

**ATTACHMENT "D"**

**ADAMS BROADWELL JOSEPH & CARDOZO**

A PROFESSIONAL CORPORATION

**ATTORNEYS AT LAW**

601 GATEWAY BOULEVARD, SUITE 1000  
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660

FAX: (650) 589-5062

rfranco@adamsbroadwell.com

**SACRAMENTO OFFICE**

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

TEL: (916) 444-6201

FAX: (916) 444-6209

KEVIN T. CARMICHAEL  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
KELILAH D. FEDERMAN  
RICHARD M. FRANCO  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
DARION N. JOHNSTON  
RACHAEL E. KOSS  
AIDAN P. MARSHALL  
ALAUARA R. MCGUIRE  
ISABEL TAHIR

Of Counsel  
DANIEL L. CARDOZO  
MARC D. JOSEPH  
DANIEL L. CARDOZO

July 15, 2025

**Via Email and Overnight Mail**

City of Antioch Planning Commission  
Kevin Riley, Chair  
Seth Webber, Vice-Chair  
Commissioners Jennifer Perez,  
Robert Martin, Ramesh Suman,  
Cortney L. Jones  
City of Antioch  
200 H Street  
Antioch, CA 94531  
Email: [planning@antiochca.gov](mailto:planning@antiochca.gov)

**Via Email Only**

Kevin Scudero, Acting Director  
Community Development Department  
200 H Street  
Antioch, CA 94531  
Email: [planning@antiochca.gov](mailto:planning@antiochca.gov)  
  
Zoe Merideth, Senior Planner  
Email: [zmerideth@antiochca.gov](mailto:zmerideth@antiochca.gov)

Re: **Antioch Planning Commission Hearing, Agenda Item 6-2;  
Slatten Ranch Townhomes Project (TM-01, AR-23-01)**

Dear Chair Riley, Vice-Chair Wehber, Commissioners, Mr. Scudero, and Ms. Merideth:

We are writing on behalf of **Contra Costa Residents for Responsible Development** ("Contra Costa Residents") to provide comments on Agenda Item 6-2, the Slatten Ranch Townhomes Project (TM-01, AR-23-01) ("Project") proposed by DeNova Homes, Inc. ("Applicant"). The Project consists of a vesting tentative map to create 17 residential lots for 17 three-story buildings, containing 129 townhome-style condominium homes. The Project site is a 6.41 acre site located on the east side and northern end of Slatten Ranch Road, bounded by Wicklow Way on the south and Empire Avenue on the east in the City of Antioch ("City").

The City contends that the Project previously has been analyzed under the California Environmental Quality Act<sup>1</sup> ("CEQA") and that further evaluation is not required pursuant to CEQA Guidelines section 15183.<sup>2</sup> Specifically, the City

<sup>1</sup> Pub. Res. Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

<sup>2</sup> February 2024 Slatten Ranch Townhomes Section 15183 Consistency Memorandum ("15183 Consistency Memorandum"), pg. 1.

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contends that the Project was adequately analyzed in the Antioch Housing, Environmental Hazards, and Environmental Justice Elements Project Environmental Impact Report (“Housing Element EIR”) certified by the City in February 2023, and that additional environmental review is therefore not required for the Project pursuant to section 15183. These conclusions are set forth in the 15183 Consistency Memorandum, which purports to “determine if project-specific impacts would occur that are not adequately covered in [the Housing Element EIR]. To the extent the Housing Element policies and/or actions substantially mitigate a particular project impact, the impact shall not be considered peculiar, pursuant to 15183(f), thus, eliminating the need for further environmental review.”<sup>3</sup>

The City’s conclusion is not supported by substantial evidence in the record and further CEQA review is required. The City’s reliance on section 15183 to avoid any project-specific environmental review is misplaced, as none of the Project’s specific impacts were studied in the Housing Element EIR, and the 15183 Consistency Memorandum lacks any analysis of Project-specific impacts and does not identify any applicable Housing Element policies and/or actions applicable to this Project that will substantially mitigate any Project-level impact. Moreover, the Project will result in new or more significant impacts that are peculiar to the Project site. As a result, the Planning Commission lacks substantial evidence to recommend approval of the Project.

In particular, Contra Costa Residents’ transportation expert found that the Project is likely to have significant vehicle miles traveled (“VMT”) impacts, and the 15183 Consistency Memorandum improperly “screened” the Project from a quantitative VMT analysis. Similarly, Contra Costa Residents’ noise expert found that the Project will have significant construction noise impacts peculiar to this Project site and which were not addressed in the Housing Element EIR. Finally, neither the Consistency Memorandum nor the Housing Element EIR performed any emissions modeling to determine the scope of potential air quality and public health impacts from the Project’s construction and operational emissions, in violation of CEQA. The City therefore may not properly rely on CEQA Guidelines section 15183 to avoid further environmental review.

We prepared these comments with the assistance of acoustics, noise, and vibration expert Jack Meighan of Wilson Ihrig<sup>4</sup> and transportation expert Norman

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<sup>3</sup> 15183 Consistency Memorandum, pg. 10.

<sup>4</sup> Mr. Meighan’s Comments (“Meighan Comments”) and CV are attached hereto as **Attachment A**

Marshall.<sup>5</sup> As explained below, the Project will have potentially significant air quality, public health, noise and transportation impacts that are peculiar to the project and were not analyzed at a project-level in the Housing Element EIR, or are more severe than previously analyzed by the City. These impacts are not reduced to less than significant levels by the mitigation measures in the Housing Element EIR or any other standard conditions of approval, and therefore require disclosure and mitigation in a project-level Environmental Impact Report (“EIR”) before the City can consider approval of the Project.

## I. STATEMENT OF INTEREST

Contra Costa Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. The coalition includes the International Brotherhood of Electrical Workers Local 302, Plumbers & Steamfitters Local 159, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483, along with their members, their families, and other individuals who live and work in the City of Antioch and Contra Costa County.

Contra Costa Residents’ individual members live, work, recreate, and raise their families in the City of Antioch and surrounding communities. Accordingly, they would be directly affected by the Project’s environmental, health, and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

Contra Costa Residents also 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 businesses and industries 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.

## II. LEGAL BACKGROUND

CEQA has two basic purposes, neither of which has the City satisfied in this

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<sup>5</sup> Mr. Marshall’s Comments (“Marshall Comments”) and CV are attached hereto as **Attachment B**.

case. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental impacts of a project before harm is done to the environment.<sup>6</sup> The EIR is the “heart” of this requirement,<sup>7</sup> and 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.”<sup>8</sup> To fulfill this purpose, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”<sup>9</sup> An adequate EIR must contain facts and analysis, not just an agency’s conclusions.<sup>10</sup>

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring imposition of mitigation measures and by requiring the consideration of environmentally superior alternatives.<sup>11</sup> CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures to address all potentially significant impacts identified in the agency’s CEQA analysis.<sup>12</sup> Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon an EIR or other environmental document to meet this obligation.

Following preliminary review of a project to determine whether an activity is subject to CEQA, a lead agency is required to prepare an initial study to determine whether to prepare an EIR or negative declaration, identify whether a program EIR, tiering, or other appropriate process can be used for analysis of the project’s environmental effects, or determine whether a previously prepared EIR could be used with the project, among other purposes.<sup>13</sup> CEQA requires an agency to analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.<sup>14</sup> A CEQA exemption may be invoked only if expressly authorized by the CEQA statute or guidelines and if there is no

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<sup>6</sup> Cal. Code Regs., tit. 14, § 15002, subd. (a)(1) (“CEQA Guidelines”); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>7</sup> *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

<sup>8</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

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

<sup>10</sup> *See Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.

<sup>11</sup> CEQA Guidelines, § 15002, subd. (a)(2) and (3); *Berkeley Jets*, 91 Cal.App.4th, at p. 1354; *Laurel Heights Improvement Ass’n v. Regents of the University of Cal.* (1998) 47 Cal.3d 376, 400.

<sup>12</sup> Pub. Resources Code, §§ 21002-21002.1.

<sup>13</sup> CEQA Guidelines, §§ 15060, 15063, subd. (c).

<sup>14</sup> See, e.g., Pub. Resources Code, § 21100.

possibility of a significant effect on the environment. Exemptions must be narrowly construed and are not to be expanded beyond the scope of their plain language.<sup>15</sup>

CEQA Guidelines Section 15183 provides an exemption for projects which are consistent with the development density established by existing zoning, community plan or general plan policies for which an EIR was certified, *except as necessary to evaluate whether there are project-specific significant impacts which are peculiar to the project or project site*.<sup>16</sup> In relying on section 15183 to approve a project, a lead agency may not forgo further analysis of potentially significant impacts unless it makes certain findings. An agency is required to perform further analysis as to impacts that (1) are peculiar to the proposed project or parcel, (2) were not analyzed as significant effects in a prior EIR for the zoning, community or general plan with which the project is consistent, (3) are potentially significant off-site or cumulative impacts that were not discussed in the prior EIR, or (4) are previously identified significant impacts which, due to substantial new information not known at the time the EIR was certified, are determined to have a more severe impact than discussed in the prior EIR.<sup>17</sup>

Under section 15183(f), an effect of a project on the environment is not considered peculiar to the project or project site if “uniformly applied development policies or standards have been previously adopted ...with a finding that the development policies or standards will substantially mitigate the environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.”<sup>18</sup>

Agency determinations under Guidelines section 15183 are reviewed under the substantial evidence standard.<sup>19</sup> In determining whether an agency’s findings concerning the use of a statutory exemption from CEQA may be upheld, courts review the administrative record to see that substantial evidence supports each element of the exemption.<sup>20</sup> This includes the determination that “uniformly applied development policies or standards” will substantially mitigate the project’s

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<sup>15</sup> *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257.

<sup>16</sup> 14 CCR § 15183(a).

<sup>17</sup> 14 CCR § 15183(b)(1)-(4).

<sup>18</sup> 14 CCR § 15183(f).

<sup>19</sup> *Lucas v. City of Pomona* (2023) 92 Cal.App. 5<sup>th</sup> 508, 538, citing *Concerned Dublin Citizens v. City of Dublin* (2103) 214 Cal.App.4<sup>th</sup> 1301, 1311; see also, *Hilltop Group v. County of San Diego* (2024) 99 Cal.App.5<sup>th</sup> 890, 909-10.

<sup>20</sup> *Lucas*, 92 Cal.App.5<sup>th</sup> at 538.

environmental effects.<sup>21</sup> Agency findings must specifically address the effect of uniform policies and standards on potential environmental impacts.<sup>22</sup>

Section 15168's two-step inquiry of a program EIR's applicability to later activities holds that "if a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration." The City insists that, pursuant to sections 15162 and 15183, the Project is within the scope of the program EIR and no subsequent EIR is required. "Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record."

Here, the Housing Element EIR analyzed impacts at a program level, and did not analyze quantify, or disclose Project-level impacts for issues including transportation, air quality and public health, and noise.

### **III. THE PROJECT IS NOT EXEMPT FROM FURTHER CEQA REVIEW AND AN EIR IS REQUIRED**

The City contends that the Housing Element EIR provides the basis for its determination that no further environmental review of the Project's impacts is required. The 15183 Consistency Memorandum notes that the Project's density of 20.1 dwelling units per acre ("du/ac") is consistent with the development density established in the Housing Element EIR, i.e., 20-25 du/ac, and purports to evaluate whether the Project will have any effects peculiar to the Project or Project site.<sup>23</sup> It goes on to state that "[t]o the extent that the Housing Element policies and/or actions substantially mitigate a particular project impact, the impact shall not be considered peculiar, pursuant to [CEQA Guidelines section] 15183(f), thus, eliminating the requirement for further environmental review."<sup>24</sup>

However, while the Consistency Memorandum recites the requirements of section 15183, it does not actually analyze whether the Project will have any effects peculiar to the Project or the Project site. Neither the Housing Element EIR nor the 15183 Consistency Memorandum examine the Project-level effects on environmental impacts such as air quality, health risks, transportation and noise.

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<sup>21</sup> 14 CCR § 15183(f).

<sup>22</sup> *Hilltop Group*, 99 Cal.App.5th at 918.

<sup>23</sup> 15183 Consistency Memorandum, pg. 10.

<sup>24</sup> *Id.*

Nor does the Consistency Memorandum identify any “Housing Element policies and/or practices” that apply to the Project to substantially mitigate the Project’s impacts. As discussed below, the City lacks substantial evidence to support the necessary findings to exempt the Project from CEQA review, and the City must prepare and circulate for public review an EIR that analyzes the Project’s potentially significant impacts.

**A. The City Improperly Failed to Analyze the Project’s Significant Transportation Impacts**

CEQA requires analysis of a project’s transportation impacts via analysis of the project’s vehicle miles traveled (“VMT”).<sup>25</sup> The Housing Element EIR evaluated the VMT impacts of all of the potential new housing sites in the City (including the site for the Slatten Ranch Project) and found a significant impact on VMT.<sup>26</sup> To address these impacts, the Housing Element EIR adopted Mitigation Measure TRANS-1, which provides that individual housing development projects (like this one) *that do not screen out from VMT impacts analysis shall provide a quantitative VMT analysis.*<sup>27</sup> Individual projects which result in a significant VMT impact are required to implement travel demand management measures and physical measures to reduce VMT to a less-than-significant level.<sup>28</sup> The Housing Element EIR lists seven criteria that are used to screen projects out of conducting project-level VMT analysis: (1) CEQA-exempt projects, (2) small projects, (3) local-serving uses, (4) proximity to a major transit stop, (5) projects located in low VMT areas, (6) affordable housing, and (7) transportation projects.<sup>29</sup> These criteria screen out projects from performing a full VMT analysis because projects meeting these criteria are presumed to have less-than-significant VMT impacts absent substantial evidence to the contrary.<sup>30</sup>

The Housing Element EIR makes clear that it did not analyze VMT impacts from individual housing projects like this one. Nor does the 15183 Consistency Memorandum for this Project analyze the Project’s VMT impacts. Instead, the City asserts that because the 15183 Consistency Memoranda concludes that the Project qualifies for the Guidelines section 15183 exemption, the Project “screens out” from

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<sup>25</sup> 14 CCR § 15064.3.

<sup>26</sup> Housing Element EIR, pg. IV.B-27.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*, pgs. IV.B-21—IV.B-22.

<sup>30</sup> *Id.*

having to perform a quantitative VMT analysis as required under Housing Element EIR mitigation measure TRANS-1. Specifically, the 15183 Consistency Memorandum states:

“As demonstrated through this 15183 Consistency Memorandum, the proposed project would not result in significant impact that is peculiar to the project or project site, a significant effect that was not identified in the Housing Element EIR, or a substantially more severe significant effect related to transportation beyond what was identified in the Housing Element EIR. Therefore, pursuant to Section 15183 of the CEQA Guidelines, the proposed project qualifies for exemption from further environmental review under CEQA. Because the proposed project would be considered exempt from CEQA, Mitigation Measure TRANS-1 is not applicable.”

The City’s position is legally and logically flawed. The City’s argument employs circular reasoning by claiming that because the Project is exempt from CEQA, it does not need to conduct a VMT analysis, citing the Housing Element EIR screening criteria. This reasoning is fundamentally flawed because the argument’s premise (“the Project is exempt from CEQA”) *assumes* the conclusion rather than supporting it. The City argues that an exemption from CEQA means an exemption from VMT analysis, but the CEQA exemption itself is predicated on the absence of significant environmental impacts peculiar to the Project, including transportation impacts which a VMT analysis is designed to determine. In other words, the City claims that it need not evaluate the Project’s potentially significant VMT impacts because the Project is exempt from CEQA, but the exemption determination itself rests on unsupported assumptions regarding the lack of Project-specific peculiar impacts. The City lacks any evidence to support the conclusion that the Project will not have significant VMT impacts peculiar to the Project or Project site because it performed no Project-specific VMT analysis. By bypassing the VMT analysis this way, the City avoids an analysis that could reveal significant impacts, and preclude the use of the section 15183 exemption. This approach undermines the purpose of CEQA, which is to ensure that potential environmental impacts are identified, disclosed and mitigated.

While the Consistency Memorandum relies solely on the “CEQA Exemption” screening criterion, the Project does not qualify for any of the other screening criteria set out in the Housing Element EIR. The Project is not a “Small Project,”



defined as having 10,000 square feet or less<sup>31</sup> of non-residential space or 10 residential units or less. The Project will not consist of “Local-Serving Uses,” as this screening criteria is intended to apply to commercial uses and is not relevant to residential projects.<sup>32</sup> The Project does not qualify for the “Proximity to a Major Transit Stop” VMT screening criteria, as this criteria is limited to the 0.5 mile (walking radius) surrounding the Antioch BART and Antioch Amtrak stations, and the Housing Element EIR found that none of the housing sites analyzed fall within this boundary.<sup>33</sup> The Project does not include any affordable housing, and therefore does not screen out from VMT analysis on that basis. Nor is the Project a “Transportation Project.” Finally, the Project is not located in a “Low VMT Area.” Indeed, as transportation expert Norman Marshall explains, the Project site is located in an area of the City where home-based VMT exceeds the City’s significance thresholds.<sup>34</sup> This makes it very likely that the Project will have significant VMT impacts requiring mitigation.<sup>35</sup>

The Project has none of the characteristics that suggest low VMT impacts that would allow it to be screened from a VMT analysis. As discussed above, the City’s failure to perform a quantitative VMT analysis prevents an understanding of the extent to which the Project’s VMT is expected to exceed the significance threshold, or the nature of mitigation required to reduce such impacts to below the threshold. The City’s conclusion lacks the support of substantial evidence because it failed to perform any Project site-specific analysis of VMT impacts or to determine to what extent these impacts are peculiar to the Project or Project site, nor has it demonstrated that the Project can be screened from performing a quantitative VMT analysis. The City must prepare a Project-specific EIR that includes a quantitative VMT analysis and appropriate mitigation.

**B. The City Lacks Substantial Evidence to Support its Conclusions With Respect to Air Quality and Public Health Impacts**

The City has not performed any emissions modeling to determine potential impacts of Project construction or operations; neither the 15183 Consistency Memorandum nor the Housing Element EIR analyzed any Project site-specific air

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at pg. IV.B-24.

<sup>33</sup> *Id.*

<sup>34</sup> Marshall Comments, pgs. 2-3.

<sup>35</sup> Marshall Comments, pgs. 2-5.

quality impacts or identified any sensitive receptors near the Project site. Under CEQA Guidelines section 15168(c), these air quality and public health impacts are effects that were not examined in the Housing Element EIR, requiring a new initial study leading to either an EIR or negative declaration. The 15183 Consistency Memorandum includes a cursory discussion of the Project's potential air quality impacts, as follows:

“The proposed project would be consistent with the Housing Element and, thus, was anticipated by the City and considered under the Housing Element EIR analysis. Accordingly, the proposed project would not result in any new significant effects related to air quality. However, the Housing Element EIR requires mitigation measures related to construction emissions of criteria air pollutant emissions from future housing developments (AIR-1), operational emissions of criteria air pollutant emissions from future housing developments (AIR-2), and health risks related to the generation of toxic air contaminants (TACs) and particulate matter (PM) 2.5 microns in diameter (PM<sub>2.5</sub>) during construction and operation of future housing developments (AIR-3a and AIR-3b).”<sup>36</sup>

However, the Consistency Memorandum goes on to state that none of the Housing Element EIR air quality mitigation measures are applicable to this Project.<sup>37</sup> Based on the Project's size, location and characteristics, none of the Housing Element EIR's air quality mitigation measures would apply to this Project. Therefore, none of the Project's air quality impacts will be mitigated by “uniformly applied development policies or standards.”<sup>38</sup> The City nevertheless concludes that “[o]verall, based on the above, the proposed project would not result in a significant impact that is peculiar to the project or the project site, was not identified as a significant effect in the Housing Element EIR, and would not result in a more severe adverse impact than the significant effects previously identified within the Housing Element EIR.” This conclusion lacks the support of any evidence, let alone substantial evidence as required by CEQA.

The Housing Element EIR expressly recognized that the use of construction equipment during construction of individual housing developments like the Project

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<sup>36</sup> 15183 Consistency Memorandum, pg. 12.

<sup>37</sup> *Id.*

<sup>38</sup> *See* CEQA Guidelines § 15183.

can pose health risks related to the generation of TACs and PM<sub>2.5</sub>.<sup>39</sup> DPM is a known toxic air contaminant (“TAC”) carcinogen that contains numerous harmful compounds. Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>40,41,42</sup> Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.<sup>43</sup> Exposure to DPM increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction.<sup>44</sup> DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM<sub>2.5</sub> and PM<sub>10</sub>.<sup>45</sup> Indeed, the California Office of Health Hazard Assessment recommends assessing cancer risk from construction emissions for all projects, like this one, for construction projects lasting longer than six months.<sup>46</sup>

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<sup>39</sup> Housing Element EIR, pgs. IV.C-21—23.

<sup>40</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM,and%20other%20adverse%20health%20effects.>

<sup>41</sup> U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

<sup>42</sup> Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; [http://www.edf.org/documents/4941\\_cleanerdieselhandbook.pdf](http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf), accessed July 5, 2020.

<sup>43</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

<sup>44</sup> Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel’s April 22, 1998 Meeting.

<sup>45</sup> Health & Safety Code § 39655(a) (defining “toxic air contaminant” as air pollutants “which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.”)

<sup>46</sup> See OEHHA Risk Assessment Guidelines, Guidance Manual for Preparation of Health Risk Assessments (February 2015), at pg. 8-18, available at <https://oehha.ca.gov/sites/default/files/media/downloads/crnrr/2015guidancemanual.pdf>

Despite the Housing Element EIR's express recognition of the health risks from construction equipment emissions of TACs from construction of projects like this one, the City failed to perform a quantitative health risk analysis to evaluate these peculiar impacts. Because the City has asserted that none of the air quality mitigation measures in the Housing Element EIR applies to this Project, all such impacts will be completely unmitigated. The City therefore may not rely on the section 15183 exemption to approve this Project, and an EIR must be prepared and circulated for public review to evaluate Project's air quality and public health impacts.

**C. The City Lacks Substantial Evidence to Support its Conclusions with Respect to the Project's Noise Impacts**

The City has not performed any site-specific analysis of the Project's potential noise impacts. Neither the Housing Element EIR nor the 15183 Consistency Memorandum includes any analysis of ambient noise in the area of the Project site, modeling of the Project's construction or operational noise impacts, or identification of sensitive receptors near the Project site. The 15183 Consistency Memorandum contains no discussion whatsoever regarding whether the Project may have peculiar noise impacts necessitating further CEQA review. Under CEQA Guidelines section 15168(c), these Project-specific noise impacts were not examined in the Housing Element EIR, requiring a new initial study leading to either an EIR or negative declaration.

The Housing Element EIR recognizes that for individual projects like this one, "construction activities could generate exterior noise levels that exceed the City's noise objectives established under General Plan Policy 11.8.2."<sup>47</sup> The Housing Element EIR also states that "[i]ndividual housing developments...would result in a potentially significant impact if they cause a new exceedance of the General Plan noise objectives, or an audible (3.0 dBA) increase in areas where the General Plan noise objectives are already exceeded as the result of existing development."<sup>48</sup> General Plan Policy 11.8.2 (f) requires a detailed noise attenuation study to be prepared by a qualified acoustical engineer to determine appropriate mitigation and ways to incorporate such mitigation into project design and intervention. Finally, the Housing Element EIR points out that General Plan Policy 11.8.2 requires development adjacent to occupied noise sensitive land uses to implement a construction-related noise mitigation plan that should depict the

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<sup>47</sup> Housing Element EIR, pg. IV.L-12.

<sup>48</sup> Housing Element EIR, pg. IV.L-10.

location of construction equipment and how the noise from this equipment will be mitigated during construction through the use of noise reduction methods listed in Policy 11.8.2(o).<sup>49</sup>

Therefore, while the City expressly recognizes that individual housing projects like this one may have significant noise impacts on existing nearby sensitive receptors and requires studies and mitigation to reduce noise impacts, the 15183 Consistency Memo simply assumes without any analysis or evidence that the proposed Project “would not result in new significant impacts or substantially more significant impacts related to” impacts including noise.<sup>50</sup> It does not analyze or even consider whether the Project would “cause a new exceedance of the General Plan noise objectives, or an audible (3.0 dBA) increase areas where the General Plan noise objectives are already exceeded.” Nor does it consider whether Housing Element policies and/or actions might substantially mitigate the Project’s noise impacts. At a minimum, to demonstrate consistency with the Housing Element EIR, it must consider Project impacts in relation to General Plan Policy noise objectives, and must prepare a construction-related noise mitigation plan depicting the location of construction equipment and how the noise from this equipment will be mitigated during construction. Without any actual analysis, or consideration of any applicable uniformly applied development policies or standards, there is no support whatsoever for the conclusion that the Project will not have peculiar noise impacts.

Moreover, as discussed in the attached comments by noise expert Jack Meighan, the 15183 Consistency Memorandum lacks any measurement or disclosure of ambient noise conditions in the area of the Project site.<sup>51</sup> It is therefore impossible to know whether the Project will cause significant increases over ambient noise conditions that are peculiar to the Project or Project site. This violates CEQA’s requirement that a lead agency consider both the “absolute noise level” associated with a project as well as the increase in the level of noise that will result from a project.<sup>52</sup> In addition, Mr. Meighan modeled potential Project construction noise impacts to residents at the nearest sensitive receptor, located 180 feet from the Project site.<sup>53</sup> Mr. Meighan’s analysis reveals potentially significant

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<sup>49</sup> Housing Element EIR, pg. IV.L-12.

<sup>50</sup> 15183 Consistency Memorandum, pg. 14.

<sup>51</sup> Meighan Comments, pg. 7.

<sup>52</sup> *Gardiner Farms, LLC v. County of Kern* (2020) 45 CA5th 814, 887, 893; *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 CA4th 714, 733.

<sup>53</sup> Meighan Comments, pgs. 4-5.

impacts from construction noise, impacts that the City has not evaluated or disclosed. Mr. Meighan's comments provide substantial evidence that the Project will have significant construction noise and vibration impacts that will not be mitigated even if the Housing Element EIR and General Plan noise policies and standards are applied.<sup>54</sup>

Since the City has performed no analysis whatsoever of potential Project noise impacts, it lacks substantial evidence to support the conclusion that the Project will not have Project-specific impacts peculiar to the Project or Project site. Therefore, the City cannot rely on the 15183 CEQA exemption. The City must prepare an EIR that adequately analyzes the Project's potentially significant noise impacts by establishing ambient noise levels for the Project site, comparing them against applicable noise significant thresholds, and proposing mitigation for any significant impacts found.

#### **IV. THE CITY LACKS SUBSTANTIAL EVIDENCE TO MAKE THE REQUIRED FINDINGS TO APPROVE THE PROJECT'S ENTITLEMENTS**

The Project requires the City to approve a Vesting Tentative Subdivision Map ("VTSM") for condominium purposes that would subdivide the project site for the development of 17 townhome buildings, containing a total of 129 residential units.<sup>55</sup> However, as discussed above, the City fails to adequately analyze or mitigate several new project-specific environmental impacts that were not addressed by the Housing Element EIR. As a result, the City cannot make the requisite findings to approve the Project's VTSM.

California's Subdivision Map Act precludes the approval of a tentative map where the design or improvement of the proposed subdivision is not consistent with the applicable general plan, is likely to cause substantial environmental damage, or is likely to cause serious public health problems.<sup>56</sup>

Additionally, Antioch Municipal Code Section 9-4.323 states that a VTSM may be made conditional or denied if any of the following is determined:

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<sup>54</sup> Meighan Comments, pgs. 2-7.

<sup>55</sup> Staff Report for the Antioch Planning Commission Regular Meeting of July 16, 2025, pg. 1

<sup>56</sup> Government Code § 66474(b), (e) and (f).

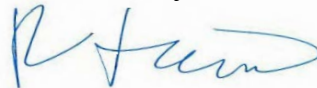
- A failure to do so would place the residents of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both; or
- The condition or denial is required in order to comply with state or federal laws.

As detailed in our comments and those of our noise and transportation experts, there is substantial evidence that the Project may result in several potentially significant environmental impacts, including: (1) construction noise, (2) VMT, and (3) air quality and related health risks. These impacts remain unaddressed and could pose serious risks to public health and safety—both for future subdivision residents and the surrounding community. Therefore, the City cannot make the required findings under the Subdivision Map Act and Antioch's Municipal Code to approve the VTSM until all of the Project's potentially significant impacts are thoroughly analyzed and effectively mitigated.

## V. CONCLUSION

As discussed herein, the City lacks substantial evidence to rely on a CEQA Guidelines section 15183 exemption for Project approval. The Project will result in potentially significant project-level impacts which are peculiar to the Project and Project site and will require mitigation. Therefore, the Project cannot be approved until the City complies with CEQA by preparing an EIR.

Sincerely,



Richard M. Franco

Attachments  
RMF:acp