

ATTACHMENT "E"

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Via Email and Overnight Mail

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Re: **Antioch Planning Commission Hearing, Agenda Item 6-1;
Wildflower Station Townhomes 2 Multifamily Residential
Project (TM-02, AR-23-05)**

Dear Chair Riley, Vice-Chair Webber, 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 6-1, the Wildflower Station Townhomes 2 Multifamily Residential Project (TM-02, AR-23-05) ("Wildflower Townhomes Project" or "Project") proposed by DeNova Homes, Inc. ("Applicant"). The Project consists of a vesting tentative map to create 19 residential lots for 19 townhome buildings, containing 159 residential units total. The Project site is a 10.35 acre undeveloped site located east of Hillcrest Avenue and west of Wildflower Station Place in the City of Antioch ("City").

The City contends that the Project previously has been analyzed under the California Environmental Quality Act¹ ("CEQA") and that further evaluation is not

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

required pursuant to CEQA Guidelines section 15183.² Specifically, the City contends that the Project was adequately analyzed in the Antioch Housing, Environmental Hazards, and Environmental Justice Elements Project Draft Environmental Impact Report (“Housing Element EIR”) adopted 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.”³

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 or the 15183 Consistency Memorandum, and the 15183 Consistency Memorandum does not provide evidence that the single Housing Element policy applicable to this Project 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 approve the Project.

In particular, Contra Costa Residents’ noise expert found that the Project’s construction and operational noise impacts were not analyzed and would exceed applicable significance thresholds. These impacts are peculiar to the Project, were not analyzed in the Housing Element EIR and will not be mitigated by any uniformly applied policies or standards. The City also lacks substantial evidence to conclude that the Project would not result in transportation impacts peculiar to the Project site. Neither the Housing Element EIR nor the 15183 Consistency Memorandum conducts a VMT analysis or provides evidence that the Project possesses characteristics exempting it from a detailed VMT analysis. 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.

² March 2024 Wildflower Townhomes Section 15183 Consistency Memorandum (“15183 Consistency Memorandum”), pg. 1.

³ *Id.* at pg. 9.

We prepared these comments with the assistance of acoustics, noise, and vibration expert Jack Meighan of Wilson Ihrig.⁴ 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.

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

II. LEGAL BACKGROUND

CEQA has two basic purposes, neither of which has the City satisfied in this 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.⁵ The EIR is the “heart” of this requirement,⁶ 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.”⁷ To fulfill this purpose, the discussion of impacts in an EIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”⁸ An adequate EIR must contain facts and analysis, not just an agency’s conclusions.⁹

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.¹⁰ 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.¹¹ 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.¹² CEQA requires an agency to

⁵ 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.

⁶ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84.

⁷ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁸ CEQA Guidelines, § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

⁹ *See Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.

¹⁰ 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.

¹¹ Pub. Resources Code, §§ 21002-21002.1.

¹² CEQA Guidelines, §§ 15060, 15063, subd. (c).

analyze the potential environmental impacts of its proposed actions in an EIR except in certain limited circumstances.¹³ A CEQA exemption may be invoked only if expressly authorized by the CEQA statute or guidelines and if there is no 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.¹⁴

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*.¹⁵ 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.¹⁶

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.”¹⁷

Agency determinations under Guidelines section 15183 are reviewed under the substantial evidence standard.¹⁸ In determining whether an agency’s findings concerning the use of a statutory exemption from CEQA may be upheld, courts

¹³ See, e.g., Pub. Resources Code, § 21100.

¹⁴ *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257.

¹⁵ 14 CCR § 15183(a).

¹⁶ 14 CCR § 15183(b)(1)-(4).

¹⁷ 14 CCR § 15183(f).

¹⁸ *Lucas v. City of Pomona* (2023) 92 Cal.App.5th 508, 538, citing *Concerned Dublin Citizens v. City of Dublin* (2103) 214 Cal.App.4th 1301, 1311; see also, *Hilltop Group v. County of San Diego* (2024) 99 Cal.App.5th 890, 909-10.

review the administrative record to see that substantial evidence supports each element of the exemption.¹⁹ This includes the determination that “uniformly applied development policies or standards” will substantially mitigate the project’s environmental effects.²⁰ Agency findings must specifically address the effect of uniform policies and standards on potential environmental impacts.²¹

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 20.05 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.²² 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.”²³

However, while the Consistency Memorandum recites the requirements of section 15183, it does not actually analyze whether the Project will have any effects

¹⁹ *Lucas*, 92 Cal.App.5th at 538.

²⁰ 14 CCR § 15183(f).

²¹ *Hilltop Group*, 99 Cal.App.5th at 918.

²² 15183 Consistency Memorandum, pg. 9.

²³ *Id.* at pgs. 8-9.

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. 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 Lacks Substantial Evidence to Support its Conclusions with Respect to the Project’s Transportation Impacts

CEQA requires analysis of a project’s transportation impacts via analysis of the project’s vehicle miles traveled (“VMT”).²⁴ The Housing Element EIR evaluated the VMT impacts of all of the potential new housing sites in the City (including the site for the Wildflower Townhomes Project) and found a significant impact on VMT.²⁵ 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*.²⁶ 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.²⁷ 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.²⁸ 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.²⁹

²⁴ 14 CCR § 15064.3.

²⁵ Housing Element EIR, pg. IV.B-27.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*, pgs. IV.B-21—IV.B-22.

²⁹ *Id.*

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 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 less³⁰ 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.³¹ 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.³² 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, neither the 15183 Consistency Memoranda nor the Housing Element EIR evaluates whether the Project is in a “Low VMT Area,” defined as having home-based VMT per resident at or below 85% of the Antioch citywide average.³³ This determination requires TAZ-level screening using Contra Costa Countywide VMT maps and Travel Demand Model (“CCTA Model”) results.³⁴ The Housing Element EIR, due to its programmatic scope, did not conduct this screening.³⁵ It does acknowledge, however, that such analysis may be necessary for individual projects.³⁶ Similarly, the 15183 Consistency Memoranda omits TAZ-based screening. Therefore, the City has not provided substantial evidence to support a finding that the Project is located in a low VMT area.

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 neither includes a site-specific VMT analysis nor demonstrates that the Project qualifies for screening under any recognized exemption. Accordingly, the City must prepare a Project-specific EIR that includes a quantitative VMT analysis and appropriate mitigation.

³⁰ *Id.*

³¹ *Id.* at pg. IV.B-24.

³² *Id.*

³³ *Id.* at pg. IV.B-22.

³⁴ *Id.* at pg. IV.B-24.

³⁵ *Id.*

³⁶ *Id.*

B. The Project Will Have Significant, Unmitigated Air Quality and Public Health Impacts That are More Severe than Previously Analyzed

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 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_{2.5}) during construction and operation of future housing developments (AIR-3a and AIR-3b).”³⁷

However, the Consistency Memorandum goes on to state that only the Housing Element EIR's air quality mitigation measure AIR-3a is applicable to this Project.³⁸ But because the measure is structured so that development projects choose one option or the other, only part of Mitigation Measure AIR-3a is applicable to the project.³⁹ Specifically, the proposed project will be required to equip all off-road diesel equipment with Tier 4 engines and the Applicant must prepare a Construction Emissions Minimization Plan for all identified reduction measures.⁴⁰ Based on the Project's size, location and characteristics, none of the other Housing

³⁷ 15183 Consistency Memorandum, pg. 10.

³⁸ *Id.* at pg. 11.

³⁹ *Id.*

⁴⁰ *Id.*

Element EIR's air quality mitigation measures would apply to this Project. The City then concludes, without any supporting evidence, that "[i]mplementation of Mitigation measure AIR-3a would ensure the proposed project would not result in a significant impact that is peculiar to the project or the project site, would not be 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."⁴¹ 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 housing developments like the Project can pose health risks related to the generation of TACs and PM_{2.5}.⁴² 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.^{43,44,45} 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.⁴⁶ 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.⁴⁷ DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it

⁴¹ *Id.*

⁴² Housing Element EIR, pgs. IV.C-21—23.

⁴³ 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.>

⁴⁴ U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

⁴⁵ 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, accessed July 5, 2020.

⁴⁶ California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

⁴⁷ Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998, Meeting.

contains toxic materials, unlike PM_{2.5} and PM₁₀.⁴⁸ 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 conduct a quantitative health risk analysis ("HRA") and omitted a comparison of the Project's health risk impacts to the Bay Area Air Quality Management District's ("BAAQMD") threshold of 10 in one million.⁴⁹

The City's omission of an HRA also conflicts with the Office of Environmental Health Hazard Assessment's ("OEHHA") *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments*. These guidelines recommend that all short-term projects lasting at least 2 months assess cancer risks and that exposure from projects lasting more than 6 months should be evaluated for the duration of the project.⁵⁰ Here, the Project's construction is expected to take longer than six months.⁵¹ Because the anticipated duration of the Project's construction would exceed the 2-month and 6-month requirements set forth by OEHHA, a quantified HRA under OEHHA guidance should have been prepared to evaluate the Project for its entire duration.

Therefore, based on the current record, the City cannot conclude that implementation of AIR-3a will prevent significant new air quality impacts associated with the Project. As a result, the City may not rely on the section 15183 exemption to approve this Project, and an EIR must be prepared and circulated for public review.

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

⁴⁸ 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.")

⁴⁹ BAAQMD, Regulation 11-18 Reduction of Risk From Air Toxic Emissions at Existing Facilities, p. 5.

⁵⁰ OEHHA, *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments*, pgs. 8-18, available at: <https://oehha.ca.gov/air/cmr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

⁵¹ 15183 Consistency Memo, pg. 11.

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."⁵² 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."⁵³ 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 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).⁵⁴

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.⁵⁵ 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 in areas where the General Plan noise objectives are already exceeded." Nor does it consider whether Housing

⁵² Housing Element EIR, pg. IV.L-12.

⁵³ *Id.* at pg. IV.L-10.

⁵⁴ *Id.* at pg. IV.L-12.

⁵⁵ 15183 Consistency Memorandum, pg. 13.

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, Mr. Meighan provides substantial evidence that the Project will cause new potentially significant noise impacts. First, the 15183 Consistency Memorandum lacks any measurement or disclosure of ambient noise conditions in the area of the 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.⁵⁶ This also fails to disclose a potentially significant operational noise impact. Based on information provided in the 15183 Consistency Memoranda, Mr. Meighan estimates the Project's nighttime operational noise levels to be 53 dBA at the Townhomes to the Northeast of the Project site.⁵⁷ Mr. Meighan goes on to explain that nighttime noise levels in suburban areas can be as quiet as 40 dBA.⁵⁸ When this ambient level is compared to the Project's estimated noise levels, the Project would far exceed the City's significance threshold of 3 dBA over ambient levels.⁵⁹ This is a new significant impact that was not addressed in the Housing Element EIR or the 15183 Consistency Memoranda and would not be mitigated even if the Housing Element EIR and General Plan noise policies and standards are applied.⁶⁰ In order to mitigate these impacts, Mr. Meighan suggest shielding HVAC units' noise emissions to the southeast.⁶¹

Second, Mr. Meighan provides substantial evidence that the Project will have significant construction noise impacts. As explained in Mr. Meighan's comments, the City fails to set its own construction noise significance threshold, leaving the

⁵⁶ *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.

⁵⁷ Meighan Comments, pg. 6.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* at pgs. 2-3.

⁶¹ *Id.* at pg. 6.

City's conclusion unsupported by any meaningful standard of evaluation.⁶² Because of this, Mr. Meighan's analysis assumes a significance threshold of 75 dBA, which comes from the Los Angeles Municipal Code.⁶³ Based on information provided in the 15183 Consistency Memoranda, Mr. Meighan estimates the Project's construction noise levels to range from 80 dBA to 85 dBA.⁶⁴ This exceeds the significance threshold by at least 5 dBA, which is a new significant impact that the Housing Element EIR and the 15183 Consistency Memoranda did not address. To reduce this impact, Mr. Meighan proposes the use of a temporary soundwall for the Project.⁶⁵

Third, Mr. Meighan explains that the City fails to conduct a screening level construction vibration analysis as required by the Housing Element EIR.⁶⁶ The Housing Element EIR states that "if sensitive receptors are located within these buffer distances [about 115 feet], future developments under the Project should prepare a screening level vibration analysis for City review in accordance with General Plan Policy 11.8.2(k)."⁶⁷ Despite the closest structures from the Project site being only 90 feet away, the City does not conduct this analysis. Mr. Meighan explains that a thorough evaluation of the Project's potential vibration impacts is "vital" because, if those impacts are significant, they could interfere with people's daily lives and potentially damage nearby homes.⁶⁸

For the above reasons, 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 significance 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 VESTING TENTATIVE SUBDIVISION MAP

The Project requires the City to approve a Vesting Tentative Subdivision Map ("VTSM") for condominium purposes that would subdivide the project site for

⁶² *Id.*

⁶³ *Id.* at pg. 5.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at pg. 6.

⁶⁷ *Id.*

⁶⁸ *Id.*

the development of 19 townhome buildings, containing a total of 159 residential units.⁶⁹ 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.⁷⁰

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:

- 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 expert, there is substantial evidence that the Project may result in several potentially significant environmental impacts, including: (1) construction and operational 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.

⁶⁹ Staff Report for the Antioch Planning Commission Regular Meeting of July 16, 2025, pg. 1

⁷⁰ Government Code § 66474(b), (e) and (f).

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,



Alaura McGuire

Attachment
ARM:acp