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11 LA CAÑADA FLINTRIDGE FOR
12 HEALTHY AIR

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ARROYO SECO FOUNDATION, a California
Non-Profit Corporation; PASADENA
AUDUBON SOCIETY, a California Non-Profit
Corporation;

Petitioners

vs.

COUNTY OF LOS ANGELES, a political
subdivision of the State of California and Charter
County; COUNTY OF LOS ANGELES
BOARD OF SUPERVISORS, governing body
of the County of Los Angeles; COUNTY OF
LOS ANGELES DEPARTMENT OF PUBLIC
WORKS, a public entity; LOS ANGELES
COUNTY FLOOD CONTROL DISTRICT, a
public entity; and DOES 1-10, inclusive.

Respondents

LOS ANGELES COUNTY FLOOD CONTROL
DISTRICT, a public entity; and ROES 1-10,
inclusive.

Real Parties in Interest and
Defendants

CASE NO. BS171826

**APPLICATION FOR LEAVE TO FILE
AMICUS BRIEF & AMICUS BRIEF OF
LA CAÑADA FLINTRIDGE FOR
HEALTHY AIR IN SUPPORT OF
PETITIONERS' VERIFIED FIRST
AMENDED PETITION FOR WRIT OF
MANDATE; DECLARATION OF
ESTHER KORNFELD IN SUPPORT
THEREOF**

[CRC 8.200]

Trial: June 13, 2019
Time: 9:30 a.m.
Dept.: 85

[Hon. James C. Chalfant]

1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

2 Under Rule 8.200 of the California Rules of Court, Proposed Amicus La Cañada
3 Flintridge for Healthy Air respectfully requests leave to file an amicus curiae brief.

4 Proposed Amicus La Cañada Flintridge for Healthy Air (“Proposed Amicus”) is an
5 unincorporated association consisting of over 150 members primarily of parents with students at
6 La Cañada Flintridge High School (“LCHS”) in La Cañada Flintridge. The organization was
7 formed with the goal to protect the students attending multiple schools close to the Devil’s Gate
8 Restoration Project (“the Project”) and adjacent or near the truck hauling routes from the high
9 levels of harmful diesel emissions from the planned up to daily 425 truck round trips from April
10 2019¹ to November 2022 (8 months annually for four years). LCHS is located at 4463 Oak Grove
11 Drive in La Cañada adjacent to the Project site where excavation activities will take place and the
12 Berkshire Place truck hauling route. (Kornfeld Decl., ¶ 3.)

13 Proposed Amicus was formed after a group of parents learned about the aggressive truck
14 schedule in September 2018. (Kornfeld Decl., ¶¶ 16-18.) As outlined below, if the Project was
15 upheld as planned, the students would be subjected to unhealthy levels of air pollution. Proposed
16 Amicus’ mission is to ensure that the Project is in compliance with the South Coast Air Quality
17 Management District’s Air Quality Management Plan such that air quality surrounding La Cañada
18 Flintridge High School and other schools will be maintained at levels no worse than they already
19 are.

20 Proposed Amicus is filing this application and proposed brief intending to assist this Court
21 and the CEQA process with analysis of several substantive and procedural flaws that should
22 invalidate the EIR. The Supreme Court recently reaffirmed that the courts shall “determine de
23 novo whether the agency has employed the correct procedures, ‘scrupulously enforc[ing] all
24 legislatively mandated CEQA requirements. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th
25 502. Given the vicinity to the Project site as well as the hauling routes, Proposed Amicus will be

26 _____
27 ¹ Note that the Los Angeles County Department of Public Works recently informed
28 the public that the start date has been delayed, and that the trucks are planned to start rolling on
May 7, 2019.

1 directly affected by the outcome of this case and, therefore, has an abiding interest in ensuring that
2 the implementation of this Project is being done without any harm to the health of their children
3 and all the other students attending one of the many schools located close to the Project and/or
4 hauling routes (Kornfeld Decl., ¶¶ 4-15). The allegations in Petitioners’ First Amended Petition as
5 to the RFEIR’s failure to address new information, which demonstrates that 2010 Model Year
6 trucks produce NOx emissions substantially higher than disclosed by the District or analyzed in
7 the original FEIR, is too serious not to draw additional scrutiny.

8 **California Rules of Court, Rule 8.200/Trial Court Judges Have Discretion.**

9 This proposed amicus brief was authored by Leech Tishman Fuscaldo & Lampl, LLP and
10 the costs for preparation and submission of the brief were paid solely by Leech Tishman Fuscaldo
11 & Lampl, Inc.

12 Proposed Amicus supports Petitioners Arroyo Seco Foundation and Audubon Society in
13 this matter.

14 This application is made pursuant to California Rules of Court, Rule 8.200². While
15 Proposed Amicus is aware that Rule 8.200 typically governs the filing of amicus briefs in the
16 Court of Appeal rather than in the trial court, trial court judges have the discretion to allow the
17 filing of amicus curiae briefs. The trial court always retains discretion to manage its own calendar
18 in the interests of justice.

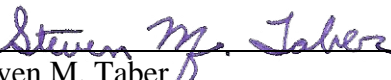
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27 ² See *In re: Veterans Industries, Inc.* (1970) 8 Cal.App.3d 902, 924-25 (Superior
28 Court judges may accept amicus briefs so that the “illegality of a transaction may be brought to the
attention of the court”).

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Due to the multiple substantive and procedural CEQA violations in the EIR and RFEIR, a writ of mandate should issue as prayed by Petitioners, and the EIR and RFEIR should be invalidated.

Date: April 30, 2019

Respectfully submitted,



Steven M. Taber
**LEECH TISHMAN FUSCALDO &
LAMPL, INC.**

Attorneys for Amicus La Cañada Flintridge for
Healthy Air

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**AMICUS CURIAE BRIEF BY
LA CAÑADA FLINTRIDGE FOR HEALTHY AIR**

I. INTRODUCTION.

In enacting the California Environmental Quality Act (CEQA), the California Legislature declared that protecting the environment should be the guiding principle in public decisions. (Pub. Resources Code, § 21001(d)). In carrying out that principle, CEQA is meant “to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account.” *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-450 (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391-92). Beginning on May 7, 2019, the Devil’s Gate Restoration Project (“Project”) will expose over 3,500 schoolchildren during the school year and approximately 2,500 students during summer school and summer camps (Kornfeld Decl., ¶¶ 4-15) who attend schools along the haul routes and are within approximately 0.5 mile of the Project site, to a massive amount of diesel emissions from 100 heavy-duty dump trucks making 425 daily round trips for 8 months annually for at least three years.³ The Project is not reasonable and does not provide the “fullest possible protection” to the students or the public.

This brief does not re-argue the points and authorities made by the Petitioners in their opening brief. Rather, Amicus La Cañada Flintridge for Healthy Air provides this amicus brief “to assist the court by broadening its perspective on the issues raised by the parties” and to “facilitate informed judicial consideration of a wide variety of information and points of view that may bear on important legal questions.” *Bily v. Arthur Young & Co.*, 3 Cal. 4th 370, 405 fn. 14 (Cal. 1992); *Rivera v. Division of Industrial Welfare*, 265 Cal. App. 2d 576, 589- 590 (Cal. App. 3d Dist. 1968) (Finding “no unfairness” when “published research material which is available to the public

³ Amicus acknowledges that the County has attempted to rectify some of the impacts the Project will have on the schoolchildren near the Project site and along the haul routes. However, none of the solutions proposed have been put into the form of a verifiable and enforceable commitment by the County. It is Amicus’ hope that the County will continue its dialog with Amicus and come to solutions to the issues raised outside of this litigation.

1 generally” is provided to the tribunal because, in part, the “Brandeis brief” providing studies to
2 supplement the Court’s decision has “become commonplace.”)

3 Simply put, the science does not back up the County’s position that MM AQ-1 will
4 mitigate the significant impacts that 425 daily round trips by heavy-duty diesel-powered trucks
5 during the hauling season will have on over 3,500 students (and the general public) every day. The
6 County should not be allowed to address a public safety problem (i.e., restoring flood capacity to
7 the reservoir) by creating a public health crisis.

8 **II. THE PROBLEM: HEAVY-DUTY TRUCK EMISSIONS**

9 According to the World Health Organization, air pollution is the “new tobacco” health
10 crisis. [Exhibit 1]. The primary components of air pollution are “particulate matter” (PM) and
11 oxides of Nitrogen (“NOx”). Diesel-powered vehicles and equipment account for nearly half of all
12 NOx and over two-thirds of all PM emissions from US transportation sources. Particulate matter
13 or soot is created during the incomplete combustion of diesel fuel. Its composition often includes
14 hundreds of chemical elements, including sulfates, ammonium, nitrates, elemental carbon,
15 condensed organic compounds, and even carcinogenic compounds and heavy metals such as
16 arsenic, selenium, cadmium and zinc. [Exhibit 2]. Though just a fraction of the width of a human
17 hair, particulate matter varies in size from coarse particulates (“PM10,” less than 10 microns in
18 diameter) to fine particulates (“PM2.5,” less than 2.5 microns) to ultrafine particulates
19 (“Ultrafines,” less than 0.1 microns). Ultrafine particulates, which are small enough to penetrate
20 the cells of the lungs, make up 80-95% of diesel soot pollution. [Exhibit 3].

21 Particulate matter irritates the eyes, nose, throat, and lungs, contributing to respiratory and
22 cardiovascular illnesses and even premature death. Researchers estimate that, nationwide, tens of
23 thousands of people die prematurely each year because of particulate pollution. Diesel engines
24 contribute to the problem by releasing particulates directly into the air and by emitting nitrogen
25 oxides and sulfur oxides, which transform into “secondary” particulates in the atmosphere.

26 Diesel exhaust has been classified a potential human carcinogen by the U.S.
27 Environmental Protection Agency (EPA) and the International Agency for Research on Cancer.

28

1 [Exhibit 2, 4]. Exposure to high levels of diesel exhaust has been shown to cause lung tumors in
2 rats, and studies of humans routinely exposed to diesel fumes indicate a greater risk of lung cancer,
3 asthma, and cardiovascular disease. [Exhibit 4]. Likewise, in 1998, the California Environmental
4 Protection Agency's Office of Environmental Health Hazard Assessment (OEHHA) completed a
5 comprehensive health assessment of diesel exhaust. [Exhibit 5]. This assessment formed the basis
6 for a decision by the California Air Resources Board (CARB) to formally identify particles in
7 diesel exhaust as a toxic air contaminant that may threaten human health.

8 PM and NOx, the World Health Organization stated in its report, are unhealthy for people
9 exposed to vehicle exhaust and contact with roadways. [Exhibit 1]. Environmental health studies
10 published over the past 20 years by health researchers demonstrate the short- and long-term
11 negative health effects on communities living near diesel truck corridors and highways,
12 specifically due to harmful pollutants released by diesel-powered vehicles. [Exhibits 4, 6, 7]. The
13 conclusions from these studies are clear: diesel particulate matter increases mortality and causes
14 life-long health issues in children.

15 The Project, even the "reduced" Project, relies extensively on using approximately 100
16 diesel-powered heavy-duty trucks making 425 daily round-trips to haul 1.7 million cubic yards of
17 sediment away for 8 months annually over a 4-year period. While the emissions from heavy-duty
18 diesel engines used by the Project are harmful to all humans, they are particularly harmful to
19 children – a "sensitive receptor" in the language of CEQA. These trucks will be passing several
20 schools along the haul route and wait and load less within 0.5 miles from the schools, thus
21 exposing approximately 3,500 school children to harmful heavy-duty truck air pollution (Kornfeld
22 Decl., ¶¶ 4-8) and 2,900 students during the summer (Kornfeld Decl. ¶¶ 9-13). Research confirms
23 that childhood exposure to diesel emissions affects them for the rest of their lives. [Exhibit 8]. To
24 make matters worse, the schools near the Project site are already impacted by the proximity of I-
25 210, a busy freeway with high rates of diesel usage even before the diesel exhaust emissions from
26 the Project are considered. [Exhibit 9].

27 With the increasing awareness of the short- and long-term deleterious health effects from
28

1 diesel emissions, and the fact that there are over 3,500 children within 0.5 miles to the Project site
2 and along the hauling routes, the County’s efforts to assure that the children’s and the public’s
3 health is being protected have been inadequate, and the risks have been underestimated. The
4 County must get this right, because the short- and long-term health of many children is at stake.
5 The RFEIR’s Air Quality Mitigation Measures are not adequate to protect the public’s health, let
6 alone protect the children’s health.

7 **III. ARGUMENT**

8 In the recent case of *Sierra Club, et al. v. County of Fresno, et al.*, (2018) 6 Cal.5th 502
9 (*Friant Ranch*) the California Supreme Court found that the County’s air quality analysis in the
10 EIR was inadequate:

11 (1) ... because it failed to include an analysis that correlated the [P]roject’s emission of air
12 pollutants to its impact on human health; (2) the mitigation measures for the [P]roject’s
13 long-term air quality impacts violate CEQA because they are vague, unenforceable and
14 lack specific performance criteria; and (3) the statements that the air quality mitigation
15 provisions will *substantially* reduce air quality impacts is unexplained and unsupported.

16 *Friant Ranch*, 6 Cal.5th at 509-510 (emphasis in the original). For many of the same reasons this
17 Project’s RFEIR is inadequate, especially when one takes into the fact that the “sensitive
18 receptors” are already near I-210.

19 **A. Standard of “EPA’s emission standards for Model Year 2010” is vague and**
20 **cannot be enforced.**

21 The County proposed a mitigation measure to ensure that the sediment removal trucks will
22 not cause significant increases in NOx and Particulate Matter (PM) emissions. As revised in the
23 RFEIR, the mitigation measure reads in its entirety:

24 *REV MM AQ-1: LACLFCD shall require all construction contractors during the sediment*
25 *removal phase of the Proposed Project to use only sediment removal dump trucks that*
26 *meet the EPA’s emission standards for Model Year 2010.*

27 RFEIR, SAR_007870, 007882 (emphasis added).⁴ However, neither the FEIR nor the RFEIR
28 explain how “the EPA’s emission standard for Model Year 2010” will resolve the issues posed by

⁴ For some reason, the words “or later” were stricken from the original to the revised. Thus, according to this mitigation measure, *only* trucks that meet the 2010 emissions standards will be used, even if more stringent standards are promulgated in later years.

1 running 425 daily round trips of heavy-duty diesel trucks past over 3,500 schoolchildren.

2 CEQA Guidelines require that mitigation measures must minimize, reduce or avoid an
3 identified environmental impact or to rectify or compensate for that impact. CEQA Guidelines §
4 15370. The courts have taken this to mean that a public agency may not rely on mitigation
5 measures of uncertain efficacy or feasibility. In *Kings County Farm Bureau v. City of Hanford*
6 (1990) 221 Cal.App.3d 692, 727 the court found that a groundwater purchase agreement was an
7 inadequate mitigation measure because the agency had presented no evidence that replacement
8 water was available to be purchased. Likewise, the court in *Gray v. County of Madera* (2008) 167
9 Cal.App.4th 1099, 1116 held that because there was “no substantial evidence [in the EIR] that the
10 mitigation measures are feasible or effective in remedying the potentially significant problem of
11 decline in water levels of neighboring wells” the EIR failed to meet the CEQA Guidelines.
12 “Feasible” is defined term under the CEQA Guidelines. It means “capable of being accomplished
13 in a successful manner within a reasonable period of time, taking into account economic,
14 environmental, legal, social and technological factors.” CEQA Guidelines § 15364. See also,
15 *Friant Ranch*, 6 Cal.5th at 509-510. Several issues make REV MM AQ-1 not feasible, vague and
16 “[in]capable of being accomplished in a successful manner” which were not considered by the
17 County in either the FEIR or the RFEIR.

18 To conclude that “EPA’s emission standards for Model Year 2010” will keep NO_x and
19 PM emissions and cancer risk below the necessary thresholds, several calculations must be made.
20 The EPA’s standards require that diesel engines have certain equipment – a PM filter and a NO_x
21 control system – that lower the emissions of PM and NO_x coming out of the tailpipe to specific
22 concentrations set by the EPA. If the Project simply sought to reduce overall emissions from
23 diesel-powered trucks, the inquiry could end here. However, to assess the impact some heavy-duty
24 diesel-powered trucks will have on a particular environment for a particular project and how those
25 emissions will impact human health, other calculations need to be made. To put it another way, the
26 “2010 EPA Standards” is a starting point for calculating the effect that diesel engine pollution
27 from the Project will have on the over 3,500 children who will be the most affected by the
28

1 pollution, not the end point.

2 The first step is the California Air Resources Board’s EMISSION FACTORS (EMFAC)
3 model. [Exhibit 10]. CARB developed EMFAC to calculate emission rates from all motor
4 vehicles, including heavy-duty trucks, operating on highways, freeways and local roads in
5 California. In the EMFAC model, the emission rates are multiplied with vehicle activity data
6 provided by the regional transportation agencies to calculate the statewide or regional emission
7 inventories. By focusing on the heavy-duty trucks that meet the 2010 EPA standards, some idea
8 can be derived as to the impact that an increase in using heavy-duty trucks will have on air quality
9 in a particular region. EMFAC was first produced in 2011 but updated in 2014 and again in 2017⁵
10 to adjust for factors that CARB had not determined such as the long-term durability of an
11 emissions control system. By using EMFAC 2011 (or EMFAC 2014 or 2017), a public agency can
12 derive the emissions a heavy-duty diesel engine will emit in a specific region of California. It is
13 only by using EMFAC 2017 that an agency could get the most up-to-date values for the emission
14 factors for the Project since the most recent modeling tool reflects the most current scientific
15 understanding of vehicle emissions, and includes any deterioration of diesel emissions control
16 systems.

17 However, to arrive at the health risk posed to humans because of those emissions, two
18 more steps are necessary. To obtain the cancer risk posed by NOx and PM emissions by heavy-
19 duty trucks, the California Office of Environmental Health Hazard Assessment (OEHHA) has
20 created a “Cancer Potency Risk Values” equation. OEHHA first developed its calculation in 2011,
21 and it was revised again in 2015 to reflect the large body of scientific work documenting the
22 pernicious effects of roadway pollution on children. [Exhibit 11]. Emissions information obtained
23 from the EMFAC model (step 1) are incorporated into the air quality analysis, in this case
24 AERMOD (step 2); and the results from step 2 are used to inform the cancer risk assessment using
25 OEHHA’s equation (step 3).

26 One final consideration must be mentioned before the cancer risk to humans can be
27

28 ⁵ EMFAC 2017 has not been approved for use by the EPA as of the drafting of this brief.

1 determined. The California Air Resources Board and the South Air Quality Management District
2 performed “on highway” studies to assess whether “2010-compliant” heavy duty engines were
3 compliant with the EPA’s values when the trucks were on the road. CARB and SCAQMD found
4 that the “on-highway” values did not meet the “certified values” that would have been expected by
5 the EPA. [Exhibits 12, 24, 26]. And because heavy-duty diesel trucks do not have to be smog-
6 checked, and only the age of the engine and emissions control systems qualifies a fleet to be
7 “certified,” there is no assurance that the emissions from the heavy-duty diesel engine will
8 continue to meet the standards set by the EPA. *Id.* Thus, whether the “certified values” or the “on-
9 highway values” reported by CARB are used in the cancer risk assessment will affect cancer risk
10 that diesel exhaust poses to humans.

11 REV MM AQ-1 fails to consider all three parts to calculate both the NO_x and PM
12 emissions created and the cancer risk from the Project. The RFEIR simply requires that trucks
13 meet the EPA’s emission standards for Model Year 2010. Without additional compliance
14 measures, there is no assurance that the emissions from the trucks will meet the standards set by
15 the EPA and will not have a significant impact on human health. For example [Exhibit 13]. If one
16 were to take the emissions output of 425 daily round trips by trucks performing at the 2010 EPA
17 certified values (as estimated using EMFAC 2011) and inputting those values into the cancer risk
18 assessment equation (OEHHA 2011), then 425 daily round trips per day is considered “safe”
19 because it produces a cancer risk of 2/1,000,000⁶. [see Exhibit 14]. However, if “on-highway”
20 emissions values reported by CARB and SCAQMD for “2010-Compliant” engines, EMFAC 2011
21 and OEHHA 2015, are used, you arrive at a result that 425 round-trips per day is *not* “safe”
22 because the cancer risk increases by 2000% – 23/1,000,000. *Id.* Finally, even if you use the 2010
23 EPA certified values, which is the basis of the RFEIR, and use either EMFAC 2014 or 2017 along
24 with OEHHA’s 2015 calculation, you probably will still arrive at a cancer risk that is not safe. The
25 science is improving and because of the magnitude of the risk to the students and other sensitive
26

27 ⁶ It should be noted that the County’s FEIR and RFEIR did not account for all sources of PM.
28 Instead the RFEIR and FEIR described only tailpipe emissions and left out non-tailpipe emissions. This is
discussed in more detail *infra* at pp.17-19.

1 receptors the updated science must not be ignored.

2 Thus, compliance with REV MM AQ-1 does not ensure that the heavy-duty engines used
3 on the Project will “meet the EPA’s emission standards for Model Year 2010” or that they will not
4 create a significant cancer risk.

5 The County has argued in the past that EMFAC 2014, EMFAC 2017, and OEHHA 2015
6 were not available when the County began the environmental review for the Project. Therefore, the
7 County states, it should not have to adjust its calculations to fit the updated information. However,
8 the courts have held that under CEQA, the lead agency cannot simply ignore updated science, such
9 as the SWAPE report (Exhibit 14), that shows that compliance with the mitigation measure will
10 not achieve the environmental goals and harm the environment and the public’s health. The court
11 in *Citizens for East Shore Parks v. California State Lands Comm.* (2012) 202 Cal.App.4th 549,
12 563 held: “agencies not only can, but should, make appropriate adjustments, including to the
13 baseline, as the environmental review process unfolds.” This means adjusting the calculations to
14 account for the changes in cancer risk calculations so the RFEIR does not become a relic of the
15 past, ossified by a blind adherence to the standards that existed when the County’s CEQA process
16 began. Relying on outdated EMFACs and OEHHA equations is not an excuse for allowing diesel
17 trucks to pollute the air and cause significant damage to over 3,500 children.

18 Moreover, outdated data cannot be the basis for informed public participation and informed
19 decision-making. For example, in *Berkeley Keep Jets Over the Bay Committee v. Board of Port*
20 *Comm’rs* (2001) 91 Cal.App.4th 1344, the court concluded that an EIR that used “outdated
21 information ... was not a reasoned and good faith effort to inform decision makers and the public.”
22 *Id.* at 1367; see also *Lands Council v. Powell* (9th Cir. 2005) 395 F.3d 1019, 1031 (holding data
23 relied on by the agency in a NEPA case “was too outdated to carry the weight assigned to it”).

24 By not applying the most current science to the project, the health and cancer risks to the
25 students and the general public from 425 daily round-trips made by 100 diesel-powered truck trips
26 during the hauling season is greatly underestimated.

27 **B. The County failed to provide the necessary information to make an informed**
28 **decision regarding whether requiring “2010-compliant” trucks would meet**

1 has not been recalled. At the very least, enforcement mechanisms must ensure that recalled “2010-
2 Compliant” engines are not used on the Project and that all dump trucks are meeting the EPA’s
3 emissions standards.

4 **2. The NOx diesel emission control systems do not provide the needed**
5 **protection this Project requires/assumes.**

6 The County, to meet the air quality goals, must assume that the NOx digester system (also
7 called the “SCR”) is functioning under optimal conditions, that is between 200°F and 250°F.
8 However, under operations where the SCR's do not reach that temperature or fall below it, like
9 cold starts, idling and slow speed driving conditions, NOx emissions are still elevated due to the
10 low temperature [Exhibit 16, 18, 19].

11 Because idling and low-speed transit en route to and from the I-210 freeway is
12 significantly underestimated in the air quality analysis, the full impact of diesel NOx emissions is
13 also underestimated. NOx emissions are not only highest when trucks are idling and traveling at 5-
14 15 MPH, they are also much higher when the trucks are carrying 16-20 cubic yards of compact
15 debris and going up inclines. The modeling calculation in the RFEIR air quality analysis assumes
16 four minutes of idling per truck per loading cycle. This would seem to be underestimated as well
17 since traffic along the hauling involved is significant at the Berkshire/Oak Grove on-ramps/off-
18 ramps and there are also many stop signs along the hauling routes. See Exhibit 17. Even with a
19 properly functioning SCR unit, higher NOx emissions will result due to the undisclosed higher
20 idling times. Guidance from SCAQMD suggests that idling and low-speed transit should be
21 analyzed carefully for unaccounted pollution contributions. [Exhibit 18, 19, 25]

22 **C. The County’s air quality analysis omitted non-tailpipe PM.**

23 An EIR shall describe feasible measures which could minimize significant adverse
24 impacts. (Guidelines, § 15126.4, subd. (a)(1).) “This obligation to describe mitigation measures is
25 one of the procedural requirements of CEQA ‘intended to assist public agencies in systematically
26 identifying both the significant effects of proposed projects and the feasible alternatives or feasible
27 mitigation measures which will avoid or substantially lessen such significant effects.’” (*POET,*
28 *LLC v. California Air Resources Board* (2013) 218 Cal.App.4th 681, 714). To facilitate this

1 informational goal, the California Supreme Court has held that “the EIR must contain facts and
2 analysis, not just the agency’s bare conclusions or opinions.” (*Laurel Heights, supra*, 47 Cal.3d at
3 404-05.) In other words, an EIR must account for all sources of environmental degradation and not
4 just mention the impacts for which its mitigation measures can provide solutions.

5 Although CARB and EPA regulations have resulted in meaningful decreases in
6 combustion-related emissions from on-road vehicles, PM emissions from brake and tire wear have
7 remained relatively constant. [Exhibit 19]. These emissions are projected to become an
8 increasingly larger portion of the on-road PM inventory. Understanding the health impact of
9 exposure to these emissions is essential, especially since transportation plans project a larger
10 percentage of the population living closer to major roads, increasing exposure to tire and brake
11 wear particles, and road dust re-suspended particles. [Exhibit 19]. This was not done in either the
12 RFEIR or the FEIR.

13 The increased exposure to brake and tire wear PM is exacerbated by the fact that the entry
14 road into the construction area has a 15% grade and the exit road has a 10% grade. Descending a
15 15% grade requires a heavy-duty truck hauling a double-dumper trailer to use its brakes. A truck
16 going up a 10% grade requires six times the power than driving on a level surface causing
17 increased wear on the truck’s tires. Going up the grade, the truck will be loaded with 16 – 25 cubic
18 yards of sediment. Each truck has 18 wheels. The brake and tire wear caused from hauling loads
19 up steep grades generates PM, which is not part of the EIR’s pollution budget since PM from non-
20 exhaust (i.e., the PM from tires and brakes wearing during use) was intentionally omitted in the
21 FEIR and RFEIR when it inputted EMFAC values into the air quality analysis (AERMOD).

22 This resulted in underestimating the cancer risk from PM. As pointed out in the SWAPE
23 analysis:

24 Model Appendix C of the FEIR discusses the assumptions and values utilized to
25 determine the health risk posed to nearby sensitive receptors. According to Appendix C,
26 the emission rates used to determine the concentration of PM10 emitted during sediment
27 transportation activities were derived from emission factors utilized in the FEIR’s Air
28 Quality Analysis (Appendix B) (Appendix C, p. 12). The report states, that “the Air
Quality Analysis found that the haul trucks on surface streets would have PM10 emissions
rates of 0.1461 grams per mile during the sediment removal activities (year 2015) and

1 0.0493 grams per mile during the operational maintenance activities (year 2020)...this
2 results in emission rates of 4.340E-06 grams per second for the sediment removal phase
3 and 1.465E-06 grams per second for the operational maintenance phase, which was used
4 in AERMOD for all road volume line sources” (Appendix C, p. 12). These emission
5 rates, inputted into the air dispersion model AERMOD, however, only include the PM10
6 running exhaust emissions emitted by the heavy-duty sediment transport trucks. The
7 emission rate inputted into AERMOD fails to incorporate PM10 emissions from tire wear
8 and from brake wear. As a result, the PM10 concentration at each sensitive receptor
9 location is greatly underestimated.

10 SWAPE, p.9. [Exhibit 14] SAR_008516.

11 Forgetting to include PM10 from non-exhaust sources is not a *de minimis* issue. Several
12 studies indicate that non-exhaust PM10 sources account for much of the PM10 emissions in
13 heavy-duty engines. [Exhibit 7]. Academic publications from 2014, 2016, and 2017 demonstrate
14 that the... “combined non-exhaust fleet PM10 emission factor...[is] higher than the combined
15 exhaust emission factor.” [Exhibit 20]. “More than 90% [of PM10 emissions due to road traffic] is
16 non-tailpipe emissions of mechanically generated particles.” [Exhibit 21]. “Exhaust and non-
17 exhaust sources contribute almost equally to total traffic-related PM10 emissions. Brake wear has
18 been recognized as one of the most important non-exhaust traffic-related sources.” [Exhibit 22].
19 The failure of the FEIR and the RFEIR to account for non-exhaust PM emissions is significant.

20 Because the EPA’s emission standards for Model Year 2010 only address issues from
21 diesel exhaust, controlling the PM emissions from tire and brake wear cannot be resolved by
22 adhering to the 2010 EPA standards.

23 **D. Lack of enforcement mechanism violates CEQA.**

24 Even if REV MM AQ-1 would meet the requirements of CEQA, it is unenforceable and
25 therefore must be revised to include provisions to make it enforceable. REV MM AQ-1 fails meet
26 this requirement because it fails to identify how the County will make the measure enforceable,
27 nor does it clearly state what to do when action must be taken. Without a clear identification of the
28 enforcement mechanism and the actions to be taken, the public cannot be assured the mitigation
measure meets the goal of keeping the heavy-duty diesel-powered dump truck emissions within
the daily thresholds established by SCAQMD.

CEQA requires “measures to mitigate or avoid significant effects on the environment [to

1 be] fully enforceable through permit conditions, agreements, or other measures.” (Pub. Resources
2 Code § 21081.6, subd. (b).) Courts have recognized the importance of CEQA’s requirement that
3 mitigation measures be enforceable. “The purpose of these requirements is to ensure that feasible
4 mitigation measures will actually be implemented...and not merely adopted and then neglected or
5 disregarded.” (*Federation of Hillside and Canyon Association v. City of Los Angeles* (2000) 83
6 Cal.App.4th 1252,1261, italics omitted; see also *Lincoln Place Tenants Ass’n v. City of Los*
7 *Angeles* (2005) 130 Cal.App.4th 1491,1508 [“Mitigating conditions are not mere expressions of
8 hope.”].) In its February 14, 2017 decision in the original *Arroyo Seco Foundation v. County of*
9 *Los Angeles* case (Case No. BS152771), this Court, on pp. 28-29, by citing to *Federation of*
10 *Hillside and Canyon Associations v City of Los Angeles*, (2000) 83 Cal.App.4th 1252, 1261,
11 clearly stated that “[m]itigation measures must be enforceable and effectively incorporated into the
12 project approvals and the mitigation program.” Given the recall issues of engines as described
13 above and the fact that not even CARB can count on the engines to maintain their low NOx and
14 PM emissions, it would not be justifiable to daily expose over 3,500 sensitive receptors to such
15 unsafe emissions for 4 years unless there exists certainty that the engines perform as expected.
16 Just like the FEIR in the original *Arroyo Seco Foundation* case, the RFEIR also fails to include
17 enforceable terms in the REV MM AQ-1 to ensure that NOx emissions and the cancer risks will be
18 reduced to less than significant levels.

19 The problem with enforcement of REV MM AQ-1 is threefold. First, the County must
20 ensure that the trucks used for sediment removal are “2010-Compliant.” There is nothing in the
21 RFEIR indicating how the County will determine whether the trucks being used are “2010-
22 Compliant” and have not been recalled by the EPA. The efficacy of REV MM AQ-1 relies on each
23 truck that shows up at the Project site for the next four years meets the 2010-EPA standards.
24 However, the County offers no method of ensuring that that is the case. The County has stated that
25 it will accept that if a trucking company can show on paper that the engine contains the built-in
26 diesel emissions control systems defined by the EPA for 2010 and newer engines, then it can use
27 the truck throughout the 4-year run of the Project.

28

1 Second, nothing in the RFEIR shows how the County will establish that the “2010-
2 Compliant” trucks continue to meet the emission standards set by the EPA for Model Year 2010
3 trucks. There is no mechanism to assess on-site whether a truck meets the standard. REV MM AQ-
4 1 does not require that the dump trucks *be* Model Year 2010 trucks. It requires that the trucks used
5 meet the emission standards set by the EPA *for* Model Year 2010 trucks. This seems to mean that
6 the trucks must continue to meet EPA standards every time they are used for the Project, and not
7 just the first time they are used. How the County is going to enforce compliance is not clear. Truck
8 companies do not have to provide smog certificates for each truck; instead fleet averages are used
9 to determine compliance with current regulatory reporting requirements. One offending truck can
10 contribute much of the pollution. [Exhibit 23]. Diesel particulate filter systems can be missing
11 from diesel engines despite a fleet certification by the truck company; or the systems might have
12 experienced tampering or fail to function properly and there is no way to know. Finally, there is no
13 enforcement mechanism to ensure that the County’s assumption that by using “2010-Compliant”
14 trucks the Air Quality Management Plan thresholds will be met. Environmental monitoring
15 equipment is not required for measuring on-site emissions and city street transit emissions. It is the
16 County’s responsibility to ensure that each dump truck used for sediment removal in the Project
17 meets the 2010 EPA Standard and continue to meet that standard throughout the entire Project (or
18 as long as the truck is used for the Project).

19 This problem is compounded by the likelihood there will be no public process in the
20 future regarding implementing mitigation measures in which members of the public can
21 participate. The necessary information must be presented now to comply with CEQA’s public
22 participation goals. How to enforce mitigation measures is a serious dilemma when the measures
23 do not include clear statements regarding enforceability. If the measures are not implemented due
24 to a lack of clarity or enforceability, the impacts of the project will change. When a project is
25 approved, the public is informed of its impacts and the agency makes findings approving the
26 project based on its impacts with the mitigation in place. If the enforcement mechanisms are
27 unclear, then compliance with the standards cannot be guaranteed.

1 Because of the proximity of so many “sensitive receptors” i.e., children, this is
2 unacceptable and not justifiable. There needs to be an enforcement mechanism that ensures that
3 every truck that moves along the hauling route and enters the Project site performs at the EPA
4 standard and that the students’ health will not be put at risk.

5 **III. CONCLUSION**

6 The current science regarding diesel engines and PM from heavy-duty trucks shows that
7 the environmental impacts of the Project will be significant. Science shows that the County’s
8 reliance on “EPA’s emission standards for Model Year 2010” will not fully address those impacts.
9 Even then, the failure of the County to consider the well-documented effects of non-exhaust PM
10 emissions, resulted in mitigation measures that will not protect “sensitive receptors” from the
11 deleterious effects of PM and NOx emissions.

12 The Supreme Court’s recent *Friant Ranch* decision makes the County’s failures to
13 proceed in the manner required by law starker. As to the County’s multiple procedural violations
14 of CEQA, the Supreme Court reaffirmed that the courts shall “determine de novo whether the
15 agency has employed the correct procedures, ‘scrupulously enforce[ing] all legislatively mandated
16 CEQA requirements’.” *Friant Ranch* 6 Cal.5th at 517. Because of the damage that can – and will –
17 be done to the children in La Cañada, all “sensitive receptors” within 0.5 miles of the Project site,
18 and the public it is the responsibility of the County to ensure that the trucks hauling the sediment
19 perform at the certified levels assumed when the Project was approved. And it is the responsibility
20 of this Court to ensure that the County meets its mandate by issuing a writ of mandate as prayed
21 by Petitioners, and the EIR and RFEIR should be invalidated.

22 DATED: April 30, 2019

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24 By: _____


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25
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