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January 13, 2014

Via Email and Overnight Mail

Tim Nielsen, Assistant Planner
City of Brentwood
Community Development Department
Planning Division
150 City Park Way
Brentwood, CA 94513
tnielsen@brentwoodca.gov

Re: Preliminary Comments on the Initial Study/Mitigated Negative Declaration for the Brentwood Country Club Project

Dear Mr. Nielsen:

We write on behalf of **Brentwood Residents for Responsible Development** to provide preliminary comments on the Initial Study/Mitigated Negative Declaration (“MND”) prepared by the City of Brentwood for the Brentwood Country Club Project (“Project”) proposed by Brentwood Country Club Partners. The Project would be located on a 26-acre site in the City of Brentwood. The Project site is surrounded by State Route 4, Balfour Road, Brentwood Golf Club and single family homes.

The Project includes the removal of existing golf facilities and the development of residential and commercial uses. The 19 acres on the southern portion of the site would be developed with either: (1) 62 detached and 120 high density senior residential units (total of 183 residential units); or (2) 34 detached, 120 high density and 157 senior residential apartments (total of 311 residential units). The seven acres on the northern portion of the Project site would be developed with either: (1) 70,000 square feet of retail; (2) a three-story 160-room hotel and 20,000 square feet of retail; (3) 200 high density senior residential units and 28,000 square feet of retail; or (4) 70,000 square feet of automotive retail. The Project also includes construction of water, sewer and storm drain facilities,

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driveways, internal streets, a public street, garages and other parking, and relocation of the existing golf cart path connection.

Based upon our review of the MND and supporting documentation, we conclude that the MND fails to comply with the California Environmental Quality Act¹ (“CEQA”) and the California Water Code. The MND fails to provide a complete and accurate Project description and to set forth an accurate and documented description of the environmental setting against which to measure the Project’s potentially significant impacts. As a result, the MND fails to identify the Project’s potentially significant environmental impacts and propose measures that can reduce those impacts to a less than significant level. The MND also fails to include a Water Supply Assessment required by the California Water Code.

As described in these comments, there is more than a fair argument that the Project will result in potentially significant direct and indirect air quality, public health, land use, noise and hazardous materials impacts. The City may not approve a General Plan Amendment, Zoning Change, Tentative Map or Conditional Use Permits for the Project until it prepares an Environmental Impact Report (“EIR”) that adequately analyzes the Project’s potentially significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to minimize these impacts.

We prepared these comments with the assistance of hazardous materials expert Matt Hagemann. Mr. Hagemann’s technical comments on the MND and qualifications are attached and submitted to the City, in addition to the comments in this letter. The County must address and respond to the comments of Mr. Hagemann separately.

We reserve the right to file supplemental comments on the MND at a later date. CEQA requires the City to make available for public review the whole MND and all documents referenced in the MND for the entire public comment period. Once materials are properly made available, CEQA requires a minimum of 30 days for public review and comment. The City has not complied with these requirements. The City did not provide the whole MND or all documents referenced in it until January 9, 2014, just days before the end of the comment period.

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CONT

¹ Pub. Resources Code §§ 21000 et seq.

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Further, despite our requests to the City to extend the comment deadline in light of the City's failure to provide the whole MND and all documents referenced for the whole comment period, the City did not extend the comment deadline. Therefore, we reserve the right to supplement these preliminary comments.

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CONT

I. STATEMENT OF INTEREST

Brentwood Residents for Responsible Development is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes Brentwood residents Jaime Gonzalez, Chad Andrews, Dustin Cabihi and Charles Knox, and the International Brotherhood of Electrical Workers Local 302, Plumbers & Steamfitters Local 159, Sheet Metal Workers Local 204, and their members and families and other individuals that live and/or work in the City of Brentwood and Contra Costa County (collectively, "Brentwood Residents").

The individual members of Brentwood Residents and the members of the affiliated labor organizations live, work, recreate and raise their families in Contra Costa County, including the City of Brentwood. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental impacts.

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The organizational members of Brentwood Residents also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for their members that they represent. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there. This in turn jeopardizes future development by causing construction moratoriums and otherwise reducing future employment opportunities for construction workers. The labor organization members of Brentwood Residents therefore have a direct interest in enforcing environmental laws to minimize the adverse impacts of projects that would otherwise degrade the environment.

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II. THE MND IS INTERNALLY INCONSISTENT AND FAILS TO ADEQUATELY DESCRIBE THE PROJECT

The MND does not meet CEQA’s requirements because it fails to include a complete and accurate project description, rendering the entire impact analysis inherently unreliable. An accurate and complete project description is necessary to perform an evaluation of the potential environmental effects of a proposed project.² Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project’s impacts and undercutting public review.³ The courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document].”⁴ Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal’s benefit against its environmental costs.⁵

ABJC-3

A. The MND Fails to Describe the Project’s Potable Water and Sewage Facilities

According to the MND, the existing potable water and sewer facilities on the Project site would be removed and new connections and facilities would be constructed.⁶ The MND states that the Project would connect to existing potable water and sewer lines, and new networks of eight inch diameter water and sewer lines would serve the Project.⁷ However, the MND does not provide any details regarding the water and sewer networks. The MND fails to describe the lengths and locations of water and sewer lines, any excavation that would be necessary for their construction, how the new lines would be constructed or how the components of the lines would be delivered to appropriate locations. Without this basic information, the public and decisionmakers cannot meaningfully assess the potential impacts of the water and sewer service components of the Project. An EIR must be prepared that describes construction of the Project’s networks of water and sewer lines and analyzes the impacts of such construction.

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² See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

³ See *id.*

⁴ *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

⁵ *Id.* at 192-193.

⁶ MND, p. 4.

⁷ *Id.*

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B. The MND Fails to Adequately Describe Parking and Staging Areas

A complete description of the Project's parking and staging areas is necessary to assess the Project's impacts. Project construction entails the use of large construction equipment, such as forklifts, excavators and cranes, as well as truck deliveries and worker vehicles.⁸ The MND completely fails to identify where delivery trucks and worker vehicles will park or where construction equipment will be staged. The MND does not indicate the size of parking or staging areas, or where they will be located. Depending on the use, size, surface composition and location, the Project's staging and parking areas could cause unanalyzed and unmitigated impacts to air quality, public health, biological resources and hydrological resources. The City must adequately describe the Project's staging and parking areas so that decision makers and the public can adequately assess the Project's impacts.

ABJC-5

C. The MND Fails to Adequately Describe the Project's Driveways or Internal Roads

The Project includes construction of internal streets and driveways.⁹ However, the MND provides no details regarding the streets or driveways, such as their length, width or depth. The City must provide more detailed information regarding the Project's driveways and internal roads. There is no way to effectively evaluate impacts from roadways of unknown lengths, widths or depths. The City must revise its description of the Project's roads and driveways in an EIR so that the public and decision makers can assess the Project's impacts on the environment, as well as the Project's compliance with all City rules and regulations.

ABJC-6

D. The MND Fails to Describe the Proposed Public Street

The MND states the Project includes a new public street and turn-around space.¹⁰ However, the MND provides no details regarding the street, such as its length, width or depth. The City must provide more detailed information regarding

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⁸ See MND, Appendix A: Air Quality Modeling Output.

⁹ MND, p. 3.

¹⁰ *Id.*

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the Project’s road improvements so that the public and decision makers can assess the Project’s impacts on the environment.

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CONT

E. The MND Fails to Describe the Amount of Grading Required for the Project

The MND states that Project construction will include grading and “other earth-moving activities.”¹¹ The MND does not provide with any degree of precision the amount of grading or other earth-moving activities that will be required for the Project. The amount of grading (e.g. volume of soil disturbed) is highly relevant to measuring a range and severity of Project impacts, including but not limited to, impacts to air quality, soils, biological and hydrological resources, worker and public health and safety, and water supply. The City must describe the amount of grading and other earth-moving activities in greater detail so that the Project’s impacts can be accurately measured.

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F. The MND Fails to Adequately Describe Project Waste and Waste Disposal

The MND states that the Project will result in less than significant impacts related to solid waste disposal capacity.¹² According to the MND, the Project’s solid waste would be serviced by the Brentwood Disposal Service.¹³ The MND states that solid waste from Project construction would be reduced by using prefabricated construction materials and sustainable materials.¹⁴ Thus, the Project “would divert construction and demolition debris from landfills such that it would not have a significant impact on landfill capacity...”¹⁵ The MND’s description of the Project’s waste generation and waste disposal is incomplete and, therefore, the MND’s conclusion that the Project would not result in a significant impact on landfill capacity and solid waste disposal is unsupported.

ABJC-9

First, the MND fails to adequately describe waste that would be generated during Project construction. The MND only states that Project construction waste would be reduced by using prefabricated construction materials and sustainable

¹¹ *Id.*, p. 35.

¹² *Id.*, p. 95.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

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materials.¹⁶ While the use of sustainable building materials may reduce overall waste, it is not evidence that Project construction would result in a less-than-significant impact to solid waste disposal capacity. The MND provides no information on the quantity of solid waste that the Project will produce, including the demolition of existing facilities and the construction of more than three hundred residential units on the southern portion of the Project site, and two hundred additional residential units, up to 70,000 square feet of commercial space or a three-story hotel on the northern portion.

ABJC-9
CONT

The MND fails to adequately describe Project waste and waste disposal. Thus, a fair argument can be made that the Project may significantly impact service systems. The City must prepare an EIR that fully describes Project waste and waste disposal, and analyzes any impacts associated with it.

G. The MND Fails to Adequately Describe the Project's Water Demand

The MND provides incorrect and insufficient information regarding the Project's water demand. The MND states that the Project "proposes to build 183 senior housing units in addition to a commercial component. The proposed project will result in a net increase of water usage at the site with the removal of existing golf course facilities, and the development of 183 residential units."¹⁷ The MND states that the City has a sufficient water supply to serve the Project and, therefore, the Project would have a less-than-significant impact on water supplies. The MND is seriously flawed for three reasons.

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First, the MND completely fails to describe the amount of water required for Project construction. In fact, the MND does not even mention that water will be necessary for Project construction, including for example, water for dust suppression and water for fire protection.

Second, the MND fails to quantify the amount of water necessary for Project operation. Without this information, there is no basis for the MND's conclusion that the Project would result in a less-than-significant impact on water supplies.

¹⁶ *Id.*

¹⁷ *Id.*, p. 68.

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Third, the MND incorrectly bases its analysis of the Project’s impacts to water supplies on 183 residential units. As a result, the MND greatly underestimates the Project’s water demand and the Project’s impacts on water supplies. The Project includes two options for the southern portion of the site -- 183 residential units or **311 residential units**. In addition, the northern portion of the Project site would be developed with either 70,000 square feet of retail, a **160-room hotel** and 20,000 square feet of retail, **200 residential units** and 28,000 square feet of retail or 70,000 square feet of automotive retail. Thus, there is potential for development of **511 residential units**, or **311 residential units and a 160-room hotel**. The MND’s use of 183 residential units for its analysis is misleading and greatly underestimates the Project’s water demand.

ABJC-10
CONT

The City must prepare an EIR that adequately describes the Project’s construction and operational water demand. The EIR must also evaluate any impacts on water supplies associated with that water demand.

III. THE MND FAILS TO ADEQUATELY DESCRIBE THE EXISTING ENVIRONMENTAL SETTING

An MND must include a description of a project’s environmental setting.¹⁸ The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project’s impacts.¹⁹ As a general matter, the MND must also “disclose the data or evidence upon which person(s) conducting the study relied. Mere conclusions simply provide no vehicle for judicial review.”²⁰ The MND is inadequate because its description of the environmental setting with respect to hazardous materials, waste disposal and water supplies is incomplete.

ABJC-11

A. The MND Fails to Adequately Establish the Environmental Setting Against Which to Measure the Project’s Impacts from Pesticides on the Project Site

The Phase I Environmental Site Assessment (“Phase I ESA”) prepared for the Project states, “[d]uring the course of agricultural use, pesticides, such as DDT,

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¹⁸ CEQA Guidelines, §15063(d)(2).

¹⁹ *Id.*, §15125(a).

²⁰ *Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

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likely were applied to crops in the normal course of farming operations. Pesticides have also been used at the site during the course of use as a golf course.”²¹ Despite this information, no soil sampling was conducted on the Project site to determine the extent of pesticide contamination. As a result, it is impossible to evaluate or mitigate the Project’s impacts to construction workers and adjacent residents from inhalation of contaminated fugitive dust during Project construction, and to future residents from exposure to contaminated soil on the Project site.

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CONT

The City must require soil sampling on the Project site to determine the extent of pesticide contamination. Sampling results must be included in an EIR that is circulated for public review and comment.

B. The MND Fails to Adequately Describe the Existing Environmental Setting for Waste Disposal

The MND states that the Project would be served by “Brentwood Disposal Service, which includes a disposal site that has the capacity to service the proposed project.”²² The MND does not describe Brentwood Disposal Service disposal site’s capacity. The MND fails to provide any evidence that the Brentwood Disposal Service has the capacity to dispose of Project construction and operational waste, including waste from the demolition of existing facilities, and from the construction and operation of hundreds of residential units, a three-story hotel and 70,000 square feet of commercial space.

ABJC-13

The MND fails to adequately describe Brentwood Disposal Service disposal site’s capacity to receive Project waste. The City must prepare an EIR that fully describes the existing setting for Project waste disposal.

C. The MND Fails to Adequately Describe the Existing Environmental Setting Against Which to Measure the Project’s Impacts to Water Supplies

The MND provides insufficient information regarding the Project’s water supply. The MND states that the City would provide water for the Project.²³ Without any supporting evidence, the MND states that the City “has adequate

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²¹ MND, p. 3.

²² *Id.*, p. 95.

²³ *Id.*, p. 4.

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supplies to service the development and continuous operation of the proposed project.”²⁴ The MND does not describe the City’s existing water supply and it provides no evidence that there is a sufficient water supply for the Project. Thus, there is no support for the MND’s conclusion that the Project would result in a less-than-significant impact to water supplies.

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CONT

The City must prepare an EIR that adequately describes the Project’s water supply. The EIR must also evaluate any impacts associated with using that water supply.

IV. AN ENVIRONMENTAL IMPACT REPORT IS REQUIRED TO SATISFY CEQA’S PURPOSES AND GOALS

CEQA has two basic purposes, neither of which the MND satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.²⁵ CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.²⁶ The purpose of the EIR is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government.”²⁷ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”²⁸

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Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.²⁹ The EIR serves to provide public agencies and the public in general, with information about the effect that a proposed project is likely to have on the environment, and to “identify ways that environmental damage can be avoided or significantly reduced.”³⁰ If a project has a significant effect on the environment, the agency may

²⁴ *Id.*, p. 94.

²⁵ CEQA Guidelines, § 15002(a)(1).

²⁶ *See* Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.

²⁷ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).

²⁸ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

²⁹ CEQA Guidelines, § 15002(a)(2)-(3); *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1354.

³⁰ CEQA Guidelines, § 15002(a)(2).

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approve the project only upon a finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible,” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA section 21081.³¹ The MND fails to satisfy the basic purposes of CEQA by failing to inform the public and decision makers of the Project’s potentially significant impacts and to propose mitigation measures that can reduce those impacts to a less-than-significant level. The City is required to evaluate the Project in an EIR.

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.³² CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.³³ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration or notices of exemption from CEQA.³⁴ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.³⁵

A mitigated negative declaration may be prepared instead of an EIR only when, after preparing an Initial Study, a lead agency determines that a project may have a significant effect on the environment, but:

³¹ *Id.*; CEQA Guidelines § 15092(b)(2)(A)-(B).

³² See Pub. Resources Code, § 21100.

³³ Pub. Resources Code, § 21082.2; CEQA Guidelines, § 15064(f), (h); *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1993) (“*Laurel Heights II*”) 6 Cal. 4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

³⁴ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

³⁵ *Sierra Club v. County of Sonoma*, (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 [“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an [environmental impact report] and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”].

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- (1) Revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where *clearly no significant effect* on the environment would occur; and
- (2) There is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.³⁶

Substantial evidence can be provided by technical experts or members of the public.³⁷ “If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.”³⁸ The CEQA Guidelines provides that “if there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.”³⁹

As detailed in the following sections, there is a fair argument, supported by substantial evidence that the Project may result in significant air quality, public health, noise, hazardous materials and land use impacts. Therefore, the City is required to prepare an EIR to evaluate the Project’s impacts and propose all mitigation measures that are necessary to reduce those impacts to a less-than-significant level.

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³⁶ Pub. Resources Code, § 21064.5.

³⁷ See, e.g., *Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 [substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy]; see also *Architectural Heritage Ass’n v. County of Monterey*, 122 Cal.App.4th 1095, 1117-1118 [substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing]; *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

³⁸ CEQA Guidelines, § 15062(f).

³⁹ *Id.*, § 15062(g).

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A. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Air Quality and Public Health Impacts

Project construction will occur 25 feet from adjacent residences. The MND states that the Project would cause a less-than-significant impact on these residents from exposure to construction-generated diesel particulate matter (“DPM”) because the “brief exposure period would substantially limit exposure to hazardous emissions, as it is substantially less than the 2-year exposure period typically assumed for health risk analysis for small construction projects.”⁴⁰ The MND’s conclusion is unsupported and substantial evidence supports a fair argument that the Project may result in potentially significant impacts to adjacent residents from exposure to DPM and PM₁₀.

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First, Project construction will last 587 days⁴¹ (or approximately 1.6 years). Thus, there is no support for the MND’s statement that the Project’s “brief” construction period would “substantially limit exposure to hazardous emissions, as it is substantially less than the 2-year exposure period...” 1.6 years is almost two years and it is certainly not “substantially less than” two years. Further, Mr. Hagemann points out in his attached comments that construction delays could easily draw Project construction out to more than two years.⁴²

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Second, in Mr. Hagemann’s expert opinion, a 1.6-year construction period may cause significant health impacts to adjacent residents from exposure to Project construction emissions.⁴³ Mr. Hagemann explains that DPM is classified by the United States Environmental Protection Agency (“EPA”) as a “likely carcinogen” and exposure to DPM may cause irritation to the eyes, nose, throat and lungs, as well as neurological effects.⁴⁴ The California Air Resources Board (“CARB”) has stated that children are the most vulnerable to the health effects of DMP.⁴⁵ Exposure to PM₁₀ can lead to respiratory problems, such as irritation of airways, coughing and difficulty breathing, aggravated asthma, decreased lung function, and

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⁴⁰ MND, p. 43.

⁴¹ *Id.*, p. 38.

⁴² **Attachment A:** Letter from Matt Hagemann to Rachael Koss re: Comments on the Brentwood Country Club Project, p. 2.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

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irregular heartbeat.⁴⁶ According to the U.S. EPA, children and older adults are the most likely to be affected by particulate matter exposure.⁴⁷

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Mr. Hagemann notes that CARB recognizes cancer risk from construction projects and the need to evaluate short-term exposure to air contaminants.⁴⁸ According to CARB, cancer risk from construction activity can exceed 10 cases in a million for an area of 26 acres surrounding a construction site, which exceeds the threshold of significance established by the Bay Area Air Quality Management District.⁴⁹

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Substantial evidence supports a fair argument that the Project may result in potentially significant, unmitigated impacts to adjacent residents from exposure to Project construction DPM and PM₁₀ emissions. The City must prepare an EIR that adequately discloses, analyzes and mitigates these impacts.

B. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Public Health Impacts from Hazardous Material Present on the Project Site

The MND recognizes that construction workers could be exposed to pesticides on the Project site, but concludes that the Project's impact from hazardous materials present on the Project site is less-than-significant.⁵⁰ The MND's conclusion is unsupported and substantial evidence supports a fair argument that the Project may result in potentially significant, unmitigated impacts to construction workers and residents from pesticide contamination on the Project site.

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The Phase I ESA states, “[d]uring the course of agricultural use, pesticides, such as DDT, likely were applied to crops in the normal course of farming operations. Pesticides have also been used at the site during its use as a golf course.”⁵¹ Despite this information, no soil sampling was conducted on the Project site to determine the extent of pesticide contamination. Instead, the MND requires

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ MND, p. 64.

⁵¹ Phase I ESA, p. 8.

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soil sampling prior to Project construction (but after Project approval). Without sampling results, it is impossible to determine the Project's impacts to residents and construction workers who may be exposed to soil and fugitive dust containing residual pesticides. Therefore, there is no support for the MND's conclusion that the Project would not result in a significant impact from hazardous materials on the Project site.

Based on Mr. Hagemann's experience and familiarity with pesticide use, and his review of the Phase I ESA, which describes extensive historical use of pesticides on the Project site, he concludes that residual pesticides on the Project site may cause a significant impact to construction workers and adjacent residents during Project construction, and to future residents of the Project site.⁵² Mr. Hagemann further states,

Given the lengthy historical use of the Project site for agriculture and golf facility uses, the almost two-year construction period and the fact that the site will be include residential development, post-approval sampling is inadequate. Instead, to provide adequate disclosure and ensure the protection of construction workers, adjacent residents [] and future residents [], sampling should be conducted now, prior to Project approval.⁵³

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Mr. Hagemann explains that sampling must conform to California Department of Toxic Substances Control guidance and should include the collection of shallow soil samples for analysis of organochlorine pesticides and arsenic.⁵⁴ Sampling results should be compared to the San Francisco Bay Regional Water Quality Control Board Environmental Screening Levels. Any sample results that exceed screening levels must be addressed through excavation until confirmation samples show that soils would not pose a risk to construction workers or the public.⁵⁵ Finally, if samples exceed hazardous waste concentrations, affected soil must be disposed of in accordance with California and federal regulations.

Substantial evidence supports a fair argument that the Project may result in potentially significant, unmitigated health impacts to construction workers and residents from exposure to pesticide contamination on the Project site. The City

⁵² Attachment A, p. 3.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

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must prepare an EIR that adequately discloses, analyzes and mitigates these impacts.

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C. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Impacts from Noise

Pursuant to CEQA (and as acknowledged in the MND), noise impacts associated with the Project would be considered significant if there is “[a] substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.”⁵⁶ The MND states that construction of the Project may temporarily increase ambient noise levels.⁵⁷ However, the MND concludes that the Project’s impact from construction noise is less than significant because generated noise would be less than Occupational Safety and Health Administration’s (“OSHA”) standard limits for noise exposure to workers (90 dB or less over eight continuous hours).⁵⁸ The MND’s analysis is severely flawed and is not supported by substantial evidence. Rather, substantial evidence supports a fair argument that the Project may result in potentially significant impacts from noise generated during Project construction.

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First, the MND applies an incorrect threshold of significance. The threshold is not 90 dB for eight hours. Rather, the threshold is “[a] substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.”⁵⁹ According to the City’s General Plan Noise Element, industrial and other non-transportation noise levels shall not exceed an hourly average of 50 dBA *L_{eq}*, or a maximum level of 70 dBA.⁶⁰ In addition, the City’s Municipal Code sets exterior noise level limits at residential properties at 60 dB.⁶¹ The MND must establish the existing ambient noise levels in the Project vicinity and then determine, based on substantial evidence, whether Project construction would result in a substantial increase to those levels. The MND does not. The MND fails to establish the existing ambient noise levels at the very location that would be most affected by Project construction noise – the adjacent residents to the

⁵⁶ CEQA Guidelines, Appendix G; MND, p. 74.

⁵⁷ MND p. 82.

⁵⁸ *Id.*, p. 83.

⁵⁹ CEQA Guidelines, Appendix G; MND, p. 74.

⁶⁰ **Attachment B:** City of Brentwood General Plan, 2001-2021, p. IV. 3-10.

⁶¹ **Attachment C:** Brentwood Municipal Code § 9.32.030.

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south of the Project site. As a result, the MND also fails to determine whether Project construction would result in a substantial increase in the ambient noise levels at the adjacent residences.

ABJC-21
CONT

Second, substantial evidence supports a fair argument that the Project may result in a significant increase in ambient noise levels at residences adjacent to the Project site. According to the MND, Project construction will take almost two years and will include the use of heavy equipment, such as bulldozers, graders and scrapers.⁶² Residences are directly adjacent to the southern boundary of the Project and “[d]emolition and construction activities would occur as near as 25 feet from the nearest homes...”⁶³ The MND states that residents will experience construction noise levels from 75 to 86 dBA L_{eq} , with the majority of the time experiencing noise levels from 84 to 86 dBA L_{eq} .⁶⁴

ABJC-22

The MND does not provide the existing noise levels at the adjacent residences but, according to the MND, ambient noise levels to the north, east and west of the Project site range from 52 to 66.6 dBA L_{eq} (the higher levels being adjacent to major roads, including Balfour Road and State Route 4).⁶⁵ If existing ambient noise levels at the residences just south of the Project are similar to the levels north, east and west of the Project site, then Project noise would result in an increase in ambient noise at the adjacent residences by as much as 34 dBA L_{eq} , which is **more than a 50 percent increase** in ambient noise levels. A 50 percent increase in ambient noise levels would constitute a significant impact under CEQA.

ABJC-23

In addition, the record establishes that adjacent residents would experience an increase in ambient noise levels even greater than 50 percent because the MND likely underestimates construction noise levels. The MND states that residents located **25 feet** from Project construction will experience construction noise levels from **75 to 86 dBA L_{eq}** . However, according to the City’s General Plan Noise Element, a typical noise level for a front-end loader at a distance of **35 feet**, is **89 dB**, a typical noise level for a concrete mixing truck at a distance of **30 feet** is **85 dB** and a typical noise level for a sand and gravel truck at a distance of **35 feet** is **91 dB**.⁶⁶ In short, typical construction noise levels are higher at greater distances than

ABJC-24

⁶² MND, pp. 38, 84.

⁶³ *Id.* pp. 82-83.

⁶⁴ *Id.*, p. 83.

⁶⁵ *Id.*, p. 79.

⁶⁶ **Attachment B**, p. IV. 3-6.

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the noise levels assumed in the MND for shorter distances. The City must prepare an EIR that accurately portrays noise levels that adjacent residents will experience during Project construction.

ABJC-24
CONT

The EIR must also disclose that, according to the City's General Plan Noise Element, "[n]oise pollution is recognized as a significant source of environmental degradation. Exposure to high noise levels can cause hearing loss, annoyance, discomfort, and interference with normal activities such as sleep, communication, and relaxation."⁶⁷ The Noise Element states that a noise level of 70 dBA is "intrusive."⁶⁸ Here, the MND states that residences will experience noise levels up to 86 dBA L_{eq} during Project construction.⁶⁹ While the levels described in the MND are likely underestimated, they will still be, at a minimum, "intrusive."

ABJC-25

Further, the Noise Element states that industrial and other non-transportation noise levels shall not exceed an hourly average of 50 dBA L_{eq} , or a maximum level of 70 dBA.⁷⁰ In addition, the City's Municipal Code sets exterior noise level limits at residential properties at 60 dB.⁷¹ Residents adjacent to the Project site will experience construction noise levels that far exceed the maximum noise levels in the Noise Element and Municipal Code. This is additional evidence that supports a fair argument that the Project may result in significant impacts from construction noise.

ABJC-26

Substantial evidence supports a fair argument that the Project may result in significant, unmitigated impacts to adjacent residents from construction-related noise. The City must prepare an EIR that adequately discloses, analyzes and mitigates this impact.

ABJC-27

⁶⁷ *Id.*, p. IV. 3-1.

⁶⁸ *Id.*

⁶⁹ MND, p. 83.

⁷⁰ **Attachment B**, p. IV. 3-10.

⁷¹ **Attachment C**: Brentwood Municipal Code § 9.32.030.

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D. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant, Unmitigated Land Use Impacts

CEQA requires an assessment of any inconsistencies between the Project and applicable land use plans.⁷² A significant impact on land use and planning would occur if the Project would “[c]onflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.”⁷³ Here, the Project conflicts with goals and policies of the City’s General Plan and Municipal Code. These inconsistencies are significant impacts that must be disclosed, analyzed and mitigated in an EIR.

1. The MND Fails to Disclose and Mitigate the Project’s Inconsistencies with the City’s General Plan

Under California law, a general plan serves as a “charter for future development”⁷⁴, and embodies “fundamental land use decisions that guide the future growth and development of cities and counties.”⁷⁵ The general plan has been aptly described as “the constitution for all future developments” within a city or county.⁷⁶ Further, the “propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.”⁷⁷ The consistency doctrine has been described as the “linchpin of California’s land use and development laws; it is the principle which infuses the concept of planned growth with the force of law.”⁷⁸

The MND fails to acknowledge the Project’s conflicts with several goals and policies of the City’s General Plan adopted for the purpose of avoiding or mitigating

⁷² CEQA Guidelines § 15125(a), (d).

⁷³ CEQA Guidelines Appendix G, § IX(b).

⁷⁴ *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 54.

⁷⁵ *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532.

⁷⁶ *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1334, 1335.

⁷⁷ *Citizens of Goleta Valley v. Board of Supervisors of County of Santa Barbara* (1990) 52 Cal.3d 553, 570.

⁷⁸ *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.

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an environmental effect. These inconsistencies are significant environmental impacts that must be disclosed, analyzed and mitigated in an EIR.

a. The Project is Inconsistent with Noise Element Goals 1 and 2, and Policy 1.2

Noise Element Goal 1 is to “[p]rotect noise-sensitive uses from exposure to excessive noise.” Goal 2 is to “[p]reserve the rural noise environment of the City and surrounding areas.” Policy 1.2 is to mitigate industrial and other non-transportation noise sources to an “acceptable standard.” Policy 1.2 sets maximum noise levels, including a daytime hourly average of 50 dBA L_{eq} and a daytime maximum level of 60 dBA. The Project is inconsistent with Goals 1 and 2 and Policy 1.2 because, as described above, substantial evidence supports a fair argument that the Project may result in significant impacts to residents adjacent to the Project site who will experience construction noise levels that far exceed the maximum noise levels in Policy 1.2. This impact is also inconsistent with Goals 1 and 2 because it will detract from the rural noise environment of the City and will expose residents to excessive noise. The City must prepare an EIR that discloses the Project’s inconsistencies with the City’s General Plan.

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CONT

2. *The MND Fails to Disclose and Mitigate the Project’s Inconsistency with the City’s Municipal Code*

a. The Project is Inconsistent with Section 9.32.030

Section 9.32.030 of the City’s Municipal Code requires that daytime exterior noise levels at residential properties be no more than 60 dB. The Project is inconsistent with section 9.32.030 because, as shown above, residences adjacent to the Project site will experience noise levels of at least 86 dBA L_{eq} during Project construction. The City must prepare an EIR that discloses the Project’s inconsistency with the City’s Municipal Code.

ABJC-29

V. THE PROJECT FAILS TO COMPLY WITH THE CALIFORNIA WATER CODE

The Project may not be approved until the City complies with the California Water Code. Pursuant to section 10912 of the California Water Code, a Water Supply Assessment (“WSA”) is required for the Project and must be included in the

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environmental review document circulated for public review and comment. If the City approves the Project without an adequate WSA, the approval will not only violate the Water Code, but it will also preclude the informed decision making required by CEQA regarding meaningful assessment of Project impacts.

The provisions of the Water Code have been described as the “show me the water” law. The law requires the preparation of WSA’s in order to “ensure that local land use authorities will thoroughly consider the availability of water supplies before approving major new developments.”⁷⁹ The WSA must discuss whether the available water supplies will meet the project’s water demand, in addition to existing and planned future water uses.⁸⁰ The WSA must also identify and describe the reliability of the water entitlements, water rights, or water service contracts that will be used to serve the project.⁸¹ Additional information is required if the water supply for the project will include groundwater.⁸² The WSA must describe the groundwater basin that will supply water to the project, including whether the basin is overdrafted or is projected to become overdrafted.⁸³

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CONT

The Water Code requires preparation of a WSA if a development “would demand an amount of water equivalent to, or greater than, the amount of water required by a 500 dwelling unit project.”⁸⁴ Here, the southern portion of the Project site would be developed with either: (1) 62 detached and 120 high density senior residential units (total of 183 residential units); or (2) 34 detached, 120 high density and 157 senior residential apartments (total of 311 residential units). The northern portion of the Project site would be developed with either: (1) 70,000 square feet of retail; (2) a three-story 160 room hotel and 20,000 square feet of retail; (3) 200 high density senior residential units and 28,000 square feet of retail; or (4) 70,000 square feet of automotive retail. The MND fails to provide the quantity of water required for Project construction and operation. However, when the proposals for the southern and northern portions of the Project site are considered, it is clear that the Project demands at least as much water as a 500 dwelling unit project. For example, if the proposed 311 residential units are developed on the southern portion

⁷⁹ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 432.

⁸⁰ Water Code § 10910(c)(4).

⁸¹ *Id.* § 10910(d), (e).

⁸² *Id.* § 10910(f).

⁸³ *Id.* § 10912(a)(5).

⁸⁴ *Id.* § 10912(a)(7).

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and the proposed 200 residential units are developed on the northern portion, there would be a total of 511 dwelling units, which is more than the Water Code's 500 dwelling unit threshold for requiring a WSA. Therefore, the City must prepare a WSA for the Project and include it in an EIR that is circulated for public review and comment.

ABJC-30
CONT

VI. CONCLUSION

The MND is inadequate because it fails to include a complete and accurate Project description, set forth the existing environmental setting and identify and mitigate the Project's potentially significant air quality, public health, land use, hazardous materials and noise impacts. The City has also failed to comply with the California Water Code. Due to these significant deficiencies, the City cannot conclude that the Project's potentially significant impacts have been mitigated to a less than significant level.

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.⁸⁵ As discussed in detail above, there is substantial evidence that the Project would result in significant adverse impacts that were not identified in the MND.

ABJC-31

We urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing an EIR to address the issues raised in this comment letter. By complying with State law, the City and the public can ensure that the Project's significant environmental impacts are mitigated to a less than significant level.

Sincerely,



Rachael E. Koss

REK:clv
Attachments

⁸⁵ CEQA Guidelines § 15063(b)(1).