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May 17, 2018

**Via Email and Hand Delivery**

Chair Michael Murray  
 Honorable Members of the Planning Commission for the City of Napa  
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**By Email Only**

Erin Morris, Planning Manager: [emorris@cityofnapa.org](mailto:emorris@cityofnapa.org)

**Re: Agenda Item No. 7.C: Trinitas Mixed-Use Project –  
2610 & 2620 Napa Valley Corporate Drive (File No. P16-0054)**

Dear Chair Murray, Honorable Members of the Planning Commission for the City of Napa, Ms. Morris:

On behalf of **Napa Residents for Responsible Development** (“Napa Residents”), we submit these comments regarding Agenda Item No. 7.C: Trinitas Mixed-Use Project – 2610 & 2620 Napa Valley Corporate Drive, File No. P16-0054, SCH #2017072005 (“Project”), and the Final Environmental Impact Report (“FEIR”) for the Project. The Project is proposed by Pacific Hospitality Group (“Applicant”). We previously submitted comments on the Draft Environmental Impact Report (“DEIR”) for the Project on February 26, 2018 (“DEIR Comments”).<sup>1</sup> We incorporate these prior comments by reference.

<sup>1</sup> The City failed to make all documents referenced or relied upon in the DEIR (“DEIR Reference Documents”) available to Napa Residents and other members of the public during the DEIR public comment period, then denied Napa Residents’ February 26, 2018, and April 25, 2018 requests to re-open the DEIR public comment period following receipt of the documents. On January 23, 2018, we submitted a letter to the City pursuant to CEQA Section 21092(b)(1) requesting “immediate access to any and all documents referenced or relied upon” in the DEIR. Napa Residents did not receive the 4140-004acp

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Napa Residents and its technical consultants have reviewed the Planning Commission Staff Report for the Project (“Staff Report”), as well as the FEIR. Based upon our review of the Staff Report and FEIR, we conclude that, while the FEIR corrects a few selected errors from the DEIR, it still fails to disclose or meaningfully evaluate significant Project impacts related to biological resources, and fails to acknowledge or evaluate the impacts of the entirety of the Meridian Resort Project, of which the Trinitas Project is the third component. The FEIR also relies on inadequate and unenforceable mitigation measures to reduce potentially significant impacts to less than significant levels, fails to evaluate feasible mitigation for potentially significant impacts, and fails to support many of its findings with substantial evidence. Moreover, the Staff Report fails to disclose and mitigate land use inconsistencies with City and Airport Land Use Commission (“ALUC”) requirements.

The City must revise and recirculate the FEIR to adequately address these issues before the Planning Commission may consider approving the Project.

We prepared these comments with the assistance of air quality consultant Hadley Nolan of Soil Water Air Protection Enterprise (“SWAPE”)<sup>2</sup>, as well as conservation biologist and wildlife ecologist Scott Cashen.<sup>3</sup>

## I. STATEMENT OF INTEREST

Napa Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential environmental and public health impacts associated with Project development. Napa Residents includes the International Brotherhood of Electrical Workers Local 180, Plumbers & Steamfitters Local 343, Sheet Metal Workers Local 104, Sprinkler Fitters Local 483 and their members and their families; and other individuals

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full set of DEIR Reference Documents until April 25, 2018. CEQA mandates that the City make the DEIR and all documents relied on in the DEIR available and “readily accessible” during the entire comment period. See PRC § 21092(b)(1); 14 CCR § 15087(c)(5). Napa Residents have therefore had less than the full 45 days required by CEQA to review and comment on the DEIR Reference Documents, in violation of CEQA. These comments address some of those documents. However, Napa Residents is continuing its review of the DEIR Reference Documents, and reserves the right to supplement these comments at a later time.

<sup>2</sup> SWAPE’s technical comments and curriculum vitae are attached hereto as Exhibit A.

<sup>3</sup> Mr. Cashen’s technical comments and curriculum vitae are attached hereto as Exhibit B.

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that live and/or work in the City of Napa and Napa County. Napa Residents have a strong interest in enforcing the State's environmental laws that encourage sustainable development and ensure a safe working environment for its members.

Individual members of Napa Residents and its member organizations include residents of the City of Napa and surrounding communities, including City of Napa resident Brett Risley and Napa County resident Steve McCall. The individual members of Napa Residents live, work, recreate, and raise their families in the City of Napa and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

In addition, Napa Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

## **II. THE FEIR AND STAFF REPORT FAIL TO ACCURATELY DESCRIBE AND ANALYZE THE WHOLE OF THE PROJECT**

Napa Residents previously commented that the DEIR improperly piecemealed its description of the Project from the other two Meritage facilities which the DEIR explained are part of a single commercial development project by the Applicant ("Meritage Project"). As a result, the DEIR failed to analyze the full extent of the Project's environmental impacts, and artificially minimized its analysis of potentially significant cumulative impacts.

The FEIR failed to correct this error. Instead, the FEIR contends that the three hotels are different projects because they each "offer a different type of guest experience," have different check-in locations for guests, and were analyzed in

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separate CEQA documents.<sup>4</sup> However, the FEIR at the same time acknowledges that all three hotels in the Meritage Project are “under one ownership,” and include “shared facilities management, laundry, and engineering [] proposed to enhance efficiencies of and reduce overlap or duplication in back of house services.”<sup>5</sup> In addition, the FEIR acknowledges that the shuttle service between all three hotels and downtown Napa will be offered as a single amenity for hotel guests.<sup>6</sup> As explained in our DEIR Comments, these factors contribute substantially to the determination that the three-hotel Meritage resort is a single project for purposes of CEQA, and should have been analyzed in a single CEQA document.

CEQA prohibits a project proponent from seeking approval a large project in a piecemeal fashion in order to take advantage of environmental exemptions or lesser CEQA for smaller projects.<sup>7</sup> CEQA mandates “that environmental considerations do not become submerged by chopping a large project into many little ones -- each with a minimal potential impact on the environment - which cumulatively may have disastrous consequences.”<sup>8</sup> Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project and a public agency may not segment a large project into two or more smaller projects in order to mask serious environmental consequences. As the Court of Appeal stated: “[...]the CEQA process is intended to be a careful examination, fully open to the public, of the environmental consequences of a given project, covering the entire project, from start to finish.”<sup>9</sup>

The FEIR fails to analyze the impacts of the Meritage Project as a single Project, in violation of CEQA. As discussed below, when considered together, the Meritage Project will have significant, unmitigated impacts on air quality and biological resources that must be disclosed and mitigated in a revised EIR.

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<sup>4</sup> FEIR RTC, p. 34.

<sup>5</sup> FEIR, RTC, p. 34.

<sup>6</sup> *Id.*

<sup>7</sup> *Arviv Enterprises, Inc.*, 101 Cal. App. 4th at 1340.

<sup>8</sup> *Bozung v. LAFCO*, 13 Cal.3d 263, 283-84 (1975); *City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1452 (1989); *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo*, 172 Cal.App.3d 151, 165 (1985).

<sup>9</sup> *Natural Resources Defense Council v. City of Los Angeles*, 103 Cal.App.4th 268 (2002).

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### A. The Meritage Project Has Significant Air Quality Impacts from Construction Emissions.

The Meritage Commons Project was approved by the City in 2015, and is the second component of the Meritage Project. Meritage Commons is currently under construction.<sup>10</sup> The Trinitas Project is the third component of the Meritage Project, and proposes to expand existing Meritage hotel uses by adding an additional 4-story, 253-guestroom dual-branded hotel, winery and office complex to the Meridian site. If the City were to approve the Trinitas Project now, Project construction is likely to overlap with construction of the Meritage Commons Project, resulting in overlapping construction impacts.

SWAPE conducted a conservative air quality analysis of the construction emissions from the Meritage Commons construction combined with the construction emissions from the Trinitas Project. SWAPE's analysis added the criteria air pollutant emissions general during construction of the Trinitas Project to the construction emissions generated by Meritage Commons Project, then compared the sum of these emissions to the Bay Area Air Quality Management District's ("BAAQMD") significance thresholds.<sup>11</sup> The results of SWAPE's analysis are set forth below:<sup>12</sup>

Average Daily Construction Emissions (lbs/day)				
Development	ROG	NOx	PM10	PM2.5
Trinitas	8.9	32.8	1.6	1.5
Trinitas and Meritage Commons	21.6	68.6	3.6	3.4
<b>Percent Difference</b>	143%	109%	125%	127%
<b>BAAQMD Regional Threshold (lbs/day)</b>	<b>54</b>	<b>54</b>	<b>82</b>	<b>54</b>
<b>Threshold Exceeded?</b>	No	<b>Yes</b>	No	No

When the construction emissions from the Trinitas and Meritage Commons Project are combined, SWAPE finds that construction-related NOx emissions would total 68.6 pounds per day. This exceeds the BAAQMD's established significance

<sup>10</sup> DEIR, p. 3-1.

<sup>11</sup> Exhibit A, pp. 2-3.

<sup>12</sup> Exhibit A, p. 2.

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threshold of 54 pounds per day (lbs/day), resulting in a significant air quality impact that the FEIR fails to disclose and mitigate.

Because Meritage Commons and Trinitas are components of the single Meritage Project, the FEIR must be revised to analyze the combined air quality impacts of the ongoing development of the Meritage Commons Project with the Trinitas Project.

**B. The Meritage Project Has Significant Biological Resources Impacts from Habitat Loss.**

The first two Meritage Project components – Meritage Resort and Meritage Commons - contain just over 30 acres of land devoted to hotel uses. The proposed Trinitas Project would add approximately 6.5 acres of land dedicated to hotel uses along with 253 additional hotel rooms (the winery, office building, and related parking account for the remaining five acres of the site). The Trinitas Project would bring the amount of acreage in the business park dedicated to hotel uses to 36.5 acres, consisting of a total of 720 hotel rooms (with Trinitas accounting for about 20% of this total acreage and 36% of the 720 total hotel rooms).<sup>13</sup>

Mr. Cashen explains that this additional conversion of lands from undeveloped to developed uses by the Trinitas Project component would result in the elimination of approximately 59 percent of existing Swainsons hawk home range.<sup>14</sup> Because 30 acres of land on the Meritage Project site have already been converted to commercial uses, Mr. Cashen concludes that the additional loss of foraging habitat caused by the Project “would undoubtedly have a significant impact on Swainson’s hawks.”<sup>15</sup>

The FEIR must be revised and recirculated to disclose and mitigate these and other significant impacts of the overall Meritage Project.

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<sup>13</sup> Staff Report, p. 6-7.

<sup>14</sup> Exhibit B, p. 12.

<sup>15</sup> *Id.*

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### III. THE FEIR AND STAFF REPORT FAIL TO RESOLVE THE PROJECT'S LAND USE INCONSISTENCIES

#### A. The Project is Irreconcilably Inconsistent with the General Plan's Land Use Policy, Goal LU-7, and Policy ED 4.4 (Tourism/Hospitality) Due to Its Location.

The Project site is located in an area designated by the General Plan as Planning Area 11 – River East.<sup>16</sup> The General Plan Designation for the Project site is CP-720, Corporate Park, which allows industrial uses, including “manufacturing, warehousing, and office, public and quasi-public uses and similar compatible uses in a campus like setting.”<sup>17</sup> The zoning for the Project site is similarly industrial – Industrial Park – Area A (IP-A); Industrial Park – Area B (IP-B).<sup>18</sup> None of these uses designate hotels. Hotels fall under Policy ED 4.4 (Tourism/Hospitality), which “emphasizes the importance of locating hotel uses in the Downtown.”<sup>19</sup> The Project’s proposal to place major hotel uses in this industrial area of the City is inconsistent with these uses, and is likely to displace or prevent other industrial uses from occupying limited industrial land within the City.

The General Plan explains that only 4% of the City’s lands are available for industrial use.<sup>20</sup> LU Element Goal LU-7’s focus is to “achieve diverse industrial opportunities in suitable locations to provide employment for Napa residents and promote economic growth in the city.”<sup>21</sup> The Staff Report explains that the Project will have a significant impact on land use within the City by displacing industrial uses:

Land for large-scale business offices and light industrial use is growing increasingly difficult to find in Napa and in the corporate park forcing business interests outward to the Airport industrial area and further south

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<sup>16</sup> See FEIR, p. 5.9-5; General Plan, Land Use (“LU”) Element, p. 1-7, available at <https://www.cityofnapa.org/DocumentCenter/View/445/Chapter-1---Land-Use-PDF>.

<sup>17</sup> Staff Report, p. 8.

<sup>18</sup> Staff Report, p. 1.

<sup>19</sup> Staff Report, p. 9.

<sup>20</sup> General Plan, LU Element, p. 1-1, 1-4.

<sup>21</sup> *Id.* at p. 1-20.

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which introduces fundamental community-wide land use issues... Staff is concerned [about] the loss of industrially zoned parcels to hospitality uses.<sup>22</sup>

Neither the FEIR nor the Staff Report's proposed General Plan consistency findings rectify this inconsistency, or disclose the loss of industrial lands as a significant impact. The loss of industrial lands that will be caused by the Project therefore remains a significant, unmitigated impact, and renders the Project inconsistent with the General Plan's Land Use Policy, Goal LU-7, and Policy ED 4.4.

### **B. The Project Violates Airport Land Use Commission Policy for ALUC Zone C.**

The Project's hotel uses are likely to result in violations of ALUC Zone C regulations. The FEIR fails to disclose this significant impact. Approximately 12,400 square feet of the proposed Residence Inn portion of the hotel building is located within ALUC Zone C.<sup>23</sup> ALUC Zone C establishes a threshold of 50 persons per acre maximum for structures within ALUC Zone C.<sup>24</sup> Based on calculations in the FEIR, the projected density for the portion of the Residence Inn located within Zone "C" is 46.5 persons per acre, just below the 50 persons per acre maximum.<sup>25</sup> However, this assumption is based on 80% room occupancy, with the threshold of 50 persons per acre being exceeded at 86% occupancy.<sup>26</sup>

Neither the FEIR nor the Staff Report's proposed Conditions of Approval include any restriction to limit occupancy of the Residence Inn to 86%. The FEIR similarly fails to include any substantial evidence that the hotel's occupancy will not exceed 86%. The Staff Report asserts that average hotel occupancy is about 75%. This does not support the Staff Report's conclusion that Project hotel occupancy will not exceed the 86% threshold to create a violation of ALUC Zone C regulations. It is therefore reasonably foreseeable that operation of the Residence Inn will result in levels of occupancy that violate the ALUC Zone C regulations. Indeed, it is economically foreseeable that the goal of the Applicant is to reach a

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<sup>22</sup> Staff Report, pp. 9-10.

<sup>23</sup> *Id.*

<sup>24</sup> Staff Report, p. 10.

<sup>25</sup> Staff Report, p. 10; pg. 5.7-22 of the FEIR.

<sup>26</sup> *Id.*



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100% occupancy level in order to maximize profits from the hotel, which would certainly result in violations of the ALUC Zone C regulations.

In order to ensure that the Project does not violate the ALUC Zone C regulations, the City should require a Condition that the Residence Inn be limited to a maximum 85% occupancy once operational.

#### **IV. THE FEIR AND STAFF REPORT FAIL TO ADEQUATELY ANALYZE AND MITIGATE SIGNIFICANT IMPACTS TO BIOLOGICAL RESOURCES**

The FEIR fails to adequately respond to Napa Resident's DEIR Comments regarding the Project's impacts to biological resources. As a result, the FEIR fails to adequately disclose and mitigate the Project's impacts on a number of sensitive plants, animals, and due to habitat loss.

CEQA requires that a lead agency meaningfully evaluate all comments on the DEIR and provide "detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful."<sup>27</sup> As discussed below, and in the comments of biologist Scott Cashen, attached hereto, the FEIR fails to comply with these requirements. The FEIR must be revised and recirculated to fully disclose and mitigate all outstanding significant impacts to biological resources.

##### **A. Swainson's Hawk.**

The FEIR acknowledges that "[n]o attempt was made to assess usage by Swainson's hawks as it is clear that they occur in and around Napa," and that "the potential frequency of use is not known."<sup>28</sup> Nevertheless, the FEIR continues to argue that the loss of foraging habitat from the Project site would not have a substantial adverse effect on Swainson's hawks.<sup>29</sup> The basis for this argument is that the Project would eliminate only one-tenth of one percent of a Swainson's hawk

<sup>27</sup> *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.4th 889, 904.

<sup>28</sup> FEIR, RTC C-B15.

<sup>29</sup> *Id.*

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home range, and that the City's consultants do not believe that this would constitute a substantial adverse effect. As explained by Mr. Cashen, the FEIR's conclusions are entirely unsupported.

Mr. Cashen explains that neither the DEIR nor the FEIR analyzed the cumulative effects that multiple projects would have on the home ranges of Swainson's hawks that occur within the Project region.<sup>30</sup> For this reason, Mr. Cashen explains that "it is inappropriate and scientifically indefensible for [the FEIR] to use the mean home range of Swainson's hawks near Sacramento to assess impacts to the home range of birds in Napa County." The FEIR then concludes that the Project would impact just 1/10<sup>th</sup> of relevant Swainson's hawk habitat.<sup>31</sup> However, because the FEIR failed to identify the home ranges of the birds that occur in the Project region, it lacks substantial evidence to support the conclusion that the Project would impact only one-tenth of one percent of the home range.

By contrast, Mr. Cashen explains that the Project site contains a relative abundance of foraging habitat in close proximity to nesting territory, which is an important factor in the survival of Swainson's hawks in the area.<sup>32</sup> Mr. Cashen concludes that the loss of habitat caused by Project development is likely to result in a significant impact to Swainson's hawk that the FEIR fails to disclose and mitigate.

## **B. Fairy Shrimp.**

The FEIR fails to include adequate mitigation to reduce the Project's potentially significant impacts on fairy shrimp to less than significant levels, and fails to ensure that the Project will comply with all other applicable laws, as required by CEQA.

MM BIO-7 requires the Applicant to mitigate impacts to occupied habitat at a 2:1 ratio if listed fairy shrimp are detected within any of the vernal pools at the Project site. However, MM BIO-7 fails to ensure that the Project will comply with all other applicable laws. Like the DEIR, the FEIR fails to require the Applicant to undertake any Endangered Species Act consultation with the USFWS. The FEIR

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<sup>30</sup> Exhibit B, p. 11.

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

<sup>32</sup> *Id.* at p. 12.

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also fails to require the Applicant to obtain an incidental take permit prior to the “take” of any listed fairy shrimp species at the site. As a result, the FEIR fails to ensure the Project would comply with Section 9 of the Endangered Species Act.

Mr. Cashen initially raised this issue in his DEIR Comments. The FEIR’s response merely states that “listed species are not expected to occur and there will be no need to obtain an incidental take permit from USFWS for the Project.”<sup>33</sup> As Mr. Cashen explains, this response is entirely dismissive of the potential for fairy shrimp to occur at the Project site, and is unsupported, due to the FEIR’s failure to conduct wet season surveys to assess the presence of fairy shrimp at the Project site during the appropriate time of year. Thus, the FEIR lacks substantial evidence for its conclusion that the Project will not result in any significant impacts to fairy shrimp, and that there will be no need for the Applicant to obtain an incidental take permit from the USFWS.

## **V. THE FEIR CONTINUES TO IMPROPERLY RELY ON “PROJECT DESIGN FEATURES” AS UNENFORCEABLE MITIGATION MEASURES**

Napa Residents previously commented that the DEIR improperly relied on non-binding Project Design Features (“PDFs”) to mitigate many of the Project’s significant impacts.<sup>34</sup> The PDFs include various measures to be implemented by the Applicant to prevent the occurrence of, or to minimize, the significance of potential environmental effects. CEQA defines “mitigation” as “[a]voiding the impact altogether by not taking a certain action or parts of an action; [m]inimizing impacts by limiting the degree or magnitude of the action and its implementation; [r]ectifying the impact by repairing, rehabilitating, or restoring the impacted environment; [r]educing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or [c]ompensating for the impact by replacing or providing substitute resources or environments.”<sup>35</sup> The PDFs are therefore “mitigation” within the meaning of CEQA.

The FEIR continues to rely on PDFs to mitigate Project impacts without incorporating them into the Project’s mitigation program. In particular, the FEIR

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<sup>33</sup> FEIR, RTC, pp. 7-8.

<sup>34</sup> See Napa Residents DEIR Comments, pp. 25-28.

<sup>35</sup> 14 CCR § 15370.

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continues to apply PDFs to the Project's unmitigated impacts on aesthetics, air quality, and GHG emissions. The FEIR then concludes that implementation of PDFs will reduce the Project's significant impacts in these areas to less than significant levels. However, the FEIR fails to incorporate these PDFs as binding mitigation measures in either the FEIR's Mitigation Monitoring and Reporting Program ("MMRP") or the Staff Report's proposed Conditions of Approval ("Conditions").

CEQA requires that mitigation measures be enforceable through conditions of approval, contracts or other means that are legally binding.<sup>36</sup> This requirement is intended to ensure that mitigation measures will actually be implemented, not merely adopted and then ignored.<sup>37</sup> A review of the MMRP and proposed Conditions demonstrates that only four PDFs related to noise have been incorporated as binding mitigation.<sup>38</sup> The remaining PDFs are not included as either mitigation measures or Conditions, and are therefore unenforceable.

The below table identifies the PDFs which the FEIR relies upon to conclude that impacts will be reduced as a result of their application, but which are not included as binding mitigation measures anywhere in the FEIR or Staff Report:

<u>Resource</u>	<u>Project Design Feature(s)</u>	<u>Relied on to Reduce Impacts?</u>	<u>Included in MMRP or Conditions of Approval?</u>
Aesthetics	"The aesthetics components of the proposed Project include vehicle and pedestrian access, truck delivery access, common space areas, and building materials and features... [including]...“design elements such as wood trellis, pergolas for entryways, water features, low walls with	Yes	No

<sup>36</sup> PRC § 21081.6(b); 14 CCR § 15126.4(a)(2); *Lotus v. Dep't of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

<sup>37</sup> *Fed'n of Hillside & Canyon Ass'n v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1261; *Anderson First Coal. v. City of Anderson* (2005) 130 Cal.4th 1173, 1186.

<sup>38</sup> See FEIR MMRP, p. 13.

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	decomposed granite, pavers, and outdoor fire pits” <sup>39</sup> ...”Special Mitigation Measures: None required. The analysis indicates that, with implementation of project design features and the City’s Standard Mitigation Measures, the proposed Project would not have a significant effect on aesthetics.” <sup>40</sup>		
Air Quality	<p>“Design features will be incorporated into the Project to reduce or eliminate air quality impacts during construction and operational phases.”<sup>41</sup></p> <p>“1. Designate at least 53 clean air vehicle (i.e., electric vehicle) parking spaces;...</p> <p>4. Planting of at least 430 new trees on-site;</p> <p>5. Instate a shuttle program which would reduce project trip generation by at least 180 trips per day.”<sup>42</sup></p>	Yes	No
GHG Emissions	<p>“• Implement NEV Network (electronic vehicle charging stations)</p> <ul style="list-style-type: none"> <li>• Exceed Title 24 by 20%</li> <li>• Install High Efficiency Lighting (20% reduction)</li> <li>• Apply Water Conservation Strategy (20% indoor and 20% outdoor)</li> <li>• Institute Recycling and Composting Services (20% reduction)</li> <li>• Sequestration (planting of at least</li> </ul>	Yes	No

<sup>39</sup> FEIR, p. 5.1-12.

<sup>40</sup> FEIR, p. 5.1-37.

<sup>41</sup> FEIR, p. 5.2-15.

<sup>42</sup> FEIR, Appendix D, p. 17 (described in Appendix as “Mitigation Measure AQ-2,” but MMRP and Conditions do not contain this mitigation measure.

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	430 trees).” <sup>43</sup>		
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The FEIR and Conditions of Approval must be revised and recirculated to incorporate all PDFs as binding mitigation measures. Without incorporating these PDFs as binding mitigation in the MMRP or as Conditions of Approval, the City and the public lack a mechanism to enforce the PDFs, and to require that the Applicant implement them in the first place. Because the PDFs are currently unenforceable, the FEIR also lacks substantial evidence to support its conclusions that application of the PDFs will result in impacts being mitigated to less than significant levels or to the greatest extent feasible.

**VI. THE CITY HAS NOT TAKEN ALL STEPS NECESSARY TO ADOPT OF A STATEMENT OF OVERRIDING CONSIDERATIONS**

Before it can approve the Project, the City must certify the Project’s Final EIR and make mandatory CEQA findings. Those findings must include (1) that the Final EIR complies with CEQA, (2) that the City has mitigated all significant environmental impacts to the greatest extent feasible, and (3) that any remaining significant environmental impacts are acceptable due to overriding considerations.<sup>44</sup> Where, as here, the Project will have a significant effect on the environment, the City may not approve the Project unless it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>45</sup>

The FEIR concludes that the Project’s GHG impacts will be significant and unavoidable.<sup>46</sup> Accordingly, in order to approve the Project, the City must make a finding that the Project’s excessive GHG emissions are acceptable due to overriding considerations. The Staff Report includes a proposed Statement of Overriding Considerations for recommendation by the Planning Commission to the City Council.<sup>47</sup> However, the FEIR fails to include substantial evidence to support the

<sup>43</sup> FEIR, p. 5.6-12.

<sup>44</sup> 14 CCR sections 15090, 15091.

<sup>45</sup> PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

<sup>46</sup> FEIR, p. 5.6-13; FEIR RTC, p. 63.

<sup>47</sup> See Staff Report, Attachment 3, p. 1.

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requisite findings. As discussed below, the Planning Commission lacks substantial evidence to support a recommendation to the City Council regarding the proposed Statement of Overriding Considerations because the FEIR fails to incorporate all feasible mitigation measures to reduce GHG emissions to the greatest extent feasible, and fails to address all factors required by CEQA to support a determination of overriding benefits.<sup>48</sup>

**A. The FEIR Fails to Adopt All Feasible Mitigation Measures to Reduce GHG Emissions to the Greatest Extent Feasible Before Declaring Them Significant and Unavoidable.**

The FEIR explains that the Project will result in significant, long-term operational GHG emissions caused by day-to-day Project operation and maintenance, use of consumer products, energy and water usage, solid waste disposal, and vehicle trips associated with employees, visitors, and hotel guests.<sup>49</sup>

The FEIR estimates that the Project's unmitigated operational GHG emissions would be approximately 2,277 metric tons of carbon dioxide equivalents per year ("MT CO<sub>2</sub>e/yr").<sup>50</sup> The FEIR then applies GHG reductions from the assumed implementation of six (6) Project Design Features to conclude that the Project's mitigated GHG emissions would be 2,058 MT CO<sub>2</sub>e/yr.<sup>51</sup> The FEIR concludes that, even with application of the Project Design Features, the Project's mitigated GHG emissions will still exceed the BAAQMD's threshold of 1,100 MT CO<sub>2</sub>e/yr, and will therefore remain significant and unavoidable.<sup>52</sup> The FEIR explains that the remaining, unmitigated GHG emissions will be primarily the result of mobile emissions and energy consumption for hotel workers and guests.<sup>53</sup>

Before it can adopt a Statement of Overriding Considerations due to the Project's significant and unavoidable GHG emissions, the City must first ensure that it has mitigated all significant environmental impacts to the greatest extent

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<sup>48</sup> Pub. Resources Code, § 21081, subs. (a)(3) and (b).

<sup>49</sup> FEIR, p. 5.6-8.

<sup>50</sup> FEIR, p. 5.6-11; Appendix D, pp. 15-16.

<sup>51</sup> FEIR, p. 5.6-14.

<sup>52</sup> FEIR, p. 5.6-11.

<sup>53</sup> FEIR, p. 5.6-14.

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feasible.<sup>54</sup> The FEIR fails to meet this threshold requirement for two reasons. First, as discussed above, the FEIR fails to incorporate its proposed GHG Project Design Features as binding mitigation measures. Implementation of the PDFs is assumed in the FEIR, but the PDFs are not included in the MMRP. The PDFs are therefore non-binding and unenforceable, and cannot be relied upon to reduce the Project's GHG emissions at all, let alone "to the greatest extent feasible."<sup>55</sup>

Second, the FEIR fails to require all feasible mitigation measures that can contribute to additional GHG reductions. The FEIR contains a single GHG mitigation measure, Mitigation Measure GHG-1, which would require on-site processing of winery wastewater, implementation of the 2013 Title 24 Green Building standards related to energy efficiency in the Project's hotel buildings, and implementation of a recycling program to divert 20% of waste created on the Project site.<sup>56</sup> While the measures required under Mitigation Measure GHG-1 are likely to lead to some reduction in GHG emissions, none of them include the 6 PDF GHG measures that the FEIR relies on to conclude that GHG emissions would be reduced to 2,058 MT CO<sub>2</sub>e/yr. Therefore, Mitigation Measure GHG-1 does not support the FEIR's conclusion that the Project's GHG emissions will be reduced to the greatest extent feasible, because there are at least 6 additional mitigation measures that would further reduce GHG impacts which the FEIR considers feasible, but which it fails to require.

Additionally, the FEIR rejects all fourteen (14) GHG mitigation measures proposed by Napa Residents' air quality experts as either infeasible or already incorporated under Mitigation Measure GHG-1's Title 24 requirements,<sup>57</sup> but fails to identify any additional measures that may be available to reduce these impacts. Instead, the FEIR simply concludes that GHG emissions have been mitigated to the greatest extent feasible.<sup>58</sup> Contrary to the FEIR's conclusions, there are several additional, feasible mitigation measures available to further reduce the Project's

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<sup>54</sup> 14 CCR sections 15090, 15091.

<sup>55</sup> The FEIR's Air Quality Analysis (Appendix D) assumed that the PDFs would be incorporated as binding mitigation measures. See Appendix D, pp. 15-17. Appendix D refers to "Mitigation Measure AQ-2," which includes the GHG PDFs. However, neither the DEIR's mitigation matrix, the FEIR's MMRP, nor the Staff Report's proposed Conditions of Approval, contain a "Mitigation Measure AQ-2" or any of the GHG PDFs.

<sup>56</sup> See FEIR MMRP, pp. 5-6.

<sup>57</sup> See FEIR RTC, pp. 107-113.

<sup>58</sup> FEIR, p. 5.6-14.



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GHG emissions from mobile sources and customer energy usage that the FEIR failed to consider. Some of these measures include:

- Require electric vehicle charging stations on the Project site as binding mitigation. There is substantial market evidence demonstrating that installation of electric vehicle charging stations at hotels is likely to result in increased patronage by guests with lower or no-GHG emitting electric vehicles, and can also result in financial incentives to the property owner for installing EV charging devices.<sup>59</sup> (The FEIR currently proposes a PDF which vaguely says “implement NEV network,” but fails to include this PDF as a binding mitigation measure, and specify the number of electric vehicle charging spaces that will be provided.<sup>60</sup>)
- Implement a bike sharing program at the Project site. Bike sharing programs are widespread and feasible, and are currently offered by other hotel chains, such as Wyndham and Affinia Hotels and Suites.<sup>61</sup> If the City or Applicant raise cost concerns over the feasibility of a hotel-sponsored bike sharing program, the Applicant could offer parking lot space for an installation of a pay-by-ride bike station by an independent third-party bike-sharing program, such as Ford’s “Go Bike” program.<sup>62</sup> (The Project currently proposes to install on-site bike racks and bike storage, but does not provide bicycles for guest use.<sup>63</sup>)
- Require fair share contributions to local public transit. The Staff Report contains Conditions of Approval requiring over \$1 million in fair share contributions from the Applicant for highway and intersection improvements,<sup>64</sup> but none for municipal public transit.
  - The FEIR’s Traffic Study shows the Project is estimated to generate 184 trips in the AM peak hour, 182 trips in the PM peak hour and

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<sup>59</sup> See e.g. [https://www.hotel-online.com/press\\_releases/release/why-hotels-are-charging-up-for-electric-vehicles](https://www.hotel-online.com/press_releases/release/why-hotels-are-charging-up-for-electric-vehicles); <https://www.usatoday.com/story/money/cars/2017/08/11/electric-cars-take-off-theyll-need-place-charge/559126001/>.

<sup>60</sup> FEIR, 5.6-12.

<sup>61</sup> See <https://www.wyndhamhotels.com/hawthorn-extended-stay/hotel-deals/bike-sharing>; <https://www.affinia.com/special-offers/offer/bike-program-1.18133>; [http://www.republicbike.com/bikes\\_for\\_hotels.asp](http://www.republicbike.com/bikes_for_hotels.asp); <https://www.americaninno.com/boston/bike-sharing-the-modern-hotel-amenity/>.

<sup>62</sup> See <https://www.fordgobike.com/>.

<sup>63</sup> FEIR, p. 4-40.

<sup>64</sup> See FEIR, p. 5.13-36; Staff Report, p. 24.

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1,946 daily trips.<sup>65</sup> City of Napa General Plan Policy T-1.2 requires the City to assess fees on new development to cover the fair share portion of that development’s “impacts on the local and regional transportation system.”<sup>66</sup> The “transportation system” includes the public transit system,<sup>67</sup> not just physical impacts on roadways from vehicles. Under Policy T-1.2, the City has the authority, and indeed the duty, to impose fees on an applicant to contribute to the City’s public transit system. The FEIR proposes to implement a private resort shuttle to carry 27 passengers to Downtown Napa, and assumes a trip reduction of 180 vehicles/day for this amenity.<sup>68</sup> However, the Project’s GHG impacts from vehicle trips remains significant even with the proposed shuttle, assuming it is implemented.<sup>69</sup> Therefore, the City has a duty to require additional, feasible GHG mitigation to further reduce vehicle trips. A fair share contribution to the City’s public transit system is feasible, and is likely to increase the availability of public transit services to hotel guests and workers. More robust and frequent public transit services are likely reduce the need for local car trips by hotel guests, workers, and winery visitors.

- Implement mitigation measures to effect Zero Net Emissions (“ZNE”) for GHGs by the Project. A ZNE mitigation plan was recently approved, and is currently being implemented for the Newhall Ranch development in Los Angeles County.<sup>70</sup>

The FEIR must be revised to consider these and any other feasible GHG mitigation measures as binding mitigation for the Project before the City can conclude that the Project’s GHG impacts are significant and unavoidable, and before the Planning Commission can recommend adoption of a Statement of Overriding Considerations.

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<sup>65</sup> FEIR, 5.13-1.

<sup>66</sup> FEIR, p. 5.13-6.

<sup>67</sup> See e.g. FEIR, p. 5.13-6 (“Existing Transit System depicts the bus routes in the general vicinity of the Project.”).

<sup>68</sup> FEIR, p. 5-13-19 to 20.

<sup>69</sup> The FEIR fails to include the shuttle as binding mitigation in the MMRP.

<sup>70</sup> See Exhibit C, Newhall Ranch 2017 Revised Mitigation Plan.

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## **B. The Statement of Overriding Consideration Must Consider Whether the Project Provides Employment Opportunities for Highly Trained Workers**

As previously stated, the City concluded in the FEIR that the Project will have significant and unavoidable environmental impacts related to GHG emissions.<sup>71</sup> Therefore, in order to approve the Project, CEQA requires the City to adopt a statement of overriding considerations, providing that the Project's overriding benefits outweigh its environmental harm.<sup>72</sup> An agency's determination that a project's benefits outweigh its significant, unavoidable impacts "lies at the core of the lead agency's discretionary responsibility under CEQA."<sup>73</sup>

In adopting a statement of overriding considerations, the City must set forth the reasons for its action, pointing to supporting substantial evidence in the administrative record.<sup>74</sup> This requirement reflects the policy that public agencies must weigh a project's benefits against its unavoidable environmental impacts, and may find the adverse impacts acceptable only if the benefits outweigh the impacts.<sup>75</sup> Importantly, a statement of overriding considerations is legally inadequate if it fails to accurately characterize the relative harms and benefits of a project.<sup>76</sup>

In this case, in order to recommend Project approval to the City Council, the Planning Commission must find that the Project's significant, unavoidable impacts are outweighed by the Project's benefits to the community. CEQA specifically references employment opportunities for highly trained workers as a factor to be considered in making the determination of overriding benefits.<sup>77</sup> Currently, there is not substantial evidence in the record showing that the Project's significant, unavoidable impacts are outweighed by benefits to the community. For example, the Applicant has not made any commitments to employ graduates of state approved apprenticeship programs or taken other steps to ensure employment of

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<sup>71</sup> FEIR, p. 63, Responses to Comments.

<sup>72</sup> CEQA Guidelines, § 15043.

<sup>73</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

<sup>74</sup> Pub. Resources Code, § 21081, subd. (b); CEQA Guidelines, § 15093, subds. (a) and (b); *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 357.

<sup>75</sup> Pub. Resources Code, § 21081(b); CEQA Guidelines, § 15093, subds. (a) and (b)

<sup>76</sup> *Woodward Park Homeowners Association v. City of Fresno* (2007) 150 Cal.App.4th 683, 717.

<sup>77</sup> Pub. Resources Code, § 21081, subds. (a)(3) and (b).

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highly trained and skilled craft workers on Project construction. Therefore, the City would not fulfill its obligations under CEQA if it adopted a statement of overriding considerations and approved the Project.

## VII. CONCLUSION

We urge the Planning Commission to remand the Project to City Staff to prepare and circulate a revised EIR which identifies the Project's potentially significant impacts, requires all feasible mitigation measures and analyzes all feasible alternatives to reduce impacts to a less than significant level. If a Statement of Overriding Considerations is adopted for the Project, we urge the City to consider whether the Project will result in employment opportunities for highly trained workers. The Planning Commission cannot recommend approval of the Project until the City prepares a revised EIR that resolves these issues and complies with CEQA's requirements.

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

Sincerely,



Christina M. Caro

CMC:acp

Attachments

4140-004acp