEIR clearly does nothing of the sort. In fact it dismisses the potential pedestrian relationship between Blair Park and Coaches Playfield by stating that "the increase in the number of pedestrians crossing between Coaches field and Blair Park is likely to be minimal, as the proposed Blair Park sports fields would provide amenities similar to Coaches Field. It is therefore unlikely that children or parents would walk back and forth across Moraga Avenue." The fact that there are not equivalent facilities and that many parents, siblings and friends will without doubt be walking back and forth to observe friends, siblings and children who are playing at different fields is ignored. A "conservative" approach would have made a reasonable worst-case assessment of the portion of the overall peak population that will want and need to cross the street. Clearly, the number of people crossing will affect how often the signal is activated which in turn will affect traffic safety, level of service, the driveway entrances and exits (one of which is located very close to the likely crosswalk location) etc. Essentially this EIR asserts that it need not evaluate the impacts of this new traffic signal in this very hazardous location.

New walkway. The changing and inadequate project description continues on page 23 with what seems to be the addition of a new 6 foot wide pedestrian walkway extending from the new crosswalk "along the northern boundary" of the project, open to the public at all times. It is virtually impossible for any member of the public to understand where this walkway will go and how it relates to the remainder of the project. Given the lack of space on the site plan in the DEIR for almost any new element, it is unclear how this new walkway - on top of the fifty percent increase in parking - will affect the proposed project. How much of the landscaping will be lost and how will it affect retaining walls and the overall site grading? Will it provide access from the street-parking at the far eastern side of the site into the project?

Because the public has no opportunity to see the walkway or any of the other new elements proposed as mitigations on a plan or illustration, it has no opportunity to comment on their impacts or potential effectiveness. In this way the EIR consistently fails at its most basic function: to provide the public and decision makers with an opportunity to comment on the potential impacts of the project as now proposed with mitigations. Assertions that these changes have no additional impacts fail to meet the most basic test of EIR adequacy.

Reliance on policies to mitigate impacts rather than adoption of mitigations

The EIR and DRTC improperly rely on various policies of other agencies and of the City to mitigate specific impacts, rather than adopt mitigations for the project.

Hazardous Materials. According to the DRTC, "in the event that hazardous materials are uncovered during site preparation, standard construction practice and government regulation require the contractor to address the issue by removing such materials in accordance with regulatory requirements . . ." (42-9, page 304). The EIR does not identify any "standard construction practice" adopted by the City, or the other government agency regulations require that a contractor stop construction when they discover some unknown material in the subsurface. It does not provide evidence that the City has any standard conditions that set forth the conditions under which a contractor would be required to stop excavation and begin an investigation. Moreover, undefined "standard practices" and vague regulations are not mitigations for potential impacts. As noted in comments on the DEIR, borings have already found a variety of materials beside dirt in the subsurface, and regulations on historic fill were notoriously lax. The potential for some hazardous materials to be found during the substantial excavation and regarding of this historically filled site is not small. This potentially significant impact must be addressed with an appropriate mitigation.

Cultural Resource Impacts. The DRTC finds that a General Plan policy ensures that potential cultural resources that might be uncovered during excavation will be addressed (C78-10, page 432). As General Plan policies are not enforceable by law, it cannot be considered a mitigation for the potential impacts. As noted in my comments on the DEIR, underneath all of the fill which the City proposes to disturb, there was once a creek in Moraga Canyon. Many of the creeks around the Bay were settled by Native Americans and there are sites similar to this one throughout the Bay Area used for burial. While there is a small likelihood of discovering human remains, it is typical for an EIR (or a Negative Declaration) to include appropriate standard mitigations to address this potential impact for this type of project. According to the DRTC, the project would be subject to a standard City condition of approval that incorporates the General Plan policy. This might be adequate to mitigate this potentially significant impact if the City had evidence in the record that it *had* standard conditions of approval such as the referenced item, and that such a condition was attached to *all* of its projects involving excavation. One of the points of undertaking an EIR is to ensure that there is mitigation of potentially significant impacts by adopting them when the project is approved. Leaving mitigation to some allegedly standard condition of approval at some later date is not assurance of mitigation.

Inadequate Evaluation of the Hazards of Wildland Fire and Emergency Evacuation

The DEIR acknowledges that the Blair Park site is in a wildland fire hazard area. The EIR then relies on the fact that it did not receive comments from the over-worked and understaffed State California Department of Forestry to conclude that placing the equivalent of an elementary school in this wildland fire hazard area is not a significant impact (DRTC C78-12, page 433). Similarly, it notes that the Piedmont Fire Department "had an opportunity to raise issues relevant to fire protection . . . but had no comment". Seemingly, the lack of comment from CDF and the Piedmont Fire Department relieves the preparers of this EIR from the affirmative responsibility to evaluate this significant

safety and environmental issue. Did the preparers of the EIR undertake the minimum effort necessary to contact these agencies and ask the question? Is there a document or an email to CDF or the Fire Chief specifically asking about any concerns with placing the equivalent of a small school in a wildland fire hazard area with limited access?

The only statement from the Piedmont Fire Department makes in relation to this issue is that the project would not significantly degrade emergency access. The Fire Department does not address whether it could safely evacuate hundreds of children from a potentially fast moving fire in this wildland fire risk canyon (not an unlikely scenario since peak use of the fields for soccer happens to coincide with peak fire season).

The statement that emergency access vehicles would be accessing the site from Piedmont, ". . . in the opposite direction of anticipated traffic generated by the fields" leaving the site (DRTC,C-2, page 131) also defies common sense. There are relatively few parents expected to be at the site during peak times. During any emergency at or near the site, the vast majority of parents will be making a beeline for the park - significantly impeding emergency personnel. It is unfortunate that the Piedmont Fire Department's did not recognize this issue. Moreover, as an emergency evacuation route for Oakland, the Piedmont Fire or Police Department personnel may be seeking to access the site in the face of an exodus of cars from Montclair during a major fire or earthquake. Again, it is unfortunate that the City of Piedmont Fire Department did not recognize this concern.

The evaluation of impacts in an EIR is not intended to be dependent on the response of State or other local agencies. The preparers of an EIR have a responsibility to seek out whatever expertise is required to address potentially significant impacts. When a comment on the DEIR notes that Moraga Avenue is an emergency evacuation route for the City of Oakland that might be negatively affected by having the equivalent of an elementary school on this narrow and highly constrained route, the fact that the City of Oakland failed to note and comment on this specific issue during the review period for the DEIR does not mean that the EIR preparers are absolved from considering and attempting some evaluation of the issue, especially after the issue is raised in comments on the DEIR. Please note that the preparers of the DRTC still failed to contact the Oakland Office of Emergency Services after the issue was specifically raised in comments. This is not adequate evaluation of an issue of this magnitude involving the safety of children in a highly vulnerable location.

Because the preparers of the EIR failed to acknowledge or conduct any analysis of the impacts of the project on a designated Emergency Evacuation Route, the potential impacts that might occur during construction if lanes on this route are closed for weeks, is also not analyzed. This is yet another failure to analyze a potentially significant impact.

Inadequate Evaluation of Traffic Impacts

Harbord/Moraga Avenue Intersection. Response to Comment C78-20 (page 434) fails to address the fundamental point of the comment: that the proposed project would make an

existing poor intersection condition considerably worse and that this must be identified as a significant impact and mitigations proposed.

The DEIR acknowledges that the impact of the project on the intersection is significant and would considerably worsen an already poor situation. However, this significant impact is not acknowledged in the DEIR. According to the DEIR and the DRTC, the project would cause the intersection to meet signal warrants - in other words, the project would have a significant impact on this intersection that could be mitigated with a new signal. An appropriate mitigation would have been for the City of Piedmont to offer to pay its fair share of a signal. Neither the DEIR or DRTC offer this mitigation. Even were the City of Piedmont to offer such mitigation, since the City of Piedmont does not control the intersection, it cannot mitigate the impact and therefore the impact would remain significant and unavoidable. None of this is acknowledged in the DEIR or in the DRTC.

Westbound turns into the site. In my comments on the DEIR, I noted that there was no discussion of the potential impacts of in-bound left turns into the 2 driveways from cars traveling west on Moraga Avenue. Response C78-23 states that the issue is addressed on page 31 of Appendix C. This page in the Appendix is simply a table showing the number of additional movements of cars with the project - it provides no analysis of the impacts of those movements. The table indicates that there will be as many as 15 cars turning left into one of the driveways during the afternoon peak hour. There is no further discussion in the appendix or elsewhere in the DEIR of the impacts of these cars turning left into these driveways. There is clearly no space for a left-turn pocket into these driveways, unlike the driveway into Coaches Field where the City wisely placed such a pocket. The DEIR has no discussion of site distances to ensure that there is adequate time to see a left turning car and stop, or how these left-turning cars will affect the operation of Moraga Avenue, not to mention the so-called gap analysis critical to the cars turning out of the driveway. For example, it does not consider that cars backing up behind a left-turning car may block the exiting driveway. In other words, the EIR completely fails to address this issue.

In summary, the EIR fails to address the inter-relationship between 5 driveways (4 proposed, one existing) on a windy, dangerous street with cars traveling 35 mph, in combination with a crosswalk signal, pedestrians and children, cars parallel parking, and parents dropping off children in inappropriate locations as the parking lots get crowded and unavailable.

There are many other inadequacies of this EIR as a public information document and in regard to its evaluation of impacts. Perhaps among the most frustrating elements is the complete lack of assessment of the visual impacts of this proposed project for the motorist and bicyclist on Moraga Avenue. Response to comment B3-7 (page 91) asserts that this issue is addressed in the DEIR on page 153. But the DEIR calls this most public and important of views for the vast majority of people in Piedmont "Other View Areas," provides no simulation, and calls them "limited views into the site," or "brief glimpses of features". How very sad to discount the value of this wonderful piece of open space that

is one of the defining gateway characteristics for the City of Piedmont. One can argue the relative merits of having play fields (with their retaining walls and berms) relative to preserving this site for its current aesthetic open character, but to not even try and evaluate and illustrate this critical impact is to not allow the public or decision makers any opportunity to weigh these aesthetic values.

What Is the Process?

As has been evident for some time regarding this project, the City's approach is both unorthodox and inappropriate, confusing the public and even long-standing CEQA practitioners as to exactly what process the City is following. While I appreciate an opportunity to comment on the "Draft Response to Comments," in my 20+ years of work with CEQA, I have never heard of a "*Draft* Response to Comments." A "Response to Comments" (not a "*Draft* Response to Comment") along with the Draft EIR constitutes the Final Environmental Impact Report and is the last step in the EIR process. It is unclear how my and other comments will be addressed, as there is no provision in CEQA to modify the RTC once published. Of course, the City could direct that a "Final Response to Comments" be prepared to address comments and I urge the Council to do so. But since the Council has also indicated that it intends to certify the FEIR regardless of the comments, the point of this exercise is unclear.

While the City can "certify" an FEIR at this time if it so chooses, as noted in the above discussion on the Project Description, the exact character of "the project" is in question. The process is opaque at best although the statements from the City Manager and Council seem to indicate that it does not intend to adopt mitigations and approve the project at this time. While I welcome the opportunity to further engage in the process, a clearer description of the remainder of the process leading to Council action would be welcome.

Thank you for the opportunity to comment.

Sincerely,

Dan Marks