Response to Gallade Chemical, Inc. Comments

Response to Comments on the Trumark Dumbarton Transit Oriented Development Residential Project submitted by Stoel Rives LLP on behalf of Gallade Chemical, Inc.

Comment II.A: Park Funding Agreement

The City proposes to approve a Resolution authorizing a Park Funding Agreement, affecting the Gallade property. (Item E.1, Att. 5.) The proposed Agreement satisfies Condition uuuu of the Tentative Map, which requires the Developer and the City to enter an agreement to address funding for a public park on the Gallade property. Condition uuuu provides that the Agreement shall "obligate" the Developer to construct or fund construction of improvements on the Park Site. (Item E.1, Att. 6, condition uuuu; see also, Item E.2, Staff Report ("Vesting Tentative Map includes numerous conditions and includes a requirement for the Gallade Chemical property to be acquired and developed as a park.").) Thus, the Condition commits the City to actions requiring development of the Park Site, which have not been evaluated under CEQA.

The proposed Agreement conditions the City's action on future compliance with CEQA (para. 1.04) in direct violation of CEQA. *(Save Tara v. City of W Hollywood* (2008) 45 Cal.4th 116; CEQA Guidelines, § 15352(a).) Although the Agreement attempts to assert that the City is not committed to any future actions, the Agreement requires the City to initiate efforts to acquire the Gallade site unless the developer terminates the Agreement. (Agreement, para. 1.04(4) ("City shall make a written offer to purchase the Park Site"), para. 1.04(5) ("City shall take all steps required ... to acquire the Park Site through the exercise of eminent domain").) The environmental impacts associated with acquisition of the Park Site have not been evaluated, and approval of the Agreement violates CEQA. *(Save Tara, supra,* 45 Cal.4th 116.)

Moreover, the Agreement provides that the park-related conditions of the Project shall be waived if the Park Site is not acquired by June 30, 2015. (Agreement, para. 1.04(7).) There has been no CEQA analysis of the potential impacts associated with waiving the park-related requirements. The City acknowledges that the acquisition of the Park Site is necessary to achieve the goals of the transit-oriented development (Item E.1, Staff Report). If the park-related conditions are waived, the Project will not meet these requirements and there is a potential for significant impacts that have not been evaluated in the SEIR. In particular, the SEIR must evaluate the potentially significant traffic, air, noise, greenhouse gas and other environmental impacts that would result if the project does not achieve its transit oriented goals. Additionally, the staff report is misleading on this point as it represents that no certificate of occupancy can be issued until the Gallade site is acquired (Item E.2, Staff Report), but the Park Agreement allows for this requirement to be waived (Agreement, para. 1.04(7)).

The Agreement also commits the City to a conceptual site plan, including construction related activities, for the Park Site, which have not been evaluated under CEQA. (Agreement, para. 1.05(5) & (6).) Further, the City's proposed actions authorize the Developer to make improvements to property that it does not own (see, Item E.1, Staff Report), and under circumstances where the property owner has not been notified (see, infra re lack of notice). The Developer has no authority to obtain approvals related to property that it does not own or control.

Finally, the Park Agreement commits the City to initiating eminent domain proceedings if certain conditions are met. (Agreement, para. 1.04(5).) This is a pre-commitment to take a

discretionary action requiring a public hearing, for which no notice or hearing has occurred and no CEQA review has been conducted.

Response II.A: This comment states the proposed Park Funding Agreement between the City and the project applicant commits the City to actions which have not been evaluated under CEQA, namely the acquisition and future development of a park on the Gallade Chemical parcel. The comment cites relevant case law in which the California Supreme Court found a lead agency had impermissibly committed to implement a proposed action prior to conducting the required environmental review. The current situation involving the Gallade parcel, however, is quite different and the City has complied with CEQA.

The Dumbarton Specific Plan proposed, and the related Dumbarton TOD Specific Plan EIR analyzed, the acquisition, future development, and ongoing use of 16.3 acres of parks and open space, including the Gallade parcel, which is depicted on the approved Specific Plan land use plan (Specific Plan Figure 8.3) as one of two new public parks to be developed within the Specific Plan. Therefore, the use of the Gallade parcel as a park was evaluated in a certified EIR. The Specific Plan EIR disclosed the construction of proposed recreational facilities could result in temporary increases in air emissions, dust, noise, and erosion from a variety of construction activities, including excavation, grading, vehicle travel on unpaved surfaces, and vehicle and equipment exhaust.

The purpose of the current Trumark Dumbarton TOD Residential Project SEIR is to evaluate the specific impacts of the two pending residential development applications (neither of which are located on the Gallade parcel), based on additional project detail that did not exist when the Specific Plan EIR was prepared. The City, in reaching the proposed Park Funding Agreement with the project applicant, is not committing to an activity that exceeds the Specific Plan EIR's level of environmental analysis of the future park on the Gallade parcel. The City has yet to proceed to the detailed park planning and design phase to determine precisely what specific physical changes would be made to the Gallade parcel to implement the future park. The draft funding agreement provides that the developer shall prepare and submit a master plan for the park site for review and consideration by the City Council, at which point the City will determine what, if any, additional project-level environmental review is appropriate, tiering from the certified Specific Plan EIR. The certified Specific Plan EIR provides adequate information at this stage of the City's decision-making with respect to the future park planned on the Gallade parcel.

Comment II.B: <u>Community Financing Agreements</u>

Similarly, the proposed Resolutions authorizing a Community Financing Agreements (Items E.1, Att. 5; E.2, Att. 5), commits the City to certain actions regarding a park on the Gallade site prior to completion of CEQA. Again, while the proposed Agreement purports not to commit the City to any action (para. C), the specific terms of the Agreement (as well as the evidence in the record) make clear that the City has already committed to the actions associated with acquisition and development of a park on the Gallade property. (Item E.1, Att. 4, para. 1.01; Item E.2, Att. 5,

para. 1.01 ("funds shall only be used towards the development of the [] approximately two- acre park (on the Gallade parcel)").) Those commitments precede required CEQA review. *(Save Tara, supra,* 45 Cal.4th 116.)

Response II.B: As discussed in the prior **Response II.A** above, the Dumbarton Specific Plan proposed, and the related Specific Plan EIR analyzed, the acquisition, future development, and ongoing use of the Gallade Chemical parcel as a park, as depicted on the approved Specific Plan land use plan (Specific Plan Figure 8.3) as one of two new public parks to be developed within the Specific Plan. Therefore, the use of the Gallade parcel as a park was evaluated in a certified EIR. The certified Specific Plan EIR provides adequate information at this stage of the City's decision-making with respect to the future park planned on the Gallade parcel.

Comment III.A: <u>The Project Description is Misleading and Results in Improper Segmentation</u>

The project description fails to include conversion of the Gallade site to a park as part of the overall Project. The Project is defined in section 3.5.1 of the SEIR as preparation of Site A and Site B for residential development, and construction of homes and other facilities "on those sites." (SEIR, p. 40.) Yet, as noted above, the Project requires the acquisition of the Gallade site and conversion to a park. The failure to include the conversion of the Gallade site to a park as part of the fundamental project description is misleading. *(County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.) A "finite project description is indispensable to an informative, legally adequate EIR." *(Id.* At 199.)

This failure also results in segmentation in violation of CEQA. The City may not split a project into small pieces so as to avoid environmental review of the entire project. *(Orinda Ass 'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171.) Yet, that is precisely what has occurred with the SEIR's failure to include converting the Gallade site to a park as part of the project. Moreover, the characterization of the park requirement as a condition of the Project, rather than part of the originally proposed Project, does not excuse the requirement to evaluate impacts associated with the park requirement. *(Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376; see also, CEQA Guidelines, §§ 15126.2, 15126.4; *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

In addition, the baseline for consideration of environmental impacts assumes, as a pre-condition, that Gallade would no longer be in operation. This is an inappropriate baseline as it does not reflect existing conditions, but rather future changes that have not occurred (and have not been evaluated). (CEQA Guidelines, § 15125.)

Response III.A: This comment states the SEIR's project description is misleading by not including the planned conversion of the Gallade parcel to a public park as a related action, and therefore, the SEIR's analysis has not accounted for all aspects of the proposed project, thereby leading to a segmented environmental review. This comment appears to misunderstand the purpose of the SEIR and what has already been disclosed in the Specific Plan EIR. The purpose of the current Trumark Dumbarton TOD Residential Project SEIR is to evaluate the specific impacts of the two pending residential development applications (neither of which are located on the Gallade parcel), based on additional project detail that did not exist when the Specific Plan EIR was prepared. The Supplemental EIR is just that, a supplemental document to the original Specific Plan EIR that focuses its analysis on the physical changes planned for the two residential sites, and the SEIR was

not written to address anticipated physical changes to other properties within the Specific Plan. The holistic project description and environmental impact analysis the comment is requesting encompassing the planned park on the Gallade parcel is to be found in the Specific Plan EIR. Therefore, the City has not segmented its environmental review of the various Specific Plan components. The current SEIR is supplementing the Specific Plan EIR's analysis of the two Trumark residential project sites, it is not attempting to supplement the certified EIR's analysis of the Specific Plan as a whole, nor specifically the planned park on the Gallade parcel.

The comment further disagrees with the selection of an environmental baseline that does not include the current Gallade Chemical operations for purposes of evaluating the two Trumark residential development applications. The SEIR employed a baseline with the Gallade Chemical Co. no longer in operation, as the TOD Specific Plan identifies that parcel as a planned park and based on the proposed conditions of approval. Substantial evidence in the record supports the SEIR's approach.

Comment III B: The Approvals Contemplate Actions With Impacts That Have Not Been Evaluated Under CEQA

Because the SEIR fails to include the park as part of the Project, there is no analysis of the potential environmental impacts of converting the Gallade site to a park. The SEIR notes: "The Specific Plan EIR provided a program -level analysis of the environmental effects of converting the former industrial land in the Specific Plan area to residential, retail and community uses and the environmental impacts of the construction and operation of the entire Specific Plan project. As such, the EIR did not analyze the project-level environmental impacts resulting from the development of specific parcels other than the Torian project site in the Specific Plan area." (SEIR, p. 38.)

With respect to the park specifically, the SEIR notes, "Use of this property as a public park was evaluated in the Specific Plan EIR only at a program level given the final cleanup activities to allow use of the site as a park were not sufficiently defined." (SEIR, section 3.5.3, p. 44.) The SEIR goes on to acknowledge that there isn't sufficient info for a project level analysis of the park, but that the park will be subject to further environmental review when plans for its development are prepared. *(Id.)* Thus, while the Project is contingent on the park, there is no analysis of the impacts of constructing the park, including but not limited to impacts on the existing Gallade operation, and impacts resulting to industrial site relocation, cleanup and remediation of the site, and construction of a park.

In addition to committing the City to take certain actions regarding the Park Site prior to CEQA analysis of review of those actions, the proposed approvals include various entitlements and conditions that have not been evaluated under CEQA. The SEIR focused only on six environmental impact areas (air quality, biological resources, cultural resources, greenhouse gas emissions, hazards and hazardous materials, and noise), and failed to evaluate the potentially significant impacts that could result to other environmental areas. The Specific Plan EIR did not evaluate impacts associated with the park at a project-level and conversion of the Gallade site to a park has the potential to result

in significant impacts to biology, air quality, traffic, noise, greenhouse gas emissions, hazards, public health and safety, utilities, hydrology, and geology.

Moreover, impacts resulting from the residential projects themselves are truncated and insufficient. For example, Item E.1, Att. 6 (proposed approval of TM-12-32) includes numerous conditions requiring road improvements (see, e.g., conditions dd through gg), but the SEIR does not even evaluate potential traffic impacts of the Project or impacts associated with the construction of those traffic improvements.

Response III.B: The first part of this comment reiterates previous comments that the City has not conducted appropriate environmental review for the Trumark residential project decisions that are pending related to the planned park on Gallade parcel. This issue has been addressed in the prior responses above.

The second part of this comment states the SEIR's analysis of the environmental impacts associated with the Trumark residential projects only focused on six impact areas (air quality, biological resources, cultural resources, greenhouse gases, hazards and hazardous materials, and noise), and should have also evaluated other topics. The City concluded, in determining that an SEIR was necessary to disclose significant new information relating to the six impact areas noted in the comment, that the certified Specific Plan EIR adequately addressed the two Trumark residential projects' impacts in all other environmental topic areas. As stated in the Draft SEIR (pg.50), other topics and potential impact areas such as aesthetics, traffic, land use, and geology are not analyzed further in the SEIR because the proposed Trumark residential developments would result in impacts consistent with the Specific Plan EIR's analysis.

Comment III.C: <u>The SEIR Inadequately Addresses Biological Resources</u>

The SEIR fails to commit to any mitigation measure for nesting raptors. The SEIR is based on surveys that were conducted for one month during the nesting season (although nesting season is from February 1 - August 31) and concluded there was no observation of white-tailed kites and red-tailed hawks. The mitigation measure incorporates Dumbarton TOD Specific Plan EIR MM 4.3-4 which states that a construction fence shall be installed if nesting raptors are identified. Because no nesting raptors were identified during the survey, it is assumed that the project proponent will not incorporate this mitigation measure. This is insufficient analysis - the Biological Resources Report found that there is potential for white-tailed kites and red-tailed hawks to nest in trees on or adjacent to the project sites and one month of surveying during the first month of nesting season is insufficient to determine the impact. The project proponent needs to engage in longer surveying and the mitigation measure needs to be revised to commit the project proponent to the measure. (SEIR, p. 62 - 4.2.2.3 Nesting Raptors.)

Response III.C: This comment states that the SEIR does not specify appropriate mitigation measures for impacts to nesting raptors, and that a nesting raptor survey conducted during preparation of the Biological Resources Report (included as Appendix B-1 of the SEIR) is inadequate to determine the presence or absence of nesting raptors. The SEIR includes the results of a nesting raptor survey conducted during February 2013 to determine if nesting raptors were present *at the time of preparation of the SEIR* to establish the environmental baseline; none were observed. However the

comment is incorrect in its assumption that no additional surveys for nesting raptors would be required or that the project would not be required to implement appropriate buffer areas (through the installation of construction fencing) if nesting raptors are present at commencement of construction. As described on Pages 62-63 of the SEIR and as identified in the Mitigation Monitoring and Reporting Program (MMRP) for the project, the project would implement Specific Plan EIR Mitigation Measure 4.3-2, which requires that pre-construction surveys for nesting raptors be conducted on each project site if initial earth moving or construction work is to occur during the raptor nesting season of February 1-August 31. If nesting raptors are identified during the surveys, appropriate buffer areas around the nest would be established and maintained. The size and duration of the buffer area are described in detail in the SEIR and the MMRP.

The SEIR provides updated information about the status of nesting raptors on the site at the time of its preparation, and appropriately identifies that Specific Plan EIR Mitigation Measure 4.3-2 would apply to the project to prevent impacts to nesting raptors if they are present at commencement of construction.

Comment III.D: The Alternatives Analysis Is Flawed

The project objectives are too narrowly drawn and are designed to minimize or avoid CEQA's requirement for an EIR to identify a reasonable range of alternatives. Specifically, the SEIR identifies the applicant's primary objectives to include: 1) "Develop an economically viable, high-quality residential project consistent with the Dumbarton TOD Specific Plan"; 2) "Develop single family detached residences consistent with the project sites' (sic) Medium High Density Residential land use designation"; and 3) "Prepare Site B for residential development by addressing soil and groundwater contaminants to achieve established regulatory standards for residential use of the property." These artificially narrow objectives are then applied in the alternatives analysis as a basis for constraining the Location Alternative (off-site alternative) to possible sites within the extremely tight physical confines of the 205 acre Specific Plan area. This is contrary to the intent of CEQA, and forcibly truncates what should have been a broader analysis of a reasonable range of alternatives, including an honest review of legitimate off-site locations. Achieving the City's goals of sustainable development, mixed use housing, and transit-oriented development should never be artificially constrained to the Specific Plan area, and should instead require meaningfully be examination through consideration of a range of other legitimate locations. Though the Specific Plan's state of readiness may arguably be more advanced than other off-site locations around the City, this is not a legal basis for limiting the range of alternatives analysis in direct violation of CEQA.

The No Project Alternative wrongly concludes that in the absence of the project, development would not occur, and therefore, impacts of the project would be avoided. This determination is inconsistent with the existence of an approved Specific Plan that has designated development for the sites. Specifically, the SEIR states:

> Under the No Project Alternative, the sites would remain vacant and would not be developed to effectuate residential development under the Dumbarton TOD Specific Plan. Remediation of soil contaminants to regulatory standards for residential use of Site B would not be implemented.

> Under the No Project Alternative, the project sites would presumably remain vacant as other nearby properties were developed under the Dumbarton TOD Specific Plan, unless or until the Plan was amended to specify other uses of the sites. Alternative use of the sites for purposes other than residential would also require an amendment to the Newark General Plan and rezoning.
>
> Under the No Project Alternative, disturbance of seasonal wetlands and Condon' s tarplant would be avoided since existing habitat would be not disturbed by site remediation and residential development. This alternative would avoid the significant unavoidable impact to future residents of the site resulting from an accidental release of hazardous substances from hazardous material users in the vicinity of the project.

(SEIR, p. 118.)

It is a fiction for the SEIR to conclude that an area within an approved Specific Plan will not develop if the immediate project proposal does not go forward. Additionally, as stated in the SEIR excerpt above, the assumption that the site would remain vacant until both the Specific Plan and General Plan are amended, and the sites are rezoned to accommodate uses other than residential is completely fabricated and entirely lacking in evidentiary support. This approach is a deliberate attempt to avoid a true assessment of the viability and legitimacy of the No Project Alternative, and violates CEQA. The alternatives analysis is further flawed with regard to continued claims that the "No Project Alternative would avoid the identified environmental impacts of the proposed project, [and] would not support the objectives of the Dumbarton TOD Specific Plan and could be detrimental to successful implementation of the Plan ... nor would it accomplish the highest and best use of the sites by leaving them vacant." (SEIR, p. 118.) Again, there is no evidence to support these flawed conclusions, which are themselves inconsistent with the City's adopted planning scheme, which remains in place regardless of whether or not the proposed project proceeds.

Finally, in what can only be described as a mysterious internal inconsistency, the No Project Alternative analysis summarized above is entirely at odds with the Summary section presented in the SEIR at pages xxv and xxvi, which clearly states that the No Project Alternative will neither limit development of the site under the Specific Plan, or avoid the key environmental impacts of the proposed project. The Summary provides:

> The No Project-Existing Plan Alternative assumes the proposed project is not approved or is not implemented, but that another future project is built consistent with existing plans and policies. In this case, what can be reasonably expected to occur in the foreseeable future, based on current plans and consistent with available infrastructure and community services is another residential project, at a density consistent with the Specific Plan designation for the site, Medium Density Residential (DTOD Specific Plan) 14-25 du/acre.
>
> Regardless of the residential unit type ultimately developed under this alternative, remediation of soil contaminants on Site B and remediation of VOCs on Site A would have to occur prior to residential development. Extensive grading and excavation necessary to prepare Site B for residential use would still affect seasonal wetlands and Congdon's tarplant on the site to the same extent as the proposed project. The potential to

avoid seasonal wetlands on Site A is discussed in more detail below in the Reduced Development Alternative and the Design Alternative.

The No Project - Existing Plan Alternative would not avoid the significant unavoidable impact from the potential exposure of future residents on Site A and Site B to airborne hazardous substances. The No Project -Existing Plan Alternative would not avoid the significant impacts of the proposed project on Site B.

(SEIR, p. xxvi.)

This glaring inconsistency cannot be reconciled and presents a clear flaw in the document. It would appear that the alternatives analysis was drafted by one individual, and the summary of the alternatives analysis by another, and that for whatever reason, neither bothered to check what the other was saying. This extremely casual approach to preparing and drafting an EIR for a major urban infill project permeates the alternatives analysis and the SEIR in general, and violates CEQA's requirements for a clear and consistent presentation of the environmental effects of the project to enable the public to understand and evaluate that which is proposed.

Response III.D: This comment states the project objectives are too narrow and have improperly constrained the SEIR's analysis of off-site location alternative(s). The SEIR's objectives are appropriately focused on implementing the Dumbarton TOD Specific Plan, and have not unduly constrained the consideration of other potential off-site location alternatives. The CEQA Guidelines do not require consideration of an off-site location alternative (per Guideline §15126.6(a), "An EIR shall describe a reasonable range of alternatives to the project <u>or</u> to the location of a project...", *emphasis added*), and the City elected to include, among the SEIR's range of alternatives, discussion of a location alternative within the Specific Plan itself in an attempt to avoid the hazardous materials release impact affecting the two Trumark residential sites while still implementing a component of the Specific Plan. CEQA does not require that the SEIR include location alternatives outside the Specific Plan, as it does not require that the SEIR include any particular location alternative.

The comment further states that the SEIR's discussion of the No Project – No Development Alternative assumes an artificial scenario using flawed assumptions that the two sites would not otherwise be developed (i.e. the two Trumark sites would remain undeveloped if the current proposed Trumark applications are not implemented). The SEIR's discussion of this alternative (pg.117) starts by referencing relevant language from the CEQA Guidelines (per Guideline §15126.6(e)(2)), that states that the No Project Alternative should address both the existing conditions, as well as what would be reasonably expected to occur in the foreseeable future if the project is not approved. The SEIR addresses both conditions. The No Project – No Development Alternative is focused on the former condition (i.e. existing conditions) per the Guidelines, while the No Project – Existing Plan Alternative discusses the latter condition. The comment expresses an opinion that the SEIR's discussion of the No Project – No Development Alternative provides little apparent value since it is reasonably foreseeable that other development would be implemented consistent with the Specific Plan, which does not require further response.

The comment concludes by describing a perceived (albeit non-existent) inconsistency that the SEIR Summary includes a discussion of the No Project - Existing Plan Alternative, while the SEIR Alternatives chapter discusses a different No Project – No Development Alternative. As stated above, **Section 7.0 Project Alternatives** of the SEIR includes discussion of two variations of the No Project Alternative (as suggested by Guideline §15126.6(e)(2)); the first of which assumes, should the current Trumark developments not be implemented, no development occurs on the two sites, while the second no project alternative assumes other development consistent with the Specific Plan ultimately is implemented on each site. As noted in the comment, the latter alternative scenario may be more likely, and therefore given its increased informational value, this No Project - Existing Plan Alternative was discussed in the SEIR Summary, while the No Project – No Development Alternative (in which the comment finds little apparent informational value) was not included in the Summary and instead is discussed solely in the SEIR Alternatives section.

Comment III.E: The SEIR Provides an Inadequate Analysis of the Project's Impacts and Proposed Mitigation of Greenhouse Gas Emissions

1. Operational Greenhouse Gas Emissions Impacts

The SEIR fails to provide substantial evidence to support its conclusion that the Project's operational greenhouse gas ("GHG") emissions will have a less than significant impact. Specific Plan EIR MM 4.6-1 requires that listed design features "shall be incorporated into ... future buildings to ensure consistency with adopted Statewide plans and programs. The project applicant shall demonstrate the incorporation of project design features prior to the issuance of building permits." (SEIR, p. 77 (emphasis added).) The SEIR's conclusion of less than significance related to operational long-term GHG emissions is premised entirely on the Project being "consistent with the Specific Plan land use designations and assumed densities" and whether "the applicable emissions reductions measures identified in the Specific Plan EIR are implemented. " *(Id.* at p. 76.) Yet, the SEIR provides that the Project would implement only the "majority" of the Specific Plan EIR mitigation measures and only those "applicable" to the Project, while simultaneously concluding that potentially significant operational emissions would be reduced to a less than significant level. *(Id.* at p. 79.)

The City cherry picks which of Specific Plan EIR MM 4.6-1 GHG reduction measures the Project will implement. In some instance the Project does not propose to implement listed reduction measures at all, in other instances it gives residents the "option" of purchasing the design feature specified in the reduction measure, thus ensuring no guarantee of implementation. (SEIR, p. 78.)

With regards to the GHG reduction measure to provide a minimum of 15 percent affordable housing, the SEIR states that the Project would provide in-lieu fees to the City to fund affordable housing development. (SEIR, p. 78.) No information is given on the amount of in- lieu fees to be provided, nor whether the proposed amount would be adequate to implement affordable housing equivalent to 15 percent of the Project's units. Nor does the City explain how it would ensure that the in-lieu fees would be used to provide these affordable housing units near transportation networks, the key component that makes the affordable housing requirement a source of GHG reductions.

To implement the GHG reduction measure "incorporate design guidelines for transit oriented development and complete street standards," the SEIR states that the Project "will construct or contribute to reconstruction of Enterprise Drive and Willow Street consistent with Specific Plan Complete Street designs." (SEIR, p. 78.) The SEIR fails to provide any explanation of how the reconstruction of these two streets will fully implement the GHG reduction measure, given that there are other streets surrounding the project. More importantly, no explanation is provided on what level of "contribution" the Project would assume, nor how the remainder of the funding presumably necessary to realize the GHG reduction measure for these streets would be available.

In addition, the GHG reduction measures outlined in Specific Plan EIR MM 4.6-1 are only some of the potential design features the Project could utilize to demonstrate and ensure consistency with the adopted statewide plans and programs related to climate change. (SEIR, p. 77.) Yet, the SEIR proposes no other, alternative GHG emission reduction measures to ensure that its emissions impacts are sufficiently mitigated. The SEIR does not quantify the Project's GHG emissions, so the impact of the SEIR's failure to incorporate all design features in accordance with Specific Plan EIR MM 4.6-1, or propose and implement alternative measures, cannot be evaluated. The SEIR even fails to provide a *qualitative* analysis of how the Project's failure to implement certain GHG reduction measures affects the assumption that operational GHG emissions impacts are lowered to less than significant.

2. Construction GHG Emissions Impacts

The SEIR provides three best management practices ("BMPs") from the Bay Area Air Quality Management District ("BAAQMD") for the reduction of construction GHG emissions and ambiguously discusses the Project's implementation of two of the three BMPs. (SEIR, p. 79.) Compliance with the City's Municipal Code would ensure the implementation of one of the BMPs, recycling or reusing at least 50 percent of construction waste and demolition materials. However, the SEIR provides no assurance that the Project would abide by, or even attempt to implement, the remaining two BMPs. The SEIR ambiguously states that the Project site is located in an urban location within close distance of construction supplies and equipment, which would help minimize GHG emissions generated from transport of construction materials and waste. *(Ibid.)* The SEIR provides no assurance, however, that the Project will actually implement the BMP to use at least 10 percent local building materials, much less providing an enforceable mitigation measure to that effect. The impacts analysis does not address the feasibility or the Project's intention to implement the remaining specified BMP to use alternative-fueled construction vehicles/equipment for at least 15 percent of the fleet. The SEIR only states it will implement recommended BMPs "where feasible" to reduce construction GHG emissions. *(Id.* at 81.) Finally, similarly to the operational GHG emission reduction measures, the Project is not limited to *only* the specified GHG reduction strategies; the Project could specify other measures to mitigate emissions. Yet, the SEIR does not even attempt to outline other construction GHG BMPs or emissions reductions that could be implemented to mitigate impacts.

Despite the Project's lack of sufficient, or enforceable, measures to mitigate construction GHG emissions, the SEIR concludes that the Project will have a less than significant impact with respect to construction GHG emissions impacts. (SEIR, p. 80.) With the potential implementation of one or two BAAQMD BMPs, the SEIR lacks substantial evidence to support this conclusion. There is no qualitative or quantitative discussion of construction emissions, their impacts, or the reduction in emissions with the (potential) implementation of the BMPs. The lack of a quantified threshold of significance from BAAQMD or the City related to impacts resulting from construction GHG emissions does not excuse the City from quantifying the Project's emissions and analyzing their

impact and whether the proposed mitigation would lower that impact to below significance. The lack of enforceable mitigation measures (assuming the mitigation proffered would be sufficient to lower impacts) also renders the conclusion of less than significant invalid.

3. Consistency with Plans and Policies

The SEIR's conclusion that the Project would not conflict with any applicable GHG reduction plans, policies or regulations is supported only by the statement that the Project will incorporate "most" of the Specific Plan EIR's applicable GHG reduction measures. (SEIR, p. 80.) As discussed above, picking and choosing those GHG reduction measures that the Project finds convenient to incorporate into the Project does not provide substantial evidence to support the conclusion that operational GHG emissions impacts are mitigated to a less than significant level. The incorporation of some GHG emissions reduction measures is similarly insufficient to conclude that the Project is consistent with all applicable GHG reduction plans, policies, and regulations, particularly where the Project's actual consistency with the unnamed "plans, policies, and regulations" is absent from the SEIR discussion.

Response III.E.1: The comment states that the SEIR does not support its conclusion that the project would have less than significant operational GHG impacts, and that the project is not consistent with Specific Plan EIR Mitigation Measure 4.6-1, which identifies potential GHG emission reduction design features for development under the Specific Plan.

The SEIR summarizes the Specific Plan EIR's GHG impact analysis, which includes a calculation of GHG emissions resulting from build out and operation of all development under the Specific Plan. The Specific Plan EIR estimated that the Specific Plan project would generate 25,600 Metric Tons of Carbon Dioxide equivalent emissions per year (MT CO_2e/year) before implementation of the energy efficiency and emission reduction design features identified in Mitigation Measure 4.6-1. The SEIR reiterates the Specific Plan EIR's calculation that implementation of the reduction measures is estimated to reduce Specific Plan emissions by 27.92% resulting in GHG emissions of approximately 18,500 MT CO_2e/year, which equates to approximately 2.26 MT CO_2e/year per service population. This rate of emission is less than half that of the BAAQMD threshold of significance for GHG emissions of 4.6 MT CO_2e/year per service population.

If none of the energy efficiency and emission reduction design features were implemented by the Specific Plan project, the Specific Plan area's annual GHG emissions of 25,600 CO_2e/year for the service population of 8,150 persons within the Specific Plan area would be approximately 3.14 MT CO_2e/year per service population, which is still well below the BAAQMD threshold of 4.6 MT CO_2e/year per service population. Therefore, if the Specific Plan EIR had identified no GHG reduction measures, Specific Plan GHG emissions, including those from the two Trumark residential projects, would still be less than significant.

This list of potential energy efficiency and emission reduction design features identified in Specific Plan EIR Mitigation Measure 4.6-1 apply to various development facets of the Specific Plan area, including residential, commercial and community serving land uses. As such, not all design measures would apply to all

land uses within the Specific Plan area (i.e., single family residential development would not be expected to implement cool roof or green roof features). The SEIR appropriately identifies which of the potential design features would be implemented by the proposed project and therefore demonstrates the project's compliance with Specific Plan EIR Mitigation Measure 4.6-1.

CEQA provides discretion to the Lead Agency to determine whether to assess a project's emissions quantitatively or qualitatively (Guideline §15064.4(a)). Nonetheless, to accommodate the commenter's request for a quantified analysis for the Trumark Residential Project, a greenhouse gas analysis was prepared by Environ Corp. (Attachment B). That analysis is additional substantial evidence that the Project will not result in significant greenhouse gas impacts. Using the assumed Trumark Project's service population of 796 residents yields an operational GHG emissions efficiency of 4.2 MT CO_2e/year per service population, which is below the BAAQMD CEQA significance threshold of 4.6 MT CO_2e/year per service population. There are no thresholds of significance for GHG emissions from construction equipment.

CEQA Guidelines Section 15088.5 requires an EIR to be recirculated when "significant new information" is added to the EIR prior to certification. "Significant new information" requiring recirculation can include a disclosure showing that a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented; or a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

"New information" is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse effect (including a feasible project alternative) that the project's proponents have declined to implement. Recirculation is not required where new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR. Recirculation of the SEIR would not be required for this Project because the quantified GHG emissions report is not evidence that the Project would result in any new significant impacts, nor does it show that there would be a substantial increase in the severity of an already identified impact. Instead, the report merely amplifies the SEIR's conclusion that the Project would not result in significant greenhouse gas impacts.

2. The comment suggests that the SEIR should identify mitigation measures for reducing construction period GHG emissions. See **Response III. E. 1**, above.

3. The comment states that the project is not consistent with applicable GHG reduction plans and policies. See **Response III. E. 1**, above.

Comment III.F: <u>The SEIR Analysis of Air Quality Impacts is Flawed and Insufficient</u>

1. Analysis of Construction Emissions Impacts

In its discussion of impacts of fugitive dust emissions associated with construction, the SEIR states that the Project would not exceed the BAAQMD significance threshold for construction-related criteria pollutants, even though the only figures in the SEIR for particulate matter ("PM") are for construction vehicle exhaust emissions only and do not include any emissions from fugitive dust. (SEIR, pp. 55-56.) The SEIR then goes on to provide that mitigation measures related to fugitive dust will be implemented "even though the proposed project would not exceed those thresholds." *(Id.* at p. 56.) With no quantification of construction fugitive dust emissions, or analysis of how these emissions would be reduced with the implementation of BAAQMD's standard mitigation measures, the SEIR improperly concludes that the Project would not result in significant impacts related to fugitive dust emissions during construction. *(Id.* at 57.) In fact, the SEIR goes so far as to state that the impact related to construction fugitive dust emissions is the same impact as in the Specific Plan EIR, despite the fact that the Specific Plan EIR did not include any project-specific emissions data. *(Ibid.)*

Related to the SEIR's analysis of exhaust emissions during construction of the Project, the SEIR states that "emissions generated in other air basins associated with transport of [contaminated] soil would be attributed to the facilities receiving the soil." (SEIR, p. 54.) It is impermissible under CEQA to ignore a direct environmental impact on the basis that the impact will occur at a certain distance from the Project. Air quality impacts that are a direct result of the Project must be analyzed, regardless of the impact potentially occurring in an adjacent air basin. While the mitigation of these impacts may be outside the jurisdiction of the City or BAAQMD, there is no basis on which to shift the analysis of the impact outside of the SEIR, particularly where there is no forum for analysis of that impact by another jurisdiction.

The SEIR states that "[e]xhaust emissions of criteria pollutants during construction would not exceed BAAQMD thresholds, therefore the project would not result in a cumulatively considerable increase in criteria pollutants for which the Bay Area is in non-attainment." (SEIR, p. 55.) CEQA requires that a cumulative impacts analysis consider not only the impacts of the Project, but also the impacts of the Project *in combination* with all other cumulative projects. *(Communities for a Better Environment* v. *California Resources Agency* (2002) 103 Cal.App.4th 98, 117-121.) The SEIR has failed to undertake this analysis in support of the statement that the Project "would not result in a cumulatively considerable increase." (SEIR, p. 55.) CEQA forbids the City from looking solely at the magnitude of the Project-specific impact in order to determine whether the impact would be cumulatively considerable. That the Project emissions will remain below BAAQMD significance thresholds goes only to the question of whether there is a Project-specific impact from construction emissions.

2. Community Health Risk Assessment of Operational Impacts

The SEIR's determination of a less than significant impact associated with toxic air contaminants ("TACs") is predicated on the number of daily commuter train pass-by events per day. (SEIR, p. 53.) The SEIR states that Dumbarton Rail Corridor train operations "was anticipated to be twelve events per day," citing a 2004 San Mateo County Transit Authority *Summary of the Dumbarton Rail Corridor Project Study Report. (Ibid.)* No explanation is provided with regards to the accuracy of this estimate, given that the *Project Study Report* is now a decade old. With a maximum increased cancer risk at the Project of 8.4 million cases in one million, approaching the significance threshold of 10 cases or greater per million, reliance on an outdated *Project Study Report* to conclusively determine TAC impacts are less than significant is inappropriate and in violation of CEQA.

3. Consistency with Air Quality Plans and Impacts related to Odors and Carbon Monoxide

The SEIR concludes that the Project would not conflict with applicable air quality plans or cause new impacts related to odors or carbon monoxide, based on the Project's consistency with Specific Plan land use designations for the site and residential development envisioned in the Specific Plan. (SEIR, p. 51, 58.) The SEIR fails to provide any explanation of how the Project-specific emissions of criteria pollutants, including carbon monoxide, or TACs and odors associated with the Project - none of which could have been described or analyzed in the programmatic Specific Plan EIR - are consistent with what was provided for in the Specific Plan EIR. For instance, if the City does not describe or specify what odors would be emitted during Project construction or operation, the SEIR cannot determine whether these types or levels of odors are consistent with the "residential development envisioned" in the Specific Plan EIR.

Response III.F.1: This comment states that the SEIR should analyze fugitive dust generated during construction as a construction emission. The BAAQMD CEQA Guidelines do not establish a numeric significance threshold for construction-related fugitive dust, therefore no quantification of construction period dust generation is required. Additionally, due to the variability of site and meteorological conditions during construction, quantification of construction fugitive dust generation is not technically feasible. Accordingly, the BAAQMD Guidelines recommend basic dust control practices Best Management Practices (BMPs) for all construction projects and additional dust and emission control BMPs for projects that exceed BAAQMD criteria pollutant construction emissions thresholds. As shown in Table 4-1 of the SEIR, the project would not exceed BAAQMD thresholds for criteria pollutant construction emissions. The project would however implement both basic dust control BMPs and the enhanced dust and emission reduction BMPs for projects that exceed criteria pollutant construction emission thresholds since the Specific Plan EIR established that all projects built under the Specific Plan would implement both the basic dust control BMPs and the enhanced dust and emission reduction BMPs. As described on Pages 55-57 of the SEIR and as identified in the Mitigation Monitoring and Reporting Program prepared for the project, the project would implement Specific Plan EIR Mitigation Measures 4.2-1.(a) for the basic fugitive dust control BMPs and 4.2-1.(b) for enhanced dust and emissions BMPs, respectively. Therefore, as stated in the SEIR, impacts from dust would be reduced to less than significant levels.

The comment further asserts that the SEIR should include an analysis of construction emissions (from the transport of contaminated soil to receiving facilities) outside of the Bay Area Air Basin. The City has chosen a reasonable and practical geographic scope for measuring criteria pollutants, and has provided a reasonable explanation for its selection. The chosen geographic scope allows for proper analysis of the severity and significance of the project's air quality impacts. The SEIR appropriately states that emissions associated with the project's truck trips outside of the Bay Area Air Basin are associated with the transportation infrastructure being used (whether trucks on highways or railcars) and the facility receiving the material (i.e. the ordinary operations of that receiving facility are already accounted for in the Clean Air Plan for that air basin and should be considered part of the baseline for that air basin). Only if the receiving facility was

needing to expand or a new facility was needed to accommodate the material from the Trumark project would there truly be an increase in emissions compared to current baseline conditions with the receiving facility operating today at its normal amount of activity. Further, including emissions outside the Project's air basin could serve to confuse the results of the EIR's analysis because a determination of the location and amount of emissions in other air basins would be speculative (it will be up to the soil remediation contractor to determine the location of disposal and mode of transportation, based on a variety of factors) and provide limited informational value to the public and decision-makers.

Nonetheless, to address the commenter's request for an analysis of the truck emissions from the transport of contaminated soil to receiving facilities outside the Bay Area Air Basin, an analysis of truck emissions to the nearest Class 1 facility in Buttonwillow, CA, is provided in Appendix C. This analysis assumes 25,000 cubic yards of soil would be transported to the Buttonwillow facility, which is located in the San Joaquin Air Basin. As noted in the SEIR, the exact amount of soil requiring disposal at a Class I facility is unknown until remediation on Site B is underway and testing of excavated soils determines pollutant concentrations, however the 25,000 cubic yard assumption is believed to be reasonably conservative and it is unlikely the amount of material to be transported would exceed that amount. The analysis found that emissions from 2,500 truck trips to the San Joaquin Air Basin (1,250 trips to the facility plus 1,250 return trips) would generate an estimated 0.10 tons Reactive Organic Gasses (ROG) and 5.49 tons of nitrous oxide (NOx). Compared to the San Joaquin Valley Air Pollution Control District (SJVAPCD) significance thresholds of 10 tons/year for both ROG and NOx, respectively, emissions from potential contaminated soil hauling within the SJVAPCD would be less than significant.

The comment additionally states that the SEIR does not adequately address cumulative construction-period emissions of criteria pollutants. The SEIR appropriately concludes that the project would not result in a cumulatively considerable increase in criteria pollutants because the project's construction-period emissions of criteria pollutants would be less than significant. The BAAQMD thresholds of significance identified in the SEIR are the basis for determining whether a project's emissions would constitute a cumulatively considerable contribution of temporary, construction-period criteria pollutant emissions. As noted in the **Response III.F.1**, above, the project would implement BAAQMD enhanced dust and emission control BMPs during construction to minimize its construction period emissions.

2. The comment questions the number of daily train pass-bys that are assumed to occur when the Dumbarton Rail Corridor service is operational. The San Mateo County Transportation Authority (SMCTA) initiated and currently oversees the planning effort for the Dumbarton Rail Corridor (DRC) project. As such, it is appropriate for the City to rely on the most recently available information from the SMCTA to serve as the basis for its analysis of the potential impact of DRC operation emissions on the proposed project. The SMCTA did not provide new information regarding the planned service of the DRC during the public review and

comment period for SEIR, nor has it published new planning documents that indicate a more frequent DRC service than that used in the SEIR's analysis. The City has, acting in good faith, relied upon the most recent publicly available information about the planned operation of a rail service by another public agency.

3. The comment states the SEIR does not explain how project emissions and odors are consistent with those analyzed in the Specific Plan EIR. The certified Specific Plan EIR *does* include an analysis of air quality impacts, including those for carbon monoxide based on Specific Plan vehicle traffic generation, and includes an analysis of potential odor impacts based on the proposed land uses in the Specific Plan and stationary odor sources in the vicinity of the Plan area. The SEIR includes an analysis of project-specific operational criteria pollutants that determined those emissions would be less than significant (Page 52). The project would not introduce a new permanent source of odors, and single family residential development is not considered an odor source, therefore no additional analysis for odors was required.

Comment III.G: <u>The SEIR Fails to Adequately Analyze Impacts related to Hazards and Hazardous Materials Associated with the Project</u>

1. Site A Remediation

The SEIR explains that the remediation of Site A of the Project is proceeding under the San Francisco Bay Regional Water Quality Control Board's ("Regional Board") Final Site Cleanup Requirements Order No. R22007-0005 ("Order") and an Alternate Cleanup Plan ("ACP") approved by the Regional Board. (SEIR, pp. 86-87.) However, the SEIR then provides that Specific Plan EIR MM 4.7-l a and MM HAZ-1 will be implemented to address the soil and groundwater contamination that is known to affect Site A, by requiring the preparation of a remediation plan and a risk management plan, to be reviewed by the Regional Board. *(Id.* at p. 88.) These plans would supposedly achieve Cal-EPA approved risk management standards for residential use of Site A. *(Ibid.)*

First, no information is provided on the relationship between the Order and ACP, already approved by the Regional Board, and the "remediation plan" and "risk management plan" provided for in MM HAZ-1. Whether these are additional, separate plans is unclear. In addition, any standards under which these plans would be drafted or evaluated for sufficiency are entirely missing from the mitigation measure and the SEIR discussion. More importantly, the SEIR provides that Specific Plan EIR Mitigation Measure 4.7-la is amended by MM HAZ-1 to address the specific conditions of Site A. *(Ibid.)* MM HAZ-1 provides that the Regional Board will "review" the remediation plan and risk management plan, but does not require the plans to be approved, rendering this mitigation measure a meaningless requirement without any force and without any guarantee of mitigating the significant danger the Site's contamination poses to future residents. Despite these flaws, the SEIR concludes that with implementation of the mitigation measure, the Project would have a less than significant impact on human health.

2. Site B Remediation

The SEIR notes that the Regional Board issued a conditional approval of a Remedial Action Plan ("RAP") for Site B of the Project, contingent on the Project's preparation of a RAP Addendum. (SEIR, p. 90.) The RAP Addendum must include (1) either a rationale for the grid- based sampling plan for dioxins or present an alternative sampling methodology, and (2) a post- remediation monitoring plan for soil, soil vapor , and groundwater. *(Ibid.)* The SEIR does not provide any information on the status of preparation of the RAP Addendum, nor whether the Project has determined which sampling methodology to seek approval of.

Estimated excavation quantities for Site B specify that approximately 94,000 cubic yards ("CY") of soil will be excavated in total, with approximately 60,350 CY removed from site for disposal. (SEIR, p. 90, Table 4-3.) The SEIR provides that excavated soil will be tested to determine whether additional excavation is necessary and to determine what soils may be reused onsite. Therefore, the SEIR provides only rough estimates of the total quantities of soil to be excavated, disposed of, and reused. Yet, the SEIR uses these estimates to determine the significance of impacts associated with the removal and disposal of these soils. For instance, construction emissions are calculated based on truck trips necessary to transport 60,350 CY of soil, and based on those calculations, the SEIR made a determination of a less than significant impact. Traffic estimates and related impacts similarly rely on the number of truck trips associated with soil removal from the site. The SEIR gives no information on how it came up with the purportedly conservative estimates of necessary soil excavation, given that testing sufficient to determine the actual extent of contamination has not been conducted.

The SEIR also specifies that a portion of the estimated 29,000 CY, containing metals, dioxins/furans, and VOCs, removed from the former evaporation ponds, would be reused on site. (SEIR, pp. 90-91.) The City also anticipates that almost half of the soil removed from the former chemical processing facility at the northwest comer of the site, contaminated with metals, VOCs, and PCBs, will be reused, for a total of approximately 15,000 CY. *(Id.* at 91-92.) The SEIR fails to provide any explanation on how the risk associated with this reuse will be evaluated to ensure the protection of human health. The SEIR merely states that these soils "could be clean enough" to be used as backfill on the site. *(Id.* at p. 92.)

Given the extensive contamination and remediation needed for these Project Sites to approach a level of safety for the proposed residential uses that the City is seeking to approve, the SEIR needs to provide full disclosure and analysis of the proposed remediation solutions, to meet the requirements and intention of CEQA to allow decision-makers and the public to fully evaluate and consider the potential impacts of the Project prior to setting the City on an irreversible course of permitting housing to be built on and adjacent to contaminated land.

3. Offsite Hazardous Material Releases

The SEIR analyzes the potential impacts associated with an accidental release of hazardous substances from nearby industrial facilities. (SEIR, pp. 95-97.) This analysis is inadequate, as it improperly excludes the potential for a release from the Gallade facility. The City attempts to exclude this potential impact "since the proposed project would not be occupied with Gallade Chemical operating at its current location. The Specific Plan identifies this parcel as a future park, and the project will be pre-conditioned such that units will not be occupied while Gallade Chemical remains in operation at the current location." *(Id* . at 96.) The SEIR ignores the potential impact to construction workers who would face exposure in the event of an accidental release from the Gallade site during construction and prior to occupation of the proposed housing units. Furthermore, Gallade

intends to remain operating at its current location indefinitely, despite the City's intentions to strip Gallade of its vested rights to do so.

4. Failure to Analyze the Hazardous Material Impacts Associated with the Use of the Gallade Site as a Park

The City states its intention to turn the current site of Gallade operations into a park as an aside in the SEIR, but fails to analyze this action by the City as part of the Project, nor the potential for impacts to human health associated with use of the parcel for recreation. (SEIR, p. 96.) As discussed in more detail *supra,* this omission from both the Specific Plan EIR and the SEIR, including the hazards and hazardous materials analyses, is a fatal flaw under CEQA.

Response III.G.1: The comment claims that there is no explanation in the SEIR of the relationship of the RWQCB Order No. 2007-0005 and the remediation and risk management plans that are required to be prepared under to that Order. The comment also questions whether RWQCB review of plans prepared pursuant the Order is protective of human health. The Final SEIR provides the status of the Alternative Cleanup Plan (ACP) that was submitted to the RWQCB pursuant to the Order at the time of preparation of the SEIR. The ACP is a remediation plan, and is identified as an "alternative" plan as it is an alternative to the original plan to remediate shallow ground water to residential cleanup goals per the Order's remediation standards. Any remediation plan submitted to the Water Board pursuant to the Order requires Water Board review and approval, however the RWQCB does not have a formal process for approval (i.e. granting of a permit) for actions taken to comply with the active Order, therefore SEIR Mitigation Measure HAZ-1 has been modified to not specify RWQCB "approval". Because residential cleanup goals for shallow ground water are not likely to be achieved before occupancy of the homes, a risk management plan will be prepared that presents engineering, maintenance and management controls to eliminate the risk of vapor intrusion into the residences, as required by the RWQCB. Finally, as described in the City's response to comments on the SEIR (See Final SEIR Response A-25, and *Revisions to the Text of the Draft SEIR*) contained in the Final SEIR, the City has modified SEIR Mitigation Measure HAZ-1 to address the concerns of the RWQCB and those of the Alameda County Water District with regard to the protection of public and worker health.

Additionally, while the Commenter claims that "MM HAZ-1 provides that the Regional Board will "review" the remediation plan and risk management plan, but does not require the plans to be approved, rendering this mitigation measure a meaningless requirement without any force and without any guarantee of mitigating the significant danger the Site's contamination poses to future residents." However, the Commenter is selectively presenting only part of MM HAZ-1, in a manner that is misleading. MM HAZ-1 actually provides that the Water Board "will review the plans to confirm that implementation of the plans should achieve risk management standards applied by the RWQCB for residential use." Accordingly, MM HAZ-1 ensures that the plans will be appropriate to eliminate any significant risk.

2. This comment seeks an update of the status of the Remedial Action Plan Addendum that was being prepared at the time of circulation of the Draft SEIR and additional information about sampling and monitoring methodologies included in the RAP Addendum. The RWQCB maintains all technical documents addressing remediation of the Jones-Hamilton site (Site "B" in the SEIR) at the following website:
http://geotracker.waterboards.ca.gov/profile_report.asp?global_id=SL20226844

The SEIR described the status of the regulatory approvals for remediation of the site at the time of preparation of the document and reflects a good faith effort at describing the regulatory approvals and remediation actions necessary to prepare the site for residential development, as well as the remediation standards the project must achieve. The SEIR is not obligated, however, to provide a continual update of ongoing regulatory actions or technical considerations that result from refinement of the remediation plan. The SEIR, as was required by CEQA, has disclosed the current known condition of each of the two sites, the anticipated physical change (i.e. remediation) necessary to prepare each site for residential use, and the environmental effects of implementing the remediation.

This comment also questions the SEIR's estimate of the amount of soil that could be reused on the site and/or would be removed from the site. Existing analytical data was used to estimate the extent of excavation required to meet residential cleanup goals and to estimate the volume of soil that may be removed for off-site disposal. As noted in the SEIR, the actual volume of soil to be removed will be based on laboratory analyses of verification samples collected during the remediation process. This comment erroneously states that the SEIR's analysis of construction-period air quality impacts assumes that 60,350 cubic yards of soil would be removed from the site. As described on Page 54 of the SEIR, the analysis of construction exhaust emissions modeled a "worst case" scenario of 109,850 cubic yards removed from the site, as well as maximum of 59,500 cubic yards of soil imported to the site if soil reuse fell below estimates. Even under the maximum, or "worst case" scenario of soil export and import, construction emissions were determined be the less than significant.

3. This comment asserts the analysis of potential hazardous materials releases included in the SEIR should have included potential releases from Gallade Chemical. The comment additionally claims that an accidental release of hazardous substances from Gallade during project construction could affect construction workers. The hazardous release analysis appropriately excluded the potential for hazardous material releases from Gallade Chemical to affect future residents of the project sites since no residential units on Site A or Site B would be occupied with Gallade in operation, as discussed in greater detail in a prior response above. The City would ensure that occupancy would not occur with Gallade in operation through project conditions of approval. The SEIR's analysis did not evaluate the potential hazardous material releases from Gallade Chemical to affect construction workers during site remediation and project development since their presence on the site is transient.

4. The comment states that the SEIR should include an analysis of the potential environmental impacts associated with the development of the Gallade Chemical Company parcel into a park site. This comment is addressed in **Response III.A**.

Response.IIIG.3: This comment asserts the analysis of potential hazardous materials releases included in the SEIR should have included potential releases from Gallade Chemical. Please see response to comment III.A above. The SEIR's analysis did not evaluate the potential hazardous material releases from Gallade Chemical to affect construction workers during site remediation and project development since their presence on the site is transient.

Comment IV: The Proposed Affordable Housing Findings are Not Supported

In order to approve an in-lieu fee as satisfying the requirements of the City's affordable housing ordinance, the City must make very specific findings required under Sections 17.18.050.D and G of the City Code. The findings contained in the Projects' staff reports and proposed resolutions regarding affordable housing are not supported by substantial evidence, and are insufficient to support allowance of in-lieu fees rather than building inclusionary units.

Approval of the Projects' alternative means of compliance with the affordable housing requirements must be supported by findings that: 1) bridge the analytical gap between the raw evidence and the ultimate decision, 2) are supported by substantial evidence, and 3) meet the requirements set forth in state and local law. *(Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.)

The requirement to render findings serves to induce the City to draw legally relevant sub-conclusions supportive of its ultimate decision. *(Id.* at 515.) The intended effect is to facilitate orderly analysis and minimize the likelihood that the City will randomly leap from evidence to conclusions. In addition, findings enable the reviewing court to trace and examine the City's analysis. *(Id.* at 516.) They also serve to demonstrate to the public that the City's decision- making is careful, reasoned, and equitable. *(Id.* at 516-17.)

The findings requirement cannot be satisfied by a mere recitation of statutory language. *(City of Carmel-by-the-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84; *see also, Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 328 ("Our Supreme Court expressly disapproved 'the practice of setting forth findings solely in the language of the applicable legislation. "') *(quoting Topanga,* 11 Cal. 3d at 517, fn 16).)

Here, the findings proposed in the staff reports and proposed resolutions merely parrot the findings as stated in the City Code. The staff reports and proposed resolutions provide no analysis nor evidence to support the findings required by the City's housing ordinance. For example, there is no explanation as to how an in-lieu fee would be equal to or better than actually building affordable housing. Further, the staff report finds that proposed alternative means of compliance will not unduly concentrate below market rate housing in one geographic area because the City can monitor this concern when particular affordable housing developments are proposed. This required finding, in essence, is punted to future City Councils, with no guarantee that affordable housing will not be concentrated in a single geographic area. Deferring this particular consideration to future legislative bodies does not satisfy the requirements of the City's affordable housing ordinance.

Moreover, there is no evidence in the record that demonstrates that the proposed in-lieu fees will adequately mitigate the impact caused by market-rate housing. For an in-lieu fee system to satisfy the duty to mitigate, either that system must be evaluated by CEQA or the in-lieu fees or other mitigation must be evaluated on a project-specific basis. *(California Native Plant Society v. County of El Dorado* (2009) 170 Cal. App.4th 1026, 1055.) There is no evidence in the record to support the determination that payment of a $25,000 per/unit in-lieu fee would adequately mitigate the impact of the market rate housing, or otherwise be equivalent to the actual construction of the required inclusionary housing.

Response IV:

See revised Planning Commission Memorandum.

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March 27, 2014

Terrence Grindall
Community Development Director
City of Newark
Fax: 510-578-4265
Email: Terrence.grindall@newark.org

Re: Comments on Trumark Dumbarton Transit Oriented Development Residential Project; SCH #2010042012

Dear Mr. Grindall,

These comments are submitted on behalf of Gallade Chemical, Inc. ("Gallade") regarding the City Council's proposed action on the proposed Trumark Dumbarton Transit Oriented Development Residential Project ("Project"), scheduled for March 27, 2014. For the reasons discussed in more detail below, the City cannot take action on the proposed Project at this time. Among other legal inadequacies, approval of the Project is improper because the City has failed to provide proper notice and because the Supplemental Environmental Impact Report ("SEIR") for the Project fails to meet the requirements of the California Environmental Quality Act ("CEQA").[1]

I. The City Cannot Take Action on the Project Because It Failed to Provide Proper Notice to Gallade

By failing to deliver personal notice of both the Planning Commission and City Council hearings to Gallade, the City has violated local, state, and constitutional laws, all of which require notice of a hearing on a rezone or subdivision be given to neighbors adjacent to the project area.

[1] In addition, Gallade incorporates by reference and reiterates the comments submitted by the San Francisco Bay Regional Water Quality Control Board, California Department of Toxic Substances Control, Alameda County Water District, San Francisco Public Utilities Commission, Margaret Lewis, CH2M Hill, and Cargill.

Alaska California Idaho
Minnesota Oregon Utah Washington
and Washington, D.C.

Gallade has not received notice required by law, and in fact, was unaware of the pending actions by the City until March 25, 2014, after the Planning Commission hearing had already been held, and only two days prior to the City Council hearing. The lack of required notice has deprived Gallade of the ability to provide comments to the Planning Commission, and allows for only cursory comments on the Project to the City Council. Based on its violations of notification requirements, the City cannot take any further action on the Project until proper notice is given to all parties, and the matter remanded to the Planning Commission for further public comment and consideration.

State law requires a City to deliver personal notice of a hearing on any zoning amendment before the Planning Commission and City Council to all owners of real property within 300 feet of the property that is the subject of the hearing. (Gov. Code §§ 65854, 65091(a)(4); *Environmental Defense Project of Sierra County v. County of Sierra* (2008) 158 Cal.App.4th 877, 893.) The Newark City Code has a similar requirement. (Newark City Code §§ 17.44.010, 17.80.050.B., 17.80.070.A.) A zoning ordinance adopted without the required notice and hearing is void. (*See Sounhein v. City of San Dimas* (1992) 11 CA4th 1255, 1260.)

Personal notice of a hearing on a tentative map is also required to be delivered to neighbor's within 300 feet of the subdivision pursuant to both Subdivision Map Act and the City Code. (Gov. Code § 66451.3, 65091(a)(4); Newark City Code § 16.08.020.A.) And as with failure to notify neighbors of a rezone, the failure to provide proper notice to affected parties of a proposed subdivision is also fatal. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605.)

Gallade's property is located directly adjacent to the Enterprise Drive Project, and thus, zoning and subdivision laws require personal notice of the Planning Commission and City Council hearings, notice which was never delivered. Therefore, the Project cannot be approved until proper notice and opportunity for comment at both the Planning Commission and City Council hearings is provided.

In addition to the legislative mandates requiring notice to neighbors, procedural due process, guaranteed by both the California and United States constitutions, requires adequate notice and an opportunity to be heard before a governmental action affecting an individual's property. (*See Goldberg v. Kelly* (1970) 397 US 254, 267.) As explained by the court in *Scott v. City of Indian Wells* (1972) 6 Cal.3d 541:

> To hold, under these circumstances, that defendant city may zone the land within its border without any concern for adjacent landowners would indeed "make a

> fetish out of invisible municipal boundary lines and a mockery of the principles of zoning." "[C]ommon sense and wise public policy ... require an opportunity for property owners to be heard before ordinances which substantially affect their property rights are adopted..." Indeed, the due process clause of the Fourteenth Amendment requires "at a minimum ... that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing..." Zoning does not deprive an adjacent landowner of his property, but it is clear that the individual's interest in his property is often affected by local land use controls, and the "root requirement" of the due process clause is "that an individual be given an opportunity for a hearing before he is deprived of any significant property interest, except for extraordinary situations where some valid governmental interest ... justifies postponing the hearing until after the event...

(*Scott*, 6 Cal.3d 541, 548-49 (citations omitted).) The court in *Horn v County of Ventura* (1979) 24 Cal.3d 605, 617, held that an agency failed to give proper notice when it had provided notice only by posting within central public buildings and direct mailing to persons who had specifically requested notice, and failed to give notice to adjacent property owners that may have been affected by the subdivision. The *Horn* court explained that

> [D]epending on the magnitude of the project, and the degree to which a particular landowner's interests may be affected, acceptable techniques might include notice by mail to owners of record of property situated within a designated radius of the subject property, or by posting of notice at or near the project site, or both. Notice must, of course, occur sufficiently prior to a final decision to permit a "meaningful" predeprivation hearing to affected landowners.

(*Horn*, 24 Cal.3d at 618; *see also Mennonite Bd. of Missions v. Adams* (1983) 462 US 791, 800 ("Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the liberty or property interests of any party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable.").)

Here, not only will Gallade's property interest be affected by a rezone and subdivision directly next door, but the Project also contemplates an actual "taking" of Gallade's property, by requiring that it be acquired prior to the issuance of a certificate of occupancy for any proposed homes within the Project. Because the City has committed itself to exercise its power of eminent domain to acquire Gallade's property in the event it cannot be acquired via negotiations, it was required to give notice of the hearings directly to Gallade. (*See Conejo Recreation & Park Dist.*

v. Armstrong (1981) 114 Cal.App.3d 1016.) At a bare minimum, due process required mailed notice to Gallade of the hearings on the proposed Project before both the Planning Commission and the City Council. The City's failure to provide notice to Gallade is unlawful, and this matter must be remanded to the Planning Commission with proper notice and an opportunity for affected property owners to provide comments.

II. The City Actions Regarding Proposed Agreements Are Premature and Violate CEQA

A. Park Funding Agreement

The City proposes to approve a Resolution authorizing a Park Funding Agreement, affecting the Gallade property. (Item E.1, Att. 5.) The proposed Agreement satisfies Condition uuuu of the Tentative Map, which requires the Developer and the City to enter an agreement to address funding for a public park on the Gallade property. Condition uuuu provides that the Agreement shall "obligate" the Developer to construct or fund construction of improvements on the Park Site. (Item E.1, Att. 6, condition uuuu; see also, Item E.2, Staff Report ("Vesting Tentative Map includes numerous conditions and includes a requirement for the Gallade Chemical property to be acquired and developed as a park.").) Thus, the Condition commits the City to actions requiring development of the Park Site, which have not been evaluated under CEQA.

The proposed Agreement conditions the City's action on future compliance with CEQA (para. 1.04) in direct violation of CEQA. (*Save Tara v. City of W. Hollywood* (2008) 45 Cal.4th 116; CEQA Guidelines, § 15352(a).) Although the Agreement attempts to assert that the City is not committed to any future actions, the Agreement <u>requires</u> the City to initiate efforts to acquire the Gallade site unless the developer terminates the Agreement. (Agreement, para. 1.04(4) ("City <u>shall</u> make a written offer to purchase the Park Site"), para. 1.04(5) ("City <u>shall</u> take all steps required … to acquire the Park Site through the exercise of eminent domain").) The environmental impacts associated with acquisition of the Park Site have not been evaluated, and approval of the Agreement violates CEQA. (*Save Tara, supra,* 45 Cal.4th 116.)

Moreover, the Agreement provides that the park-related conditions of the Project shall be waived if the Park Site is not acquired by June 30, 2015. (Agreement, para. 1.04(7).) There has been no CEQA analysis of the potential impacts associated with waiving the park-related requirements. The City acknowledges that the acquisition of the Park Site is necessary to achieve the goals of the transit-oriented development (Item E.1, Staff Report). If the park-related conditions are waived, the Project will not meet these requirements and there is a potential for significant impacts that have not been evaluated in the SEIR. In particular, the SEIR must evaluate the

potentially significant traffic, air, noise, greenhouse gas and other environmental impacts that would result if the project does not achieve its transit oriented goals. Additionally, the staff report is misleading on this point as it represents that no certificate of occupancy can be issued until the Gallade site is acquired (Item E.2, Staff Report), but the Park Agreement allows for this requirement to be waived (Agreement, para. 1.04(7)).

The Agreement also commits the City to a conceptual site plan, including construction related activities, for the Park Site, which have not been evaluated under CEQA. (Agreement, para. 1.05(5) & (6).) Further, the City's proposed actions authorize the Developer to make improvements to property that it does not own (see, Item E.1, Staff Report), and under circumstances where the property owner has not been notified (see, infra re lack of notice). The Developer has no authority to obtain approvals related to property that it does not own or control.

Finally, the Park Agreement commits the City to initiating eminent domain proceedings if certain conditions are met. (Agreement, para. 1.04(5).) This is a pre-commitment to take a discretionary action requiring a public hearing, for which no notice or hearing has occurred and no CEQA review has been conducted.

B. Community Financing Agreements

Similarly, the proposed Resolutions authorizing a Community Financing Agreements (Items E.1, Att. 5; E.2, Att. 5), commits the City to certain actions regarding a park on the Gallade site prior to completion of CEQA. Again, while the proposed Agreement purports not to commit the City to any action (para. C), the specific terms of the Agreement (as well as the evidence in the record) make clear that the City has already committed to the actions associated with acquisition and development of a park on the Gallade property. (Item E.1, Att. 4, para. 1.01; Item E.2, Att. 5, para. 1.01 ("funds shall only be used towards the development of the [] approximately two-acre park (on the Gallade parcel)").) Those commitments precede required CEQA review. (*Save Tara*, *supra*, 45 Cal.4th 116.)

III. The SEIR Is Wholly Inadequate

A. The Project Description Is Misleading and Results in Improper Segementation

The project description fails to include conversion of the Gallade site to a park as part of the overall Project. The Project is defined in section 3.5.1 of the SEIR as preparation of Site A and Site B for residential development, and construction of homes and other facilities "on those sites." (SEIR, p. 40.) Yet, as noted above, the Project requires the acquisition of the Gallade site and conversion to a

park. The failure to include the conversion of the Gallade site to a park as part of the fundamental project description is misleading. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185.) A "finite project description is indispensable to an informative, legally adequate EIR." (*Id.* At 199.)

This failure also results in segmentation in violation of CEQA. The City may not split a project into small pieces so as to avoid environmental review of the entire project. (*Orinda Ass'n v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171.) Yet, that is precisely what has occurred with the SEIR's failure to include converting the Gallade site to a park as part of the project. Moreover, the characterization of the park requirement as a condition of the Project, rather than part of the originally proposed Project, does not excuse the requirement to evaluate impacts associated with the park requirement. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376; see also, CEQA Guidelines, §§ 15126.2, 15126.4; *Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)

In addition, the baseline for consideration of environmental impacts assumes, as a pre-condition, that Gallade would no longer be in operation. This is an inappropriate baseline as it does not reflect existing conditions, but rather future changes that have not occurred (and have not been evaluated). (CEQA Guidelines, § 15125.)

B. The Approvals Contemplate Actions With Impacts That Have Not Been Evaluated Under CEQA

Because the SEIR fails to include the park as part of the Project, there is no analysis of the potential environmental impacts of converting the Gallade site to a park. The SEIR notes: "The Specific Plan EIR provided a program-level analysis of the environmental effects of converting the former industrial land in the Specific Plan area to residential, retail and community uses and the environmental impacts of the construction and operation of the entire Specific Plan project. As such, the EIR <u>did not</u> analyze the project-level environmental impacts resulting from the development of specific parcels other than the Torian project site in the Specific Plan area." (SEIR, p. 38.)

With respect to the park specifically, the SEIR notes, "Use of this property as a public park was evaluated in the Specific Plan EIR <u>only at a program level</u> given the final cleanup activities to allow use of the site as a park were not sufficiently defined." (SEIR, section 3.5.3, p. 44.) The SEIR goes on to acknowledge that there isn't sufficient info for a project level analysis of the park, but that the park will be subject to further environmental review when plans for its development are prepared. (*Id.*) Thus, while the Project is contingent on the park, there is no analysis of the impacts of constructing the park, including but not limited to impacts on the existing Gallade

operation, and impacts resulting to industrial site relocation, clean up and remediation of the site, and construction of a park.

In addition to committing the City to take certain actions regarding the Park Site prior to CEQA analysis of review of those actions, the proposed approvals include various entitlements and conditions that have not been evaluated under CEQA. The SEIR focused only on six environmental impact areas (air quality, biological resources, cultural resources, greenhouse gas emissions, hazards and hazardous materials, and noise), and failed to evaluate the potentially significant impacts that could result to other environmental areas. The Specific Plan EIR did not evaluate impacts associated with the park at a project-level and conversion of the Gallade site to a park has the potential to result in significant impacts to biology, air quality, traffic, noise, greenhouse gas emissions, hazards, public health and safety, utilities, hydrology, and geology.

Moreover, impacts resulting from the residential projects themselves are truncated and insufficient. For example, Item E.1, Att. 6 (proposed approval of TM-12-32) includes numerous conditions requiring road improvements (see, e.g., conditions dd through gg), but the SEIR does not even evaluate potential traffic impacts of the Project or impacts associated with the construction of those traffic improvements.

C. The SEIR Inadequately Addresses Biological Resources

The SEIR fails to commit to any mitigation measure for nesting raptors. The SEIR is based on surveys that were conducted for one month during the nesting season (although nesting season is from February 1 - August 31) and concluded there was no observation of white-tailed kites and red-tailed hawks. The mitigation measure incorporates Dumbarton TOD Specific Plan EIR MM 4.3-4 which states that a construction fence shall be installed if nesting raptors are identified. Because no nesting raptors were identified during the survey, it is assumed that the project proponent will not incorporate this mitigation measure. This is insufficient analysis - the Biological Resources Report found that there is potential for white-tailed kites and red-tailed hawks to nest in trees on or adjacent to the project sites and one month of surveying during the first month of nesting season is insufficient to determine the impact. The project proponent needs to engage in longer surveying and the mitigation measure needs to be revised to commit the project proponent to the measure. (SEIR, p. 62 - 4.2.2.3 Nesting Raptors.)

D. The Alternatives Analysis Is Flawed

The project objectives are too narrowly drawn and are designed to minimize or avoid CEQA's requirement for an EIR to identify a reasonable range of alternatives. Specifically, the SEIR

identifies the applicant's primary objectives to include: 1) "Develop an economically viable, high-quality residential project consistent with the Dumbarton TOD Specific Plan"; 2) "Develop single family detached residences consistent with the project sites' (sic) Medium High Density Residential land use designation"; and 3) "Prepare Site B for residential development by addressing soil and groundwater contaminants to achieve established regulatory standards for residential use of the property." These artificially narrow objectives are then applied in the alternatives analysis as a basis for constraining the Location Alternative (off-site alternative) to possible sites within the extremely tight physical confines of the 205 acre Specific Plan area. This is contrary to the intent of CEQA, and forcibly truncates what should have been a broader analysis of a reasonable range of alternatives, including an honest review of legitimate off-site locations. Achieving the City's goals of sustainable development, mixed use housing, and transit-oriented development should never be artificially constrained to the Specific Plan area, and should instead require meaningfully be examination through consideration of a range of other legitimate locations. Though the Specific Plan's state of readiness may arguably be more advanced than other off-site locations around the City, this is not a legal basis for limiting the range of alternatives analysis in direct violation of CEQA.

The No Project Alternative wrongly concludes that in the absence of the project, development would not occur, and therefore, impacts of the project would be avoided. This determination is inconsistent with the existence of an approved Specific Plan that has designated development for the sites. Specifically, the SEIR states:

> Under the No Project Alternative, the sites would remain vacant and would not be developed to effectuate residential development under the Dumbarton TOD Specific Plan. Remediation of soil contaminants to regulatory standards for residential use of Site B would not be implemented. [ ]
>
> Under the No Project Alternative, the project sites would presumably remain vacant as other nearby properties were developed under the Dumbarton TOD Specific Plan, unless or until the Plan was amended to specify other uses of the sites. Alternative use of the sites for purposes other than residential would also require an amendment to the Newark General Plan and rezoning.
>
> Under the No Project Alternative, disturbance of seasonal wetlands and Condon's tarplant would be avoided since existing habitat would be not disturbed by site remediation and residential development. This alternative would avoid the significant unavoidable impact to future residents of the site resulting from an

> accidental release of hazardous substances from hazardous material users in the vicinity of the project.

(SEIR, p. 118.)

It is a fiction for the SEIR to conclude that an area within an approved Specific Plan will not develop if the immediate project proposal does not go forward. Additionally, as stated in the SEIR excerpt above, the assumption that the site would remain vacant until both the Specific Plan and General Plan are amended, and the sites are rezoned to accommodate uses other than residential is completely fabricated and entirely lacking in evidentiary support. This approach is a deliberate attempt to avoid a true assessment of the viability and legitimacy of the No Project Alternative, and violates CEQA. The alternatives analysis is further flawed with regard to continued claims that the "No Project Alternative would avoid the identified environmental impacts of the proposed project, [and] would not support the objectives of the Dumbarton TOD Specific Plan and could be detrimental to successful implementation of the Plan… nor would it accomplish the highest and best use of the sites by leaving them vacant." (SEIR, p. 118.) Again, there is no evidence to support these flawed conclusions, which are themselves inconsistent with the City's adopted planning scheme, which remains in place regardless of whether or not the proposed project proceeds.

Finally, in what can only be described as a mysterious internal inconsistency, the No Project Alternative analysis summarized above is entirely at odds with the Summary section presented in the SEIR at pages xxv and xxvi, which clearly states that the No Project Alternative will neither limit development of the site under the Specific Plan, or avoid the key environmental impacts of the proposed project. The Summary provides:

> The No Project – Existing Plan Alternative assumes the proposed project is not approved or is not implemented, but that another future project is built consistent with existing plans and policies. In this case, what can be reasonably expected to occur in the foreseeable future, based on current plans and consistent with available infrastructure and community services is another residential project, at a density consistent with the Specific Plan designation for the site, Medium Density Residential (DTOD Specific Plan) 14-25 du/acre.
>
> Regardless of the residential unit type ultimately developed under this alternative, remediation of soil contaminants on Site B and remediation of VOCs on Site A would have to occur prior to residential development. Extensive grading and excavation necessary to prepare Site B for residential use would still affect seasonal wetlands and Congdon's tarplant on the site to the same extent as the

> proposed project. The potential to avoid seasonal wetlands on Site A is discussed in more detail below in the Reduced Development Alternative and the Design Alternative.
>
> The No Project – Existing Plan Alternative would not avoid the significant unavoidable impact from the potential exposure of future residents on Site A and Site B to airborne hazardous substances. The No Project – Existing Plan Alternative would not avoid the significant impacts of the proposed project on Site B… .

(SEIR, p. xxvi.)

This glaring inconsistency cannot be reconciled and presents a clear flaw in the document. It would appear that the alternatives analysis was drafted by one individual, and the summary of the alternatives analysis by another, and that for whatever reason, neither bothered to check what the other was saying. This extremely casual approach to preparing and drafting an EIR for a major urban infill project permeates the alternatives analysis and the SEIR in general, and violates CEQA's requirements for a clear and consistent presentation of the environmental effects of the project to enable the public to understand and evaluate that which is proposed.

E. The SEIR Provides an Inadequate Analysis of the Project's Impacts and Proposed Mitigation of Greenhouse Gas Emissions

1. Operational Greenhouse Gas Emissions Impacts

The SEIR fails to provide substantial evidence to support its conclusion that the Project's operational greenhouse gas ("GHG") emissions will have a less than significant impact. Specific Plan EIR MM 4.6-1 requires that listed design features "<u>shall</u> be incorporated into … future buildings <u>to ensure consistency</u> with adopted Statewide plans and programs. The project applicant <u>shall demonstrate the incorporation of project design features</u> prior to the issuance of building permits." (SEIR, p. 77 (emphasis added).) The SEIR's conclusion of less than significance related to operational long-term GHG emissions is premised entirely on the Project being "consistent with the Specific Plan land use designations and assumed densities" and whether "the applicable emissions reductions measures identified in the Specific Plan EIR are implemented." (*Id.* at p. 76.) Yet, the SEIR provides that the Project would implement only the "majority" of the Specific Plan EIR mitigation measures and only those "applicable" to the Project, while simultaneously concluding that potentially significant operational emissions would be reduced to a less than significant level. (*Id.* at p. 79.)

The City cherry picks which of Specific Plan EIR MM 4.6-1 GHG reduction measures the Project will implement. In some instance the Project does not propose to implement listed reduction measures at all, in other instances it gives residents the "option" of purchasing the design feature specified in the reduction measure, thus ensuring no guarantee of implementation. (SEIR, p. 78.)

With regards to the GHG reduction measure to provide a minimum of 15 percent affordable housing, the SEIR states that the Project would provide in-lieu fees to the City to fund affordable housing development. (SEIR, p. 78.) No information is given on the amount of in-lieu fees to be provided, nor whether the proposed amount would be adequate to implement affordable housing equivalent to 15 percent of the Project's units. Nor does the City explain how it would ensure that the in-lieu fees would be used to provide these affordable housing units near transportation networks, the key component that makes the affordable housing requirement a source of GHG reductions.

To implement the GHG reduction measure "incorporate design guidelines for transit oriented development and complete street standards," the SEIR states that the Project "will construct or contribute to reconstruction of Enterprise Drive and Willow Street consistent with Specific Plan Complete Street designs." (SEIR, p. 78.) The SEIR fails to provide any explanation of how the reconstruction of these two streets will fully implement the GHG reduction measure, given that there are other streets surrounding the project. More importantly, no explanation is provided on what level of "contribution" the Project would assume, nor how the remainder of the funding presumably necessary to realize the GHG reduction measure for these streets would be available.

In addition, the GHG reduction measures outlined in Specific Plan EIR MM 4.6-1 are only some of the potential design features the Project could utilize to demonstrate and ensure consistency with the adopted statewide plans and programs related to climate change. (SEIR, p. 77.) Yet, the SEIR proposes no other, alternative GHG emission reduction measures to ensure that its emissions impacts are sufficiently mitigated. The SEIR does not quantify the Project's GHG emissions, so the impact of the SEIR's failure to incorporate all design features in accordance with Specific Plan EIR MM 4.6-1, or propose and implement alternative measures, cannot be evaluated. The SEIR even fails to provide a *qualitative* analysis of how the Project's failure to implement certain GHG reduction measures affects the assumption that operational GHG emissions impacts are lowered to less than significant.

2. Construction GHG Emissions Impacts

The SEIR provides three best management practices ("BMPs") from the Bay Area Air Quality Management District ("BAAQMD") for the reduction of construction GHG emissions and ambiguously discusses the Project's implementation of two of the three BMPs. (SEIR, p. 79.) Compliance with the City's Municipal Code would ensure the implementation of one of the BMPs, recycling or reusing at least 50 percent of construction waste and demolition materials. However, the SEIR provides no assurance that the Project would abide by, or even attempt to implement, the remaining two BMPs. The SEIR ambiguously states that the Project site is located in an urban location within close distance of construction supplies and equipment, which would help minimize GHG emissions generated from transport of construction materials and waste. (*Ibid.*) The SEIR provides no assurance, however, that the Project will actually implement the BMP to use at least 10 percent local building materials, much less providing an enforceable mitigation measure to that effect. The impacts analysis does not address the feasibility or the Project's intention to implement the remaining specified BMP to use alternative-fueled construction vehicles/equipment for at least 15 percent of the fleet. The SEIR only states it will implement recommended BMPs "where feasible" to reduce construction GHG emissions. (*Id.* at 81.) Finally, similarly to the operational GHG emission reduction measures, the Project is not limited to *only* the specified GHG reduction strategies; the Project could specify other measures to mitigate emissions. Yet, the SEIR does not even attempt to outline other construction GHG BMPs or emissions reductions that could be implemented to mitigate impacts.

Despite the Project's lack of sufficient, or enforceable, measures to mitigate construction GHG emissions, the SEIR concludes that the Project will have a less than significant impact with respect to construction GHG emissions impacts. (SEIR, p. 80.) With the potential implementation of one or two BAAQMD BMPs, the SEIR lacks substantial evidence to support this conclusion. There is no qualitative or quantitative discussion of construction emissions, their impacts, or the reduction in emissions with the (potential) implementation of the BMPs. The lack of a quantified threshold of significance from BAAQMD or the City related to impacts resulting from construction GHG emissions does not excuse the City from quantifying the Project's emissions and analyzing their impact and whether the proposed mitigation would lower that impact to below significance. The lack of enforceable mitigation measures (assuming the mitigation proffered would be sufficient to lower impacts) also renders the conclusion of less than significant invalid.

3. Consistency with Plans and Policies

The SEIR's conclusion that the Project would not conflict with any applicable GHG reduction plans, policies or regulations is supported only by the statement that the Project will incorporate "most" of the Specific Plan EIR's applicable GHG reduction measures. (SEIR, p. 80.) As discussed above, picking and choosing those GHG reduction measures that the Project finds convenient to incorporate into the Project does not provide substantial evidence to support the conclusion that operational GHG emissions impacts are mitigated to a less than significant level. The incorporation of some GHG emissions reduction measures is similarly insufficient to conclude that the Project is consistent with all applicable GHG reduction plans, policies, and regulations, particularly where the Project's actual consistency with the unnamed "plans, policies, and regulations" is absent from the SEIR discussion.

F. The SEIR Analysis of Air Quality Impacts is Flawed and Insufficient

1. Analysis of Construction Emissions Impacts

In its discussion of impacts of fugitive dust emissions associated with construction, the SEIR states that the Project would not exceed the BAAQMD significance threshold for construction-related criteria pollutants, even though the only figures in the SEIR for particulate matter ("PM") are for construction vehicle exhaust emissions only and do not include any emissions from fugitive dust. (SEIR, pp. 55-56.) The SEIR then goes on to provide that mitigation measures related to fugitive dust will be implemented "even though the proposed project would not exceed those thresholds." (*Id.* at p. 56.) With no quantification of construction fugitive dust emissions, or analysis of how these emissions would be reduced with the implementation of BAAQMD's standard mitigation measures, the SEIR improperly concludes that the Project would not result in significant impacts related to fugitive dust emissions during construction. (*Id.* at 57.) In fact, the SEIR goes so far as to state that the impact related to construction fugitive dust emissions is the same impact as in the Specific Plan EIR, despite the fact that the Specific Plan EIR did not include any project-specific emissions data. (*Ibid.*)

Related to the SEIR's analysis of exhaust emissions during construction of the Project, the SEIR states that "emissions generated in other air basins associated with transport of [contaminated] soil would be attributed to the facilities receiving the soil." (SEIR, p. 54.) It is impermissible under CEQA to ignore a direct environmental impact on the basis that the impact will occur at a certain distance from the Project. Air quality impacts that are a direct result of the Project must be analyzed, regardless of the impact potentially occurring in an adjacent air basin.

While the mitigation of these impacts may be outside the jurisdiction of the City or BAAQMD, there is no basis on which to shift the analysis of the impact outside of the SEIR, particularly where there is no forum for analysis of that impact by another jurisdiction.

The SEIR states that "[e]xhaust emissions of criteria pollutants during construction would not exceed BAAQMD thresholds, therefore the project would not result in a cumulatively considerable increase in criteria pollutants for which the Bay Area is in non-attainment." (SEIR, p. 55.) CEQA requires that a cumulative impacts analysis consider not only the impacts of the Project, but also the impacts of the Project *in combination* with all other cumulative projects. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 117-121.) The SEIR has failed to undertake this analysis in support of the statement that the Project "would not result in a cumulatively considerable increase." (SEIR, p. 55.) CEQA forbids the City from looking solely at the magnitude of the Project-specific impact in order to determine whether the impact would be cumulatively considerable. That the Project emissions will remain below BAAQMD significance thresholds goes only to the question of whether there is a Project-specific impact from construction emissions.

2. Community Health Risk Assessment of Operational Impacts

The SEIR's determination of a less than significant impact associated with toxic air contaminants ("TACs") is predicated on the number of daily commuter train pass-by events per day. (SEIR, p. 53.) The SEIR states that Dumbarton Rail Corridor train operations "was anticipated to be twelve events per day," citing a 2004 San Mateo County Transit Authority *Summary of the Dumbarton Rail Corridor Project Study Report*. (*Ibid.*) No explanation is provided with regards to the accuracy of this estimate, given that the *Project Study Report* is now a decade old. With a maximum increased cancer risk at the Project of 8.4 million cases in one million, approaching the significance threshold of 10 cases or greater per million, reliance on an outdated *Project Study Report* to conclusively determine TAC impacts are less than significant is inappropriate and in violation of CEQA.

3. Consistency with Air Quality Plans and Impacts related to Odors and Carbon Monoxide

The SEIR concludes that the Project would not conflict with applicable air quality plans or cause new impacts related to odors or carbon monoxide, based on the Project's consistency with Specific Plan land use designations for the site and residential development envisioned in the Specific Plan. (SEIR, p. 51, 58.) The SEIR fails to provide any explanation of how the Project-specific emissions of criteria pollutants, including carbon monoxide, or TACs and odors

associated with the Project - none of which could have been described or analyzed in the programmatic Specific Plan EIR - are consistent with what was provided for in the Specific Plan EIR. For instance, if the City does not describe or specify what odors would be emitted during Project construction or operation, the SEIR cannot determine whether these types or levels of odors are consistent with the "residential development envisioned" in the Specific Plan EIR.

G. The SEIR Fails to Adequately Analyze Impacts related to Hazards and Hazardous Materials Associated with the Project

1. Site A Remediation

The SEIR explains that the remediation of Site A of the Project is proceeding under the San Francisco Bay Regional Water Quality Control Board's ("Regional Board") Final Site Cleanup Requirements Order No. R22007-0005 ("Order") and an Alternate Cleanup Plan ("ACP") approved by the Regional Board. (SEIR, pp. 86-87.) However, the SEIR then provides that Specific Plan EIR MM 4.7-1a and MM HAZ-1 will be implemented to address the soil and groundwater contamination that is known to affect Site A, by requiring the preparation of a remediation plan and a risk management plan, to be reviewed by the Regional Board. (*Id.* at p. 88.) These plans would supposedly achieve Cal-EPA approved risk management standards for residential use of Site A. (*Ibid.*)

First, no information is provided on the relationship between the Order and ACP, already approved by the Regional Board, and the "remediation plan" and "risk management plan" provided for in MM HAZ-1. Whether these are additional, separate plans is unclear. In addition, any standards under which these plans would be drafted or evaluated for sufficiency are entirely missing from the mitigation measure and the SEIR discussion. More importantly, the SEIR provides that Specific Plan EIR Mitigation Measure 4.7-1a is amended by MM HAZ-1 to address the specific conditions of Site A. (*Ibid.*) MM HAZ-1 provides that the Regional Board will "review" the remediation plan and risk management plan, but does not require the plans to be approved, rendering this mitigation measure a meaningless requirement without any force and without any guarantee of mitigating the significant danger the Site's contamination poses to future residents. Despite these flaws, the SEIR concludes that with implementation of the mitigation measure, the Project would have a less than significant impact on human health.

2. Site B Remediation

The SEIR notes that the Regional Board issued a conditional approval of a Remedial Action Plan ("RAP") for Site B of the Project, contingent on the Project's preparation of a RAP

Addendum. (SEIR, p. 90.) The RAP Addendum must include (1) either a rationale for the grid-based sampling plan for dioxins or present an alternative sampling methodology, and (2) a post-remediation monitoring plan for soil, soil vapor, and groundwater. (*Ibid.*) The SEIR does not provide any information on the status of preparation of the RAP Addendum, nor whether the Project has determined which sampling methodology to seek approval of.

Estimated excavation quantities for Site B specify that approximately 94,000 cubic yards ("CY") of soil will be excavated in total, with approximately 60,350 CY removed from site for disposal. (SEIR, p. 90, Table 4-3.) The SEIR provides that excavated soil will be tested to determine whether additional excavation is necessary and to determine what soils may be reused onsite. Therefore, the SEIR provides only rough estimates of the total quantities of soil to be excavated, disposed of, and reused. Yet, the SEIR uses these estimates to determine the significance of impacts associated with the removal and disposal of these soils. For instance, construction emissions are calculated based on truck trips necessary to transport 60,350 CY of soil, and based on those calculations, the SEIR made a determination of a less than significant impact. Traffic estimates and related impacts similarly rely on the number of truck trips associated with soil removal from the site. The SEIR gives no information on how it came up with the purportedly conservative estimates of necessary soil excavation, given that testing sufficient to determine the actual extent of contamination has not been conducted.

The SEIR also specifies that a portion of the estimated 29,000 CY, containing metals, dioxins/furans, and VOCs, removed from the former evaporation ponds, would be reused on site. (SEIR, pp. 90-91.) The City also anticipates that almost half of the soil removed from the former chemical processing facility at the northwest corner of the site, contaminated with metals, VOCs, and PCBs, will be reused, for a total of approximately 15,000 CY. (*Id.* at 91-92.) The SEIR fails to provide any explanation on how the risk associated with this reuse will be evaluated to ensure the protection of human health. The SEIR merely states that these soils "could be clean enough" to be used as backfill on the site. (*Id.* at p. 92.)

Given the extensive contamination and remediation needed for these Project Sites to approach a level of safety for the proposed residential uses that the City is seeking to approve, the SEIR needs to provide full disclosure and analysis of the proposed remediation solutions, to meet the requirements and intention of CEQA to allow decisionmakers and the public to fully evaluate and consider the potential impacts of the Project prior to setting the City on an irreversible course of permitting housing to be built on and adjacent to contaminated land.

3. Offsite Hazardous Material Releases

The SEIR analyzes the potential impacts associated with an accidental release of hazardous substances from nearby industrial facilities. (SEIR, pp. 95-97.) This analysis is inadequate, as it improperly excludes the potential for a release from the Gallade facility. The City attempts to exclude this potential impact "since the proposed project would not be occupied with Gallade Chemical operating at its current location. The Specific Plan identifies this parcel as a future park, and the project will be pre-conditioned such that units will not be occupied while Gallade Chemical remains in operation at the current location." (*Id.* at 96.) The SEIR ignores the potential impact to construction workers who would face exposure in the event of an accidental release from the Gallade site during construction and prior to occupation of the proposed housing units. Furthermore, Gallade intends to remain operating at its current location indefinitely, despite the City's intentions to strip Gallade of its vested rights to do so.

4. Failure to Analyze the Hazardous Material Impacts Associated with the Use of the Gallade Site as a Park

The City states its intention to turn the current site of Gallade operations into a park as an aside in the SEIR, but fails to analyze this action by the City as part of the Project, nor the potential for impacts to human health associated with use of the parcel for recreation. (SEIR, p. 96.) As discussed in more detail *supra*, this omission from both the Specific Plan EIR and the SEIR, including the hazards and hazardous materials analyses, is a fatal flaw under CEQA.

IV. The Proposed Affordable Housing Findings Are Not Supported

In order to approve an in-lieu fee as satisfying the requirements of the City's affordable housing ordinance, the City must make very specific findings required under Sections 17.18.050.D and G of the City Code. The findings contained in the Projects' staff reports and proposed resolutions regarding affordable housing are not supported by substantial evidence, and are insufficient to support allowance of in-lieu fees rather than building inclusionary units.

Approval of the Projects' alternative means of compliance with the affordable housing requirements must be supported by findings that: 1) bridge the analytical gap between the raw evidence and the ultimate decision, 2) are supported by substantial evidence, and 3) meet the requirements set forth in state and local law. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506.)

The requirement to render findings serves to induce the City to draw legally relevant sub-conclusions supportive of its ultimate decision. (*Id.* at 515.) The intended effect is to facilitate orderly analysis and minimize the likelihood that the City will randomly leap from evidence to conclusions. In addition, findings enable the reviewing court to trace and examine the City's analysis. (*Id.* at 516.) They also serve to demonstrate to the public that the City's decision-making is careful, reasoned, and equitable. (*Id.* at 516-17.)

The findings requirement cannot be satisfied by a mere recitation of statutory language. (*City of Carmel-by-the-Sea v. Board of Supervisors* (1977) 71 Cal.App.3d 84; *see also*, *Dore v. County of Ventura* (1994) 23 Cal.App.4th 320, 328 ("Our Supreme Court expressly disapproved 'the practice of setting forth findings solely in the language of the applicable legislation.'") (*quoting Topanga*, 11 Cal. 3d at 517, fn 16).)

Here, the findings proposed in the staff reports and proposed resolutions merely parrot the findings as stated in the City Code. The staff reports and proposed resolutions provide no analysis nor evidence to support the findings required by the City's housing ordinance. For example, there is no explanation as to how an in-lieu fee would be equal to or better than actually building affordable housing. Further, the staff report finds that proposed alternative means of compliance will not unduly concentrate below market rate housing in one geographic area because the City can monitor this concern when particular affordable housing developments are proposed. This required finding, in essence, is punted to future City Councils, with no guarantee that affordable housing will not be concentrated in a single geographic area. Deferring this particular consideration to future legislative bodies does not satisfy the requirements of the City's affordable housing ordinance.

Moreover, there is no evidence in the record that demonstrates that the proposed in-lieu fees will adequately mitigate the impact caused by market-rate housing. For an in-lieu fee system to satisfy the duty to mitigate, either that system must be evaluated by CEQA or the in-lieu fees or other mitigation must be evaluated on a project-specific basis. (*California Native Plant Society v. County of El Dorado* (2009) 170 Cal. App.4th 1026, 1055.) There is no evidence in the record to support the determination that payment of a $25,000 per/unit in-lieu fee would adequately mitigate the impact of the market rate housing, or otherwise be equivalent to the actual construction of the required inclusionary housing.

V. CONCLUSION

Because the Projects cannot satisfy the City's affordable housing requirements, they must be denied.

Gallade would welcome the opportunity to meet with the City to discuss these issues and identify an acceptable course of action. In that regard, please contact the undersigned or Greg Trimarche of Wrenn Bender at (949) 232-1210, who is serving as co-counsel in this matter (and will be appearing on Gallade's behalf at the City Council meeting tonight).

Very truly yours,

Kristen T. Castaños

KTC:ms

cc: Greg Trimarche, Esq.
Jeff Ring, Esq.

ENVIRON

April 16, 2014

Ms. Veronica Vargas
Project Manager
Trumark Homes LLC
4185 Blackhawk Plaza Circle, Suite 200
Danville, California 94506

Re: Greenhouse Gas Analysis for the Proposed Trumark Homes Residential Development, Newark, California

Dear Ms. Vargas:

At your direction, ENVIRON International Corporation (ENVIRON) prepared this technical memorandum of an evaluation of greenhouse gas (GHG) impacts associated with the proposed Trumark Homes Residential Development located in Newark, California (herein referred to as the "Project" or the "Site").

This memorandum provides a description of the assumptions used for model estimates, the modeling results for both operational and construction emissions, and a comparison to the May 2011 Bay Area Air Quality Management District (BAAQMD) California Environmental Quality Act (CEQA) thresholds of significance for GHG emissions.

Project Description

We understand that the Project consists of approximately 244 single-family homes located on two, non-contiguous parcels at 8333 and 8300 Enterprise Drive in Newark, California. One parcel is 2.14 acres to be divided into approximately 27 units; the larger parcel, which is 21.27 acres, will comprise of 217 units.

Regulatory Framework

The May 2011 Bay Area Air Quality Management District (BAAQMD) California Environmental Quality Act (CEQA) Guidelines suggests consistency with a qualified Climate Action Plan (CAP) or achievement of GHG significance thresholds for either the bright line (1,100 MT CO_2e/yr) or service population metrics (4.6 MT CO_2e/SP/yr).[1] BAAQMD has not established construction-related thresholds, but recommends quantifying and disclosing associated emissions. The City of Newark adopted a CAP[2] in January 2010.

[1] A March 2012 Alameda County Superior Court judgment determined that the BAAQMD had failed to evaluate the environmental impacts of the land use development patterns that would result from adoption of the thresholds and ordered the thresholds set aside. The Court of Appeal reversed that judgment and the California Supreme Court is currently reviewing the limited issue of whether CEQA requires an analysis of the environment's impact on a project. Regardless of the status of that litigation, the thresholds are supported by substantial evidence, including a comprehensive study and analysis as documented in Appendix D to the May 2011 BAAQMD CEQA Air Quality Guidelines.

[2] City of Newark. 2010. City of Newark Climate Action Plan January 2010 Initial Framework. January. Available online at http://www.ci.newark.ca.us/images/uploads/pubwks/pdfs/greenhouse/Climate%20Action%20Plan.pdf.

Approach and Assumptions

Project operational-related GHG emissions were calculated with the California Emission Estimator Model (CalEEMod®), version 2013.2.2.[3] CalEEMod® is a state-specific program designed to calculate both criteria and GHG emissions from development projects in California and approved for use by the BAAQMD.[4]

CalEEMod® utilizes widely accepted models for emission estimates combined with appropriate default data that can be used if site-specific information is not available. These models and default estimates use sources such as the United States Environmental Protection Agency (USEPA) AP-42 emission factors,[5] California Air Resources Board's (ARB's) on-road and off-road equipment emission models such as the EMFAC and the Offroad Emissions Inventory Program model (OFFROAD), and studies commissioned by California agencies such as the California Energy Commission (CEC) and CalRecycle. CalEEMod includes all of the GHG emission source categories required for a comprehensive GHG impacts analysis, along with updated vehicle emission factors that incorporate recent regulations such as Pavley I and the Low Carbon Fuel Standard (LCFS).

For operational emissions, default values from CalEEMod® were used with the following specifications:

- ENVIRON analyzed construction emissions beginning in year 2014 with operational emissions beginning at the close of construction.
- ENVIRON modeled 244 single-family homes based on the data provided. The average household size of 3.26 residents per dwelling unit is from the Dumbarton Transit Oriented Development Specific Plan and consistent with 2010 US Census Data for Newark.[6,7]
- For energy use, ENVIRON used a CO_2 intensity factor based on Pacific Gas and Electric (PG&E) data,[8] which incorporates the 20% Renewable Portfolio Standard (RPS) requirement for 2010.
- ENVIRON used non-default CalEEMod® inputs to include 2013 Title 24 building efficiency standards, which took effect January 1, 2014. The default values in CalEEMod® incorporate the 2008 Title 24 standards, which ENVIRON adjusted to reflect the new standards that are currently in effect and would apply to the Project. The 2013 Title 24 standards exceed the current energy efficiency standards in CalEEMod® by 25%, according to the California Energy Commission.[9]

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3 Available at: http://www.caleemod.com/.

4 BAAQMD. 2013. CEQA Guidelines website. August 5 update. See http://www.baaqmd.gov/Divisions/Planning-and-Research/CEQA-GUIDELINES.aspx.

5 The USEPA maintains a compilation of Air Pollutant Emission Factors and process information for several air pollution source categories. The data is based on source test data, material balance studies, and engineering estimates. More information is available at http://www.epa.gov/ttnchie1/ap42/.

6 US Census 2010. Available online at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1.

7 Dahlin Group Architecture Planning in association with the BKF Engineers. *Dumbarton Transit Oriented Development Specific Plan.* Available at http://www.newark.org/images/uploads/comdev/pdfs/DumbartonTOD/FinalDraftSpecificPlan/11_0908_DumbartonTOD_SpecificPlan_FinalDraft.pdf.

8 PG&E's Power/Utility Protocol (PUP) Reports available at: https://www.climateregistry.org/CARROT/public/reports.aspx.

9 California Energy Commission website http://www.energy.ca.gov/releases/2012_releases/2012-05-31_energy_commission_approves_more_efficient_buildings_nr.html, according to which the 2013 Building Energy Efficiency Standards for residential construction are 25% more efficient than previous standards. The Standards will take effect on January 1, 2014 and include more efficient insulation, windows, ventilation systems and other features that reduce energy consumption.

- Mobile mitigation factors from the Dumbarton Transit Oriented Development (TOD) Draft Environmental Impact Report (DEIR)[10] and the Supplemental Environmental Impact Report (SEIR)[11] were applied to evaluate the change in emissions from operational use of the proposed project. These mitigation factors include proximity to transit, addition of pedestrian networks, and construction of high-density housing, at 10.4 dwelling units per acre.

For construction emissions, default values from CalEEMod® were used.

Results

Operational emissions from the Project are estimated to be 3,347 metric tons of carbon dioxide equivalent (MT CO_2e), with mobile emissions contributing about 64% of the total emissions. Emissions from energy consumption contribute about 29% of the total emissions. The remaining 7% result from area sources, water usage, and waste generation. Details of the operational emissions are presented in Table 1.

Total construction emissions from the Project, in Table 2, are estimated to be 898 MT CO_2e over the entire construction period (2014 to 2015).

Comparison to Thresholds of Significance

The Project's estimated operational emissions exceed the BAAQMD adopted CEQA bright line threshold of significance for GHG emissions of 1,100 MT CO_2e/year. However, using the assumed Project service population (SP) of 796 residents yields an operational GHG emissions efficiency of 4.2 MT CO_2e/SP/year, which is below the BAAQMD CEQA significance threshold of 4.6 MT CO_2e/SP/year.

There are no thresholds of significance for GHG emissions from construction equipment; however BAAQMD recommends that these emissions be quantified and disclosed. For reference, the project construction emissions of 898 MT CO_2e over two years are below the one-year bright line threshold of significance for GHG emissions of 1,100 MT CO_2e/year.

Closing

Please feel free to contact Michael at 415.796.1934 if you have any questions about this analysis. Thank you for the opportunity to assist you with this matter.

Sincerely,

Michael Keinath, PE
Principal

Catherine Mukai, PE
Manager

[10] Newark, California. *Dumbarton TOD – Draft Supplemental Environmental Impact Report*. Available at http://www.newark.org/departments/planning-and-economic-development/on-going-projects/dumbarton-transit-devlopment-area-2/.

[11] RBF Consulting for the City of Newark. *Dumbarton Transit Oriented Development Specific Plan: Draft Environmental Impact Report*. Available at http://www.newark.org/departments/planning-and-economic-development/on-going-projects/dumbarton-transit-devlopment-area-2/

Table 1
Greenhouse Gas Emissions - Operation
Trumark Homes Residential Development
Newark, California

Type	Source	GHG Emissions	Units
Yearly Operational Emissions	Area[1]	48	MT CO_2e/yr
	Energy[1]	968	
	Mobile[1]	2,127	
	Waste[1]	152	
	Water[1]	52	
Total Operational[2]		**3,347**	
Total Service Population[3]		**796**	--
Total Operational per Service Population		**4.2**	MT CO_2e/SP/yr
BAAQMD May 2011 CEQA GHG threshold		**4.6**	
Exceeds Threshold?		**NO**	--

Notes:
1. Emissions estimated using CalEEMod version 2013.2.2.
2. Total operational emissions include yearly emissions from area, energy, mobile, waste, and water sources.
3. The service population is assumed to be a total of 796 residents, a density of 3.26 residents per dwelling unit, for consistency with the Dumbarton Transit Oriented Development Specific Plan, and confirmed by the US 2010 Census, which shows the population density in Newark to be 3.27 people per dwelling.

Abbreviations:
BAAQMD = Bay Area Air Quality Management District
CalEEMod = California Emissions Estimator Model
CEQA = California Environmental Quality Act
CO_2e = carbon dioxide equivalents
GHG = greenhouse gases
MT = metric tonnes
SP = service population
USEPA = United States Environmental Protection Agency
yr = year

Sources:
BAAQMD. 2011. CEQA Air Quality Guidelines. May.
CalEEMod version 2013.2.2. Available online at: www.CalEEMod.com
Dumbarton Transit Oriented Development Specific Plan. Available at http://www.newark.org/images/uploads/comdev/pdfs/DumbartonTOD/FinalDraftSpecificPlan/11_0908_DumbartonTOD_SpecificPlan_FinalDraft.pdf
US Census 2010. Available online at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1.

Table 2
Greenhouse Gas Emissions - Construction
Trumark Homes Residential Development
Newark, California

Type	Source	GHG Emissions	Units
One-Time Emissions	Construction	898	MT CO_2e

Notes:
1. Emissions estimated using CalEEMod version 2013.2.2.

Abbreviations:
CO_2e = carbon dioxide equivalents
MT = metric tonne (1,000 kilograms)

Sources:
http://www.caleemod.com

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4/18/2014

Michael Rhoades
David J. Powers & Associates, Inc.
1871 The Alameda, Suite 200
San Jose, CA 95126

Re: Trumark TOD Project - Response to Stoel Rives LLP Air Basin Comment:

Stoel Rives LLP Comment F-1: Related to the SEIR's analysis of exhaust emissions during construction of the Project, the SEIR states that "emissions generated in other air basins associated with transport of [contaminated] soil would be attributable to the facilities receiving the soil." (SEIR, p. 54) It is impermissible under CEQA to ignore a direct environmental impact on the basis that the impact will occur at a certain distance from the Project. Air quality impacts that are a direct result of the Project must be analyzed, regardless of the impact potentially occurring in an adjacent air basin. While the mitigation of these impacts may be outside the jurisdiction of the City or BAAQMD, there is no basis on which to shift the analysis of the impact outside of the SEIR, particularly where there is no forum for analysis of that impact by another jurisdiction.

I&R: Truck hauling of contaminated soil due to project construction may result in air emissions in the jurisdiction of the San Joaquin Valley Air Pollution Control District (SJVAPCD). Thresholds of significance for construction activities have been developed by the SJVAPCD and are 10 tons per year for ROG and NO_X.[1] At this time, the volume of contaminated soil on site is not known, but was conservatively estimated to be 25,000 CY by the project applicant. As a reasonable worst-case scenario, all truck hauling of contaminated soil was assumed to occur within the same year.

Emissions of ROG and NO_X from diesel-fueled trucks hauling to the Buttonwillow Class 1 hazardous waste facility were calculated using 2014 emission factors from the California Air Resources Board (CARB) EMFAC2011 emissions model. The default EMFAC2011 vehicle fleet age distribution for the San Joaquin Valley was assumed for heavy-duty T7 trucks. An average speed of 55 mph was assumed. It was assumed that each haul truck would hold 20 CY of contaminated soil. This would result in approximately 2,500 total one-way trips (or 1,250 round trips) from the BAAQMD boundary to Buttonwillow, a distance of approximately 210 miles one-way within the SJVAPCD. Estimated total construction period hauling emissions within the SJVAPCD are 0.10 tons ROG and 5.49 tons NO_X.

[1] SJVAPCD, 2002. *Guidance for Assessing and Mitigating Air Quality Impacts*. Revised January, 2002.

Compared to the SJVAPCD significance thresholds of 10 tons/year for both ROG and NOx, respectively, project construction hauling emissions from potential contaminated soil hauling within the SJVAPCD would be less than significant.

If contaminated soil was removed by rail, hauling would be expected to have less of an adverse impact than hauling by truck. Hauling by rail is generally much more efficient than with trucks. At this time, a rail hauling route and total number of train trips required is not known. However, this volume of material would not be expected to add additional train trips on top of existing freight schedules and operations.

* * *

Joshua D. Carman

Consultant
ILLINGWORTH & RODKIN, INC.

Attachment: EMFAC2011 calculations