

ADAMS BROADWELL JOSEPH & CARDOZO

DANIEL L. CARDOZO  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
TANYA A. GULESSERIAN  
LAURA E. HORTON  
MARC D. JOSEPH  
RACHAEL E. KOSS  
JAMIE L. MAULDIN  
ADAM J. REGELE  
ELLEN L. WEHR

A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721  
TEL: (916) 444-6201  
FAX: (916) 444-6209  
etrescott@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE  
601 GATEWAY BLVD., SUITE 1000  
SO. SAN FRANCISCO, CA 94080  
TEL: (650) 589-1660  
FAX: (650) 589-5062

September 28, 2015

RECEIVED

SEP 29 2015

CITY OF BRENTWOOD  
COMMUNITY DEVELOPMENT DEPT.

VIA OVERNIGHT MAIL AND E-MAIL

Jeff Zilm, Senior Planner  
City of Brentwood Community Development  
150 City Park Way  
Brentwood, CA 94513-1164  
jzilm@brentwoodca.gov

Re: Planning Commission September 29th Agenda Item No. 4, Initial Study/Addendum for the Sciortino Ranch Subdivision Project (State Clearinghouse No. 2008112041)

Dear Mr. Zilm:

These comments are submitted on behalf of **Brentwood Residents for Responsible Development<sup>1</sup>** regarding the Initial Study/Addendum ("Addendum") prepared by the City of Brentwood ("City") for the Sciortino Ranch Subdivision Project ("Project") proposed by New Urban Communities Partners ("Applicant"). The proposed Project would modify the previously approved Sciortino Ranch Project by increasing the number of single family homes from 140 to 331, removing the previously approved multi-family homes, and reserving 8.6 acres along Brentwood Boulevard and Sand Creek Road for future commercial development.

Individual members of Brentwood Residents for Responsible Development, along with their families, may be adversely affected by the potential environmental and public service impacts of the Project. These members live, work, recreate and raise their families in the City of Brentwood and surrounding areas. In addition,

---

<sup>1</sup> Brentwood Residents for Responsible Development is an unincorporated association of labor organizations and individuals including the **International Brotherhood of Electrical Workers Local 302, Plumbers and Steamfitters Local 159, and Sheet Metal Workers Local 104**, and their members and their families who live, work, and recreate in the City of Brentwood and surrounding areas. Individual members of Brentwood Residents for Responsible Development include Chad Andrews and Dustin Cabihi.

September 28, 2015

Page 2

the labor organizations and individual members of Brentwood Residents for Responsible Development have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

We reviewed the Addendum as well as the Environmental Impact Report (“EIR”) prepared by the City in 2009 for the previously approved project. We identified flaws in the Project description and misleading statements regarding what mitigation measures will—or will not—apply to the Project. We also identified project changes, changed circumstances, and new information that require the City to prepare a subsequent or supplemental EIR to address impacts related to air quality, greenhouse gas emissions, hazards, public services, noise, and transportation. We identify these substantial changes and new information below in order to enable the City to comply with CEQA and reduce the Project’s significant impacts before the City approves the Project.

Issuing permits and entitlements for the Project without preparing a subsequent or supplemental EIR would compromise the environment and violate CEQA. The City simply lacks substantial evidence to support its decision that a subsequent or supplemental EIR is not required.

**I. INSUFFICIENT ACCESS TO AND TIME TO REVIEW PROJECT INFORMATION, AND NEED TO SUBMIT SUPPLEMENTAL COMMENTS**

On June 25, 2015, we submitted a written request to the City for access to Project-related documents pursuant to the California Public Records Act. Our records indicate that the City did not respond to this request. On September 23, 2015, we submitted a second Public Records Act request to the City, and have not yet received a response.

On Friday, September 25, 2015, just four days before the Planning Commission’s September 29th hearing on the Project, the City published a 303-page Staff Report (with attachments), which contains proposed revisions to the zoning

September 28, 2015

Page 3

ordinance for the Project site (Planned Development No. 55, Municipal Code Chapter 17.505), and newly proposed Design Guidelines for the Project site.

Due to the City's failure to respond to our initial request for public records, and the last-minute publication of a revised zoning ordinance and Design Guidelines for the Project, we have not had sufficient time to review the relevant Project information and make informed conclusions regarding the potentially significant and unmitigated impacts of the Project. Accordingly, we reserve the right to revise and/or supplement these comments prior to the City Council's final decision regarding the Addendum and Project entitlements.

## II. OVERVIEW OF CEQA REQUIREMENTS

CEQA has two basic purposes, neither of which is satisfied by the Addendum and the previously certified EIR. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.<sup>2</sup> The EIR is the "heart" of this requirement.<sup>3</sup> 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."<sup>4</sup>

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."<sup>5</sup> An adequate EIR must contain facts and analysis, not just an agency's conclusions.<sup>6</sup> CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.<sup>7</sup>

---

<sup>2</sup> 14 Cal. Code Regs. § 15002(a)(1) ("CEQA Guidelines"); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354; *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>3</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

<sup>4</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>5</sup> CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

<sup>6</sup> See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

<sup>7</sup> Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).

September 28, 2015

Page 4

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.<sup>8</sup> If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.<sup>9</sup> CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.<sup>10</sup> Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements or other legally binding instruments.<sup>11</sup> A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>12</sup> This approach helps "insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug."<sup>13</sup>

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering or other appropriate process can be used for analysis of the project's environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.<sup>14</sup> The initial study must contain the following:

---

<sup>8</sup> CEQA Guidelines § 15002(a)(2) and (3); *Berkeley Jets*, 91 Cal.App.4th at 1354; *Laurel Heights Improvement Ass'n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

<sup>9</sup> Pub. Resources Code §§ 21002.1(a), 21100(b)(3).

<sup>10</sup> *Id.*, §§ 21002-21002.1.

<sup>11</sup> CEQA Guidelines § 15126.4(a)(2).

<sup>12</sup> *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal.App.3d 692, 727-28 (a groundwater purchase agreement found to be inadequate mitigation because there was no record evidence that replacement water was available).

<sup>13</sup> *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

<sup>14</sup> CEQA Guidelines §§ 15060, 15063(c).

September 28, 2015

Page 5

- (1) A description of the project, including the location of the project;
- (2) An identification of the environmental setting;
- (3) An identification of environmental effects...provided that the entries...are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or a reference to another information source such as...an earlier EIR... A reference to another document should include, where appropriate, a citation to the page or pages where the information is found;
- (4) A discussion of the ways to mitigate the significant effects, if any;
- (5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls; and
- (6) The name of the person or persons who prepared or participated in the Initial Study.<sup>15</sup>

CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.<sup>16</sup> A negative declaration may be prepared instead of an EIR when, after preparing an initial study, a lead agency determines that a project "would not have a significant effect on the environment."<sup>17</sup>

When an EIR has been prepared for a project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when one or more of the following events occur:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report;

---

<sup>15</sup> CEQA Guidelines § 15063(d) (emphasis added).

<sup>16</sup> See, e.g., Pub. Resources Code § 21100.

<sup>17</sup> *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597; Pub. Resources Code § 21080(c).

September 28, 2015

Page 6

- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; or
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.<sup>18</sup>

The CEQA Guidelines explain that the lead agency must determine, on the basis of substantial evidence in light of the whole record, if one or more of the following events occur:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of new significant effects or a substantial increase in the severity of previously identified effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
  - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
  - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

---

<sup>18</sup> Pub. Resources Code § 21166.

- (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
- (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.<sup>19</sup>

Only where *none* of the conditions described above calling for preparation of a subsequent or supplemental EIR have occurred may the lead agency consider preparing a subsequent negative declaration, an addendum, or no further documentation.<sup>20</sup> In any case, however, the decision must be supported by substantial evidence.<sup>21</sup> Here, the City's decision not to prepare a subsequent or supplemental EIR for the Project is not supported by substantial evidence.

### III. THE CITY CANNOT RELY ON THE ADDENDUM AND THE PREVIOUS EIR FOR PROJECT APPROVAL

#### A. Description of the Project and Mitigation Are Flawed

1. *Development Assumptions on Commercial Parcels Not Supported by Substantial Evidence*

On April 21, 2009, the City Planning Commission approved Tentative Subdivision Map 9152 for the Sciortino Ranch Project, which subdivided a 65-acre parcel into 11 parcels.<sup>22</sup> Among these were Parcel 1 and Parcel 6, which corresponded to the 5.5-acre Subarea 2A and the 9.4-acre Subarea 1, respectively.<sup>23</sup>

---

<sup>19</sup> CEQA Guidelines § 15162(a)(1)-(3).

<sup>20</sup> CEQA Guidelines § 15162(b).

<sup>21</sup> *Id.* §§ 15162 (a), 15164(e), and 15168(c)(4).

<sup>22</sup> Planning Commission Minutes, April 21, 2009, Item 3, *available at*: [http://brentwood.granicus.com/MediaPlayer.php?view\\_id=28&clip\\_id=987](http://brentwood.granicus.com/MediaPlayer.php?view_id=28&clip_id=987)

<sup>23</sup> Planning Commission Staff Report, April 21, 2009, Item 3, pp. 9; Draft EIR for Sciortino Ranch, Feb. 2009, Figures 3-3 and 3-4.

September 28, 2015

Page 8

These parcels were zoned for commercial, retail, office, and institutional use, and the zoning ordinance that the City adopted for the Project allowed for mid-size retailers, supermarkets, pharmacies, gas stations, restaurants, offices, institutions (including public institutions), and other commercial uses.<sup>24</sup> The EIR for the project assumed that these parcels would accommodate 195,258 square feet of retail and office development.<sup>25</sup>

The Project Applicant now proposes new Subareas 1 and 2, comprising eight separate commercially zoned parcels and covering approximately 8.6 acres (375,000 square feet) within the former Subareas 1 and 2A. The City's Staff Report describes how the proposed zoning for these parcels, with the exception of a new prohibition on large retail stores, is "designed with a tremendous amount of flexibility in terms of what uses are appropriate," and "the majority of uses are proposed as permitted uses, rather than conditionally permitted uses, essentially precluding the need for conditional use permits and other associated regulations."<sup>26</sup> The Staff Report further explains that so long as development on the Project site complies with the newly proposed Design Guidelines, the City will not even require design review approval.<sup>27</sup>

The newly released Design Guidelines for the Project site allow commercial buildings up to three stories in height on the eight new commercial parcels.<sup>28</sup> Despite the fact that the Applicant has not submitted any development plans for these parcels, and the City has proposed very flexible zoning and development standards with few (if any) requirements for future review, the Addendum makes the unsupported assumption that these parcels will be developed with no more than 120,000 square feet of retail and office space, which is 32% of the total commercial site area (assuming only one-story developments are constructed).

Without any concrete development proposals for the eight newly created commercial parcels, for purposes of CEQA review the City should assume that the parcels will be developed to their maximum land use intensity. There are no Floor Area Ratio ("FAR") restrictions on the site. Even if the FAR of the developed parcels was only 0.5 to 1, this would equate to 187,500 square feet of new

---

<sup>24</sup> Municipal Code § 17.505.008.

<sup>25</sup> Draft EIR, Table 3-1.

<sup>26</sup> City Staff Report for September 29, 2015 Planning Commission meeting, Agenda Item 4 ("Staff Report"), p. 12.

<sup>27</sup> *Ibid.*

<sup>28</sup> Project Design Guidelines, p. 18.



commercial use, which would substantially increase the environmental impacts of the Project. If multi-story buildings are constructed the square footage of development will be even higher. The City lacks substantial evidence to support its assumption that the newly created commercial parcels will be developed with only 120,000 square feet of commercial uses (0.32 FAR). Without any proposed development plans or regulatory limitations on the square footage of future commercial development, this Project assumption is inadequate.

2. *Mitigation Measures Not Adequately Described or Incorporated Into a Revised Mitigation Monitoring and Reporting Plan*

The Addendum is very unclear about what mitigation measures will be imposed on the Project. Moreover, the Staff Report describes a "revised Mitigation Monitoring and Reporting Plan" (or "MMRP") that would apply to the Project, but no revised MMRP is included in the documents to be approved by the City.<sup>29</sup> The City's failure to clearly identify the mitigation measures that will apply to the Project, and propose a revised MMRP that identifies how such measures will be monitored and enforced is a violation of CEQA.

Examples of previously adopted measures that the Addendum describes (and in certain instances revises) but indicates would not apply to the Project include Mitigation Measures 4.2-2(a) (bicycle lanes required in each Project sub-area), 4.5-5 (specifications for parks), 4.9-8 (requiring an agreement with the City regarding parks), 4.3-1 (traffic improvements), 4.3-7(f) (traffic improvements), and 4.9-1(b) (fair share fees for offsite water infrastructure).

Examples of previously approved measures that are substantially revised in the Addendum include Mitigation Measures 4.4-2(b) (elements of transportation management plan), 4.6-8 (identification of existing trees to be protected or replaced), VIII-6 (drainage plan approval by flood control district), 4.5-2 (noise shielding for outdoor activity areas), 4.5-3 (required noise study and sound ratings), 4.3-2 (traffic improvements), 4.3-7 (traffic improvements), 4.3-7(d) (traffic fair share fees), and 4.3-7(f) (traffic study).

---

<sup>29</sup> Staff Report, Draft Resolution 15-043.

In many instances, the Addendum does not provide any information or analysis to support the removal or revision of these mitigation measures. This approach is inadequate. A CEQA Addendum is only appropriate where “minor technical changes or additions” to a previous EIR are required. The revision or deletion of more than a dozen previously adopted mitigation measures for a project is not a minor or technical change. The public must be given a full and fair opportunity to review and comment upon the proposed changes to the Project’s required mitigation measures, and the City must clearly delineate its proposed revisions in a revised MMRP.

#### **B. Air Quality Impacts**

The City indicates that one of the primary purposes of the Addendum is to address “changes to statutes and regulations that have occurred since adoption of the Final EIR.”<sup>30</sup> The Addendum, however, applies updated statutes and regulations in an arbitrary way, by acknowledging only those regulatory changes that may *reduce* the Project’s mitigation obligations (such as recent changes to traffic impacts methodology), while failing to acknowledge and apply regulatory changes that would *increase* the Project’s mitigation obligations (such as air quality and greenhouse gas thresholds and mitigation, and updated survey protocols for biological resources such as burrowing owls<sup>31</sup>).

For example, the Addendum indicates that Mitigation Measure 4.4-1, which was included in the 2009 EIR, includes “all feasible measures for construction emissions identified by the Bay Area Air Quality Management District” (“BAAQMD”)<sup>32</sup> This is incorrect. The BAAQMD requires new development projects to implement all of the measures listed in Table 8-1 of its current CEQA guidelines.<sup>33</sup> These measures require water sweepers and prohibit dry sweepers (the Project mitigation only states that water sweepers are “preferred”), limits idling time for construction equipment and requires signage at the construction site, requires proper maintenance of equipment engines and certification by a visible

---

<sup>30</sup> Addendum, p. 2.

<sup>31</sup> See California Department of Fish and Wildlife, Staff Report on Burrowing Owl Mitigation (2012), available at: [https://www.dfg.ca.gov/wildlife/nongame/survey\\_monitor.html](https://www.dfg.ca.gov/wildlife/nongame/survey_monitor.html)

<sup>32</sup> *Ibid.*, p. 27.

<sup>33</sup> BAAQMD 2011 CEQA Guidelines, p. 8-3 (“BAAQMD Guidelines”), available at: [http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines\\_May%202011\\_5\\_3\\_11.ashx](http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines_May%202011_5_3_11.ashx)

September 28, 2015

Page 11

emissions inspector, and public signage with a phone number for dust complaints.<sup>34</sup> Mitigation Measure 4.4-1 does not meet the minimum requirements of the BAAQMD.

Regarding the Project's operational emissions, the 2009 EIR concluded that the project would result in "significant and unavoidable" impacts to air quality, even with mitigation incorporated, and the Addendum concludes the same. Rather than updating the proposed mitigation to reflect new guidance for transportation demand management,<sup>35</sup> however, the Addendum *removes* previously required mitigation.

For example, Mitigation Measure 4.4-2(a) provides that for each sub-area within the Project site, the tentative map or site plan shall show bicycle lanes or paths, subject to approval by the Community Development Director and the City Engineer. The purpose of this measure is to reduce the Project's impacts on air quality by ensuring that each area of the Project includes a network of bicycle paths to encourage alternative modes of transportation.

The Addendum states that Mitigation Measure 4.4-2(a) "would not apply because bicycle and pedestrian facilities are provided on project plans." This is incorrect, and is contradicted by other statements and figures in the record. The proposed Vesting Tentative Map for the Project that is shown in Exhibit 3 of the Addendum and also attached to the City's Staff Report does not show bicycle lanes and paths throughout the Project area's 15 acres of internal roadways and 5 acres of parks. Furthermore, the revised Design Guidelines for the Project do not require any bicycle lanes on internal Project roads or bicycle paths through the Project's park areas. The City improperly and arbitrarily removed this mitigation requirement from the originally approved project EIR.

The Addendum also removes certain provisions from Mitigation Measure 4.4-2(b), including the requirement that a transportation management plan be approved prior to the approval of any site plan, and that the transportation management plan include design features to facilitate transit access, and provide on-site child care or contributions to off-site child care within walking distance.<sup>36</sup> Without a regulatory trigger for the transportation management plan, it appears

---

<sup>34</sup> *Ibid.*

<sup>35</sup> See *ibid.*, p. 4-12.

<sup>36</sup> Addendum, pp. 27-28.

that the residential component of the Project could be constructed without a transportation management plan in place. The City lacks substantial evidence to support the proposed changes to Mitigation 4.4-2(b), and has arbitrarily failed to incorporate updated regulatory guidance to address the Project's significant air quality impacts.

### C. Impacts from Greenhouse Gas Emissions

The EIR made some effort to calculate the estimated carbon dioxide ("CO<sub>2</sub>") emissions from vehicles associated with the originally proposed project, but ultimately concluded that a determination of environmental impacts from greenhouse gas ("GHG") emissions would be "speculative." The EIR therefore declined to make a finding of significance:

To determine whether the proposed project would have a significant impact associated with climate, in light of the fact that significance thresholds for such an impact do not exist, would be speculative and substantial evidence is not available at present to legitimately evaluate the issue in this EIR. Therefore, consistent with CEQA Guidelines Section 15145, because the City has made an effort to fully explore the potential for climate change and has determined that the conclusion would be speculative, *a determination of significance cannot be made.*<sup>37</sup>

The EIR included several "suggestions" for mitigating potential GHG impacts, but did not require any binding and enforceable mitigation measures.<sup>38</sup>

The Addendum acknowledges that "at the time of Final EIR certification in 2009, a local or statewide greenhouse gas threshold had not yet been adopted."<sup>39</sup> The Addendum assumes that the Project would not result in any GHG emissions beyond those disclosed and analyzed in the EIR, and therefore requires no mitigation for GHG impacts. However, the Addendum misleads the reader by stating that the EIR found "less than significant impacts" from GHG emissions.<sup>40</sup>

---

<sup>37</sup> Draft EIR, p. 4.4-25 (emphasis added).

<sup>38</sup> *Ibid.*

<sup>39</sup> Addendum, p. 45.

<sup>40</sup> *Ibid.*

This is incorrect. Instead of making a determination of significance, the EIR invoked CEQA Guidelines Section 15145, which states:

If, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

Under CEQA, a lead agency must prepare a supplemental or subsequent EIR if, at the time a project is revised and re-approved, there is new information of substantial importance showing that the project will have significant effects not discussed in the previous EIR, more severe than shown in the previous EIR, or if there are different mitigation measures or alternatives that would substantially reduce those effects.<sup>41</sup> Here, there are new and more severe impacts from GHG emissions than were discussed in the EIR, and available mitigation not previously discussed. The Addendum's conclusions that the Project will not have a significant GHG impact and will not conflict with any applicable policies or regulations of agencies that oversee GHG emissions, are both incorrect.

In 2010, the Office of Planning and Research ("OPR"), which is the agency responsible for updating the CEQA Guidelines, formally clarified that it is not permissible for lead agencies to conclude that GHG impacts are speculative, as the City did in the EIR. "Lead agencies must analyze the greenhouse gas emissions of proposed projects, and *must* reach a conclusion regarding the significance of those emissions."<sup>42</sup> It is thus no longer adequate for the City to rely on the EIR, which relied on CEQA Guidelines Section 15145, when assessing the potential impacts of the Project's GHG emissions.

Furthermore, the BAAQMD has jurisdiction over the Project, and it has adopted guidelines for lead agencies to analyze the GHG impacts of new developments, plus applicable thresholds of significance, and available mitigation measures.<sup>43</sup> The guidelines specify that the "GHG threshold is based on carbon

---

<sup>41</sup> CEQA Guidelines § 15162(a)(1)-(3).

<sup>42</sup> OPR's website on CEQA and Climate Change, *available at*: [http://www.opr.ca.gov/s\\_ceqaandclimatechange.php](http://www.opr.ca.gov/s_ceqaandclimatechange.php) (emphasis added); CEQA Guidelines § 15064.4.

<sup>43</sup> BAAQMD 2011 CEQA Guidelines ("BAAQMD Guidelines"), *available at*: [http://www.baaqmd.gov/~/\\_media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines\\_May%202011\\_5\\_3\\_11.ashx](http://www.baaqmd.gov/~/_media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines_May%202011_5_3_11.ashx)

dioxide equivalent emissions and not just CO<sub>2</sub>.”<sup>44</sup> The adopted thresholds of significance are 1,100 metric tons of CO<sub>2</sub> equivalent emissions per year, or 4.6 metric tons of CO<sub>2</sub> equivalent emissions per person per year (Project residents and employees).<sup>45</sup>

The EIR estimated that the originally proposed project’s CO<sub>2</sub> emissions from vehicles alone would exceed 46,000 US tons, or 42,000 metric tons.<sup>46</sup> This analysis did not include any calculation of GHG emissions associated with Project construction, gas and electricity consumption, etc. There is clearly a potentially significant unmitigated impact from GHG emissions associated with the Project, and there is available mitigation to offset these potential impacts.<sup>47</sup> The City is required to conduct a GHG analysis of the revised Project, make a determination of significance that is based on substantial evidence, and if necessary, impose available mitigation measures.

#### **D. Hazards Impacts**

The Project design has changed, so that a stormwater retention basin will be excavated in the northeast corner of the Project site, where a natural gas pumping station and pipeline were once located.<sup>48</sup> Development of this area was not approved as part of the previous Vesting Tentative Map, which showed that the land would be retained by Delta Sierra LLC.<sup>49</sup> The EIR did, however, include evidence of soil and groundwater contamination.

The 2007 Environmental Site Assessment prepared to investigate potential hazards on the project site did not directly investigate the natural gas pumping plant in the northeast corner of the site, because it was not proposed for development.<sup>50</sup> However, a 2005 soils investigation report did include soil and groundwater testing in this area, which found diesel hydrocarbons in the soil at levels of 3,100 mg/kg, and gasoline hydrocarbons at levels of 11,000 mg/kg, both well above the environmental health screening level (“ESL”) of 100 mg/kg. Soil

---

<sup>44</sup> *Ibid*, p. i.

<sup>45</sup> *Ibid*, p. 2-2, Table 2-1.

<sup>46</sup> EIR, p. 4.4-23.

<sup>47</sup> See BAAQMD Guidelines, p. 4-11.

<sup>48</sup> Addendum, pp. 13, 15.

<sup>49</sup> EIR, Figure 3-4.

<sup>50</sup> EIR, Appendix J, Site Map.

samples also exceeded the ESLs for benzene, toluene, ethylbenzene, and xylene. Groundwater samples exceeded all of these ESLs by large margins.

Based on this and other data, the 2005 report concluded that “a significant release of petroleum hydrocarbons has occurred to soil and groundwater” and “a dissolved phase hydrocarbon plume has migrated” to surrounding areas:

The release consists of gasoline and diesel range hydrocarbons, apparently well gas condensate which was piped to the storage tanks. The extent of impacted soil above the capillary fringe is relatively well defined based on this investigation; however the extent of impacted groundwater is not yet known.

*Further investigation of the extent of impacted groundwater will be necessary to better understand to what extent groundwater treatment may be needed. Prior to the development of this portion of the property, soil and groundwater remediation will be required, along with a follow-up groundwater monitoring program.<sup>51</sup>*

The EIR briefly described how soil was excavated at the Marsh Creek #2 Dehydration Station, but no further information about follow-up monitoring or agency oversight and approval of these remediation efforts has been provided.<sup>52</sup> The previously documented severe contamination in and around the area of the proposed stormwater treatment basin must be further investigated and mitigated.

Without an adequate investigation and disclosure of the current status of soils and groundwater in and around this site, the proposed excavation of soil and the creation of a stormwater retention basin will create unacceptable risks for construction workers and the public. The public must be informed of these risks and given the opportunity to demand adequate site remediation. The proposed changes to the Project create the potential for new and more significant environmental impacts than previously disclosed and analyzed, and a supplemental or subsequent EIR is required.

---

<sup>51</sup> EIR, attachment to Appendix J, Soil and Groundwater Investigation Report dated December 15, 2005, prepared by AEI Consultants, pp. 9-10 (emphasis added).

<sup>52</sup> EIR, p. 4.8-5.

**E. Noise Impacts**

The Addendum modifies previously adopted mitigation for noise impacts on the Project site, including the following:

Mitigation Measure 4.5-2 would be modified so that shielding of outdoor activity areas on the Project site would only be required on “final” maps or site plans, not tentative maps and plans, as previously required.<sup>53</sup> The only purpose of this change is to allow the Applicant to avoid the previously required 10-foot and 7-foot sound walls along Brentwood Boulevard and Sand Creek Road, as described in the mitigation measure. For example, the Staff Report indicates that site plans will not be required for the Project. The City cannot revise Mitigation Measure 4.5-2 so as to defeat the achievement of sound protection on the Project site, and avoid public review of the required sound protection improvements.

Mitigation Measure 4.5-3 would be modified so that only a “design review application,” rather than a tentative subdivision map, will trigger a required showing of soundproofing. Furthermore, only commercial development applications will require a noise study, rather than all development applications.<sup>54</sup> The clear purpose of these revisions is to avoid the application of this measure to the proposed residential subdivision map. Again, this is improper under CEQA without a supplemental or subsequent EIR.

**F. Impacts to Public Services**

The City’s Addendum proposes a revised version of Mitigation Measure 4.9-8, concerning the provision of recreational park space and the payment of in-lieu park fees.<sup>55</sup> The meaning of the proposed revisions is entirely unclear, because the revisions describe an agreement with the City “in accordance with the originally approved map” for the project, even though the originally approved map will be superseded by the currently proposed Project map. Adding to this uncertainty, the Addendum states that Mitigation Measure 4.9-8 will not apply to the revised Project at all, because the Applicant will include enough park space on the project site:

---

<sup>53</sup> Addendum, p. 65.

<sup>54</sup> *Ibid.*

<sup>55</sup> Addendum, p. 73.



The proposed project would add 1,026 persons to the City's population. Using the City's established park land ratio of 5.0 acres per 1,000 residents, the proposed project would create a demand for 5.1 acres of park land. The project would provide 5.1 acres of park land and, therefore, would achieve the 5.0-acre-per-1,000-residents standard. As such, Mitigation Measure 4.9-8 would not apply, as sufficient park land is included as part of the project. Impacts to parks would be less than significant.<sup>56</sup>

Not only is the revised version of Mitigation Measure 4.9-8 insufficient to address the currently proposed Project, but the proposed Project does not appear to meet the City's requirements of 5 acres of park land per 1,000 residents. The proposed Design Guidelines and related Project maps make clear that the proposed park land within Subareas 4 and 5 on the east side of the Project site will include two large stormwater detention basins, which will be depressed at least five feet below the ground surface and fenced from public use.<sup>57</sup> The Addendum and related Project documents do not disclose the acreage of the stormwater detention basins vis-à-vis the remaining park land, but they appear to take up much of the available open space on the Project site.

Fenced off stormwater depressions do not count as recreational park land, and should not be used to offset existing project mitigation requirements. The City must disclose the actual acreage of park land that will not be included in stormwater retention basins on the Project site, and must impose additional mitigation to offset the Project's failure to provide adequate public open space.

#### **G. Transportation Impacts**

The Draft EIR included eight distinct mitigation measures to be undertaken by the Applicant: (1) eliminate left turns from the westbound approach of the Brentwood Boulevard/Homecoming Way intersection; (2) modify the Brentwood Boulevard/Grant Street/Sunset Road intersection by modifying turn lanes and adding a through lane; (3) eliminate through- and left-turn movements from the westbound approach of the Brentwood Boulevard/Havenwood Avenue intersection; (4) eliminate left turns from the westbound approach of the Brentwood

---

<sup>56</sup> *Ibid.*, pp. 72, 75.

<sup>57</sup> Proposed Project Design Guidelines, p. 4;

Boulevard/Village Drive intersection; (5) add a dedicated right turn lane to the Brentwood Boulevard/Lone Tree Way intersection; (6) eliminate turn movements at the Brentwood Boulevard/Sunrise Drive intersection; (7) install a traffic signal at Brentwood Boulevard and Gregory Lane; and (8) add a southbound right turn lane at the Brentwood Boulevard/Sand Creek Road intersection.<sup>58</sup>

For some of these required measures, the Draft EIR allowed the contribution of fair share payments to the City or to other developers, if the improvement had already been constructed was added to the City's circulation improvement program ("CIP").

The City's Addendum completely changes these mitigation requirements. First, the Addendum appears to misrepresent the text of the transportation mitigation measures that were applied to the Project as a result of the 2009 EIR. These measures may have been changed in the final MMRP that was adopted by the City in 2009, but without reviewing a copy of that MMRP it is not yet possible to determine the extent of this error. The mitigation measures contained in the 2009 Draft EIR are not the same as those presented on pages 80-82 of the Addendum. The City must disclose the exact language of the previously approved mitigation measures and describe all proposed revisions.

Second, the Addendum is entirely unclear about which revised mitigation measures will apply to the Project. The Addendum lists six measures, crosses out the text of one measure, and in the text of the transportation analysis appears to indicate that only one of these measures, revised Mitigation Measure 4.3-2, would apply to the Project.<sup>59</sup> These changes must be clearly identified in a supplemental or subsequent EIR and revised MMRP.

Third, the Addendum and attached Transportation Assessment would alleviate the Applicant from the need to directly undertake any of the approved transportation mitigation measures, as well as the need to contribute payment toward the completion of other measures. For many of the previously required traffic improvements, the Transportation Assessment concludes without discussion that the improvements are "not desirable," do not "seem consistent with other

---

<sup>58</sup> Draft EIR, pp. 2-9 to 2-15.

<sup>59</sup> Addendum, pp. 79-82.

September 28, 2015  
Page 19

planned corridor improvements,” or “could create circuitous travel.”<sup>60</sup> The unsupported elimination of previously required mitigation for the Project is unacceptable. The City must prepare a revised EIR that fully discloses the Project’s potentially significant impacts (using a robust analysis of the full potential development of the commercial parcels), and ensures the implementation of full mitigation for existing Project-related and cumulative traffic impacts in the City of Brentwood.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Ellen Wehr". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ellen L. Wehr

ELW:ljl

---

<sup>60</sup> Addendum, Appendix A, Transportation Assessment, pp. 11-13.