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May 27, 2020

**Via U.S. Mail**

Contra Costa County Planning Commission  
Contra Costa County  
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Martinez, CA 94553

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**Via Email**

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Contra Costa Planning Commission, [planninghearing@dcd.cccounty.us](mailto:planninghearing@dcd.cccounty.us)

Re: **Comments on the Del Hombre Apartment Project for the May 27, 2020 Contra Costa County Planning Commission (Agenda Items #2-5)**

Dear Honorable Planning Commission Members; Ms. Cruz

We are writing on behalf of **Contra Costa Residents for Responsible Development** regarding the County’s Final Environmental Impact Report (“FEIR”) and responses to comments prepared for the Del Hombre Apartment Project (“Project”) proposed by the Hanover Company in Contra Costa County (“County”).

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The Project involves developing a 2.4-acre site as a 284-unit apartment building. The Project is located at 112 Roble Road, approximately 0.12 miles from the Pleasant Hill BART station. The Project requires the demolition of two existing residential structures and the removal of 161 trees.

Contra Costa Residents for Responsible Development (“Contra Costa Residents”) is an unincorporated association of individuals and labor unions, including member and Pleasant Hill resident Gerald Phillips, that may be adversely affected by the potential environmental impacts of the Project. Individual members of Contra Costa Residents and the affiliated unions live, work, recreate and raise their families in Contra Costa County. These members would be directly affected by the Project’s environmental and health and safety impacts. Members of Contra Costa Residents may also work on the Project itself. Accordingly, these individuals will be first in line to be exposed to any health and safety hazards created by the Project.

We reviewed the County’s FEIR and response to comments with the assistance of air quality and greenhouse gas expert, Dr. James Clark. Dr. Clark’s comments and curriculum vitae are attached as Exhibit A.<sup>1</sup> Exhibit A is fully incorporated herein and submitted to the County herewith. Exhibits and references to the expert comments are included by Dropbox.

We conclude that the Project’s EIR is in violation of CEQA and must be revised. As explained below, there remain outstanding issues related to the FEIR’s greenhouse gas (“GHG”), air quality, and traffic analysis that have not been addressed by the County. The EIR cannot be certified by the County until these issues have been resolved in a revised EIR.

## I. GREENHOUSE GASES

Our review of the EIR and County’s response to comments found that the EIR’s GHG analysis contains inadequate analysis and mitigation in the following areas: 1) The EIR does not support its reliance on the 2.6 MT CO<sub>2</sub>e/service population/year threshold with evidence, 2) the impact of vegetation removal on carbon sequestration as a result of Project construction was not accounted for in the EIR. When the impact is properly accounted for, it increases the Project’s GHG

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<sup>1</sup> Exhibit A: Letter from James Clark to Aaron Messing re: Comment Letter on Final Environmental Impact Report (FEIR) for Del Hombre Apartments Project, Contra Costa County, California State Clearing House Number 2018102067 (May 23, 2020) (hereinafter “Clark letter”) 4714-009acp

emissions above the EIR's 2030 threshold, 3) the EIR significantly underestimates water consumption which will increase the Project's GHG impact and relies on a water consumption mitigation measure that is not adequately incorporated or guaranteed by the EIR, 4) the EIR's mobile source and Project waste emissions are unsupported in the record, and 5) the EIR's calculation of service population to calculate GHG emissions/person is not supported by evidence.

**A. The EIR uses incorrect and unsupported GHG thresholds to support its GHG analysis**

The EIR presents two thresholds for determining whether the Project will result in significant impacts from GHGs: BAAQMD's 2020 GHG significance threshold of 4.6 MTCO<sub>2e</sub>/service population and an unadopted, unsupported 2030 GHG significance threshold of 2.6 MTCO<sub>2e</sub>/service population. Neither threshold is adequate to support a conclusion based on substantial evidence that no significant impact will occur from GHGs as a result of the Project.

In its response to comments, the County "acknowledged that the buildout year (2022) would be beyond the target year (2020)" and argue it included the 2020 threshold "for informational purposes."<sup>2</sup> But the County did not attempt to establish a threshold for the full buildout year or modify the 2020 threshold in any way to make it applicable to the year 2022.<sup>3</sup> Instead, the EIR appears to rest its GHG analysis solely on satisfaction of what the FEIR describes as the "substantial progress threshold for the region." The County admits in the FEIR that this threshold was not formally adopted.<sup>4</sup> Moreover, the EIR includes no disclosure of the threshold's origin or any substantial evidence to support the County's reliance upon that threshold.

CEQA requires agencies to support their use of thresholds of significance with substantial evidence,<sup>5</sup> defined as "facts, reasonable assumptions predicated on facts, and expert opinion supported by facts."<sup>6</sup> For GHG analysis, CEQA specifically requires that "the agency's analysis should consider a timeframe that is appropriate for the project" and that it will "reasonably reflect evolving scientific knowledge and

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<sup>2</sup> Response to comments, p. 2-191

<sup>3</sup> See CEQA Guidelines 15064.4(b); *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 223.

<sup>4</sup> Response to comments, p. 2-191.

<sup>5</sup> 14 CCR § 15064.7

<sup>6</sup> PRC § 21082.2

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state regulatory schemes.”<sup>7</sup> California Courts have acknowledged that “over time, consistency with year 2020 goals will become a less definitive guide, especially for long-term projects that will not begin operations for several years [after 2020].”<sup>8</sup> Further, “consistency with the State’s long-term climate stabilization objectives . . . will often be appropriate . . . under CEQA,” provided the analysis is ‘*tailored . . . specifically to a particular project.*’”<sup>9</sup>

The EIR fails to support the use of its GHG threshold with any evidence, except for the vague statement in the FEIR that this is the “substantial progress threshold.” Without substantial evidence justifying the County’s use of the 2030 threshold, the EIR cannot be approved as satisfying CEQA’s requirement of disclosure and analysis. The EIR must be revised to use a GHG emissions threshold that is tailored to the project and applicable to the Project’s buildout year and, more importantly, to justify the choice of its 2030 GHG threshold with substantial evidence. Failure to do so would render the EIR inadequate under CEQA.

**B. The EIR fails to account for the GHG impacts of vegetation removal, underestimating a significant GHG impact**

As a result of Project construction, 161 trees will be removed and replaced by only 15 trees on the Project site. These trees are characterized in the DEIR “as a mixed oak woodland, dominated by valley oak...and coast live oak...in conjunction with a variety of other mature, adult tree species.”<sup>10</sup> Trees serve a vital environmental function as a natural vehicle for carbon sequestration. Carbon sequestration is the process of capturing and storing atmospheric carbon dioxide.<sup>11</sup> It is a prominent method of reducing the amount of carbon dioxide in the atmosphere with the goal of reducing global climate change.<sup>12</sup>

According to the DEIR, the Project would result in a reduction of more than 90% of the vegetation currently onsite; however, the DEIR fails to note that this will

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<sup>7</sup> CEQA Guidelines 15064.4(b); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354; *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 223.

<sup>8</sup> *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th at 223.

<sup>9</sup> *Id.* (emphasis added).

<sup>10</sup> *Del Hombre Apartment Project DEIR* at 2-29.

<sup>11</sup> U.S. Geological Survey, *What is Carbon Sequestration?*, available at [https://www.usgs.gov/faqs/what-carbon-sequestration?qt-news\\_science\\_products=0#qt-news\\_science\\_products](https://www.usgs.gov/faqs/what-carbon-sequestration?qt-news_science_products=0#qt-news_science_products).

<sup>12</sup> *Id.*

significantly reduce the potential carbon sequestration at the Project site.<sup>13</sup> The EIR relies on the California Emissions Estimator Model (CalEEMod), a statewide land use emissions computer model, for its GHG emissions analysis. The CalEEMod includes a default GHG accumulation per acre factor for trees which reflects GHG sequestration of different land uses. For trees the factor is 111 MT CO<sub>2</sub>/acre.<sup>14</sup>

However, the EIR does not address the increase in GHG emissions from the clearing of trees and the subsequent loss of sequestration at the site. When properly included, Dr. Clark calculated that the resulting increase in GHG emissions would be 263 MT CO<sub>2</sub>/yr in 2030, bringing the Project's total 2030 GHG emissions to 2,187 MT CO<sub>2</sub>e/yr.<sup>15</sup> Using the EIR's service population of 823 people, the Project's GHG emissions generation will be 2.7 MT CO<sub>2</sub>e/service population/year, which exceeds the EIR's stated 2030 GHG emission threshold of 2.6 MT CO<sub>2</sub>e/service population/year.

In sum, if the EIR had properly considered increased GHGs resulting from a loss of carbon sequestration, it would have found a significant impact from GHGs. Under CEQA, any significant environmental impact *must* be disclosed and analyzed for potential mitigation.<sup>16</sup> The County has not done so here and must revise its analysis before any Project approval can be made.

**C. The Project's GHG emissions from water consumption would be significantly higher than that which was assumed in the DEIR and FEIR**

The EIR underestimates the GHG emissions associated with the Project in two primary ways. First, it assumes a 20% reduction in water usage due to "Compliance with the Green Building Code Standards" and the "Water Efficient Land Use Ordinance," but does not identify the measures from those standards that would actually reduce water usage. Second, the Draft EIR and Final EIR contain significantly different and conflicting estimates of water demand, with no explanation for the differences. Even if there will, in fact, be a 20% reduction in water usage, the gallons of water per capita required by the Project would be 1.5 times higher than the usage rates assumed in the FEIR, again resulting in higher GHGs emissions from the Project.

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<sup>13</sup> Clark letter at p. 3.

<sup>14</sup> Clark letter at p. 3.

<sup>15</sup> Clark letter at p. 3.

<sup>16</sup> 14 CCR § 15002(a)(1).

In its response to comments from Laborers International Union of North America Local Union 324, the FEIR maintains that its water consumption analysis was accurately modeled to include “Apply Water Conservation Strategy” because it incorporated Green Building Code Standards and the Water Efficient Land Use Ordinance.<sup>17</sup> However, the FEIR does not identify how these standards will lead to the reduction of water consumption.

An EIR may not completely defer analysis of potential environmental impacts to an outside regulatory scheme.<sup>18</sup> In *Californians for Alternatives to Toxics v. Dep't of Food & Agric.*, the Court found that the lead agency “repeatedly deferred to [an applicable] regulatory scheme instead of analyzing environmental consequences of pesticide use and therefore fell short of its duty under CEQA to meaningfully consider the issues raised by the proposed project.”<sup>19</sup> Thus, the County must show meaningful consideration of the environmental impacts from Project water consumption and show how particular measures would reduce the impacts, regardless of whether the measures are incorporated into the project or included as mitigation measures.<sup>20</sup>

Additionally, the DEIR and FEIR have substantially different projected water demands, with the DEIR projecting 55.23 Mgal/yr and the FEIR projecting 30.169 MG/yr.<sup>21</sup> Dr. Clark notes that “[n]o explanation is offered for the discrepancy in water demand assumed in the CalEEMod model analysis and disclosed in the main text of either the DEIR or the FEIR.”<sup>22</sup> This change in calculation has a marked impact on the projected GHG emissions from the Project, and the EIR must disclose the justification behind this reduction before it can be approved under CEQA.

Given the unreliability of the FEIR’s water usage numbers, Dr. Clark considers the California Water Resources Control Board and County’s Water

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<sup>17</sup> Contra Costa County, Del Hombro Apartment Project Response to Comments at p. 2-199.

<sup>18</sup> See *Californians for Alternatives to Toxics v. Dep't of Food & Agric.* (2005) 38 Cal. Rptr. 3d 638, 648; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882 (court rejected assertion that noise level under proposed project would be insignificant simply by virtue of being consistent with general plan standards for zone in question).

<sup>19</sup> *Californians for Alternatives to Toxics v. Dep't of Food & Agric.* (2005) 38 Cal. Rptr. 3d 638, 648.

<sup>20</sup> 14 CCR §15002(a)(2); see *Californians for Alternatives to Toxics v. Dep't of Food & Agric.* (2005) 38 Cal. Rptr. 3d 638, 648; *Sierra Club v. Cty. of Fresno* (2018) 6 Cal. 5th 502, 522; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

<sup>21</sup> Clark letter at p. 6.

<sup>22</sup> Clark letter at p. 6.

District water usage per capita a more accurate depiction of the Project's water usage.<sup>23</sup> The Water District's numbers would increase the FEIR's water usage by 1.5 times, even if the 20% reduction was supported in the FEIR, which it is not.<sup>24</sup> Once this increase is incorporated into the FEIR's modeling analysis, it will find a 39 to 58.5 MT CO<sub>2</sub>/yr increase in 2020 and a 45 to 67.5 MT CO<sub>2</sub>/yr increase in GHG emissions from operation of the Project, further driving up the already significant GHG impact.<sup>25</sup>

**D. Mobile Source and Project waste emissions are unsupported in the record**

The EIR fails to disclose support for its modeling analysis for mobile sources and Project waste emissions. First, the EIR's modeling analysis indicates that mobile source GHG emissions from the Project will decrease from 1,644 MT CO<sub>2</sub>e/yr in 2022 to 1,305 MT CO<sub>2</sub>e/yr in 2030.<sup>26</sup> Dr. Clark notes in his letter, "the DEIR and FEIR both fail to disclose the GHG emission factors assumed for mobile sources in 2022 and 2030. Thus, the major source of GHG emissions for the project is unsupported."<sup>27</sup>

Additionally, the DEIR assumed GHG emissions from processing Project waste would be reduced by 74%, from 66 MT CO<sub>2</sub>e/yr to 49 MT CO<sub>2</sub>e/yr by complying with AB 341. However, as Dr. Clark explains in his letter, "there is no support for the assumption that a 74% reduction in waste by recycling and composting would reduce GHG emissions by 74%. If the recycling and composting program, for example, relied on composting, which releases methane emissions, a GHG gas, GHG emissions could increase compared to the assumptions in the FEIR."<sup>28</sup>

"Whether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question."<sup>29</sup> This is because CEQA analysis cannot consist of "[a] conclusory discussion of an environmental impact...without reference to substantial

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<sup>23</sup> Clark letter at p. 7.

<sup>24</sup> Clark letter at p. 7.

<sup>25</sup> Clark letter at p. 7.

<sup>26</sup> Clark letter at p. 4.

<sup>27</sup> Clark letter at p. 4.

<sup>28</sup> Clark letter at p. 7.

<sup>29</sup> *Sierra Club v. Cty. of Fresno* (2018) 6 Cal. 5th 502, 514.  
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evidence.”<sup>30</sup> Here, the EIR merely assumes reductions in GHG emissions without supporting those reductions in the record with substantial evidence or implementing specific mitigation measures to ensure those reductions actually take place. This is invalid under CEQA and the County must revise this analysis before certifying the EIR.

**E. The EIR assumes a Service Population in its analysis that underestimates GHGs**

The EIR assumes 2.88 persons per household to calculate the service population for the project, totaling 818 residents.<sup>31</sup> However, given that the majority of residential units within the Project will only have one bedroom or less, our expert finds that this number considerably overestimates the Project’s service population.

The U.S. Department of Housing believes that an occupancy policy of 2 people per bedroom, as a general rule, is an appropriate estimation of occupancy.<sup>32</sup> Dr. Clark notes that this more tailored recommendation for the service population at the Project increases the EIR’s current GHG numbers to above its stated GHG threshold.<sup>33</sup> Assuming one resident for a studio, two residents for a one bedroom, and four residents for a two bedroom, the more realistic approximation of service population would be 722 residents, as opposed to the FEIR’s 818 residents. In 2030, this would mean that GHG emissions per service population per year would be  $1,924/722 = 2.7$  MT CO<sub>2</sub>e, exceeding the FEIR’s stated 2.6 MT CO<sub>2</sub>e 2030 GHG threshold.<sup>34</sup> Thus, when following a more accurate approximation of the Project’s service population, the Project’s GHGs are significant and must be disclosed and mitigated by the EIR.

**II. AIR QUALITY**

In our comments on the DEIR, we argued that the DEIR’s mitigation measure MM AIR-3 was inadequate to secure primarily Tier IV Interim off-road

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<sup>30</sup> 14 CCR §15126.4(a)(2); *Sierra Club v. Cty. of Fresno* (2018) 6 Cal. 5th 502, 514.

<sup>31</sup> DEIR, p. 3.17-16.

<sup>32</sup> Department of Housing and Urban Development, Fair Housing Enforcement–Occupancy Standards; Statement of Policy; Notice; Republication (“Keating Memo”), p. 70984 (Dec. 22, 1998), available at [https://www.hud.gov/sites/documents/DOC\\_7780.PDF](https://www.hud.gov/sites/documents/DOC_7780.PDF).

<sup>33</sup> Clark letter at p. 4.

<sup>34</sup> Clark letter at p. 4.



emission standard equipment for Project construction.<sup>35</sup> We argued that an exception within the mitigation measure essentially negated any requirements stated within the measure.<sup>36</sup> In response, the County rewrote the mitigation measure to remove this exception:

During construction activities, all off-road equipment with diesel engines greater than 50 horsepower shall meet either United States Environmental Protection Agency or California Air Resources Board Tier IV Interim off-road emission standards.<sup>37</sup>

The County also required monitoring for compliance with the above stated requirement:

The construction contractor shall maintain records concerning its efforts to comply with this requirement, including equipment lists. Off-road equipment descriptions and information may include but are not limited to equipment type, equipment manufacturer, equipment identification number, engine model year, engine certification (Tier rating), horsepower, and engine serial number.<sup>38</sup>

While the rewritten mitigation measure would appear to commit to the use of Tier IV certified equipment, Dr. Clark notes that, based on publicly available records, the likelihood of this mitigation measure being achieved in practice is extremely low. Dr. Clark shows that the Tier IV equipment likely needed by the Project are in short supply in California, as can be seen by Table 2: Percent of Equipment in California DOORS Database by Emission Tier Level in Dr. Clark's letter.<sup>39</sup> This includes equipment for demolition (rubber tired dozers and tractors/loaders/backhoes), site preparation (graders, scrapers, rubber tired dozers, and tractors/loaders/backhoes), grading (graders, scrapers, rubber tired dozers, off-highway trucks, and tractors/loaders/backhoes), and paving operations (pavers, rollers, and tractors/loaders/backhoes). There is therefore no reason for the EIR to

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<sup>35</sup> Contra Costa Residents for Responsible Development, Comments on the Del Hombre Apartment Project Draft Environmental Impact Report (SCH # 2018102067) at p. 12–13 (Nov. 15, 2019) (hereinafter "Residents letter").

<sup>36</sup> Residents letter p. 12–13.

<sup>37</sup> Response to Comments, p. 2-95.

<sup>38</sup> Response to Comments, p. 2-95.

<sup>39</sup> Clark letter p. 9–11.

assume that this mitigation measure is feasible in practice without substantial evidence. No such substantial evidence is provided in the EIR.

Without any plan for how the Project intends to achieve this mitigation measure, there is no indication that this measure will provide any mitigation against the potential health risk impacts from construction that the mitigation is intended to reduce.<sup>40</sup> The Project cannot be approved under CEQA without addressing this deficiency.

### III. TRAFFIC

In our comments on the DEIR, we presented evidence that traffic queue exceedances were substantial and that the County failed to analyze and mitigate those impacts.<sup>41</sup> The County responded that “vehicle queues often extend to and beyond driveway locations” and that “[e]liminating all instances of vehicle queue spillback at the driveways mentioned would require further roadway widening, which could be contrary to other community goals. Additionally, vehicle queue spillback is usually temporary in nature, and can be managed through signal timing adjustment and other operational strategies.”<sup>42</sup>

Here, the County in fact acknowledges the impacts outlined in our comments, argues that potential mitigation exists, but fails to provide any specific analysis or identify specific mitigation measures that would address the impacts. At the same time, the County appears above to claim that the impacts may be significant but are ultimately unavoidable. The County cannot hold the stick at both ends. Either it must acknowledge this impact as significant and unavoidable or it must implement in the EIR those “operational strategies” it claims can mitigate those impacts.<sup>43</sup>

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<sup>40</sup> CEQA §§ 21002, 21081(a); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available); *Lotus v. Dept of Forestry* (2014) 223 Cal. App. 4th 645, 651–52.

<sup>41</sup> Residents letter p. 18–20.

<sup>42</sup> Response to Comments, p. 2-98–2-99.

<sup>43</sup> CEQA Guidelines § 15096(g)(2) (“The Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment”); CEQA Guidelines § 15093(b) (“The statement of overriding considerations shall be supported by substantial evidence in the record”).

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#### IV. CONCLUSION

The Del Hombre Apartment Project's EIR violates CEQA and cannot be certified as currently written. The EIR fails to fully analyze significant environmental impacts from greenhouse gases and fails to provide adequate analysis and mitigation for air quality and traffic impacts.

We urge the Commission not to certify the EIR and require staff to prepare a revised analysis that addresses the issues raised in our comments and includes the mitigation necessary to reduce impacts to less than significant.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Messing', with a long horizontal line extending to the left.

Aaron M. Messing  
Associate

AMM:acp

Attachment

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