

SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: 415 552-7272 F: 415 552-5816
www.smwlaw.com

GABRIEL M.B. ROSS
Attorney
ross@smwlaw.com

March 17, 2011

Via US Mail & Electronic Mail

Mayor Dean Barbieri and Honorable
Councilmembers
City of Piedmont
120 Vista Ave.
Piedmont, CA 94611

Re: Moraga Canyon Sports Fields Project

Dear Mayor Barbieri and Councilmembers,:

On behalf of Friends of Moraga Canyon, I am writing to express grave concerns over the environmental review of the Moraga Canyon Sports Field Project ("Project"). Although members of FOMC have been assured by the City Administrator that the City Council does not plan to take action on the Project at its March 21, 2011 meeting, we are concerned that the Project's sponsors and boosters will call for approval of all or part of the Project at that time. We urge you to resist any such pressure for the simple reason that in the several months since the certification of the Project's environmental impact report ("EIR"), new proposals for Project changes have cropped up at such a rate that no one, not even the City, appears to know precisely what the Project consists of. The Staff Report made available late this week only adds to the confusion, as it refers to a new, "hybrid" Project, but does not include any actual description of this Project's form or features. Council Agenda Report, dated March 21, 2011 ("Agenda Report") at 2-3.

The Council plainly cannot make any approval in the absence of a clearly defined, concrete proposal. Moreover, the California Environmental Quality Act, Public Resources Code sections 21000 et seq., will not allow such an approval, because, as discussed below, the changes to the Project will have potentially significant impacts on the environment and therefore a supplemental EIR must be prepared and circulated for public review and comment. Thus, the appropriate action for the Council at March 21 meeting will be to (1) direct staff to draft a clear, thorough, and stable description of the

entire Project, and (2) to direct the preparation of a supplemental or subsequent EIR that examines and mitigates *all* of the environmental impacts of *that* Project.

DISCUSSION

I. The Project Has Changed Since the EIR Certification.

The City Council certified the EIR on December 6, 2010. Since that time, as discussion of the Project has proceeded through City Commissions and public debate, the Project's proponents have come forward with a series of changes to essential Project features, including the following:

Elimination of pedestrian bridge: The Draft and Final EIRs analyzed a Project that included a pedestrian bridge across Moraga Avenue. *See, e.g.*, DEIR at 25, 255-56. Now, however, proponents of the project have proposed "elimination of the pedestrian elevator and bridge across Moraga Avenue." Planning Commission Staff Report for Moraga Canyon Sports Field Project, dated February 24, 2011 ("Staff Report") at 2.

Expanded Parking Area: The Draft and Final EIRs analyzed a Project that included 40 parking spaces at Blair Park. DEIR at 59. Proponents now propose 60 spaces, a fifty-percent increase. Staff Report at 2.

Traffic calming features: Before the Planning Commission, Project proponents offered a series of "mitigation measures" related to the Project's traffic impacts, including "traffic roundabouts at the intersections of Moraga/Red Rock Road and Moraga/Maxwelton, . . . the narrowing of Moraga Avenue in front of Blair Park and the addition of a colored bike lane in the uphill (east) direction." Draft Minutes of Planning Commission Special Meeting, February 24, 2011("Minutes") at 2. These major features are entirely missing from the EIR.

New park features: Project proponents have suggested the addition of a "par course" style exercise trail, a tot lot, and an enclosed dog park at Blair Park. Staff Report at 2. None of these features appears anywhere in the EIR.

City staff have called these features, offered by the Project's sponsors and proponents, "suggested project modifications." Staff Report at 2. Similarly, in the case of the roundabouts at least, the project's sponsors have deemed them "new features . . . being proposed as mitigation." Minutes at 2. Given the vague nature of these labels, neither the public nor this Council has any way of knowing whether or not they are a part of the Project under consideration.

In any event, it is clear that the EIR did not describe the Project now under discussion. “An accurate, stable and finite project description is the *sine qua non*” of adequate environmental review. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 730. To the extent that these new features are indeed a part of the Project, then the EIR has failed to meet this fundamental CEQA standard. Moreover, because the EIR’s Project Description did not include the new features, its impact analyses necessarily left them out as well. This omission is a fatal flaw that requires a supplemental EIR.

II. The Changed Project Requires a Supplemental EIR.

Under CEQA, when “[s]ubstantial changes are proposed in the project” after the certification of the original EIR, and those changes gives rise to new or more severe environmental impacts, the lead agency should prepare a supplemental or subsequent EIR, disclosing those impacts, proposing new mitigation measures to minimize or avoid them, and considering alternatives to the altered project. CEQA Guidelines §§ 15096(e); 15162(a), (c); *see also* Pub. Resources Code § 21166; *Mira Monte Homeowners Ass’n v. County of Ventura* (1985) 165 Cal. App. 3d 357, 363-66; *Eller Media Co. v. Cmty Redevelopment Agency* (2003) 108 Cal. App. 4th 25, 39-40.

Each of the Project changes described above could result in new or more severe impacts. The elimination of the pedestrian bridge would require everyone crossing between the two ballfields, or between the fields and parked cars, to cross Moraga Avenue directly. This would increase the hazard to pedestrians and the traffic wait times caused by pedestrians. The new park features will increase traffic: whole new categories of park users, like exercise enthusiasts and parents of toddlers, will be drawn to the park, adding potentially substantial amounts of traffic.

The new parking area would also increase traffic to and from the site, because the extra spaces will increase families’ incentive to drive to the fields, rather than walk or carpool. The EIR’s analysis does not account for this added traffic. Moreover, additional spaces will increase the problems caused by cars turning into and out of traffic. These additional parking spaces, if they are outside the original footprint of the parking lot, will also increase the Project’s impervious surface, increasing runoff and the attendant hydrological and water-quality impacts. The additional grading and paving work will add to all of the Project’s construction-related impacts, such as air pollution and noise.

The proposed roundabouts and other traffic-calming features will similarly increase the Project’s runoff and its construction-related impacts. Moreover, they will

clearly affect traffic conditions on Moraga Avenue and on the intersecting streets. The nature of these consequences are difficult for a layperson to predict, which is precisely why the altered Project must be analyzed in a supplemental EIR.

In short, these examples demonstrate that the Project's EIR does not analyze the Project as it currently stands. The Project that is before the Council—to the extent the details of that Project can be discerned—will have potentially significant impacts that have never been analyzed, disclosed to the public, or mitigated. The “hybrid” Project now on the table will, by City staff's own admission, have further impacts and require further analysis, despite the lack of any concrete information about the content of this proposal. Agenda Report at 2.

The purpose of CEQA is to allow “informed self-government” by exposing all of a project's impacts to public scrutiny and discussion. *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal. 3d 376, 392. Because the Project now under debate is not the Project analyzed in the EIR, that document does not meet CEQA's standards or fulfill its purposes. Unless and until a supplemental EIR provides thorough, public analysis of all of these new features and the whole Project, CEQA bars the City from taking any action to approve the Project or any portion thereof.

CONCLUSION

For the above reasons, we urge the City Council to take no action to approve any part of the Project until the Project has been accurately defined and thorough, accurate environmental review of all of its features and their impacts has been prepared and circulated to the public.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Gabriel M.B. Ross