Letter 1

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AGENDA ITEM 5.02

Via Email and Hand-Delivery

Planning Commission Chair Erik Bjorklund
and Planning Commissioners
City of Livermore
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Steve Stewart, Planning Manager
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Re: Legacy Livermore – Downtown Design Review (DDR 17-012); Tentative Parcel Map 10757 (SUB 17-008); Certificate of Appropriateness (COA 17-019); and Tree Removal (TREE 17-006)

Dear Chair Bjorklund, Commissioners and Mr. Stewart:

Please accept these comments on behalf of Livermore Residents for Responsible Development regarding the Legacy Livermore project ("Project"). The Applicant, Legacy Partners, is seeking the following Project approvals:

- Downtown Design Review (DDR 17-012),
- Tentative Parcel Map 10757 (TPM 10757),
- Subdivision (SUB17-008),
- Certificate of Appropriateness (COA17-019), and
- Tree Removal (TREE17-006) (collectively, "Project Approvals").

The Project includes construction of a mixed use development consisting of two buildings that, together, contain 222 apartments and approximately 14,000 square feet of ground-floor retail space. The Project would also demolish four existing buildings that are more than 50 years old and remove existing on-site trees. The

Project is proposed to be located at 934-1962 First Street and 57-59 South L Street in downtown Livermore.

The City prepared a California Environmental Quality Act ("CEQA") Infill Environmental Checklist ("Checklist") and Mitigated Negative Declaration ("MND"), pursuant to Section 21094.5 of the Public Resources Code ("PRC") and Section 15183.3 of the CEQA Guidelines.[1] As explained more fully below, the City lacks substantial evidence to support its air quality and public health impact analyses. Moreover, substantial evidence exists that the Project will result in significant impacts. Therefore, the Livermore Planning Commission may not adopt a resolution certifying the MND and may not grant any Project Approvals until an infill Environmental Impact Report ("EIR") is prepared that adequately analyzes the Project's significant impacts and incorporates all feasible mitigation measures to minimize the impacts.

We reviewed the Checklist/MND for the Project with the assistance of air quality engineer, Phyllis Fox, Ph.D.. Dr. Fox's attached technical comments and *curricula vitae* are submitted in addition to the comments in this letter.[2] Accordingly, they must be included in the Project's record.

I. STATEMENT OF INTEREST

Livermore 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 impacts of the Project. The association includes: City of Livermore residents Brian Werner, Russell White and Jeff Conger; 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 their families; and other individuals that live and/or work in the City of Livermore and Alameda County.

Individual members of Livermore Residents and the affiliated labor organizations live, work, recreate and raise their families in Alameda County,

[1] Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs., §§ 15000 et seq. ("CEQA Guidelines").
[2] **Exhibit A**, Phyllis Fox, PhD, PE Comments on the Infill Checklist/Mitigated Negative Declaration for the Legacy @ Livermore Project (March 5, 2018) (hereinafter "Fox Comments"); **Exhibit 1 to Exhibit A,** Phyllis Fox, Ph.D, PE Curricula Vitae.

including the City of Livermore. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. Accordingly, they will be first in line to be exposed to any health and safety hazards that exist onsite. Livermore Residents has 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.

II. AN INFILL EIR IS REQUIRED

The basic statutory goals of CEQA are to, among others, inform governmental decisionmakers and the public about the potential, significant effects of a project and to identify the ways that environmental damage can be avoided or significantly reduced through the environmental review process.[3] Only certain projects are eligible for streamlining of the environmental review process.[4] For infill projects, the lead agency must evaluate if a Project is eligible for infill streamlining and must support its determinations with "enough relevant information and reasonable inferences from this information to support a conclusion, even though other conclusions might also be reached. (See Section 15384 [defining substantial evidence])."[5] Infill streamlining does not permit a lead agency to avoid preparing an EIR. Pursuant to 15183.3, subdivision (d)(2)(C):

> If the infill project would result in new specific effects or more significant effects, and uniformly applicable development policies or standards would not substantially mitigate such effects, *those effects are subject to CEQA*. With respect to those effects that are subject to CEQA, the lead agency *shall prepare an infill EIR* if the written checklist shows that the effects of the infill project would be potentially significant.[6]

The courts will use an "abuse of discretion" standard of review when evaluating a lead agency's determination regarding whether the infill project will

[3] CEQA Guidelines, § 15002(a).
[4] *See* Pub. Resources Code, § 21094.5; CEQA Guidelines, § 15183.3
[5] CEQA Guidelines, § 15183.3(d).
[6] CEQA Guidelines, § 15183.3(d)(2)(C) (emphasis added).

cause a new specific effect that requires additional review under CEQA. As the courts have explained, a prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the [environmental review] process."[7]

With respect to this Project, the City's Checklist/MND does not contain enough relevant information that would enable to City to support its conclusions, or to inform decisionmakers and the public about the Project's effects. Thus, the City would abuse its discretion if it relied on this legally deficient Checklist/MND. Moreover, substantial evidence exists that the Project would result in new specific, significant effects that would not be substantially mitigated by uniformly applicable development policies.[8] The lead agency must prepare an infill EIR to analyze those effects.[9] 1-1

III. THE PROJECT WILL CAUSE NEW SPECIFIC SIGNIFICANT EFFECTS FROM CONSTRUCTION EMISSIONS

This Project will result in new specific effects from construction emissions. A new specific effect is one "that was not addressed in the prior EIR and that is specific to the infill project or the infill project site."[10] 1-2

Here, the prior EIR is the Livermore General Plan and Downtown Specific Plan EIR (SCH No. 2003032038) ("PEIR") that was certified in 2003. The PEIR found that construction emissions would be less than significant on a plan-level.[11] The PEIR analyzed "regional" air quality impacts and did not analyze site-specific information for subsequent projects.[12] The PEIR set forth basic emissions-reducing construction measures for all projects, and left open the possibility that further

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[7] *Berkeley Jets*, *supra*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.
[8] *See* CEQA Guidelines, § 15183.3(e).
[9] CEQA Guidelines, § 15183.3(e).
[10] CEQA Guidelines, § 15183.3(d)(1)(C).
[11] PEIR, p. 156.
[12] PEIR, p. 153; Appendix E-1 to PEIR, "Air Quality Regional Emissions (Years 2002 and 2025)"

emissions reductions may be necessary for *specific* projects.[13] Needless to say, this Project's *site-specific* information (*e.g.*, construction schedule, truck trips) was not available at the time and could not have been analyzed in the nearly 15-year-old *plan-level* PEIR.

Thus, the City analyzed this Project's *site-specific* air quality impacts from construction in the Checklist/MND. The City compared the Project's emissions to the Bay Area Air Quality Management District's ("BAAQMD") "*project-level* thresholds of significance."[14] As the Checklist/MND prescribes: "[t]o meet the project-level threshold of significance for construction-related criteria air pollutant and precursor impacts, the project must emit no more than 54 pounds/day ("lbs/day") of […] nitrogen oxides (NOx) and […] no more than 82 lbs/day of exhaust-related PM10."[15]

The City found that the Project's site-specific construction emissions would not exceed the applicable thresholds. The City then concluded that the air quality impact "would be less than significant and would not be more significant than what has already been analyzed."[16]

As discussed in further detail below, the City's conclusion is not supported by substantial evidence. The PEIR analyzed *regional*, *plan-level* air quality impacts and did not analyze impacts from site-specific emissions. Therefore, the City's conclusion that the air quality impact "would not be more significant than what has already been analyzed" is unsupported and meaningless.

1-2 cont.

Further, substantial evidence shows that this Project includes two new specific effects —NOx and PM10 construction emissions' impacts — that were not addressed in the PEIR and that are specific to the infill project. Based on Dr. Fox's substantial evidence, these new specific effects are significant because they exceed thresholds of significance and are not substantially mitigated by uniformly applicable development policies or standards.

[13] PEIR, p. 156.
[14] Checklist/MND, p. 4.0-6. (emphasis added)
[15] Checklist/MND, p. 4.0-6.
[16] Checklist/MND, p. 4.0-8 (emphasis removed).
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As a result, the City must prepare an infill EIR to analyze the Project's new specific, significant effects that are not substantially mitigated.

A. The City's Construction Emissions Modeling is Flawed.

To support its less than significant conclusion, the City conducted CalEEMod version 2015.3.2 modeling. The CalEEMod outputs are included in Appendix AQ to the Checklist/MND.[17] However, as Dr. Fox explains, the CalEEMod is not sufficient for calculating emissions from the Project's construction activities.[18] In particular, the CalEEMod is not sufficient to calculate fugitive dust and other emissions' sources from construction activities. 1-3 1-4

According to Dr. Fox, the City's CalEEMod contains the following deficiencies. First, the CalEEMod is a "black box," where the actual emission calculations are not available to the user or review. For example, the Project's CalEEMod does not display individual calculations from fugitive dust activities, but rather groups the output by site location, activity, and year without disclosing any emissions calculations.[19] 1-5

Second, the CalEEMod does not have emission calculation methodologies for many of the construction activities. For example, the CalEEMod does not have the ability to calculate fugitive dust emissions from wind erosion.[20] 1-6

Third, the CalEEMod uses an inappropriate unpaved road emission factor in calculating fugitive dust emissions from onsite hauling, grading, and other activities. As Dr. Fox writes in her letter "[t]hese are the most significant source of PM10 and PM2.5 emissions during construction activities."[21] The emission factor the CalEEMod uses is for vehicles that weigh between 1.5 and 3.0 tons.[22] The appropriate emissions factor is for trucks that weigh from 2 to 290 tons.[23] In using 1-7

[17] Checklist/MND, p. 4.0-8.
[18] Fox Comments, p. 2.
[19] Fox Comments, p. 2.
[20] Fox Comments, p. 2.
[21] Fox Comments, p. 2.
[22] Fox Comments, p. 2.
[23] Fox Comments, p. 2.

the wrong unpaved road emissions factors, the CalEEMod underestimates fugitive PM10 and PM2.5 emissions.[24] 1-7 cont.

Fourth, the CalEEMod does not include any fugitive PM emissions from unpaved on-site haul roads.[25] 1-8

Fifth, the CalEEMod files in Appendix AQ to the Checklist/MND exclude the input files, thus preventing meaningful review.[26] 1-9

For the five reasons described above, the City's CalEEMod is flawed and does not constitute substantial evidence to support the City's conclusion. The City's CalEEMod does not provide support for its calculations and fails to include all emissions sources. For other emissions calculations, it has applied the wrong emissions factor. Consequently, the City relied on incomplete, wrong or irrelevant information to support its air quality conclusion. The City lacks substantial evidence to support its air quality analysis. 1-10

B. New Specific Significant Effect from NOx Emissions.

In addition to the general flaws in the air quality modeling discussed above, the Checklist/MND failed to accurately calculate the NOx emissions, because the City underestimated the number of vehicle trips and the length of trips. Construction-related NOx emissions occur from exhaust emissions from workers, vehicle trips and construction equipment. When NOx emissions are correctly calculated, the Project exceeds significance thresholds. Additionally, according to Dr. Fox, the uniformly applicable construction standards would not substantially mitigate the Project's significant NOx emissions. 1-11

1. The City Fails to Accurately Calculate Site-Specific NOx Emissions.

The PEIR did not analyze site-specific construction impacts from NOx emissions; and, the Checklist/MND does not accurately calculate the site-specific NOx emissions. Because the City has not accurately analyzed site-specific NOx emissions from construction, the City lacks substantial evidence that "*all* estimated

[24] Fox Comments, p. 2.
[25] Fox Comments, p. 3.
[26] Fox Comments, p. 3.

construction-generated criteria pollutant and precursor emissions would be below the BAAQMD thresholds of significance" for this Project.[27] **1-11 cont.**

First, the Checklist/MND's CalEEMod underestimated the number of vehicle trips.[28] The CalEEMod requires the user to input the number of trips per day.[29] According to Dr. Fox, the Checklist/MND's CalEEMod improperly input the number of average daily round rips, rather than the number of average daily trips.[30] **1-12**

Second, the Checklist/MND assumed trip lengths would be 10.8 miles for workers, 7.30 miles for venders, and 20.0 miles for hauling.[31] These assumptions are unsupported in the Checklist/MND, and there are no measures that would limit trip lengths to the assumed distances.[32] **1-13**

2. *Substantial Evidence Shows that Total PM10 Emissions Would be Significant.* **1-14**

Dr. Fox demonstrates that the Project's site-specific NOx construction emissions are underestimated and significant.[33]

Based on the number of vehicle trips error, the City's estimate of emissions associated with construction worker commuter trips, vendor vehicles, and hauling vehicles are half of what they should be.[34] By doubling the Checklist/MND's reported NOx emissions, Dr. Fox finds that the NOx emissions are 97.8 lbs/day.[35] Thus, the NOx emissions exceed BAAQMD's significance threshold of 54 lbs/day.[36] **1-15**

With respect to the second flaw, trip lengths, according to Dr. Fox, these assumed distances are unreasonably small and unsupported. Consequently, the NOx emissions are underestimated. **1-16**

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[27] Checklist/MND, p. 4.0-8.
[28] Fox Comments, p. 3.
[29] Fox Comments, p. 3.
[30] Fox Comments, p. 3.
[31] Fox Comments, p. 3.
[32] Fox Comments, p. 3.
[33] Fox Comments, section II. NOx Emissions are Underestimate and Significant
[34] Fox Comments, p. 3.
[35] Fox Comments, p. 3.
[36] Fox Comments, p. 3.
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3. Substantial evidence shows that uniformly applicable development policies or standards would not substantially mitigate the NOx emissions.

The Project's construction related NOx emissions would be significant and uniformly applicable development policies or standards would not substantially mitigate the resulting air quality and public health impacts.

The uniformly applicable development policies the City relies on for construction emissions are BAAQMD's Basic Construction Mitigation Measure listed in Checklist/MND Table 4.2-3.[37] The City claims that, with implementation of these measures, the construction emissions will not exceed levels of significance.[38]

1-17

However, Dr. Fox explains that the Basic Construction Mitigation Measures are designed to mitigate particulate emissions (PM10 and PM2.5), not NOx.[39] Only two of the eight measures address exhaust emissions, the major source of NOx.[40] As another example of the Basic Construction Measures' deficiencies with respect to the Project's NOx emissions, the measures do not limit the number of truck trips or trip length.[41] In Dr. Fox's experience, the measures would not substantially mitigate construction NOx impacts.[42] Thus, Dr. Fox proposed additional mitigation measures, such as requiring all construction equipment be equipped with Best Available Control Technology ("BACT") for NOx.[43] These additional measures are discussed in further detail below.

This Project would cause a new specific significant air quality effect from construction-related NOx emissions. The effect was not addressed in the PEIR and the effect is specific to the infill project. Based on Dr. Fox's substantial evidence, this new specific effect is significant because it exceeds BAAQMD's significance threshold and is not substantially mitigated by uniformly applicable development policies or standards. As a result, an infill EIR must be prepared to analyze this new specific, significant effect that would not be substantially mitigated. The City

[37] Checklist/MND, p. 4.0-7 (Table 4.2-3).
[38] Checklist/MND, p. 4.0-7-8 ((Table 4.2-4).
[39] Fox Comments, p. 3.
[40] Fox Comments, p. 3.
[41] Fox Comments, p. 3.
[42] Fox Comments, p. 3.
[43] Fox Comments, p. 3.

must disclose the effect and include all feasible construction NOx mitigation in an infill EIR.

C. New Specific Significant Effect from Total PM10 Emissions.

Adding to the deficiencies of the Checklist/MND's CalEEMod modeling, the Checklist/MND fails to calculate the total PM10 emissions. Dr. Fox demonstrates that total PM10 construction emissions exceed applicable significance thresholds.[44] When total PM10 emissions are calculated, the Project exceeds applicable significance thresholds. Additionally, according to Dr. Fox, the uniformly applicable construction would not substantially mitigate the Project's significant PM10 emissions. 1-18

1. The City Fails to Evaluate Total PM10 Emissions.

The Checklist/MND only includes exhaust PM10 emissions in its construction-related air quality significance analysis. Neither the Checklist/MND nor the PEIR analyze site-specific construction impacts from all PM10 emissions. In particular, and as discussed in more detail in subsequent sections, Dr. Fox identifies numerous emissions sources that were omitted from the air quality analysis. These omitted emissions sources must be separately calculated and included in the total PM10 emissions. They include: 1-19 1-20

- Fugitive dust from off-road truck travel within the site[45]
- Fugitive dust emissions from wind erosion[46]
- Fugitive dust emissions from grading equipment[47]

Dr. Fox also identifies that fugitive dust emissions during site preparation are underestimated.

Yet, the City concluded that "all estimated construction-generated criteria pollutant and precursor emissions would be below the BAAQMD thresholds of significance. Therefore, the effect of the project would be less than significant and 1-21

[44] Fox Comments, section III. PM10 Emissions are Underestimated and Significant
[45] Fox Comments, p. 4.
[46] Fox Comments, p. 7.
[47] Fox Comments, p. 8.
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would not be more significant than what has already been analyzed."[48] Because the City has not and never has analyzed site-specific total PM10 emissions from construction, the City lacks substantial evidence that "*all* estimated construction-generated criteria pollutant and precursor emissions would be below the BAAQMD thresholds of significance" for this Project.[49] 1-21 cont.

The City's conclusion violates CEQA. In *Meija v. City of Los Angeles* (2005), the court held that "[a] public agency cannot apply a threshold of significance or regulatory standard 'in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.' (*Communities for a Better Environment, supra,* at p. 114, 126 Cal.Rptr.2d 441.)"[50] Here, the City relied on a threshold of significance for *exhaust* PM10 to conclude that *all* PM10 emissions from construction would be less than significant. However, the cited threshold of significance does not apply to all PM10 emissions from construction. 1-22

As set forth in further detail below, substantial evidence shows that fugitive dust emissions when combined with exhaust PM10 emissions would result in significant impacts. 1-23

2. *Substantial Evidence Shows that Total PM10 Emissions Would be Significant.*

As an initial matter, the City does not have an adopted threshold of significance for total PM10. BAAQMD also does not have an adopted threshold of significance for total PM10.[51] BAAQMD's "screening criteria" that the City relies on to conclude that PM10 fugitive emissions are not significant do not apply in projects that involve "extensive material transport (e.g., greater than 10,000 cubic yards of soil import/export) requiring a considerable amount of haul activity," among other factors.[52] This Project will haul 24,000 cubic yards of soil.[53] The City erroneously relied upon screening criteria that do not apply to the Project and failed to adopt a significance threshold for total PM10 constructions. 1-24

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[48] Checklist/MND, p. 4.0-8.
[49] Checklist/MND, p. 4.0-8.
[50] *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342.
[51] See Fox Comments, pp. 10-11.
[52] Fox Comments, pp. 10-11 (citing BAAQMD CEQA Guidelines).
[53] Checklist/MND, p. 4.0-55.
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When there is no adopted threshold of significance, CEQA states that a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts.[54] Dr. Fox recommends a significance threshold of 80 to 150 lbs/day for total PM10 emissions.[55] Her recommendation is based on the PM10 significance threshold for construction impacts adopted by the Monterey Bay Unified Air Pollution Control District (82 lbs/day), South Coast Air Quality Management District (150 lbs/day), and the Sacramento Metropolitan Air Quality Management District (80 lbs/day if all feasible BACT/BMPs are applied).[56] As detailed in the following section, Dr. Fox provides substantial evidence that total PM10 emissions for this Project are 170 lbs/day. The total PM10 emissions exceed the upper range of Dr. Fox's recommended significance threshold. Therefore the PM10 emissions are significant. **1-25** **1-26**

Dr. Fox calculated the emissions that were omitted from the air quality analysis. When Dr. Fox added all sources of emissions for PM10, she provides substantial evidence that the Project's construction-related PM10 emissions are significant when compared to applicable PM10 significance thresholds.

The first omitted source Dr. Fox calculated is the fugitive dust from off-road truck travel within the site.[57] The CalEEMod model does not include fugitive dust from off-road vehicle travel, including fugitive dust from on-site haul trucks. Based on site-specific Project information, such as the weight of the haul truck and total number of truck trips, Dr. Fox calculated the PM emissions from on-site haul truck travel using USEPA's AP-42 air pollution emission factor equation for industrial unpaved road.[58] Her calculations show that PM10 emissions from fugitive dust from off-road truck travel will be 70 lbs/day.[59] **1-27**

The second omitted source Dr. Fox calculated is fugitive dust from wind erosion. Windblown dust can be a significant source of fugitive dust and the CalEEMod does not estimate fugitive dust generated by wind over land and storage piles.[60] Despite the site-specific information that windblown dust could occur over **1-28**

[54] CEQA Guidelines, § 15064.7 (thresholds of significance).
[55] Fox Comments, p. 12.
[56] Fox Comments, p. 12.
[57] Fox Comments, pp. 3-4.
[58] Fox Comments, pp. 3-6.
[59] Fox Comments, p. 6.
[60] Fox Comments, p. 7.

graded areas or areas that would be excavated, the Checklist/MND does not provide separate emissions estimates from these sources.[61] Instead, the Checklist/MND assumes that conventional construction measures will be adequate for wind erosion control. The City's approach is backwards. As Dr. Fox points out, the City must conduct an analysis and then consider if enforceable control measures will mitigate the impact. As is, the City's unsupported conclusion is not evidence that wind erosion impacts are insignificant. **1-28 cont.**

Dr. Fox estimated the wind erosion PM10 emissions using USEPA AP-42 emissions factors.[62] She used site-specific Project information (*i.e.*, 4 acre project site) and a 2-minute wind speed of 30 mph to find that the Project would result in 60 lb/day of wind erosion PM10 emissions.[63]

The third omitted source Dr. Fox calculated is fugitive dust emissions from grading equipment, in particular from scrapers. The CalEEMod does not include emissions calculations from scrapers.[64] A scraper is a large mechanical device that excavates then stores the material it excavates.[65] The scraper's fugitive dust emissions from site preparation are unaccounted for in the Checklist/MND. As Dr. Fox estimates, if one scraper is used and would travel 1 mile on the maximum day, PM10 emissions would be 20 lbs/day using USEPA AP-42 emissions factors.[66] **1-29**

Next, Dr. Fox points out that in addition to the omitted sources, the Checklist/MND also underestimates fugitive dust emissions during site preparation.[67] The CalEEMod includes fugitive dust from loading or unloading material.[68] The CalEEMod user inputs the amount of material imported and exported to the site, and the CalEEMod estimates the number of haul trips required for material transport activities.[69] The Checklist/MND states that 24,000 cubic yards of soil off-haul will be required.[70] One issue is that the CalEEMod input **1-30**

[61] Fox Comments, p. 7.
[62] Fox Comments, p. 8.
[63] Fox Comments, p. 8.
[64] Fox Comments, pp. 7-8.
[65] Fox Comments, p. 7.
[66] Fox Comments, p. 8.
[67] Fox Comments, p. 8.
[68] Fox Comments, p. 9.
[69] Fox Comments, p. 9.
[70] Fox Comments, p. 9.

assumes 1,680 (units not disclosed) of graded material.[71] This discrepancy in the amount of soil off-haul is unexplained.[72] Another issue is that the CalEEMod indicates that there will be zero hauling trips even though the materials will be moved.[73] All emissions resulting from a drop of materials onto a pile or onto a truck to be imported/exported must be included.[74] By improperly setting the haul trip number to zero, the CalEEMod does not calculate fugitive dust emissions from loading and unloading.[75] The emissions from grading are substantially underestimated.[76]

1-30 cont.

Adding the emissions from the omitted sources

- 70 lbs/day for fugitive dust from off-road truck travel
- 60 lbs/day for wind erosion PM10 emissions
- 20 lbs/day for PM10 emissions from scrapers

1-31

to the unmitigated fugitive dust emissions reported in the Checklist/MND (18 lbs/day), the fugitive PM10 emissions are 168 lbs/day.[77] When the fugitive PM10 emissions are added to the construction exhaust PM10 emissions (2.4 lbs/day), the total PM10 emissions are approximately 170 lbs/day.[78] The fugitive dust emissions, on their own, surpass the significance threshold of 80-150 lbs/day for construction-related PM10 emissions.[79] The Project's total PM10 emissions from construction are significant.

[71] Fox Comments, p. 9.
[72] Fox Comments, p. 9.
[73] Fox Comments, p. 9.
[74] Fox Comments, p. 9.
[75] Fox Comments, p. 9.
[76] Fox Comments, pp. 9-10.
[77] Fox Comments. pp. 9-10.
[78] Fox Comments, p. 11.
[79] Fox Comments, p. 11.

3. Substantial evidence shows that uniformly applicable development policies or standards would not substantially mitigate the total PM10 emissions.

The Project's total PM10 emissions would be significant and uniformly applicable development policies or standards would not substantially mitigate the resulting air quality and public health impacts.

The uniformly applicable development policies the City relies upon for construction emissions are BAAQMD's Basic Construction Mitigation Measure listed in Checklist/MND Table 4.2-3.[80] The City claims that with implementation of these measures the PM10 emissions will not exceed levels of significance.[81]

1-32

However, Dr. Fox explains that the Basic Construction Mitigation Measures will not substantially reduce the impact from PM10 emissions.[82] First, two of the eight measures address exhaust emissions, not fugitive PM10 emissions.[83] Second the emissions sources that are addressed in these measures do not address the omitted sources from the CalEEMod calculations.[84] Therefore, the Basic Construction Measures do not substantially mitigate those omitted sources.[85]

As set forth above, the fugitive PM10 emissions are highly significant as they exceed three air districts' significance thresholds for PM10.[86] All feasible construction mitigation measures are required when impacts are significant.[87] Dr. Fox provides additional construction mitigation measures which are necessary to substantially reduce the PM10 emissions because the Basic Construction Measures are insufficient.[88] These include measures, such as truck washing and using low rolling resistance tires on certain vehicles, that reduce fugitive PM10 emissions.[89]

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[80] Fox Comments, p. 12; Checklist/MND, p. 4.0-7.
[81] Fox Comments, p. 12.
[82] Fox Comments, p. 12.
[83] Fox Comments, p. 12.
[84] Fox Comments, p. 12.
[85] Fox Comments, p. 13.
[86] Fox Comments, p. 13.
[87] Fox Comments, p. 13.
[88] Fox Comments, p. 13.
[89] Fox Comments, p. 13-16.

The additional measures are necessary to substantially reduce the PM10 emissions because the basic mitigation measures are insufficient.[90]

This Project results in a new specific significant air quality effect from construction-related PM10 emissions. The effect was not addressed in the PEIR and the effect is specific to the infill project. Based on Dr. Fox's substantial evidence, this new specific effect is significant because it exceeds applicable significance thresholds and is not substantially mitigated by uniformly applicable development policies or standards. As a result, an infill EIR must be prepared to analyze this new specific, significant effect that cannot be substantially mitigated. The City must disclose this impact and include all feasible construction PM10 mitigation in the infill EIR.[91] **1-32 cont.**

IV. THE CITY'S CHECKLIST/MND IS FLAWED BECAUSE IT FAILS TO INCLUDE A HEALTH RISK ASSESSMENT

CEQA is designed to not only protect the environment but also to demonstrate to the public that it is being protected.[92] The City's Checklist/MND fails to serve as an information disclosure document. The Project will be constructed 90 feet from a multifamily residence.[93] The Checklist/MND, however, does not include a construction health risk assessment to address the risk to nearby sensitive receptors.[94] For the following reasons, the Checklist/MND fails to disclose the risk the Project may have on nearby sensitive receptors. **1-33**

First, the Checklist/MND assumes that Tier 4 engines would be used in all equipment. Dr. Fox states that an all Tier 4 construction fleet is unlikely because there are more lower tier engines available in the current market.[95] Non-Tier 4 engines produce significantly more carcinogenic Diesel Particulate Matter ("DPM") than their Tier 4 counterparts.[96] **1-34**

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[90] Fox Comments, p. 17.
[91] CEQA Guidelines, § 15183.3(e) ("Except as otherwise providing in this subdivision, an infill EIR shall contain all elements described in Article 9.").
[92] CEQA Guidelines, § 15003(b).
[93] Fox Comments, p. 17.
[94] Fox Comments, p. 17.
[95] Fox Comments, p. 17.
[96] Fox Comments, p. 17.
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Second, the Checklist/MND states emissions are reduced by 70 percent at a distance of approximately 500 feet.[97] This statement conceals the fact that a multifamily residence is 90 feet away. 1-35

Third, Dr. Fox points out that the Checklist/MND fails to apply the recommended short-term exposures.[98] Again, this information fails to disclose to the public the risk to nearby sensitive receptors.[99] 1-36

Fourth, the Checklist/MND should clarify and disclose the increased health risk for third trimester pregnancies and for infants and children.[100] 1-37

Fifth, the Checklist/MND should require diesel particulate traps to reduce the harmful diesel particulate matter emissions.[101] 1-38

Sixth, the Checklist/MND states that basic construction measures would substantially reduce diesel PM emissions.[102] However, the measures do not substantially reduce diesel PM emissions.[103] 1-39

As is, the Checklist/MND fails as an information disclosure document because it lacks a health risk assessment for construction impacts. The City must prepare a health risk assessment along with an infill EIR. 1-40

V. CONCLUSION

We urge the City to fulfill its responsibilities under CEQA by withdrawing the Checklist/MND and preparing an infill EIR for the Project. In this way, the City and the public can ensure that all adverse impacts of the Project are analyzed, disclosed and substantially mitigated as required by law. 1-41

[97] Fox Comments, p. 17.
[98] Fox Comments, pp. 17-18.
[99] Fox Comments, p. 18.
[100] Fox Comments, p. 18.
[101] Fox Comments, p. 18.
[102] Fox Comments, pp. 18-19.
[103] Fox Comments, pp. 18-19.
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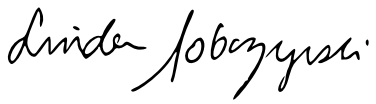
Thank you for your consideration of these comments.

Sincerely,



Linda Sobczynski

LTS:acp
Attachments

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