

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

kcarmichael@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080

TEL: (650) 589-1660
FAX: (650) 589-5062

ARIANA ABEDIFARD
KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARION N. JOHNSON
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO

Of Counsel

MARC D. JOSEPH
DANIEL L. CARDOZO

October 3, 2023

Agenda Item VIII-D

Via Email and Overnight Mail

Chair Peter Vang
Planning Commissioners
c/o Planning and Development Department
City of Fresno
City Hall
2600 Fresno Street, Room 3043
Fresno, California, 93721-3604
Email: PublicCommentsPlanning@fresno.gov

Via Email Only

Steven Martinez, Planner
Email: Steven.Martinez@fresno.gov

**Re: Agenda Item VIII-D: 2740 West Nielsen Avenue
Office/Warehouse Project (Development Permit Application
No. P21-02699 and Tentative Parcel Map No. P21-05930) (SCH
2022050265)**

Dear Chair Vang, Planning Commissioners, and Mr. Martinez:

We are writing on behalf of **Fresno Residents for Responsible Development** (“Residents”) regarding the City of Fresno Planning Commission’s Agenda Item No. VIII-D for the proposed 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930; SCH 2022050265) (“Project”), proposed by Scannell Properties (“Applicant”).¹ The Project proposes construction of four office/warehouse buildings

¹ City of Fresno, Planning Commission Agenda (October 4, 2023) available at <https://fresno.legistar.com/View.ashx?M=A&ID=1057020&GUID=756A2F25-13EC-44BD-9120-9A1242198A34>
6179-014j

October 3, 2023

Page 2

that would be configured for heavy industrial uses.² The proposed buildings would result in a total gross floor area of approximately 901,438 square feet.³

The Project site is located at 2740 West Nielsen Avenue, between North Marks and North Hughes Avenues in the City and County of Fresno.⁴ The 48.03-acre Project site is currently vacant but formerly consisted of an industrial warehouse that has since been demolished.⁵ The Project site is bounded to the north by partially developed land, to the east by North Hughes Avenue, to the south by West Nielsen Avenue, and to the west by North Marks Avenue.⁶ Regional access to the site is provided by State Route 180 (“SR-180”), which is located approximately 0.3 mile south of the project site, and State Route 99 (“SR-99”), which is located approximately 0.8 miles east of the project site.⁷

On May 19, 2023, Residents submitted written comments on the Draft Environmental Impact Report (“DEIR”) (“DEIR Comments”), including expert comments, which identified significant errors, omissions, and fatal defects in the environmental document prepared for the Project. In particular, the DEIR failed to accurately disclose and mitigate the Project’s potentially significant air quality, greenhouse gas (“GHG”) emissions, noise, and transportation impacts. The City prepared a Final Environmental Impact Report (“FEIR”) for the Project which includes written responses to the DEIR Comments.⁸

Residents and their experts have reviewed the FEIR and Staff Report and supporting exhibits prepared for this hearing. Based upon our review of the FEIR and supporting documentation, we conclude that the City has not resolved the issues raised in Residents’ DEIR comments, and that the FEIR still fails to comply with the requirements of the California Environmental Quality Act⁹ (“CEQA”). Although the City purports to have revised its air quality and GHG analysis in response to our DEIR Comments, our review demonstrates that the FEIR’s air

² City of Fresno, Draft Environmental Impact Report, 2740 West Nielsen Avenue Office/Warehouse Project (SCH: 2022050265) (hereinafter “DEIR”) (February 2023) p. 1-3. available at <https://ceqanet.opr.ca.gov/2022050265/3>.

³ DEIR, p. 1-3.

⁴ DEIR, p. 2-2.

⁵ DEIR, p. 3-5.

⁶ DEIR, pp. 2-1 – 2-2.

⁷ DEIR, p. 3-1.

⁸ City of Fresno, Final Environmental Impact Report, 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930) (hereinafter “FEIR”) available at <https://ceqanet.opr.ca.gov/Project/2022050265>

⁹ Pub. Resources Code (hereinafter “PRC”) §§ 21000 et seq.; 14 Cal. Code Regs (hereinafter “CEQA Guidelines”) §§ 15000 et seq.

quality and GHG analyses remain substantially inaccurate and incomplete. The FEIR also fails to meaningfully respond to the majority of Resident's technical comments, and fails to resolve the majority of legal and evidentiary deficiencies we identified in the DEIR. As a result, the FEIR still fails to adequately disclose, analyze, and mitigate the Project's potentially significant impacts related to air quality, GHG emissions, noise, and on transportation and traffic. The City lacks substantial evidence to support the FEIR's conclusions that impacts will be mitigated to less than significant levels. The FEIR also continues to rely on legally inadequate, ineffective, and unenforceable mitigation measures that fail reduce impacts to less than significant levels, and fail to meet the basic mitigation requirements of CEQA. The Planning Commission cannot approve the Project in reliance on such a legally inadequate FEIR.

These comments address the outstanding deficiencies in the City's environmental analysis and proposed mitigation for the Project. These comments are supported by substantial evidence in the form of technical comments from qualified experts identifying significant, unmitigated air quality, GHG emissions, transportation, and noise impacts that the FEIR fails to adequately address. These comments were prepared with the assistance of air quality and hazardous materials expert James J.J. Clark, Ph.D. of Clark and Associates, noise expert Derek Watry of Wilson Ihrig, and transportation expert Norman Marshall of Smart Mobility. Their technical comments are attached hereto as Exhibit A, Exhibit B, and Exhibit C respectively and incorporated by reference herein.¹⁰ These experts address the FEIR's failure to remedy the DEIR's analytical errors and omissions, and lack of adequate mitigation, that were described in detail in their DEIR comments.

We urge the Planning Commission to carefully consider these comments and to remand the Project to City Staff to prepare a legally adequate EIR for the Project. The Project should not be rescheduled for a further public hearing before the Commission until all of the issues raised in these comments, and in the comments of other members of the public, have been fully addressed. We reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.¹¹

¹⁰ **Exhibit A**, James J.J. Clark, Ph.D., Clark & Associates (hereinafter "Clark Comments"); **Exhibit B**, Derek Watry, Wilson Ihrig (hereinafter "Watry Comments"); **Exhibit C**, Norman Marshall, Smart Mobility (hereinafter "Marshall Comments").

¹¹ 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.
6179-014j

I. STATEMENT OF INTEREST

Fresno Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. Fresno Residents includes the **International Brotherhood of Electrical Workers Local 100, Plumbers and Pipefitters UA Local 246, Sheet Metal Workers Local 104, Sprinkler Fitters Local 669, District Council of Ironworkers** their members and their families, and other individuals that live and/or work in the City of Fresno and Fresno County.

Fresno Residents support sustainable development in the City. Fresno Residents has a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members. Large warehouse projects like this Project should avoid adverse impacts to air quality, noise levels, transportation, biological resources, and public health, and should take all feasible steps to ensure unavoidable impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can commercial and industrial development truly be sustainable.

The individual members of Fresno Residents live, work, recreate, and raise their families in the City of Fresno and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work constructing the Project itself. They would be the first in line to be exposed to any health and safety hazards which may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

In addition, Fresno 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 the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

Finally, Fresno Residents is concerned with projects that can result in serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.¹² It is in this spirit we offer these comments.

II. LEGAL DISCUSSION

A. The City's Responses to Public Comments on the DEIR Are Inadequate

CEQA requires that a lead agency evaluate and prepare written responses to comments in a FEIR.¹³ Agencies are required to provide “detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful.”¹⁴ When a comment raises a “significant environmental issue,” the written responses must describe the disposition of each such issue raised by commentators.¹⁵ Specifically, the lead agency must address the comment “in detail giving reasons why” the comment was “not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice,”¹⁶ particularly in response to comments are made by agencies or experts.¹⁷ Failure of a lead agency to respond to comments raising significant environmental issues before approving a project frustrates CEQA’s informational purpose and may render the EIR legally insufficient.¹⁸ As the court explained in *City of Long Beach*:

The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to

¹² PRC § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

¹³ PRC § 21091(d); 14 CCR §§ 15088(a), 15132.

¹⁴ *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.4th 889, 904.

¹⁵ PRC §21091(d); 14 CCR §§15088(c), 15132(d), 15204(a).

¹⁶ 14 CCR § 15088(c); see *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124 (“*Laurel IP*”); *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal. App. 4th 603, 615.

¹⁷ *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367, 1371; *People v. County of Kern* (1976) 62 Cal.App.3d 761, 772).

¹⁸ *Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1020.

public scrutiny, and that public participation in the environmental review process is meaningful.¹⁹

The City's responses to comments in the FEIR fail to fulfill the City's legal duty to provide reasoned responses to comments in several ways.

First, the Responses fail to meaningfully respond to the detailed technical comments of Dr. Clark and dismiss comments regarding the Project's potentially significant health risk impacts from exposure to Valley Fever causing fungus spores and from the operation of backup generators, transportation refrigeration units, and fire pumps at the Project site. Additionally, the FEIR claims that an updated health risk analysis ("HRA") was performed for the Project. However, the HRA is not included in the FEIR or the materials attached to the Agenda for this hearing. The City cannot rely on hidden studies which are not disclosed to the public to support findings regarding the Project's environmental impacts.²⁰ The FEIR's responses also missed the main technical points of Dr. Clark's comments and the lack of a detailed response to Dr. Clark's comments fails to comply with CEQA.²¹

The Responses also fail to meaningfully respond to Mr. Watry's comments explaining that the Project has significant construction and operational noise impacts that require mitigation to lower decibel levels encountered by sensitive receptors. In his DEIR comments, Mr. Watry identified clear errors in the City's noise analysis showing that the Project would result in a significant unmitigated impact and explained that the City's proposed noise mitigation, MM NOI-1, does nothing to reduce excess decibel levels. In response to Mr. Watry's comments, the FEIR simply reiterates the DEIR's unsupported conclusion that the noise analysis is correct, and that MM NOI-1 would reduce noise levels to less than significant levels. By so doing, the FEIR fails to respond to Mr. Watry's comment raising a "significant environmental issue," and as a result, fails to mitigate this impact. This is a clear violation of CEQA.²²

Finally, the FEIR fails to meaningfully respond to Mr. Marshall's comments on the DEIR's failure to accurately estimate Project truck traffic and the resulting transportation and GHG emissions impacts. Furthermore, the FEIR fails to

¹⁹ 176 Cal. App. 4th at 904.

²⁰ *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").

²¹ 14 CCR § 15088(c); *People v County of Kern* (1976) 62 CA3d 761.

²² PRC §21091(d); 14 CCR §§15088(c), 15132(d), 15204(a).

consider the addition of proposed mitigation to reduce the Project's potentially significant impacts on GHG emissions resulting from the Project's truck trip generation.

The City's failure to respond to Residents' expert comments is comparable to the errors made by the City of Carmel in *Flanders Foundation*.²³ In that case, a city prepared a FEIR for a project involving the sale of a city-owned historic property surrounded by city-owned parkland. Its DEIR had proposed a conservation easement to mitigate the loss of city parkland. Comments submitted on the *Flanders* DEIR recommended an alternative of selling the residence with a smaller lot in order to mitigate the potentially significant impacts from the loss of city park space. However, the FEIR failed to provide a substantive response to this comment, and instead merely reiterated the city's reliance on the same conservation easement that had been originally proposed in the DEIR as "sufficient mitigation."²⁴ Both the trial court and the Court of Appeal held that Carmel's response was legally inadequate because it had ignored the commenter's observation that a reduction in the size of the parcel would mitigate an environmental impact of the project.²⁵

Similarly here, the Responses fail entirely to respond to Dr. Clark's comments documenting significant health risk impacts, respond to Mr. Watry's comments on inadequate noise mitigation by simply reiterating the inadequate analysis and mitigation measure originally proposed in the DEIR, and fail to analyze the potentially significant transportation and GHG emissions impacts from the reasonably foreseeable use of the Project. These are patently inadequate responses which fail to meet the clear legal standard articulated in the CEQA Guidelines. As the *Flanders Foundation* court explained:

Since the proposed project would have an unmitigated significant environmental impact by eliminating parkland, the comment's suggestion reasonably questioned whether that impact could be reduced by reducing the size of the parcel. The City's obligation under CEQA was to explain in the FEIR "*in detail giving reasons why*" the City was not considering the sale of the residence with a reduced parcel. The City made no effort to satisfy its obligation....The City's failure to respond to this significant comment violated its duty under CEQA, and the trial court correctly found that the City's certification of the FEIR was therefore invalid.²⁶

²³ *Flanders Foundation*, 202 Cal.App.4th at 609.

²⁴ *Flanders Foundation*, 202 Cal.App.4th at 609.

²⁵ *Id.* at 615-616.

²⁶ *Id.* at 616-17.

The FEIR must be revised and recirculated to correct the significant errors and omissions in the City's Responses.

B. The FEIR Fails to Accurately Disclose and Mitigate the Project's Potentially Significant Transportation Impacts

The FEIR continues to substantially underestimate the Project's transportation impacts by relying on unsupported assumptions regarding the Project's operations and failing to consider reasonably foreseeable uses of the Project.

First, Resident's comments on the DEIR explained that, because the Project's future tenants have not been identified, the Project's trip generation analysis was highly uncertain. Additionally, the trip generation study relied upon in the DEIR included warehouse sites with trip rates of two to six times the rate used in the DEIR, thus inflating the baseline against which the Project's trips were analyzed. Furthermore, our comments detailed that the failure to account for the reasonably foreseeable uses of the Project resulted in a failure to accurately analyze the Project's air quality and GHG emissions impacts.

In response, the FEIR focuses on one facet of our comments, specifically, that if the Project were to operate as an Amazon fulfillment center, the Project would result in 4.5 daily trips per 1,000 square feet, twice the rate assumed in the DEIR. The FEIR states that the Applicant has confirmed that Amazon is not a potential future tenant of the Project site and summarily dismisses the remainder of our comments.²⁷ However, as detailed in our comments on the DEIR, an Amazon fulfillment center is just one of many foreseeable intensive warehouse uses that would generate truck trips exceeding that which was assumed in the DEIR's transportation analysis. Additionally, Mr. Marshall notes that many businesses are copying Amazon's logistics model.²⁸ Therefore, even if Amazon is not a potential future tenant, the City lacks evidentiary support to conclude that a similar logistics center would not be a reasonably foreseeable use of the Project site. Neither the MMRP nor the Project's conditions of approval include a requirement that the future use of the Project limit the truck trips to the levels analyzed in the FEIR. Therefore, the City lacks substantial evidence to conclude that the Project will not generate truck trips consistent with the high intensity high-cube warehouse uses allowed at the Project site.

²⁷ FEIR, p. 3-236.

²⁸ Marshall Comments, p. 2.

Second, our comments on the DEIR detailed that the City applied the Fresno COG ABM to estimate that the Project would generate 19.8 VMT per employee per day. Mr. Marshall found that the model covers only Fresno County and excludes the portion of travel outside the county, thereby excluding distances traveled to major intermodal facilities that are 110 – 240 miles from the proposed project.²⁹ In response, the FEIR states that the VMT analysis in Appendix G of the DEIR included external passenger vehicle travel.³⁰ However, in his review of the ABM, Mr. Marshall found that the external travel was calculated based on coarse output data from the California Statewide Travel Demand Model (“CSTDm”) which cannot be relied on for project level analysis.³¹ The website for the CSTDm includes a disclaimer which states: “This model is not an appropriate tool for individual project level analysis.”³² By the State’s own admission, the CSTDm is not an appropriate tool to evaluate the Project’s external VMT. As a result, the City lacks substantial evidence to support the conclusion that the Project will not result in significant VMT impacts. Furthermore, Mr. Marshall notes that VMT analysis for land uses which will generate significant truck traffic, such as the Project here, must include an analysis of truck VMT and GHG emissions in order to adequately inform decisionmakers of a project’s potential impacts.

The City must prepare a revised EIR for the Project and include an analysis of the Project’s reasonably foreseeable truck trip generation and VMT.

C. The FEIR Fails to Accurately Disclose and Mitigate the Project’s Potentially Significant Health Risk Impacts

The FEIR continues to substantially underestimate the Project’s health risk impacts by relying on unsupported assumptions regarding Project operations. Additionally, the FEIR fails to respond to Residents’ comments regarding the potentially significant health risks stemming from exposure to Valley Fever.

1. The FEIR Still Fails to Address Health Risk Impacts from Transportation Refrigeration Units

We previously provided comments that the DEIR failed to account for the operation of transportation refrigeration units (“TRUs”) during Project operations

²⁹ Marshall Comments, p. 1.

³⁰ FEIR, p. 3-238.

³¹ Marshall Comments, p. 2.

³² State of California, CalTrans, California Statewide Travel Demand Model (accessed September 29, 2023) available at <https://dot.ca.gov/programs/transportation-planning/division-of-transportation-planning/data-analytics-services/statewide-modeling/california-statewide-travel-demand-model>
6179-014j

resulting in an underestimated foreseeable health risk to the community as well as associated GHG emissions impacts. In response, the FEIR states that the DEIR's analysis "assumed that any refrigerated trucks would use the electrical hookups to power the TRUs rather than operate their onboard diesel engines."³³ However, the City does not provide any evidence to support this assumption, nor does the MMRP include any mitigation measures to ensure that TRUs at the Project site will use auxiliary electrical hookups instead of onboard diesel engines. Project Mitigation Measure ("MM") AIR-3 requires that the Project provide infrastructure to "accommodate a minimum of one **future** charger per 50,000 square feet."³⁴ MM AIR-3 does not require the installation of charging stations, only that there is infrastructure to support future charging stations. If no charging stations are subsequently installed, there would be no quantifiable emissions reductions resulting from this infrastructure. The City lacks supporting evidence to rely on the assumption that there will be charging stations or auxiliary power for TRUs.

As a result, the City's analysis of health risk impacts from the operation of TRUs fails to meet the requirements to analyze the Project's health risk impacts under CEQA.

2. The FEIR Still Fails to Address Health Risk Impacts from Backup Generators

Resident's comments on the DEIR detailed that the City failed to account for the use of backup generators and fire pumps during Project operation resulting in a failure to analyze the reasonably foreseeable air quality and health risk impacts from diesel particulate matter emissions. In response, the FEIR states that "a supplemental analysis to evaluate potential emissions associated with equipment, emergency backup generators, and diesel fire pumps was conducted using CalEEMod" and found that the use of "equipment, emergency backup generators, and diesel fire pumps would not exceed the significance criteria for annual ROG, NOX, CO, SOX, PM10, or PM2.5 emissions."³⁵ However, the FEIR fails to attach the referenced analysis, and in our review of the entire record, such analysis could be located. If the City did perform an updated HRA for the Project, it has not been disclosed to the public, and cannot be relied upon by the City to conclude that the Project will not result in significant health risk impacts from the operation of backup generators and fire pumps.

³³ FEIR, pp. 3-254 – 3-255.

³⁴ FEIR, p. 3-252 (emphasis provided).

³⁵ FEIR, p. 3-256.

The City must prepare a revised DEIR for the Project which discloses the results of the updated HRA, and provide the public the opportunity to review the analysis.

3. The FEIR Still Fails to Address Impacts from Valley Fever

Resident's comments on the DEIR detailed the potential health risk to construction workers and nearby residents from exposure to *Coccidioides immitis* ("Cocci") fungus spores which can spread a disease known as Valley Fever. Our comments explained that the most at-risk populations are construction and agricultural workers and that the potentially exposed population in surrounding areas is much larger than construction workers because the nonselective raising of dust during Project construction will carry the very small spores which measure 0.002–0.005 millimeters into nonendemic areas, potentially exposing large non-Project-related populations. The City fails to respond to substantial evidence demonstrating the known presence of Valley Fever in the Project's vicinity and the potential impacts of exposure to the fungus spores.

According to the FEIR, the closest sensitive receptors to the Project site include the single-family residences located approximately 110 feet south of the project site across West Nielsen Avenue.³⁶ These sensitive receptors are at risk of Valley Fever exposure during Project construction, resulting in a potentially significant health risk impact, and are not subject to the protective Valley Fever training requirements of Labor Code 6702. Furthermore, the small fungus spore particles will not be controlled by the conventional construction dust control mitigation measures proposed in the DEIR under Mitigation Measure ("MM") Air-1.³⁷ Thus, off-site sensitive receptors may have a significant risk of exposure to Valley Fever spores with no mitigation.

In response to Residents' comments, the FEIR states that the distance to nearby sensitive receptors is far enough such that particulate matter will settle prior to reaching the nearest sensitive receptor.³⁸ Additionally, the FEIR states that "crosswinds influenced by adjacent traffic intersections would help dissipate any particulate matter associated with the construction phase of the project."³⁹ Based on these assumptions the FEIR concludes that Valley Fever causing *Cocci*

³⁶ FEIR, p. 3-235.

³⁷ Clark Comments, p. 6.

³⁸ FEIR, p. 3-235.

³⁹ FEIR, p. 3-235.

spores will not reach nearby sensitive receptors and that the dust control measures required by Mitigation Measure AIR-1 will reduce exposure to workers onsite.⁴⁰ Here, the FEIR disregards substantial evidence provided by Residents and Dr. Clark and relies on unsupported assumptions in its response.

Dr. Clark notes that smaller particles like spores require significantly longer to settle out of air.⁴¹ For particles 10 um in diameter the settling time is measured in minutes, but for particles less than 10 um in diameter, the settling time is measured in hours.⁴² *Cocci* spores are 2-5 um in diameter, thus allowing the spores to travel significantly further, thereby impacting receptors at greater distances. The FEIR's unsupported assumption that the spores would not reach sensitive receptors is not supported by substantial evidence and cannot be used as justification for the City's conclusion that the Project will not result in a significant health risk impact.

Additionally, as detailed in our DEIR comments, conventional dust control measures, such as those required under MM AIR-1, are inadequate to control the spread of *Cocci* spores.

The FEIR still fails to provide any information regarding the prevalence of *Cocci* fungus spores in the Project's vicinity, fails to discuss applicable construction worker Valley Fever training requirements and fails to include any Valley Fever-specific mitigation in the MMRP. This continued lack of disclosure by the City prevents meaningful analysis and mitigation of the potential health impacts the Project will cause to onsite construction workers and other individuals in close proximity to the Project site from disturbing soils which may be contaminated with Valley Fever spores site during Project construction.

The City must prepare a revised DEIR which includes a discussion of the potential for the presence of *Cocci* fungus spores at the Project site in order to accurately analyze and mitigate the Project's potentially significant health risk impacts from Valley Fever.

⁴⁰ FEIR, p. 3-235.

⁴¹ Clark Comments, p. 5.

⁴² Clark Comments, p. 5.

4. The FEIR Still Fails to Include Effective Mitigation Measures to Reduce the Project's Potentially Significant Health Risks from Valley Fever

In his comments on the DEIR, Dr. Clark proposed a number of feasible mitigation measures the City should consider and adopt in the MMRP for the Project to reduce potential health impacts from Valley Fever. The City failed to provide any response to the proposed mitigation measures. Residents reiterate that the following mitigation measures must be included in the MMRP for the Project to reduce the potentially significant health risk impacts to construction workers and nearby sensitive receptors from exposure to *Cocci* spores during Project construction:

- (1) Include specific requirements in the Project's Injury and Illness Prevention Program regarding safeguards to prevent Valley Fever.
- (2) Control dust exposure through the following methods:
 - Apply chemical stabilizers at least 24-hours prior to high wind event;
 - Apply water to all disturbed areas a minimum of three times per day. Watering frequency should be increased to a minimum of four times per day if there is any evidence of visible wind-driven fugitive dust;
 - Provide National Institute for Occupational Safety and Health (NIOSH)-approved respirators for workers with a prior history of Valley Fever.
 - Half-face respirators equipped with a minimum N-95 protection factor for use during worker collocation with surface disturbance activities. Half-face respirators equipped with N-100 or P-100 filters should be used during digging activities. Employees should wear respirators when working near earth-moving machinery.
 - Prohibit eating and smoking at the worksite, and provide separate, clean eating areas with hand-washing facilities.
 - Avoid outdoor construction operations during unusually windy conditions or in dust storms.
 - Consider limiting outdoor construction during the fall to essential jobs only, as the risk of cocci infection is higher during this season.
- (3) Prevent transport of cocci outside endemic areas:
 - Prevent spillage or loss of bulk material from holes or other openings in the cargo compartment's floor, sides, and/or tailgate;

- Provide workers with coveralls daily, lockers (or other systems for keeping work and street clothing and shoes separate), daily changing and showering facilities.
 - Clothing should be changed after work every day, preferably at the work site.
 - Train workers to recognize that cocci may be transported offsite on contaminated equipment, clothing, and shoes; alternatively, consider installing boot-washing.
 - Post warnings onsite and consider limiting access to visitors, especially those without adequate training and respiratory protection.
- (4) Improve medical surveillance for employees:
- Employees should have prompt access to medical care, including suspected work-related illnesses and injuries.
 - Work with a medical professional to develop a protocol to medically evaluate employees who have symptoms of Valley Fever.
 - Consider preferentially contracting with 1-2 clinics in the area and communicate with the health care providers in those clinics to ensure that providers are aware that Valley Fever has been reported in the area. This will increase the likelihood that ill workers will receive prompt, proper and consistent medical care.
 - Respirator clearance should include medical evaluation for all new employees, annual re-evaluation for changes in medical status, and annual training, and fit-testing.
 - Skin testing is not recommended for evaluation of Valley Fever.⁴³
 - If an employee is diagnosed with Valley Fever, a physician must determine if the employee should be taken off work, when they may return to work, and what type of work activities they may perform.

Any mitigation measures must be included in the MMRP for the Project and be fully enforceable through permit conditions, agreements, or other legally binding instruments.⁴⁴ Failure to include enforceable mitigation measures is considered a

⁴³ Short-term skin tests that produce results within 48 hours are now available. See Kerry Klein, NPR for Central California, New Valley Fever Skin Test Shows Promise, But Obstacles Remain, November 21, 2016; available at <http://kvpr.org/post/new-valley-fever-skin-test-shows-promise-obstacles-remain>.

⁴⁴ CEQA Guidelines §15126.4(a)(2).
6179-014j

failure to proceed in the manner required by CEQA.⁴⁵ In order to meet this requirement, the above mitigation measures must be incorporated directly into the EIR to be enforceable.⁴⁶

The City must prepare a revised DEIR to include mitigation measures such as the those proposed by Dr. Clark to reduce the impacts of exposure to Valley Fever causing fungus spores and mitigate impacts to sensitive receptors.

D. The FEIR Fails to Accurately Disclose, Analyze, and Mitigate the Project’s Potentially Significant Noise Impacts

1. The FEIR Still Fails to Establish an Absolute Threshold of Significance for Project Related Noise Impacts

Residents’ comments on the DEIR detailed that the noise analysis for the Project only compared the Project’s operational noise impacts to a relative threshold of significance and ignored the noise impacts resulting from the absolute increase in the noise environment. In response, the FEIR reiterates the analysis contained in the DEIR stating that the noise analysis for the Project relies on the threshold established in General Plan Policy NS-1-j which states that the City considers a 3 dBA increase to be a significant increase in ambient noise.⁴⁷ The FEIR concludes that, because the Project will result in a 2.1 dBA increase in noise, the Project will not result in a significant noise impact.

In our comments on the DEIR, we presented evidence that the Project will result in a noise increase from 64 dBA CNEL to 66.1 dBA CNEL, thereby exceeding the absolute threshold in General Plan Policy NS-1-j which establishes “65 dBA Ldn or CNEL as the standard for the desirable maximum average exterior noise levels for defined usable exterior areas of residential and noise-sensitive uses.”⁴⁸ The FEIR does not address the data presented by Residents’ expert, and dismisses relevant case law cited in Residents’ comments showing that the noise increase from the Project must be analyzed against the absolute threshold of 65 dBA.

As discussed in Residents’ DEIR comments, an agency cannot simply rely on compliance with local noise regulations to conclude there will be no significant noise

⁴⁵ *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 672.

⁴⁶ *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645, 651-52.

⁴⁷ FEIR, p. 3-244.

⁴⁸ City of Fresno, General Plan, Noise and Safety Element, Policy NS-1-j (December 18, 2014) p. 9-22. Available at <https://www.fresno.gov/wp-content/uploads/2023/03/9-Noise-and-Safety-02-03-21.pdf> 6179-014j

impacts without considering the impacts of increases in noise.⁴⁹ In *King & Gardiner Farms, LLC v. County of Kern*, the County approved an EIR for proposed zoning amendments to streamline oil and gas permitting.⁵⁰ The EIR included an analysis of noise impacts that determined significance based solely on whether the 65 decibel day-night average (“dBA DNL”) threshold in the County General Plan would be exceeded.⁵¹ The Court of Appeal reasoned that the County General Plan did not conclude that all increases in the magnitude of noise are insignificant until the 65 dBA DNL threshold is exceeded, so the General Plan “does not constitute substantial evidence that the magnitude of an increase in ambient noise is irrelevant.”⁵² Rather, an EIR’s noise analysis should consider both the increase in noise level and the absolute noise level associated with a project in determining the significance of the project’s noise impacts.⁵³ The Court of Appeal concluded that an agency cannot exclusively rely on “a single cumulative DNL metric for determining the significance of the project’s noise impacts” while deciding “the magnitude of the increase in ambient noise is irrelevant.”⁵⁴

In *Berkeley Jets*, the Court of Appeal invalidated the Port of Oakland’s EIR for expansion of the Oakland Airport because of its reliance on an improper noise standard.⁵⁵ The EIR evaluated the significance of noise impacts based on whether the estimated level of sound would exceed 65 dB Community Noise Equivalent Level (“CNEL”).⁵⁶ However, as the Court of Appeal explained, the CNEL metric—which averages noise over the course of a day—could not be the sole indicator of significant effects from noise because it does not provide a meaningful analysis of the “degree single overflights will create noise levels over and above the existing ambient noise level at a given location, and the community reaction to aircraft noise, including sleep disturbance.”⁵⁷ Therefore, the Court concluded, a revised EIR with additional study of noise impacts from flights was necessary.⁵⁸

Similarly here, the City continues to rely on the Project’s purported compliance with local noise regulations to conclude that the Project will not result in significant construction noise impacts. As in *Keep Our Mountains Quiet*, the

⁴⁹ *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 894.

⁵⁰ *Id.* at 829.

⁵¹ *Id.* at 830, 889.

⁵² *Id.* at 894.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Berkeley Jets*, 91 Cal.App.4th at 1381–1382.

⁵⁶ *Id.* at 1373.

⁵⁷ *Id.* at 1381–1382.

⁵⁸ *Id.* at 1382.

City's reliance on noise regulations does not provide substantial evidence to support the FEIR's conclusion that the Project will not have significant noise impacts. The FEIR must be revised and recirculated to analyze the Project's construction noise impacts against a meaningful significance threshold.

2. The FEIR Still Fails to Analyze Construction Noise Impacts

Residents' comments on the DEIR detailed that the construction noise analysis completed for the Project incorrectly applied the Federal Transit Administration's ("FTA") guidance on calculating construction noise by reducing the usage factor of the construction equipment used in the analysis. Mr. Watry corrected the errors identified in the DEIR's noise analysis and found that construction of the Project will result in a significant noise impact. Specifically, he found that the site preparation phase will result in a noise level of 70.2 dBA Leq, while grading will result in noise levels of 71 dBA Leq, and building construction will result in noise levels of 69.0 dBA Leq. When compared to the existing ambient noise level of 62.3 dBA Leq, Mr. Watry found that Project construction will result in noise exposure increases of 7.9, 8.7 and 6.7 dBA Leq during the Projects site preparation, grading, and building phases respectively. Therefore, the Project will exceed the DEIR's threshold of 5 dBA Leq during three phases of construction, resulting in a significant impact.

The FEIR fails to address Mr. Watry's findings that the City's analysis relies on an improper application of the FTA methodology and reiterates that Project construction will result in an increase of 3.0 dBA Leq, thereby resulting in a less than significant impact.⁵⁹ The FEIR also states that when using the detailed construction methodology and information from the DEIR's CalEEMod analysis, the construction noise levels will reach 68.9 dBA Leq, and would not exceed the 5 dBA threshold of significance.⁶⁰ However, as Mr. Watry notes in his comments, the FEIR's conclusion is based on an incorrect baseline ambient noise level, rendering their conclusion incorrect.⁶¹ The FEIR incorrectly states that the ambient noise level at nearby residential uses between 7:00 a.m. and 4:00 p.m is 66.0 dBA Leq.⁶² However, based on the information provided in the DEIR's noise analysis, Mr.

⁵⁹ FEIR, p. 3-246.

⁶⁰ FEIR, p. 3-246.

⁶¹ Watry Comments, p. 4.

⁶² FEIR, p. 3-246.

Watry calculated the ambient noise level to be 62.3 dBA Leq.⁶³ Based on the FEIR's own calculations, the Project's construction noise levels of 68.9 dBA Leq will exceed the 5 dBA Leq threshold, resulting in a significant noise impact.

The City must revise the construction noise analysis in a revised and recirculated EIR for the Project which includes mitigation measures that will reduce the Project's noise impacts to less than significant.

3. The FEIR Still Fails to Mitigate Significant Noise Impacts to Less Than Significant Levels.

Mr. Watry's DEIR comments explained that MM NOI-1 constituted ineffective mitigation for the Project's noise impacts because the measures proposed (requiring that all equipment be equipped with properly operating and maintained mufflers, and the designation of a "disturbance coordinator" at the City who would be responsible for responding to any local complaints about construction noise) are existing standard features in construction equipment and will not reduce Project construction noise. The DEIR also lacked any quantitative analysis to assess whether the noise reduction achieved by the measures included in MM NOI-1 would result in meaningful reductions in decibel levels. The FEIR failed to revise MM NOI-1 in any way. Therefore, MM NOI-1 remains ineffective.

E. The FEIR Still Fails to Consider the Office of The Attorney General's Best Practices and Mitigation Measures for Warehouse Projects

Resident's comments on the DEIR detailed that the Project fails to comply with several measures outlined in the California Office of the Attorney General's ("OAG") *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* ("Best Practices").⁶⁴

The Best Practices were developed to aid local agencies to achieve CEQA compliance, and promote environmentally-just development when they are considering warehouse project proposals.⁶⁵ The OAG developed the Best Practices based on knowledge gained from monitoring, providing comments on, and litigating,

⁶³ Watry Comments, p. 3.

⁶⁴ California Office of the Attorney General, Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act (hereinafter "Best Practices") (September 2022) available at <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf>

⁶⁵ Best Practices, p. 1.

warehouse development projects in California.⁶⁶ The Best Practices state that while CEQA analysis is necessarily project-specific, the document provides feasible best practices and mitigation measures which were adapted from actual warehouse projects in California.⁶⁷ The purpose of the Attorney General's guidance is to ensure that warehouse projects reduce their individual and cumulative impacts on the communities in which they are located to the greatest extent feasible.

The Best Practices provides examples of environmentally superior methods of developing warehouse projects and offers sample mitigation measures that a local agency should consider when faced with a project such as the Project proposed here. For example, the Best Practices encourage local governing bodies to proactively plan for logistics projects by establishing industrial districts near major highway and rail corridors but away from sensitive receptors in order to help attract investment while avoiding conflicts between warehouse facilities and residential communities.⁶⁸

The FEIR fails to respond to most of the Best Practices measures outlined in Residents' DEIR comments and relies on MM AIR-2 and MM-AIR-3 to demonstrate the Project's compliance with the Best Practices.

The FEIR fails to address many of the recommendations in the Best Practices. For example:

- Per CARB guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors.
- Placing facility entry and exit points from the public street away from sensitive receptors, e.g., placing these points on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.⁶⁹

As noted above, the closest receptor is 110 feet to the south of the project site, considerably closer than what is recommended by the Best Practices. Additionally, the entry and exit point to the Project site on Nielsen Avenue faces the sensitive receptors to the south, increasing the likelihood of causing significant impacts to those receptors.

⁶⁶ Best Practices, p. 1

⁶⁷ Best Practices, p. 1.

⁶⁸ Best Practices, p. 3.

⁶⁹ Best Practices, p. 6.

The Best Practices also recommend that local jurisdictions take care when considering potential impacts from air quality and GHG emissions from project construction and operation. The FEIR does not address many of the recommendations and fails to include mitigation measures that conform with the Best Practices, which for construction include:

- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Limiting the amount of daily grading disturbance area.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.⁷⁰

For operational air quality and GHG emissions impacts, the Best Practices recommend:

- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.

The FEIR fails to demonstrate conformance with any of the above recommendations. The Best Practices also include several recommendations and suggested mitigation measures regarding warehouse noise and transportation impacts that the FEIR fails to consider.

The City must consider all of the recommendations of the OAG and incorporate any feasible measures recommended in the Best Practices as mitigation measures in a revised DEIR to further reduce the Project's potentially significant air quality, GHG emissions, transportation, energy, and noise impacts.

⁷⁰ Best Practices, p. 8.
6179-014j

F. The FEIR Fails to Disclose the Project’s Inconsistencies with Land Use and Planning Laws and Regulations

Pursuant to Appendix G of the CEQA Guidelines, a project will have a significant adverse environmental impact on land use and planning if it will cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.⁷¹ Here, the FEIR fails to disclose inconsistency with the City’s General Plan which result in a significant adverse environmental impact on land use and planning.

1. The FEIR Fails to Disclose the Project’s Inconsistencies with the Noise Element of the City’s General Plan

Under California law, a general plan serves as a “charter for future development”⁷² and embodies “fundamental land use decisions that guide the future growth and development of cities and counties.”⁷³ The general plan has been aptly described as “the constitution for all future developments” within a city or county.⁷⁴ Further, the “propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.”⁷⁵ The consistency doctrine has been described as the “linchpin of California’s land use and development laws; it is the principle which infuses the concept of planned growth with the force of law.”⁷⁶

The City of Fresno’s General Plan Noise Element includes objectives and policies that work to protect the citizens of the City from the harmful and annoying effects of exposure to excessive noise. The Noise Element includes the following policy to guide development:

NS-1-a Desirable and Generally Acceptable Exterior Noise Environment. Establish 65 dBA Ldn or CNEL as the standard for the desirable maximum average exterior noise levels for defined usable exterior areas of residential and noise sensitive uses for noise, but designate 60 dBA Ldn or CNEL

⁷¹ CEQA Guidelines, Appendix G §X(b).

⁷² *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 54.

⁷³ *City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532.

⁷⁴ *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors of El Dorado County* (1998) 62 Cal.App.4th 1334, 1335.

⁷⁵ *Citizens of Goleta Valley v. Board of Supervisors of County of Santa Barbara* (1990) 52 Cal.3d 553, 570.

⁷⁶ *Corona-Norco Unified School District v. City of Corona* (1993) 17 Cal.App.4th 985, 994.

(measured at the property line) for noise generated by stationary sources impinging upon residential and noise sensitive uses. Maintain 65 dBA Ldn or CNEL as the maximum average exterior noise levels for non-sensitive commercial land uses, and maintain 70 dBA Ldn or CNEL as maximum average exterior noise level for industrial land uses, both to be measured at the property line of parcels where noise is generated which may impinge on neighboring properties.⁷⁷

As demonstrated above, the Project will result in significant noise impacts during Project operation that will violate Policy NS-1-a unless mitigated. Mr. Watry provides substantial evidence that the Project will exceed the desirable and generally acceptable noise thresholds established in Policy NS-1-a, and as a result, the FEIR fails to demonstrate consistency with the General Plan.

III. THE PLANNING COMMISSION CANNOT MAKE THE FINDINGS REQUIRED FOR PROJECT APPROVAL

The Project requires approval of a Development Permit and a Tentative Parcel Map by the City. Pursuant to the Fresno City Code (“Code”) the City Planning Director (“Director”) has the authority to approve, conditionally approve, or deny the Project’s applications based on specific sets of findings applicable to each permit, the Director may refer items directly to the Planning Commission when in their opinion the public interest would be better served by having the Planning Commission conduct the Development Permit review.⁷⁸ Here, the Director has referred the Project applications to the Planning Commission for review. In order to approve the Development Permit for the Project, the Planning Commission must find that the Project is consistent with the following:

1. The applicable standards and requirements of [the City] Code.
2. The [City’s] General Plan and any operative plan or policies the City has adopted.
3. Any applicable design guidelines adopted by the City Council.
4. Any approved Tentative Map, Conditional Use Permit, Variance, or other planning or zoning approval that the project required.

⁷⁷ City of Fresno, General Plan, Chapter 9: Noise and Safety, p. 9-19 available at https://www.fresno.gov/darm/wp-content/uploads/sites/10/2022/12/upload_temp_Consolidated-GP-10-13-2022.pdf

⁷⁸ Fresno City Code (“FCC”) § 15-5203 (Development Permit); *see also* FCC § 15-3308 (Tentative Parcel Map).
6179-014j

5. Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670—21679.5.⁷⁹

Additionally, pursuant to the Code, the Planning Commission may approve or conditionally approve a Tentative Parcel Map based on the following findings:

1. The proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan, any applicable operative plan, adopted policies or guidelines, and the Municipal Code.
2. A subdivision for which a Tentative Map is required shall provide pursuant to the Map Act (Section 66473.1), to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.
3. Water will be available and sufficient to serve a proposed subdivision with more than 500 dwelling units in accordance with the Map Act (Section 66473.7).
4. There exists sufficient infrastructure capacity for water, runoff, storm water, wastewater, and solid waste systems to serve the proposed subdivision. In cases where existing infrastructure is found to be deficient, plans shall show how sufficient capacity will be provided.
5. The proposed subdivision is compliant with the City of Fresno Floodplain Management Ordinance and the State of California Code of Regulations Title 23, as well as any other applicable State or federal law.⁸⁰

The City cannot make all of the above findings for the Project, thereby precluding approval of the Project's land use permits. As demonstrated in the foregoing comments, the Project is inconsistent with the General Plan's Noise and Safety Element. Therefore, the Planning Commission cannot find that the Project is consistent with the General Plan, precluding finding No. 2 for the Development Permit and Finding No. 1 of the Tentative Parcel Map and cannot make the necessary findings to approve the Project's entitlements until the deficiencies in the FEIR are corrected.

⁷⁹ FCC § 15-5206.

⁸⁰ FCC § 15-3309.
6179-014j

IV. THE PROJECT FAILS TO COMPLY WITH THE SUBDIVISION MAP ACT

The Project requires the approval of a Tentative Parcel Map to subdivide the existing two parcels into four parcels.⁸¹

The FEIR still fails to analyze this component of the Project. The FEIR therefore lacks substantial evidence to support the Map Act's required factual findings to approve the Tentative Parcel Map, which require the City to find that a proposed subdivision is consistent with the general plan/specific plan, and does not have any detrimental environmental or public health effects.⁸² In addition, as discussed above, there is substantial evidence demonstrating that the Project is likely to have, potentially significant impacts related to transportation, air quality, health risk, GHG emissions, noise, and land use and planning. These impacts are not adequately mitigated in the FEIR. As a result of these unmitigated impacts, the Project fails to comply with mandatory Map Act requirements and the City cannot make the requisite findings to approve the Project's Tentative Parcel Map.

The purpose of the Map Act is to regulate and control design and improvement of subdivisions with proper consideration for their relation to adjoining areas, to require subdividers to install streets and other improvements, to prevent fraud and exploitation, and to protect both the public and purchasers of subdivided lands.⁸³ Before approving a tentative map, the Map Act requires the agency's legislative body to make findings that the proposed subdivision map, together with the provisions for its design and improvement, is consistent with the general plan and any specific plan.⁸⁴ The Map Act also requires the agency's legislative body to deny a proposed subdivision map in any of the following circumstances:⁸⁵

- a) The proposed map is ***not consistent with applicable general and specific plans*** as specified in Section 65451.
- b) The design or improvement of the proposed subdivision is ***not consistent with applicable general and specific plans***.
- c) The site is not physically suitable for the type of development.
- d) The site is not physically suitable for the proposed density of development.

⁸¹ DEIR, pg. 3-13.

⁸² Gov Code §§66473.5, 66474.

⁸³ *Pratt v. Adams* (1964) 229 Cal.App.2d 602.

⁸⁴ Gov Code § 66473.5.

⁸⁵ Gov. Code § 66474 (emphasis added).

- e) The ***design of the subdivision or the proposed improvements are likely to cause substantial environmental damage*** or substantially and avoidably injure fish or wildlife or their habitat.
- f) The ***design of the subdivision or type of improvements is likely to cause serious public health problems.***
- g) The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Residents' experts provided substantial evidence demonstrating that the Project is likely to have significant, unmitigated impacts to public health from exposure to *Cocci* fungus spores; on the environment and public health from construction and operational noise; and on the climate from excess GHG emissions caused by unmitigated VMT. These impacts demonstrate that the Project fails to comply with the General Plan, is "likely to cause substantial environmental damage," and "is likely to cause serious public health problems."⁸⁶ These unmitigated impacts render the Project inconsistent with Map Act requirements. The Map Act therefore requires the City to deny the Project's Tentative Parcel Map pursuant to Government Code Sections 66473.5 and 66474(a), (b), (e), and (f).

V. CONCLUSION

For the reasons stated herein, in Residents' comments on the DEIR, and in other comments from the public, Residents urges the Planning Commission to remand the Project to City Staff to prepare and circulate a legally adequate EIR which fully discloses and mitigates the Project's potentially significant impacts related to air quality, health risks, GHG emissions, noise, and transportation. The City must remedy all substantial defects in the FEIR, and in the Project as a whole, before the Project may be presented to the City's decision making body at any future public hearing.

Thank you for your consideration of these comments.

Sincerely,



Kevin Carmichael

KTC:ljl

⁸⁶ Gov. Code §§ 66474(a), (b), (e), and (f).
6179-014j