

Letter 82

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September 25, 2024

Via Email and Overnight Mail

City of Sacramento

Community Development Department

Attn: Scott Johnson, Senior Planner

300 Richards Boulevard, 3rd Floor

Sacramento, CA 95811

Email: SRJohnson@cityofsacramento.org

Re: Supplemental Comments on the Draft Environmental Impact Report for the Airport South Industrial Project (SCH No. 2022030181)

Dear Mr. Johnson:

We are writing on behalf of **Sacramento Residents for Responsible Development** ("Sacramento Residents") to provide these supplemental comments on the Draft Environmental Impact Report for the Airport South Industrial Project (SCH No. 2022030181) ("Project") proposed by NorthPoint Development ("Applicant") and prepared by the City of Sacramento ("City") and the Sacramento Local Agency Formation Commission ("Sacramento LAFCO") as co-lead agencies¹ pursuant to the California Environmental Quality Act ("CEQA").²

Sacramento Residents submitted preliminary comments to the City on July 17, 2024. Based on Sacramento Residents' review of the DEIR, its appendices, and documents provided to date, Sacramento Residents and its experts have identified further inadequacies with the DEIR. Specifically, the DEIR fails to adequately disclose, analyze, and mitigate the Project's potentially significant greenhouse gas ("GHG"), air quality, health risk, construction and operational noise, and transportation impacts.

¹ City of Sacramento, Draft Environmental Impact Report for the Airport South Industrial Project and Appendices (SCH No. 2022030181) (hereinafter "DEIR") (May 29, 2024) available at <https://www.cityofsacramento.gov/community-development/planning/environmental/impact-reports>.

² Pub. Resources Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs ("14 CCR") §§ 15000 et seq. ("CEQA Guidelines").
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Sacramento Residents reviewed the DEIR and its technical appendices with the assistance of traffic and transportation expert Norman Marshall of Smart Mobility,³ health risk, air quality, GHG omissions and hazardous materials expert James Clark Ph.D.,⁴ and noise expert Jack Meighan of Wilson Ihrig.⁵ Sacramento Residents reserves the right to supplement these comments at a later date, and at any later proceedings related to this Project.⁶

I. STATEMENT OF INTEREST

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Sacramento Residents is an unincorporated association of individuals and labor organizations with members who may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes the **Sacramento-Sierra's Building and Construction Trades Council and its affiliated unions**, the members of those unions and their families, and other individuals that live, recreate and/or work in and around the City of Sacramento and Sacramento County.

Sacramento Residents supports the development of sustainable commercial and industrial centers where properly analyzed and carefully planned to minimize impacts on public health and the environment. Industrial warehouse projects like the Project should avoid adverse impacts to air quality, noise levels, transportation, and public health, and should take all feasible steps to ensure that 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 Sacramento Residents and the members of the affiliated labor organizations live, work, recreate and raise their families in and around the City of Sacramento and Sacramento County. 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

³ Mr. Marshall's technical comments (hereinafter "Marshall Comments") and curricula vitae are attached hereto as Exhibit A.

⁴ Dr. Clark's technical comments (hereinafter "Clark Comments") and curricula vitae are attached hereto as Exhibit B.

⁵ Mr. Meighan's technical comments (hereinafter "Meighan Comments") and curricula vitae are attached hereto as Exhibit C.

⁶ Gov. Code § 65000(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, 7328-007.



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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.

Sacramento Residents and its members also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members they represent. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the City, and by making it less desirable for businesses to locate and people to live and recreate in the City, including the Project vicinity. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities.

Finally, Sacramento Residents are 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.⁷ It is in this spirit Sacramento Residents offer these comments.

II. THE PROJECT DESCRIPTION IS INADEQUATE

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The DEIR does not meet CEQA's requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. California courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."⁸ CEQA requires that a project be described with enough particularity that its impacts can be assessed.⁹ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.¹⁰ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.¹¹

⁷ PRC § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

⁸ *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* ("CBE v. Richmond") (2010) 184 Cal.App.4th 70, 85 89; *County of Inyo v. City of Los Angeles* (5d Dist. 1977) 71 Cal.App.3d 185, 193.

⁹ 14 CCR § 15124; see, *Laurel Heights I, supra*, 47 Cal.3d 376, 192-193.

¹⁰ *Id.*

¹¹ *Sundstrom v. County of Mendocino* ("Sundstrom") (1988) 202 Cal.App.3d 293, 311, 7328-007.



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CEQA Guidelines section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”¹² “The term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval.”¹³ Courts have explained that a complete description of a project must “address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable* consequence[s] of the initial project.”¹⁴ “If a[n]...EIR...does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law.”¹⁵

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A. The Project Description Fails to Include Reasonably Foreseeable Backup Generators and Fire Pumps in the Analysis

Sacramento Residents previously provided comments on the DEIR’s failure to disclose potential backup/emergency stationary generators for the Project’s operations. In his analysis of the DEIR, Dr. Clark found that the DEIR also failed to include analysis of air quality impacts from the operation of fire-pumps at the Project site.¹⁶ Dr. Clark explains that the Project will be required to install fire pump systems, and it is reasonably foreseeable that the Project buildings will have back-up generators (BUG) onsite.¹⁷ According to Dr. Clark, this failure to include the emissions from the fire pumps and BUGS are a significant unaddressed emission source for the Project.¹⁸ The City must disclose and analyze the potential use of backup generators and fire-pumps because (1) they are a reasonably foreseeable consequence of the Project, and (2) their use will increase the Project’s environmental effects.¹⁹

¹² CEQA Guidelines § 15378.

¹³ *Id.*, § 15378(c).

¹⁴ *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

¹⁵ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

¹⁶ Clark Comments, pp. 5-6.

¹⁷ *Id.* at p. 5.

¹⁸ *Id.* at p. 6.

¹⁹ *Id.*

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Diesel back-up generators and diesel fueled fire-pump equipment emit significant amounts of Nitrogen Oxides ("NOx"), sulfur dioxides ("SO₂"), particulate matter ("PM₁₀"), carbon dioxide ("CO₂"), carbon monoxide ("CO"), and volatile organic compounds ("VOC").²⁰ These emissions affect not only air quality, but also create significant health risks.²¹ Omission of the Project's reasonably foreseeable use of backup generators and fire-pumps results in an underestimation of the Project's air quality, greenhouse gas, and health risk impacts.

In sum, by failing to include an analysis of diesel fueled backup generators and fire-pumps in the DEIR, the City underestimates the Project's air quality, greenhouse gas, energy, and health risk impacts. The DEIR must be revised to resolve this project description inconsistency and correct the analyses to accurately disclose the Project's potentially significant impacts.

²⁰ University of California, Riverside Bourns College of Engineering – Center for Environmental Research and Technology, Air Quality Implications Of Backup Generators In California, (March 2005), pg. 8, available at <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=84c8463118e4813a117db3d768151a8622c4bf6b>; South Coast AQMD, Fact Sheet on Emergency Backup Generators ("Emissions of Nitrogen Oxides (NOx) from diesel-fired emergency engines are 200 to 600 times greater, per unit of electricity produced, than new or controlled existing central power plants fired on natural gas. Diesel-fired engines also produce significantly greater amounts of fine particulates and toxics emissions compared to natural gas fired equipment."), available at <http://www.aqmd.gov/home/permits/emergency-generators#Fact2>.

²¹ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> ("When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts)"). 7328-007j



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Proposed Project Scenario is anticipated to take place over six years, and the Full-Buildout Scenario is assumed to be 10 years.²⁸ The DEIR erroneously concludes that:

Because construction equipment on-site would not operate for long periods of time and would be used at varying locations within the sites, associated emissions of DPM would not occur at the same location (or be evenly spread throughout the entire project site) for long periods of time. Due to the *temporary nature of construction and the relatively short duration of potential exposure to associated emissions*, the potential for any one sensitive receptor in the area to be exposed to concentrations of pollutants for a substantially extended period of time would be low. Therefore, construction associated with the proposed project would not be expected to expose any sensitive receptors to substantial pollutant concentrations.²⁹

Dr. Clark explains that this approach is not consistent with Sacramento Metropolitan Air Quality Management District ("SMAQMD") guidance for the preparation of CEQA documents. This guidance provides specific instructions on preparation of an HRA for construction projects.³⁰ Dr. Clark explains that diesel exhaust, and in particular diesel particulate matter ("DPM") from construction equipment, is classified by the State of California as a toxic air contaminant ("TAC").³¹ TACs, including DPM, contribute to a host of respiratory impacts and may lead to the development of various cancers.³² Failing to quantify the carcinogenic and other health risk impacts places the community at risk for unwanted adverse health impacts.³³ Even brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual.³⁴

According to the SMAQMD CEQA guidelines, the following construction activities should be analyzed for each project:

²⁸ DEIR, p. 4.3-49.

²⁹ DEIR, pp. 4.3-49 – 4.3-50 (emphasis provided).

³⁰ SMAQMD, CEQA Guide, Chapters 3 (Construction) and 5 (Toxic Air Contaminants) (April 2021) Available at <https://www.airquality.org/businesses/ceqa-land-use-planning/ceqa-guidance-tools>.

³¹ Clark Comments, p. 7.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

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III. THE DEIR FAILS TO ADEQUATELY DISCLOSE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS

An EIR must fully disclose all potentially significant impacts of a project, and must implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.²² An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.²³

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.²⁴ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.²⁵ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will 'determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements.'²⁶

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'²⁷

A. The DEIR Fails to Assess Health Risks from Project Construction

The DEIR failed to conduct a health risk analysis ("HRA") of Project construction, and as a result, cannot conclude that the Project's health risk impacts are less than significant. According to the DEIR, Project construction of the

²² 14 CCR § 15064(b).

²³ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 892, 732.

²⁴ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

²⁵ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 112, 435.

²⁶ *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

²⁷ *Berkeley Jets*, 91 Cal.App.4th at 1355, 7328-007j



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Proposed Project Scenario is anticipated to take place over six years, and the Full-Buildout Scenario is assumed to be 10 years.²⁸ The DEIR erroneously concludes that:

Because construction equipment on-site would not operate for long periods of time and would be used at varying locations within the sites, associated emissions of DPM would not occur at the same location (or be evenly spread throughout the entire project site) for long periods of time. Due to the *temporary nature of construction and the relatively short duration of potential exposure to associated emissions*, the potential for any one sensitive receptor in the area to be exposed to concentrations of pollutants for a substantially extended period of time would be low. Therefore, construction associated with the proposed project would not be expected to expose any sensitive receptors to substantial pollutant concentrations.”²⁹

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Dr. Clark explains that this approach is not consistent with Sacramento Metropolitan Air Quality Management District (“SMAQMD”) guidance for the preparation of CEQA documents. This guidance provides specific instructions on preparation of an HRA for construction projects.³⁰ Dr. Clark explains that diesel exhaust, and in particular diesel particulate matter (“DPM”) from construction equipment, is classified by the State of California as a toxic air contaminant (“TAC”).³¹ TACs, including DPM, contribute to a host of respiratory impacts and may lead to the development of various cancers.³² Failing to quantify the carcinogenic and other health risk impacts places the community at risk for unwanted adverse health impacts.³³ Even brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual.³⁴

According to the SMAQMD CEQA guidelines, the following construction activities should be analyzed for each project:

²⁸ DEIR, p. 4.3-49.

²⁹ DEIR, pp. 4.3-49 – 4.3-50 (emphasis provided).

³⁰ SMAQMD, CEQA Guide, Chapters 3 (Construction) and 5 (Toxic Air Contaminants) (April 2021) Available at <https://www.airquality.org/businesses/ceqa-land-use-planning/ceqa-guidance-tools>.

³¹ Clark Comments, p. 7.

³² *Ibid.*

³³ *Ibid.*

³⁴ *Ibid.*

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- Types of off-site receptors and their proximity to construction activity;
- Duration of construction period;
- Quantity and types of diesel-powered equipment;
- Number of hours equipment would be operated each day;
- Location of equipment staging area;
- Predominant wind direction; and
- Amount of on-site diesel-generated PM exhaust if mass emission levels from construction activity are estimated.³⁵

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Dr. Clark states a quantitative analysis of the Project's construction health risk is warranted based on the size of the project, the long construction period, and large amount of DPM that was calculated to be emitted from all of the off-road equipment in the CalEEMOD model (120 lbs per year to 388.2 lbs per year).³⁶ The City must conduct an analysis of the Project's construction health risk impacts by first quantifying the concentration of TACs released by Project construction at each of the sensitive receptors surrounding the Project site, calculating the dose of TACs at each receptor, and then quantifying the cancer risk and hazard index for each of the chemicals of concern.³⁷ Only after this analysis is completed, can the City make a determination regarding the health risk impacts associated with Project construction. Without such an analysis, the City's conclusion that the Project will not result in significant health impacts to nearby receptors is unsupported by substantial evidence.

The City must conduct the above-mentioned analysis and include such analysis and any necessary mitigation measures in a revised and recirculated DEIR for the Project prior to the City's consideration of Project approval.

³⁵ SMAQMD, CEQA Guide, Chapter 5 (April 2021) pp. 5-4 – 5-5. Available at <https://www.airquality.org/LandUseTransportation/Documents/Ch5TAC4-2020.pdf>.

³⁶ Clark Comments, p. 8.

³⁷ Clark Comments, p. 8.
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B. The DEIR Fails to Accurately Disclose and Mitigate the Project's Potentially Significant Health Risk Impacts from Exposure to Hazardous Soils

The DEIR states that the Project site was previously used for hay and rice production from 1937 until at least 2020.³⁸ Additionally, the DEIR states that potential on-site recognized environmental conditions (RECs) include organochloride pesticides (OCPs), underground and aboveground storage tanks, stockpiled soils, solid wastes, polychlorinated biphenyls (PCBs) from a transformer, asbestos-containing building materials, and lead-based paint residues.³⁹ Dr. Clark found that the DEIR fails to adequately characterize and analyze the potential for exposure to these on-site hazards by construction workers and nearby sensitive receptors.⁴⁰

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The DEIR includes two mitigation measures aimed at mitigation of potential exposure to contaminated soils.⁴¹ However, both mitigation measures 4.7-2(a) and 4.7-2(b) lack specific performance criteria and defer analysis of on-site hazards in violation of CEQA. CEQA provides that, if a project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment" to the greatest extent feasible and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."⁴² Further, EIRs must mitigate significant impacts through measures that are "fully enforceable through permit conditions, agreements, or other legally binding instruments."⁴³ Deferring formulation of mitigation measures is generally impermissible.⁴⁴ If identification of specific mitigation measures is impractical until a later stage in the Project, specific

³⁸ DEIR, p. 4.7-2.

³⁹ *Id.*, pp. 4.7.3-4.7.4.

⁴⁰ Clark Comments, p. 9.

⁴¹ DEIR, p. 4.7-18.

⁴² PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

⁴³ CEQA Guidelines, § 15126.4, subd. (a)(2).

⁴⁴ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

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performance criteria must be articulated, and further approvals must be made contingent upon meeting these performance criteria.⁴⁵ Mitigation that does no more than allow approval by a lead agency without setting enforceable standards is inadequate.⁴⁶

Here, Mitigation Measures 4.7-2(a) and 4.7-2(b) require analytical testing of soils and stockpiled soils after Project approval but prior to the issue of grading permits.⁴⁷ Dr. Clark found that the mitigation measures do not include information regarding the number of samples to be analyzed, the required detection limits for the analytical techniques, or whether composited sampling would be allowed.⁴⁸ Dr. Clark explains that the vagueness of the mitigation measures does not support the City's conclusion that, with the implementation of the mitigation measures, the risk to workers and public would be less than significant.⁴⁹ Additionally, the failure to include specific and enforceable mitigation measures in the DEIR leads to a corresponding failure to analyze the potential air quality and health risk impacts that would result from remediation of contaminated soils including increased Project related DPM emissions from excavation and haul truck trips.

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As a result, the City lacks substantial evidence to support the conclusion that the Project's health risk impacts will be less than significant with mitigation. The DEIR must be revised to include mitigation measures with specific performance standards adequate to assure worker and public safety.

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C. The DEIR Fails to Analyze and Mitigate DPM Emissions from All Reasonably Foreseeable Phases of the Project

According to the DEIR, the anticipated use of Parcel 8 is cold-storage warehouse use.⁵⁰ The DEIR characterizes the development of Parcel 8 as "speculative" and states that due to the speculative nature of future development of the parcel, health risks related to the construction and operation of a warehouse at the Project site were not modeled in the DEIR.⁵¹

⁴⁵ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical*, *supra*, 29 Cal.App.4th at pg. 160-1, fn. 5.

⁴⁶ *Endangered Habitats League, Inc. v. County of Orange*, (2005) 131 Cal.App.4th 777, 794.

⁴⁷ DEIR, p. 4.7-18.

⁴⁸ Clark Comments, pp. 9 – 10.

⁴⁹ *Id.*, p. 10.

⁵⁰ DEIR, p. 2-15.

⁵¹ *Id.*, p. 4.3-53.

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Dr. Clark explains that the reasonably foreseeable use of Parcel 8 as a cold-storage warehouse use results in an underestimation of the Project's TAC impacts on nearby sensitive receptors, including the Paso Verde K-8 School located 200 feet from the Project site.⁵² The use of Parcel 8 for cold-storage would result in the likelihood of transportation refrigeration units ("TRUs") accessing the Project site; these uses and the resulting emissions were not analyzed in the air quality analysis for the Project. Dr. Clark explains that TRUs generate DPM from the operation of the trucks' refrigeration systems.⁵³ The excess DPM generated by the TRUs must be analyzed in the DEIR in order to fully analyze the potential air quality and health risk impacts of the Project.

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D. The DEIR Fails to Include Enforceable Mitigation Measures to Reduce Project Construction Emissions

The DEIR includes mitigation measures designed to reduce air quality impacts from Project construction equipment through the use of CARB compliant equipment. Mitigation measure 4.3-1 (b) provides that:

all project components (i.e., construction of the industrial park, nonparticipating parcels, and off-site force main), including owned, leased, and subcontractor vehicles, shall be a combination of engine Tier 3 or Tier 4 off-road construction equipment, or hybrid, electric, or alternatively fueled equipment (or any combination of the above), sufficient to achieve a fleet-wide average reduction in construction-related NOX emissions to below the applicable SMAQMD thresholds of significance (85 lbs/day). For instance, the emissions presented in Table 4.3-8 of the Draft EIR were achieved by requiring all equipment used during construction to be engine Tier 4.⁵⁴

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The DEIR's assumption that the Project's offroad construction equipment will achieve a fleet-wide average reduction in construction-related NOX emissions to below the applicable SMAQMD thresholds of significance is unjustified because the above measure does not require the Applicant to use specific equipment. Dr. Clark explains that the failure to require the use of all Tier 4 equipment in mitigation

⁵² Clark Comments, p. 11.

⁵³ *Ibid.*

⁵⁴ DEIR, pp. 4.3-44 - 4.3-44.
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measure 4.3-1(b) will result in substantially higher emissions than those disclosed in the DEIR which are likely to exceed significance thresholds and create adverse regional air quality issues in an already impaired region of the Sacramento Metropolitan Air Basin.⁵⁵

The City must revise the DEIR's construction air quality analysis with calculations that reflect the potential use of Tier 3 construction equipment, or, alternatively, amend mitigation measure 4.3-1(b) to require the use of Tier 4 equipment.

E. The DEIR Fails to Analyze the Project's Construction Noise Impacts

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When evaluating the significance of the Project's construction noise impacts, the DEIR states: "[a]lthough the construction activities could result in infrequent periods of high noise, the construction noise would not be sustained and would only occur only during the City's permitted construction noise hours."⁵⁶ The DEIR bases this conclusion on the fact that the City's Noise Ordinance (Section 8.60.080 of the Municipal Code) exempts construction activities from the City's noise standards, provided that construction takes place between the hours of 7:00 AM and 6:00 PM Monday through Saturday and 9:00 AM and 6:00 PM Sundays.⁵⁷ However, the DEIR does not include any mitigation measures that would require construction to take place between the specified hours. Thus, the DEIR relies on a qualitative and illusory construction noise threshold which does not consider any quantifiable noise level to be a significant impact.

The DEIR's sole reliance on the Municipal Code is not legally supported, as courts have held that compliance with noise regulations alone is not substantial evidence of a less-than-significant impact.⁵⁸ In *Keep our Mountains Quiet v. County of Santa Clara*,⁵⁹ neighbors of a wedding venue sued over the County of Santa Clara's failure to prepare an EIR for a proposed project to allow use permits for wedding and other party events at a residential property abutting an open space preserve. Neighbors and their noise expert contended that previous events at the facility had caused significant noise impacts that reverberated in neighbors' homes

⁵⁵ *Ibid.*

⁵⁶ DEIR, p. 4.10-16.

⁵⁷ *Ibid.*

⁵⁸ *King & Gardiner Farms, LLC v. Cnty. of Kern* (2020) 45 Cal.App.5th 814, 835.

⁵⁹ *Keep our Mountains Quiet v. County of Santa Clara* (2015) 235 Cal.App.4th 714, 7328-007.



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and disrupted the use and enjoyment of their property.⁶⁰ In *Keep Our Mountains Quiet*, the County had prepared a mitigated negative declaration (“MND”), which employed the noise standards set forth in the County’s noise ordinance and general plan as the County’s thresholds for significant noise exposure from the project, deeming any increase to be insignificant so long as the absolute noise level did not exceed those standards.⁶¹

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The Court examined a long line of CEQA cases which have uniformly held that conformity with land use regulations is not conclusive of whether or not a project has significant noise impacts.⁶² In particular, citing *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*, the Court explained that “the fact that residential uses are considered compatible with a [County noise ordinance maximum] noise level of 65 decibels for purposes of land use planning is not determinative in setting a threshold of significance under CEQA.”⁶³ The Court further explained that, as required by CEQA Guidelines Appendix G, § XII, subd. (d), the CEQA lead agency is required to “consider both the increase in noise level and the absolute noise level associated with a project” in evaluating whether a project has significant noise impacts. The Court held that the evidence submitted by local residents and their expert attesting to significant noise impacts felt directly on their residences amounted to substantial evidence demonstrating that the project would have potentially significant noise impacts. The Court also held that the County’s reliance on the project’s compliance with noise regulations did not constitute substantial evidence supporting the County’s finding of no significant impacts.⁶⁴

82-19

Here, the City’s threshold – compliance with the Municipal Code – does not consider the increase in noise level nor the absolute noise level associated with a project. Thus, as in *Keep Our Mountains Quiet*, the City’s reliance on compliance with noise regulations does not provide substantial evidence to support the City’s

⁶⁰ *Id.* at 724.

⁶¹ *Id.* at 732.

⁶² *Id.*, citing *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416 (project’s effects can be significant even if “they are not greater than those deemed acceptable in a general plan”); *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354, (“CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan”).

⁶³ *Id.*, citing (2001) 91 Cal.App.4th 1344, 1381, 111 Cal.Rptr.2d 598 (“*Berkeley Jets*”).

⁶⁴ *Id.* at 732–734.
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conclusion that the Project will not have significant noise impacts. And whereas the noise threshold in *Keep Our Mountains Quiet* was held insufficient for merely setting a maximum noise level, the City's construction noise threshold does not even set a maximum allowable noise level or increase. Thus, the City lacks substantial evidence that compliance with the Municipal Code alone would ensure less-than-significant construction noise impacts.

Furthermore, as Mr. Meighan notes in his comments, Project construction noise may result in significant impacts to nearby sensitive receptors.

Mr. Meighan found that the potential for significant construction noise impacts on nearby sensitive receptors is high, as evidenced by statements shown within the DEIR itself.⁶⁵ For example, according to the DEIR's construction vibration analysis, "[s]ensitive receptors which could be impacted by construction related vibrations ... are located approximately 150 feet, or further, from typical construction activities."⁶⁶ Mr. Meighan found that the construction noise source levels presented in Table 4.10-8 of the DEIR, which show a 90 dB Lmax for a concrete saw and an 89 dB Lmax for a jackhammer, produce a daytime Leq of 76 dBA.⁶⁷ This is 23 dBA over the ambient conditions measured at LT-2. Mr. Meighan notes that a noise increase of 23 dBA (over four times the ambient conditions) would result in a significant impact on nearby sensitive receptors.⁶⁸ The DEIR should be updated with a proper quantitative threshold, and analyze and disclose whether Project construction will result in significant impacts to nearby sensitive receptors.

82-20

F. The DEIR Fails to Analyze the Project's Operational Noise Impacts

In addition to the failure to analyze construction noise impacts, the DEIR fails to accurately analyze the Project's operational noise impacts. Mr. Meighan found that the operational noise analysis failed to include noise calculations for rooftop mechanical equipment, which could exacerbate the existing significant noise impacts of the Project.

⁶⁵ Meighan Comments, p. 3.

⁶⁶ DEIR Appendix J, p. 29.

⁶⁷ Meighan Comments, p. 3.

⁶⁸ *Ibid.*

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The DEIR found that “peak hour noise levels at the nearest sensitive receptors to the east of the project site, including the contribution of noise generated from on-site operations, would range from 45 to 51 dBA” and that “full buildout of the annexation area would exceed the City’s nighttime 50 dBA L50 noise level standard.”⁶⁹ Mr. Meighan found that the City’s failure to account for rooftop mechanical equipment leads to underestimation of noise levels, since truck noise will not be the only noise generating use on site.⁷⁰

Mr. Meighan found that rooftop HVAC units with a sound power level of 96 dBA on the southeastern and northeastern corner of each warehouse would combine with other on-site operational noise and exceed the 50 dBA threshold at the single-family homes due east of the Project site.⁷¹ By including noise from rooftop mechanical equipment, Mr. Meighan calculated operational noise level of 53 dBA at the sensitive receivers to the east.⁷² Assuming the DEIR’s stated 3 dBA of attenuation is achieved by the sound wall as is shown between figures 4.10-5 and 4.10-6, operational noise levels would exceed the thresholds presented in the DEIR resulting in a significant noise impact.⁷³ Mr. Meighan notes that additional height added to the sound wall and additional study would most likely reduce this impact to less than significant.⁷⁴

The City must revise the DEIR’s operational noise analysis to include noise generated by rooftop mechanical units and provide additional mitigation to reduce the Project’s significant noise impacts.

G. The DEIR Fails to Analyze the Project’s Reasonably Foreseeable Air Quality Impacts from Truck Trips

82-21

Sacramento Resident’s previously provided comments that the DEIR’s analysis of truck trip generation lacks substantial evidence for the City to conclude that the Project’s transportation impacts would be less than significant. Sacramento Residents’ comments were based on the speculative nature of the proposed Project leading to an underestimation of the reasonably foreseeable transportation impacts of the Project. In his review, Mr. Marshall found that the

⁶⁹ DEIR, p. 4.10-19.

⁷⁰ Meighan Comments, p. 3.

⁷¹ *Ibid.*

⁷² *Id.*, p. 4.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

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Project's transportation analysis relies on several additional erroneous assumptions and calculations which result in an even greater underestimation of the Project's air quality impacts from truck trips.

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First, Mr. Marshall found that the DEIR's fleet mix assumptions are unrealistic and lead to an underestimation of the Project's air quality impacts. According to the DEIR's air quality analysis, the Project's fleet mix is assumed to be composed of approximately 0.9451% heavy truck trips and 1.3298% medium trucks for a total of 2.3% medium and heavy trucks.⁷⁵ This assumption is in stark contrast to the results of the DEIR's transportation analysis which assumes that approximately 20% of the Project's daily trips will be "heavy trucks."⁷⁶ Mr. Marshall explains that heavy trucks produce substantially more pollution than passenger vehicles, and as a result, the DEIR's air quality analysis underestimates the Project's air quality impacts from the use of heavy trucks at the site.

Second, Mr. Marshall found that the assumed truck trip lengths are likely underestimated in the DEIR. The DEIR assumes an average trip length of 3.31 for commute trips for all uses, including the industrial use.⁷⁷ For the industrial use, there would be few shopping trips, therefore most of the non-commute trips, including the heavy truck trips, would have an assumed average trip length of 2.15 miles.⁷⁸ However, Mr. Marshall found that the Sacramento Area Council of Governments ("SACOG")⁷⁹ Transportation Analysis Zones ("TAZ") for the Project site show that average commute trip length is approximately about four times what is assumed in the DEIR's air pollution analysis, and the non-commute trip length is about six times what is assumed in the DEIR air pollution analysis.⁸⁰

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As a result of reliance on inaccurate heavy truck trip rates and lengths, the DEIR's air quality analysis underestimates the Project's reasonably foreseeable air quality impacts from Project operation. The City must revise the DEIR's air quality analysis to be consistent with the assumptions in the transportation analysis and present the results in a revised and recirculated DEIR for the Project.

⁷⁵ DEIR, Appendix C, pdf, p. 334 of 2309.

⁷⁶ DEIR, Appendix D, pdf, p. 1818 of 2309.

⁷⁷ Marshall Comments, p. 6.

⁷⁸ *Ibid.*

⁷⁹ SACOG is an association of local governments in the Sacramento Region comprised of El Dorado, Placer, Sacramento, Sutter, Yolo and Yuba Counties.

⁸⁰ *Ibid.*

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H. The DEIR Fails to Adequately Mitigate Project VMT Impacts

According to the DEIR, the Project is not in a VMT efficient area, and without mitigation, the Project would exceed the threshold of allowable VMT by 22%.⁸¹ In order to reduce the Project's VMT impacts, the DEIR relies on implementation of several VMT reduction strategies outlined in the CAPCOA 2021 handbook. The DEIR concludes that through implementation of strategies T-6 through T-13 under the CAPCOA Trip Reduction Program, the Project will be able to achieve a minimum of 22% VMT reduction, resulting in a less than significant VMT impact.⁸²

However, Mr. Marshall found several errors in the calculations which call the DEIR's results into question. By correcting the errors contained in the City's VMT reduction calculations, Mr. Marshall found that the estimated reduction for all potential mitigation options described in the DEIR is 13%, significantly less than the required 22% and leaving the Project's significant VMT impacts unmitigated.⁸³

Accordingly, the City's conclusion that the Project's VMT impacts will be reduced to less than significant levels is not supported by substantial evidence. The City must revise the DEIR to accurately calculate the potential VMT reductions of each proposed measure and provide additional mitigation measures to reduce the Project's significant VMT impacts to less than significant levels.

IV. CONCLUSION

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For the reasons discussed above, the DEIR for the Project is wholly inadequate under CEQA. It must be thoroughly revised to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for additional public review. Until the DEIR has been revised and recirculated, as described herein, the City and Sacramento LAFCO may not lawfully certify the EIR or approve the Project's requested entitlements.

⁸¹ DEIR, Appendix Q, pdf p. 2302 of 2309.

⁸² *Id.* at pdf p. 2309 of 2309.

⁸³ Marshall Comments, pp. 5-10.

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Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Kevin Carmichael

KTC:jl

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