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August 28, 2018

Via Email

Item E.1

Newark Planning Commission Members
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Re: FMC Parcel C - Addendum to the Program
Environmental Impact Report for the Dumbarton Transit
Oriented Development Project (RZ-18-9; TTM-18-16; P-18-8; and
E-18-10)

Dear Chair Aguilar and Planning Commission Members:

We are writing on behalf of Newark Residents for Responsible Development (“Newark Residents”) to urge the Planning Commission to withhold a recommendation on the Addendum to the Program Environmental Impact Report for the Dumbarton Transit Oriented Development Project (“Addendum”) and related project entitlements and approvals for the FMC Parcel C Project (“Project”) until a subsequent Environmental Impact Report (“EIR”) is prepared. The Parcel C Project Owner, LLC (“Applicant”) is proposing to develop a 193-unit residential project on an approximately 17.4 acre site within the Dumbarton Transit Oriented Development (“TOD”) Specific Plan Area on the western edge of the City. The Project site is located within the City of Newark, west of the intersection of Hickory Street and Enterprise Drive on Assessor’s Parcel Numbers 537-852-1-2, 537-852-2-7, and 537-852-2-8.

4361-001j

I. Statement of Interest

Newark Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety standards and environmental impacts associated with Project development. Newark Residents includes Jesse Chavez, Howard Neal, Robert Wetherall, the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 342, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, and their members and families; and other individuals that live and/or work in the City of Newark and Alameda County.

Individual members of Newark Residents and the affiliated organizations live, work, recreate and raise their families in the City of Newark and Alameda County. These individuals would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. Thus, they will be first in line to be exposed to any health and safety hazards that exist onsite. Newark Residents have a strong interest in enforcing the State's 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.

II. Summary of Initial Review

We conducted an initial review of the Addendum and Project-related documents with the assistance of senior ecologist Scott Cashen and air quality consultants at Soil Water Air Protection Enterprise ("SWAPE"). Based on our initial review, we identified several deficiencies in the City's analysis of the Project's impacts to biological resources, air quality and greenhouse gas emissions. Because the Addendum was released just six days prior to the Planning Commission hearing on the Project, we have not yet had a sufficient opportunity to fully evaluate the analysis contained in the Addendum and related documents. Nevertheless, even our limited review of the Addendum, the Environmental Impact Report for the Dumbarton Transit Oriented Development Specific Plan ("Specific Plan Program EIR"), and supporting documentation reveal a number of critical errors which render the City's conclusion that no subsequent EIR is required unsupported.

Instead, we found substantial changes in the circumstances and new information that was not known and could not have been known when the Specific Plan Program EIR was certified, showing new or more severe significant impacts and new feasible mitigation measures. Thus, the City is required to prepare a subsequent EIR in this case.

We reserve the right to submit further comments once we have had the opportunity to fully analyze the Addendum and related documents. However, in anticipation of tonight's hearing on the Project, we wish to bring the following issues to your attention.

First, in the area of biological resources, senior ecologist Scott Cashen identified the following deficiencies in the City's analysis in the Addendum, which relies on the Specific Plan Program EIR:

- A.1 • The Addendum and Biological Resources Technical Report dated November 2017 ("BTR") improperly conclude that the Project site lacks potential habitat for the northern harrier,¹ despite photographs in the salt marsh harvest mouse report that depict habitat conditions associated with the northern harrier.
- A.2 • The Addendum and BTR lack substantial evidence for the conclusion that the Project site lacks potential habitat for the California clapper rail, as no surveys for this species were conducted.²
- A.3 • The Addendum and BTR fails to disclose potential habitat of the loggerhead shrike, a California Species of Special Concern, which has potential to occur at the site.
- A.4 • The Addendum and BTR lack substantial evidence that wetlands at the Project site do not provide potential habitat for vernal pool fairy shrimp and/or tadpole shrimp.

¹ Biological Technical Report for the FMC Parcel C Project (Nov. 2017), Helix Environmental Planning, Inc., Appendix C, p. C-5.

² Addendum at p. 58.

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- A.5 • The Addendum and BTR lack substantial evidence that special-status plants were evident and identifiable at the time site surveys were performed.
- A.6 • New information demonstrates the Project would introduce conditions favorable to the brown-headed cowbird – which are a threat to the Alameda song sparrow and saltmarsh common yellowthroat. No analysis or mitigation of this impact was provided in the Addendum.
- A.7 • New information demonstrates the Project would result in numerous new trees in an area where they did not historically occur. The new trees will provide perch sites for avian predators, which may result in potentially significant impacts to special-status species that are prey.
- A.8 • The Addendum references “prohibitions on feline pets and feral cat stations . . .” to support the conclusion that impacts to Alameda song sparrow, saltmarsh common yellowthroat, and other nesting passerines would be less than significant, but fails to incorporate this language as an enforceable mitigation measure.³

Second, with regard to the Project’s air quality impacts, SWAPE identified the following errors while reviewing the CalEEMod emissions model output files, which result in inaccurate emissions calculations:

- B.1 • The CalEEMod model failed to include emissions from the demolition of retaining walls, concrete pads, concrete structures, and asphalt, as well as the associated hauling truck trips, which the Addendum acknowledges will occur when preparing the site for construction.⁴
- B.2 • The CalEEMod model relies on an incorrect land use type, which fails to account for emissions associated with the Project’s 512 parking spaces, and instead assumes 196,020 square feet of “Other Non-Asphalt Surfaces.”⁵

³ Addendum at p. 61.

⁴ Addendum at pp. 15-16.

⁵ Addendum at p. 128.

- B.3 Third, SWAPE found that the Addendum's analysis of the Project's greenhouse gas emission is flawed, and new information shows that the Project may result in significant greenhouse gas impacts. SWAPE's review of the Addendum found that the estimated GHG emissions per service population disclosed in the Addendum do not account for the Project's amortized construction GHG emissions.
- B.4 In addition, SWAPE's review of the CalEEMod output files found that the Project's proposed residential land uses will generate just 569 residents, as opposed to the 600 assumed in the Addendum.⁶ When a service population of 569 people is used, and, when a total GHG emissions estimate of 2,804 MT CO₂e/yr is used, the Project would emit 4.93 MT CO₂e/sp/yr, which exceeds the Bay Area Air Quality Management District's threshold of significance of 4.6 MT CO₂e/sp/yr.⁷ This constitutes new information that the Project will have a significant effect not discussed in the Specific Plan Program EIR.

The California Environmental Quality Act serves two fundamental purposes. 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.⁸ To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."⁹

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.¹⁰ If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.¹¹ Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, it must ensure that

⁶ Compare Addendum, Appendix C, p. 61 with Addendum p. 38.

⁷ California Environmental Quality Act Air Quality Guidelines, Bay Area Air Quality Management District (May 2017) at Appendix D, p. D-7.

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

⁹ 14 CCR, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

¹⁰ 14 CCR, § 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.

¹¹ PRC, §§ 21002.1(a), 21100(b)(3).

mitigation measures are fully enforceable through permit conditions, agreements or other legally binding instruments.¹²

In cases such as this, where an EIR has previously been prepared that could apply to the project, CEQA requires the lead agency to conduct subsequent or supplemental environmental review when 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;

...

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 an Addendum.¹³ The City's decision not to prepare a subsequent EIR must be supported by substantial evidence.¹⁴

¹² 14 CCR, § 15126.4(a)(2).

¹³ 14 CCR, § 15162(b).

¹⁴ *Id.* §§ 15162 (a), 15164(e), and 15168(c)(4).

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III. Conclusion

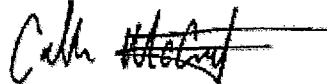
As outlined above, our limited review of the Addendum and supporting documents reveal that the City failed to satisfy the mandates of CEQA in evaluating Project impacts. The Addendum lacks fundamental information on the existing conditions of biological resources at the site which are necessary to inform the decisionmakers and the public about the environmental impacts of the Project. The Addendum also fail to accurately disclose, analyze, and mitigate changed circumstances and new information regarding Project-specific impacts to biological resources, air quality, and climate change, which are new or more severe than impacts previously analyzed in the Specific Plan Program EIR.

For these reasons, we urge the Planning Commission to withhold a recommendation on the Addendum and entitlements and approvals for the Project until after the City prepares a subsequent environmental impact report to fully disclose and analyze the Project's environmental impacts.

Again, we reserve the right to submit further comments once we have had the opportunity to fully analyze the Addendum and related documents.

Thank you for considering these comments.

Sincerely,



Collin S. McCarthy

CSM:lj1