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September 11, 2023

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Re: Agenda Item 200 –Alexandria Science Village Project (SCH No. 2019060003; Project No. 647676)

Dear President Elo-Rivera, City Council Members, Mr. Hafertepe, Ms. Blake:

On behalf of the International Brotherhood of Electrical Workers (“IBEW”) Local 569, we submit these preliminary comments on Agenda Item No. 200, the Alexandria Science Village Project (SCH No. 2019060003; Project No. 647676) (“Project”)¹, proposed by Alexandria Real Estate (“Applicant”), including the Mitigated Negative Declaration (“MND”) prepared for the Project by the City.

¹ Also referred to in the MND and reference documents as “Science Village” or “ARE Science Village.”
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The Project proposes a Rezone, General Plan/University Community Plan/Nexus Technology Centre Specific Plan Amendment, and Planned Development Permit for the demolition of three existing scientific research buildings totaling 138,400 square feet (sf), and the construction of two new four-story scientific research and development (“R&D”) buildings totaling approximately 369,878 sf with associated accessory uses. The Project would consist of approximately 310,416 sf of R&D uses, 59,462 sf of accessory and amenity space, and a 419,814 sf three-level subterranean parking garage with 938 parking spaces. The 3.97-acre project site is located at 9363, 9373, and 9393 Towne Centre Drive in the University Community Plan area. The approximately 3.97-acre site is located on three parcels which include 9363, 9373, and 9393 Towne Centre Drive, between Eastgate Mall and Executive Drive in San Diego, California.

At the September 11, 2023 San Diego City Council meeting, the City Council will consider a resolution adopting the MND, a General Plan Amendment, a Specific Plan Amendment, an ordinance approving rezone, a resolution approving a Planned Development Permit, and a resolution rescinding a Planned Development Permit.

IBEW Local 569 respectfully requests that the City Council continue today’s hearing to require the City to comply with the City’s Climate Action Plan (“CAP”) and the California Environmental Quality Act (“CEQA”) before the Project is considered for approval. As explained herein, the Project has potentially significant air quality and public health impacts which the MND failed to disclose and mitigate. The Project also fails to comply with the City’s CAP, which is intended to reduce the climate change impacts of new developments on the City and the region. The CAP requires new land-intensive new development projects like this one to calculate the greenhouse gas (“GHG”) emissions that will be generated by the project, then mitigate those emissions to the extent feasible. The City did not quantify the Project’s GHG emissions, in violation of the CAP, and does not include all feasible GHG mitigation measures. The CAP is a local land use plan. Inconsistency with this plan, along with the Project’s other significant, unmitigated impacts, preclude the City Council from making the findings necessary to approve the Project’s general plan amendment and other entitlements at this time.

Based upon our review of the MND, it is also evidence that the MND fails to fulfill its mandate under CEQA to accurately disclose and mitigate environmental and public health impacts. The MND fails to include a quantitative analysis of the Project’s health risk impacts during construction and operation, despite the proximity of residential sensitive receptors 220 feet away. These sensitive receptors would be exposed to toxic air contaminants from construction equipment, diesel trucks, and stationary generators for approximately four years.

The MND also violates CEQA by omitting analysis of the Project's backup generators, a key source of operational air pollutant emissions. As a result, the MND underestimates health risk and air quality GHG impacts. The MND also fails to disclose and mitigate GHG emissions. The CAP Consistency Checklist not only requires the City to directly analyze the Project's GHG emissions, but provides that the Project's GHG impact is significant. Accordingly, substantial evidence supports a fair argument that the Project will result in significant and unmitigated impacts in these areas. The City cannot approve the Project until the errors in the MND are remedied and substantial evidence supporting its conclusions is provided in an EIR.

This letter contains the preliminary comments of IBEW Local 569.² IBEW Local 569 expressly reserves the right to submit additional comments on the Project in conjunction with the MND or any other future actions taken with regard to the Project.³

I. THE CITY COUNCIL CANNOT APPROVE THE PROJECT UNTIL THE CITY COMPLIES WITH CEQA AND THE CITY'S CLIMATE ACTION PLAN

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.⁴ "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment, but also informed self-government."⁵ 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."⁶

² IBEW Local 569 is a labor organization which includes workers in the local and regional electrical industry. IBEW Local 569 workers live and work in and around San Diego and may be directly impacted by construction and operational impacts of new development projects. IBEW Local 569 participates in local decision making to elevate the moral, intellectual and social conditions of its members, their families and dependents, in the interest of a higher standard of citizenship and a healthy work and living environment.

³ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* ("Bakersfield") (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

⁴ See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.

⁵ *Citizens of Goleta Valley v. Bd. of Supervisors* ("Goleta Valley") (1990) 52 Cal.3d 553, 564, internal citations omitted.

⁶ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
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CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.⁷ CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard. Under that standard, a lead agency "shall" prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.⁸

In contrast, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

- (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur,* and
- (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may* have a significant effect on the environment.⁹

Courts have held that if "no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR."¹⁰ The fair argument standard creates a "low threshold" favoring environmental review through an EIR, rather than through issuance of a negative declaration.¹¹ An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.¹²

⁷ See Pub. Resources Code, § 21100

⁸ Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* ("Laurel Heights II") (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* ("Quail Botanical") (1994) 29 Cal.App.4th 1597, 1601- 1602.

⁹ Pub. Resources Code, § 21064.5 (emphasis added).

¹⁰ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

¹¹ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754

¹² *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 ("*Friends of B Street*") ("If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a 6755-003

“Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”¹³ According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064, subdivision (f):

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR. 13 Pub. Resources Code, § 21064.5 (emphasis added).

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”¹⁴ Deferring formulation of mitigation measures to post-approval studies is generally impermissible.¹⁵ Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.¹⁶ If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.¹⁷ Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report’s recommendations is insufficient to meet the standard for properly deferred mitigation.¹⁸

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The MND fails to adequately disclose, investigate, and analyze the Project’s potentially significant impacts, and fails to provide substantial evidence to conclude

negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

¹³ CEQA Guidelines, § 15384, subd. (a).

¹⁴ CEQA Guidelines, § 15126.4, subd. (a)(2).

¹⁵ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

¹⁶ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical*, *supra*, 29 Cal.App.4th at pg. 1604, fn. 5.

¹⁷ *Id.*

¹⁸ *Id.*

that impacts will be mitigated to a less than significant level. Because the MND lacks basic information regarding the Project's potentially significant impacts, the IS/MND's conclusion that the Project will have a less than significant impact on the environment is unsupported.¹⁹ Moreover, substantial evidence shows that the Project may result in potentially significant impacts. Therefore, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

A. The Project Fails to Comply with the City's Climate Action Plan by Failing to Analyze the Significance of the Project's GHG Emissions

The MND fails to quantify the Project's total emissions of GHGs, instead claiming that consistency with the City's CAP Consistency Checklist is sufficient. The CAP, adopted in December 2015, provides a streamlined review process for proposed new development projects that are subject to discretionary review.²⁰ But the terms of the Checklist itself require the City to analyze the significance of the Project's quantified GHG emissions.

The CAP Consistency Checklist includes a three-step process to determine if the project would result in a GHG impact.²¹ The City is required to analyze the significance of the Project's quantified emissions under the first step. Step 1 consists of an evaluation to determine the project's consistency with existing General Plan, Community Plan, and zoning designations for the site.²² Question C of Step 1 asks:

If the proposed project is not consistent with the existing land use plan and zoning designations, does the project include a land use plan and/or zoning designation amendment that would result in an equivalent or less GHG-intensive project when compared to the existing designations?... For question C above, provide estimated project emissions under both existing and proposed designation(s) for comparison. Compare the maximum buildout of the existing designation and the maximum buildout of the proposed designation.

¹⁹ Pub. Resources Code, § 21064.5.

²⁰ MND, App D, pg. 2.

²¹ MND, pg. 43.

²² MND, App D, pg. 4.

Step 1 provides that that if a proposed project is not consistent with the existing land use plan and proposes an equivalent or more GHG-intensive project, the project's GHG impact is significant.²³

The MND's response to the Step 1 inquiry is that the Project is consistent with the existing land use plans because the Project is consistent with the Scientific Research and Prime Industrial land use designations under the General Plan and University Community Plan. But the MND ignores that the Project is not consistent with the Nexus Technology Centre Specific Plan. The MND acknowledges that the Project site is located in the Nexus Technology Centre Specific Plan, which only allows for 138,400 of building sf.²⁴ The MND further acknowledges that the Project – which proposes to construct buildings totaling 369,878 sf – would exceed this limit.²⁵ It is because the Project is inconsistent with the Nexus Technology Centre Specific Plan that the Project seeks a Specific Plan Amendment to remove the project site from the Nexus Technology Centre Specific Plan to allow for additional development intensity.²⁶

Since the Project is inconsistent with the existing land use plan, the terms of the CAP Consistency Checklist require the MND to provide estimated Project emissions under both existing and proposed designation(s) for comparison.²⁷ Since the MND does not provide this information, the Project is not consistent with the CAP.

Further, the MND's GHG impact is significant under the CAP. Step 1 provides that that if a proposed project is not consistent with the existing land use plan and proposes an equivalent or more GHG-intensive project, the project's GHG impact is significant.²⁸ The instant Project would be more GHG-intensive because the project is anticipated to generate a net increase of 1,778 weekly average daily

²³ MND, App D, pg. 4 (“If “No,” in accordance with the City’s Significance Determination Thresholds, the project’s GHG impact is significant. The project must nonetheless incorporate each of the measures identified in Step 2 to mitigate cumulative GHG emissions impacts unless the decision maker finds that a measure is infeasible in accordance with CEQA Guidelines Section 15091. Proceed and complete Step 2 of the Checklist”).

²⁴ MND, pg. 18.

²⁵ *Id.*

²⁶ MND, pg. 12.

²⁷ MND, App D, pg. 4.

²⁸ MND, App D, pg. 4 (“If “No,” in accordance with the City’s Significance Determination Thresholds, the project’s GHG impact is significant. The project must nonetheless incorporate each of the measures identified in Step 2 to mitigate cumulative GHG emissions impacts unless the decision maker finds that a measure is infeasible in accordance with CEQA Guidelines Section 15091. Proceed and complete Step 2 of the Checklist”).

trips. Two percent of these trips are estimated to be diesel truck trips.²⁹ This proposed increase in vehicle trips would result in an increase in GHG emissions.³⁰

In sum, the City fails to demonstrate consistency with the CAP by failing to estimate and analyze the Project's GHG emissions. And because the Project would likely be an equivalent or more GHG-intensive project than the existing use, the CAP Consistency Checklist shows that the Project's GHG impact would be significant. The City must prepare an EIR that corrects these errors and discloses the Project's significant GHG impact.

B. The MND Fails to Disclose and Mitigate Potentially Significant Health Risk Impacts from Project Emissions

The MND acknowledges that the Project's construction activities would generate Toxic Air Contaminant ("TAC") emissions.³¹ Specifically, the Project's construction and operation would generate DPM, a type of TAC.³² DPM would be emitted during construction by heavy equipment and diesel trucks, and during operations by the Project's backup generator.³³ DPM has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death. The MND acknowledges that DPM is carcinogenic.³⁴ The Project's emissions of DPM would impact nearby sensitive receptors, including residents 220 feet away at a multi-family residential complex.³⁵ But the MND fails to adequately analyze and mitigate this potentially significant health risk.

CEQA requires analysis of human health impacts. CEQA Guidelines Section 15065(a)(4) provides that the City is required to find that a project will have a significant impact on the environment and require an EIR if the environmental effects of a project will cause a substantial adverse effect on human beings. The Supreme Court has also explained that CEQA requires the lead agency to disclose the health consequences that result from exposure to a project's air emissions.³⁶ Courts have held that an environmental review document must disclose a project's

²⁹ MND, App B, pg. 30.

³⁰ City of San Diego General Plan, ME-G.5. ("Reduced automobile trips would lessen traffic and air quality impacts, including greenhouse gas emissions").

³¹ MND, App B, pg. 30.

³² *Id.*

³³ SCAQMD, Fact Sheet on Emergency Backup Generators, <http://www.aqmd.gov/home/permits/emergency-generators> ("Most of the existing emergency backup generators use diesel as fuel").

³⁴ MND, App B, pg. 30.

³⁵ *Id.*

³⁶ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523.
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potential health risks to a degree of specificity that would allow the public to make the correlation between the project's impacts and adverse effects to human health.³⁷

In *Bakersfield Citizens for Local Control v. City of Bakersfield*, the court found that the EIRs' description of health risks were insufficient and that after reading them, "the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin."³⁸ Likewise, in *Sierra Club*, the California Supreme Court held that the EIR's discussion of health impacts associated with exposure to the named pollutants was too general and the failure of the EIR to indicate the concentrations at which each pollutant would trigger the identified symptoms rendered the report inadequate.³⁹ Some connection between air quality impacts and their direct, adverse effects on human health must be made. As the Court explained, "a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact."⁴⁰ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.⁴¹

The Office of Environmental Health Hazard Assessment's ("OEHHA") risk assessment guidelines also recommend a formal health risk analysis ("HRA") for short-term construction exposures to TACs lasting longer than 2 months and exposures from projects lasting more than 6 months should be evaluated for the duration of the project.⁴² In an HRA, lead agencies must first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern.⁴³ Following that analysis, then the City can make a determination of the relative significance of the emissions. The significance threshold for this Project is that a significant health risk impact occurs if the Project would expose sensitive

³⁷ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

³⁸ *Id.* at 1220.

³⁹ *Sierra Club*, at 521.

⁴⁰ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

⁴¹ *Sierra Club*, 6 Cal.5th at 518–522.

⁴² Office of Environmental Health Hazard Assessment (OEHHA), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, February 2015 (OEHHA 2015), Section 8.2.10: Cancer Risk Evaluation of Short Term Projects, pp. 8-17/18; <https://oehha.ca.gov/air/crn/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

⁴³ *Id.*

receptors to air contaminants that exceed the maximum incremental cancer risk of 10 in one million.⁴⁴

The OEHHA guidance is applicable to this Project because its construction is anticipated to occur over an approximate 47-month time frame (approximately 4 years) from the onset of demolition through final construction, which exceeds the two-month threshold.⁴⁵ However, the City failed to conduct the analysis recommended by OEHHA. Despite acknowledging that exposure is the primary factor used to determine health risk, the MND does not quantify sensitive receptors' exposure to DPM emitted during Project construction and operation.⁴⁶ Regarding construction emissions of DPM, the MND's qualitative analysis instead offers that the health risk would be less than significant because the use of diesel-powered construction equipment would be short-term, intermittent, and "construction activities are expected to occur well below the 30-year exposure period used in health risk assessments."⁴⁷ This analysis does not disclose the health consequences that result from exposure to this Project's air emissions.⁴⁸ And the MND's reasoning that impacts could not result from activities lasting shorter than 30 years is not supported by substantial evidence, as OEHHA guidelines recommend an HRA for short-term construction exposures to TACs lasting longer than 2 months.⁴⁹

Regarding health risk from Project operation, the MND reasons that impacts would be less than significant because the Project would only generate occasional diesel truck trips.⁵⁰ This analysis fails to meet CEQA's informational standards because it fails to disclose sensitive receptors' exposure to pollutants. The analysis also lacks the support of substantial evidence because it fails to consider the TAC emissions from the potential stationary generator.

In sum, the MND fails to comply with CEQA by failing to provide the necessary information to evaluate the health risk impacts of the Project. Due to the proximity of the nearest sensitive receptors to construction and operational sources

⁴⁴ MND, pg. 36.

⁴⁵ MND, pg. 14.

⁴⁶ MND, App B, pg. 30 (It is anticipated that the work would be completed in 8- or 10-hour shifts, with a total of five shifts per week (Monday-Friday)).

⁴⁷ *Id.*

⁴⁸ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523.

⁴⁹ Office of Environmental Health Hazard Assessment (OEHHA), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, February 2015 (OEHHA 2015), Section 8.2.10: Cancer Risk Evaluation of Short Term Projects, pp. 8-17/18; <https://oehha.ca.gov/air/crn/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

⁵⁰ MND, App B, pg. 30.
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of DPM, the Project may result in potentially significant health risk impacts. The City must prepare an HRA to evaluate the magnitude of the Project's health risk impacts in accordance with CEQA.

C. The MND Fails To Disclose And Analyze Impacts From Stationary Diesel Generators

The MND fails to include stationary backup generators in its analysis of the Project's operational impacts. Specifically, the MND's analysis of air quality impacts fails to include backup generator emissions in its technical models.⁵¹ And the MND's discussion of the Project's health risk and greenhouse gas impacts did not disclose impacts from backup generators. These omissions result in a failure to meet CEQA's informational and analytical standards. California courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."⁵² CEQA requires that a project be described with enough particularity that its impacts can be assessed.⁵³ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.⁵⁴ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.⁵⁵

CEQA Guidelines section 15378 defines "project" to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."⁵⁶ "The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval."⁵⁷ Courts have explained that a complete description of a project must "address not only the immediate environmental consequences of going forward with the project, but also all "*reasonably foreseeable* consequence[s] of the initial project."⁵⁸ "If a

⁵¹ MND, App. B, PDF pg. 35, 119, 196, 280.

⁵² *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* ("CBE v. Richmond") (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

⁵³ 14 CCR § 15071; see *Laurel Heights Improvement Assn. v. Regents of University of California* ("Laurel Heights I") (1988) 47 Cal.3d 376, 192–193.

⁵⁴ *Id.*

⁵⁵ *Sundstrom v. County of Mendocino* ("Sundstrom") (1988) 202 Cal.App.3d 296, 311.

⁵⁶ CEQA Guidelines § 15378.

⁵⁷ *Id.*, § 15378(c).

⁵⁸ *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449–50. 6755-003

[CEQA document]...does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA and the final [document] is inadequate as a matter of law.”⁵⁹

Backup generators are a reasonably foreseeable consequence of the Project that must be considered part of the whole of the action. Here, the Project includes construction of two, four-story scientific R&D buildings totaling approximately 369,878 square feet. The MND acknowledges that a backup generator may be located in the first level of the underground parking garage.⁶⁰ And site plans in the MND include a backup generator.⁶¹ Besides being included in the Project’s design plans, back-up generators are a reasonably foreseeable consequence of the Project due to increasingly common Public Safety Power Shutoff (“PSPS”) events and extreme heat events. Extreme heat events (“EHE”) are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.⁶² According to the California Public Utilities Commission (CPUC) de-energization report⁶³ in October 2019, there were almost 806 PSPS events that impacted almost 973,000 customers (~7.5% of households in California). The California Air Resources Board estimates that with 973,000 customers impacted by PSPS events in October 2019, approximately 125,000 back-up generators were used by customers to provide electricity during power outage.⁶⁴ The widespread use of back-up generators to adapt to PSPS and EHE events suggests that back-up generators are a reasonably foreseeable consequence of the Project. These facts show that use of backup generators is reasonably foreseeable.

The MND suggests that analysis of backup generator impacts is not required because generators require permits from the San Diego Air Pollution Control District (“SDAPCD”).⁶⁵ But as clearly stated in the CEQA Guidelines, the project that must be analyzed in an MND “refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental

⁵⁹ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

⁶⁰ MND, pg. 58; App. B, pg. 28.

⁶¹ MND, pg. 91, Site Plan, Figure 3.

⁶² Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

⁶³ <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage..

⁶⁴ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps>.

⁶⁵ MND, pg. 35 (“[i]f stationary sources, such as backup generators, are installed on-site, they would be required to obtain the applicable permits from the SDAPCD for operation of such equipment.”). 6755-003

agencies...The term "project" does not mean each separate governmental approval.”⁶⁶ Therefore, backup generator emissions must be analyzed in the MND regardless of additional permits required in the future.

Backup generators have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.⁶⁷ Generators can emit criteria air pollutants, greenhouse gases, and toxic air contaminants. Backup generators commonly rely on fuels such as natural gas or diesel,⁶⁸ and thus can significantly impact public health through DPM emissions.⁶⁹ Diesel back-up generators emit significant amounts of Nitrogen Oxides (NOx), sulfur dioxides (SO₂), particulate matter (PM₁₀), carbon dioxide (CO₂), carbon monoxide (CO), and volatile organic compounds (VOC).⁷⁰ As a result, omission of a generator system results in an underestimation of the Project’s air quality, greenhouse gas, and health risk impacts.

⁶⁶ CEQA Guidelines § 15378(c).

⁶⁷ CEQA Guidelines § 15378.

⁶⁸ SCAQMD, Fact Sheet on Emergency Backup Generators, <http://www.aqmd.gov/home/permits/emergency-generators> (“Most of the existing emergency backup generators use diesel as fuel”).

⁶⁹ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> (“When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California’s 35 air pollution control and air quality management districts (air districts)”).

⁷⁰ University of California, Riverside Bourns College of Engineering—Center for Environmental Research and Technology, Air Quality Implications Of Backup Generators In California, (March 2005), pg. 8, available at <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=84c8463118e4813a117db3d768151a8622c4bf6b>; South Coast AQMD, Fact Sheet on Emergency Backup Generators (“Emissions of Nitrogen Oxides (NOx) from diesel-fired emergency engines are 200 to 600 times greater, per unit of electricity produced, than new or controlled existing central power plants fired on natural gas. Diesel-fired engines also produce significantly greater amounts of fine particulates and toxics emissions compared to natural gas fired equipment.”), available at <http://www.aqmd.gov/home/permits/emergency-generators#Fact2>.

In sum, the MND is required to include backup generators in its impacts analyses because use of backup generators is a reasonably foreseeable consequence of the Project. Diesel generators have the potential for resulting in a direct physical change in the environment resulting in adverse health risk, air quality, GHG, and noise impacts.”⁷¹ However, the MND fails to include backup generators in its analyses. Therefore, the MND fails to meet CEQA’s informational standards, and the City lacks substantial evidence to conclude that these impacts would be less than significant. An EIR must be prepared to analyze the full scope of the Project’s potentially significant impacts.

II. CONCLUSION

The City Council lacks substantial evidence to support the findings required to approve the Project due to the City’s failure to comply with the CAP and CEQA. Substantial evidence supports a fair argument that the Project’s impacts may be significant and unmitigated. Due to the MND’s deficiencies, the City cannot conclude that the Project’s impacts have been mitigated to a less than significant level.

We urge the City Council to continue today’s hearing and fulfill its responsibilities under CEQA by withdrawing the MND and preparing an EIR to address the issues raised in this preliminary comment letter. This is the only way the City and the public can ensure the Project’s significant environmental impacts are mitigated to less than significant levels.

Sincerely,



Aidan P. Marshall

⁷¹ CEQA Guidelines § 15378.
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