

January 4, 2019

Sent via Email

Tyler Corey, Principal Planner
City of San Luis Obispo
919 Palm Street
San Luis Obispo, CA 93401
tcorey@slocity.org

Re: 650 Tank Farm Road Mixed-Use Project Mitigated Negative Declaration

Dear Mr. Corey:

This law firm represents the **Southwest Regional Council of Carpenters (Southwest Carpenters)** and submits this letter on the above-referenced project on its behalf.

Southwest Carpenters represents 50,000 union carpenters in six states, including in Southern California, and has a strong interest in ensuring well-ordered land-use planning and reducing the environmental impacts of development projects, such as the 650 Tank Farm Road Mixed-Use Project (Project). In its Mitigated Negative Declaration (MND), the City of San Luis Obispo (City) has determined the Project has the potential to cause significant impacts on the environment, but that all such impacts will be reduced to a less-than-significant level after mitigation.

The City describes the Project as including the construction of 17,500 square feet of commercial space and 249 residential units in fifteen three-story buildings. The Project will include the following approvals:

- Zone Change to rezone 3.25 acres of Business Park and 6.85 acres of Medium Density Residential to Business Park/Residential;
- General Plan Amendment, which the City does not further describe;
- Specific Plan Amendment to the Airport Area Specific Plan, which the City does not further describe;
- Conditional Use Permit; and
- Mobile Home Park Conversion Impact Report

The City does not confirm whether the Project will need to obtain any other state and federal approvals, such as a Section 401, 404 and NPDES permits, Endangered Species Act consultation or permit, or a Streambed Alteration Agreement. However, as the Project has the potential to

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impact jurisdictional waters, it should also include a Section 404 permit and involve formal Section-7 Consultation, pursuant to 16 U.S.C. § 1536(c).

Southwest Carpenters presents these comments in response to the MND, below.

Project Description

The City does not adequately describe the Project, such that it is difficult to understand its impacts.

First, the City references “potential” off-site access improvements. As these potential off-site access improvements involve the widening of a bridge in a manner that has a real potential to cause additional impacts, including to biological resources, the City must state definitively whether this is a component of the Project.

The City’s description of the residential component of the Project provides an unbelievably low total floor area. The City states all 249 residences will be located on only 14,530 square feet of floor area, equating to roughly 50 square feet per residence. (MND, p. 4.) This statement is incredulous, cannot include the floor area and square footage of all residential-related structures, and must be revised in a recirculated document.

The City wildly oscillates between describing the Project as including the removal of vacant and non-vacant mobile homes. To summarize the universal trend in the City’s analysis, the City described these homes as occupied or vacant, in turn, whenever doing so would portray the Project as having reduced environmental impacts. This approach is the opposite of informative and must be revised throughout the MND.

The City does not describe the General Plan and Specific Plan Amendments at all. The City must provide more information regarding these amendments. Specifically, what would these amendments change the land use designation of the Project to and from?

The City does not confirm whether the Project will include any state or federal permits, such as a Streambed Alteration Agreement, Section 404 Permit, Incidental Take Permit, or Section 7 Consultation. The City must describe whether the Project includes any or all of the above approvals.

The City provides an incorrect estimate of the total Project population; as such, all analysis that relies on these estimates is wrong. Whereas the City, without support, assumes the Project would only accommodate an unbelievably low 2 residents per residential unit, no

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jurisdiction in California has such a low average number of residents per unit. San Luis Obispo averages 2.44 residents per housing unit. A correct estimate of the Project's population is 607, not 498. Thus, the City underestimated the Project population by roughly twenty percent. This estimate and all analysis based on it must be revised throughout the MND and the MND must be recirculated.

Some or all of the Project site is not located within the City limits, yet the City does not describe the Project as including annexation of any County property or related LAFCo approval. The City should have disclosed these needed steps for Project approval in the MND.

Aesthetics

The City mischaracterizes the Project site as occurring in the "moderate" scenic value section of Tank Farm Road. However, roughly one-third of the Project site falls west of Santa Fe Road. (MND, p. 10.)

The City provides an inadequate analysis of General Plan Policies designed to protect the aesthetic values of the Project site. The City states General Plan policies "require environmental review to ensure that the City preserves and improves view [*sic*] from public scenic places. Therefore, the project would not have a significant effect on a scenic vista, or substantially degrade the existing visual character or quality of the site and its surroundings." (MND, p. 16.) This conclusory statement is not evidence the Project will have less-than-significant impacts in reference to these General Plan policies. The City cannot rely on the fact that environmental review will occur as evidence that no impacts will occur. Please revisit this analysis in a revised MND or EIR.

Air Quality

The City provides no analysis whatsoever of cumulative impacts for air quality, in addition to several other categories of environmental impacts. Thus, the City's analysis is entirely deficient and must be revised for the MND to serve as a legally sufficient CEQA document. However, as shown by the City's analysis in the DEIR for the nearby and recently approved Avila Ranch project, the Project will cumulatively contribute to several environmental impacts the City has previously found to be significant and unavoidable. Because the Project will cumulatively contribute to these significant and unavoidable environmental impacts, the City must prepare an EIR for the Project.

The City erroneously evaluates the Project assuming the mobile home park is operational. However, elsewhere, the City describes these homes as "vacant," and assumes a baseline

population of zero. (MND, p. 26.) As mentioned, above, please provide an accurate description of baseline project conditions as they existed at the time the City began its environmental review and evaluate the Project consistently using that baseline.

The City states the Project would not exceed the population projections in the San Luis Obispo Air Pollution Control District (APCD). (MND, p. 23.) However, as mentioned above, the City fails to account for twenty percent of the Project population at build-out. Further, the City fails to consider the cumulative impacts of other past, present, and reasonably foreseeable future development. The City states the General Plan Land Use Element only anticipates a population of 50,569 by 2035 and regional planning only estimates a citywide population of 48,601 by 2025. Evidence clearly shows the Project, in conjunction with other past, presently, and reasonably foreseeable development, will well exceed these growth estimates. The City, itself, has predicted the City's population would grow to over 56,000 by 2035. Regarding the 2025 estimates used for regional planning, the City's population has already exceeded that estimate. According to the U.S. Census, the City's 2017 population was 47,541, meaning that the City's population would only need to increase by 1,000 to exceed these estimates. The approval of other nearby projects greatly exceeds this estimate, including the Avila Ranch development, which increases the City's population by 1,756, as well as the Tribune Production Building Conversion Project, San Luis Ranch Project (580 units and 200-room hotel), the 860 On the Wye project (20 units), the Twin Creeks project (102 units). While there are likely several other past, present, and reasonably foreseeable projects, the City's utter lack of a cumulative impacts analysis defeats the ability of commenters to gain a complete view of Project impacts. However, even under the limited information described, above, it is clear the City will well exceed its 2025 and 2035 population estimates. The Project is clearly inconsistent with population growth estimates prepared for the City, and this analysis must be revised accordingly. (MND, p. 23.)

The City's statements regarding impacts to the citywide vehicle trip rate is also incorrect on its face. The City discloses the Project would exceed the estimated General Plan daily trip rate at buildout by 10,853 daily trips. (MND, p. 24.) Because the Project will exceed the General Plan estimated daily trip estimates, this results in a significant impact not adequately considered or mitigated in the MND. This excess is all the more troubling, as it is unclear whether the City has fully accounted for the cumulative traffic impacts of all other past, present, and foreseeable future projects. Further, the City's estimated total Project trips is calculated based on the false premise that the Project would only accommodate 498 residents. The MND underestimates Project trips by approximately twenty percent.

The City's analysis of Land Use and Transportation Control Measures is also inadequate. (MND, p. 24.) The City's statements in its analysis are conclusory and unsupported by evidence

in the record. The City must provide evidence and additional analysis to support its reasoning regarding the impacts of the Project in relation to land use and transportation control measures.

While the City found the Project would have impacts that exceed significance thresholds, the majority of the City's mitigation measures do not address these impacts. (MND, p. 26.) However, even as to those mitigation measures directed toward reducing the significant impacts of the Project, the City fails to quantify the reductions achieved by this mitigation, such that members of the Public can discern whether these measures would reduce Project emissions to below the quantitative level of significance. Absent this information, the City's analysis remains inadequate and unsupported by evidence in the record.

Biological Resources

The City's analysis of impacts to plant species does not support a finding that Project impacts will be less than significant. As the City's initial surveying of the Project site occurred outside of the flowering season for all relevant special status plants, it does not currently know the extent or locations of sensitive plant species on-site. (MND, p. 32.) While the City would require additional biological surveying during the blooming season, the City does not prohibit construction to start prior to conducting these surveys. Thus, there is no evidence that the Project will not significantly impact individuals of and habitat for special status species.

Furthermore, the City fails to provide adequate evidence that mitigation designed to reduce impacts to protected wildlife will reduce these impacts to less than significant. The City's mitigation measures are designed to avoid protected species that are found in riparian habitat. However, as the City recognizes, individuals of these species have the potential to use other portions of the Project site, including areas that will be graded, developed, and frequented by future users of the Project site. The City's mitigation measures do little to nothing to ensure the Project will not significantly impact individuals that move away from riparian areas. As the City does not claim the Project includes Section 7 Consultation or the receipt of an Incidental Take Permit, the unauthorized take of even one individual of a species protected under the federal and state Endangered Species Acts would violate these laws and result in significant and unavoidable impacts.

The City's evaluation of other impacts to protected species is conclusory. For instance, the City states, "Because the project site and immediate vicinity are already developed and disturbed, the increase in lighting, noise, and human activity onsite due to the project would not result in a substantial change or long term impact to wildlife movement throughout the region." (MND, p. 45.) This statement is unsupported by evidence and related analysis. Thus, the City cannot rely on this statement to determine Project impacts will be less than significant.

Cultural Resources

The City provides an inadequate analysis of impacts to cultural resources. First, the City fails to provide an adequate description of the Project, such that it is impossible to understand the impacts of the Project. For instance, the City states the Project may contain land that has high paleontological sensitivity but states it does not know whether the Project will result in a significant impact because “The maximum depth of proposed project ground disturbance is unknown until project design is finalized.” (MND, p. 50.) The City was required to fully describe the Project in the MND, such that commenters would know whether this impact would occur.

Furthermore, the City states the Project would have a less than significant impact in regard to Significance Threshold (d). (MND, p. 52.) This threshold asks whether the Project would “Disturb any human remains, including those interred outside of formal cemeteries.” (MND, p. 52.) While the City recognizes the Project has the potential to disturb human remains, it somehow still determines Project impacts will be less than significant *prior to mitigation*. (MND, p. 52.) The Project cannot both trigger this significance threshold and have less than significant impacts. The City’s analysis indicates it did not seriously consider these impacts and, instead, categorically assumes without analysis that no project can ever trigger this significance threshold because there are state laws designed to address impacts to human remains. CEQA requires better analysis than this.

Geology and Soils

The City does not provide an adequate discussion of baseline Project conditions or Project impacts, such that members of the Public cannot determine whether the Project will result in significant impacts in regard to Significance Thresholds (a.3), (c), and (d). (MND, p. 55.) The City admits the Project has the potential to result in significant impacts under these thresholds, but then states it cannot know whether impacts will be significant “because such analyses have not been completed.” (MND, p. 55.) The City then imposes the production of a Site Geotechnical Study as a mitigation measure, to be implemented well after the Project is approved. The City is required to accurately and adequately describe these impacts in the MND; its failure to do so invalidates the MND.

Greenhouse Gas Emissions

The APCD provides a quantitative “bright-line” greenhouse gas impact threshold for projects of 1,150 metric tons of carbon dioxide-equivalent (MTCO₂e) per year, as well as an “efficiency-based threshold” for “larger, very GHG-efficient projects that would otherwise

significantly exceed the bright-line threshold.” (APCD, Greenhouse Gas Thresholds and Supporting Evidence, p. 26.) However, the City provides no justification for the use of this threshold. The City never classifies the Project as “larger” or as significantly exceeding the bright-line threshold. Rather, the City seems to default to the efficiency threshold without further analysis simply because the use of this threshold allows it to claim Project-related impacts are less than significant, and for no other reason. However, especially as the City is analyzing the Project pursuant to an MND, it cannot ignore significance of Project impacts under the bright-line emissions threshold, where application of this threshold provides evidence that the Project will have significant and unavoidable environmental impacts.

Perhaps more importantly, the City should not rely on the APCD GHG Guidance *at all*, as this guidance is clearly outdated. The last time the APCD updated this guidance was in 2012 in reference to the greenhouse gas reduction targets in AB 32. This document contains as its goal a reduction of greenhouse gases to 1990 levels by 2020, which does not even account for full Project construction, let alone Project operation. Fatally, the guidance, and thresholds, in this document were superseded when the State Legislature adopted SB 32 in 2016, which, as the City recognizes, represents much stronger greenhouse gas reductions goals, for which the APCD’s Guidance does not account. Thus, the entirety of the City’s quantitative greenhouse gas emissions analysis is invalid and must be revised with City-adopted thresholds that take into consideration the stricter mandate of SB 32.

For the same reasons, the City’s analysis of Project consistency with the City’s Climate Action Plan is also invalid. The City’s Climate Action Plan was also adopted in 2012, in reference to the mandates of AB 32. (City of San Luis Obispo Climate Action Plan, p. 1; City of San Luis Obispo, Sustainability, <https://www.slocity.org/government/department-directory/community-development/sustainability> (accessed Jan. 4, 2019 (stating the City’s “Climate Action Plan lays out strategies to achieve emissions reductions to meet state guidance of 1990 levels by the year 2020).) In addition, the City’s evaluation of Project consistency with its Climate Action Plan was conclusory, unsupported by reasoning or evidence, and, thus, inadequate in its own right.

Finally, the City’s conclusory evaluation of Project consistency with the California Air Resources Board’s Scoping Plan is both analytically inadequate and impermissible pursuant to clear legal precedent. (*See Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4th 204.)

In sum, the City’s reliance on outdated and irrelevant policies and documents cannot be seen as a good-faith effort to evaluate the greenhouse gas impacts of the Project. And, assuming

the validity of the APCD's GHG Guidance, the City has ignored the significant and unavoidable impacts of the Project.

Hazards and Hazardous Materials

The City wrongly concludes no schools are located within one-quarter mile of the Project site and neglects to conduct any further analysis of this significance threshold. (MND, p. 69.) However, contrary to the City's conclusion, the nearest school is the San Luis Obispo College of Law, which is located less than one-quarter mile from the Project site. The City must revise its analysis of this significance threshold in a recirculated MND or DEIR.

In the City's analysis of airport hazards, the City did not state whether the required Federal Aeronautics Administration (FAA) consultation has occurred. According to 14 C.F.R. Part 77, projects near airports, such as the Project, are required to consult with the FAA prior to submitting an application to the City. (See FAA, Notification of Proposed Construction or Alteration on Airport Part 77, <https://www.faa.gov/airports/central/engineering/part77/> (last accessed Jan. 4, 2019.)) Absent confirmation this safety consultation occurred, the City has failed to provide sufficient information to evidence that Project impacts will be less than significant.

Furthermore, evidence presented by the City indicates there is a threat that the Project may impact airport safety. As the City mentions, over the past thirty years, there have been 33 accidents, eleven of which have occurred in the Airport Overlay Zones. (MND, p. 67.) However, the City does not indicate whether any of these Airport Overlay Zone accidents occurred near the Project site. As the Project will pose another obstacle to an airplane attempting to conduct an emergency landing, there is evidence the Project would create significant and unavoidable impacts to airport safety.

Hydrology and Water Quality

The City discloses half of the Project site is at risk of flooding under baseline Project conditions. (MND, p. 77.) The City plans to raise Project ground elevations above the existing 100-year floodplain. (MND, p. 6.) Due to this, the City determines the Project will have less than significant impacts regarding exposure of people or structures to flooding. (MND, pp. 73-74.) Notwithstanding the potential of the Project to cause injury or death, the only mitigation measure the City proposes is a change to the Federal Emergency Management Agency (FEMA) Flood Map after it raises the Project floor above the flood level. (MND, p. 78.) Thus, the City analyzes raising the Project above flood levels as part of the *Project*, although this is clearly mitigation. It is impermissible for the City to compress its analysis of Project impacts and

mitigation measures in a manner that skews the environmental analysis and underrepresents the impacts of the Project.

Further, the City entirely fails to evaluate the impacts of this mitigation measure. By default, raising the Project site out of the floodplain means the Project will increase and sharpen flows during flooding, in a manner that will cause even greater flood impacts off-site, and also in a manner that will cause additional impacts to biological resources, including through habitat modification that will directly result in the take of species. The City's failure to consider these impacts invalidates the MND.

Regarding water quality impacts, the City fails to disclose baseline conditions, or to evaluate the cumulative impacts of the Project. (MND, p. 75.) The City fails to disclose whether the waterways that traverse the Project site are impaired and, if so, whether the Project will cumulatively contribute to their continued impaired status.

Land Use

The City, again, shifts its baseline discussion in a manner that downplays the significant impacts of the Project. Whereas the City elsewhere evaluates the mobile homes as being occupied, in the City's evaluation of impacts to mobile homes in its discussion of land use impacts, the City states these homes are vacant, and "Therefore, no residents would be displaced with the redevelopment of the site." (MND, p. 81.) The City cannot have this both ways, and its constantly shifting baseline serves to misinform the public regarding the significant impacts of the Project.

Furthermore, the City fails to evaluate whether the Project would comply with all laws and policies designed to preserve mobile home communities. While, or perhaps because, these communities provide some of the lowest-cost housing in the state, these communities have regularly been targeted for removal, thus often forcing the displacement or homelessness of mobile home residents. In response to this crisis the State Legislature has enacted a series of laws designed to preserve and protect mobile home communities. Despite this, the City entirely fails to evaluate whether the Project would be consistent with these laws. This failure violates CEQA, and possibly other state laws.

Noise

The City determined Project-related noise impacts would be significant and proposed mitigation measures. However, Mitigation Measure N-1 is only directed to address the impacts of the Project on future Project residents. (MND, pp. 89-90.) This mitigation measure does

nothing to reduce impacts to the environment, including protected species and nearby sensitive receptors. The City's determination that Project impacts will be less than significant in reliance on this mitigation is not supported by substantial evidence.

Population and Housing

The City states, "Cumulatively, residential buildout in the City up to the year 2035 would not exceed 25,762 units (or 56,686 people)." (MND, p. 98.) This statement provides evidence that the City's own estimates on future population growth exceed the 50,569-resident buildout estimate the City relies on elsewhere in the MND. Further, this estimate grossly understates the total population full build-out of the General Plan would allow. Assuming an average household size of 2.44 persons per residential unit, build-out of 25,762 units would result provide housing for 62,640 residents, not 56,686, as the City states.

Public Services

The City's analysis of impacts to public services is backwards. For instance, regarding impacts to fire services, the City recognizes the Fire Department even now suffers from limited capacity and increasing response times. (MND, p. 99.) The City further recognizes the Department must construct new facilities and increase its staff to meet the service needs of this and other projects. (MND, p. 99.) Notwithstanding the above, the City somehow determined Project impacts are less than significant because the Project will be required to pay impact fees to contribute to the construction of these facilities. The payment of these impact fees will literally cause the significant impact raised in the CEQA Guidelines and the City's own MND analysis. Yet, the City provides no analysis to indicate how these impacts will be reduced to less than significant. The City provides the same faulty analysis regarding impacts to police services, schools, and parks. (MND, pp. 100-101.)

Regarding impacts to schools, the City fails to address the significant impacts of providing school services to the Project site, in light of the distance of the Project from the nearest elementary, middle, and high schools. Because the Project is so far away from these schools, student attendance will cause much longer, and more, vehicle trips than under typical circumstances. The City does not even disclose whether school buses provide transportation services to the Project site; if all students will have to be transported to school in private vehicles, this will greatly increase the number of trips and emissions above the already understated trip estimates provided in the MND.

Traffic

The City, again, shifts its baseline in a manner that downplays the environmental impacts of the Project. The City downplays Project impacts by assuming the incorporation of future changes to intersections that have not occurred as of the publication of the MND. (MND, pp. 108, 110.) The City must provide an accurate and stable baseline that does not assume the incorporation of changes other than mitigation measures.

The City fails to evaluate, or even mention, impacts to nearby intersections the City has elsewhere stated suffer from significant and unavoidable impacts. Specifically, the City fails to disclose Project impacts on Buckley Road and Highway 227, which is just down the street from the Project site, and to Prado and South Higuera Street, which is only one-half mile away from the Tank Farm Road/South Higuera Street intersection the City evaluates in the MND. (MND, p. 106.) The City fails to evaluate impacts to these intersections and, likewise, fails to claim no Project traffic would use these intersections. These intersections operate and significant and unavoidable levels of service. Because the Project would cumulatively contribute to a significant and unavoidable impact, the City must prepare an EIR for the Project.

Utilities

The City's analysis of impacts to wastewater facilities is incomplete. The City focuses exclusively on dry-weather wastewater flows, which the City states are currently 4.5 million gallons per day (mgd). (MND, p. 125.) The City states the "dry-weather" capacity of the wastewater treatment facility slated to serve the Project is 5.1 mgd.

As this law firm also serves as counsel for a community services district that has long had sewer district powers, this firm has some experience with sewer facility capacity. As a first point, there is no such thing as "dry-weather" versus "wet-weather" capacity. Rather, wastewater treatment plants and related facilities must be built to accommodate peak wet weather capacity. This is the only capacity that exists or matters, because during peak wet weather events, flows to sewer facilities may double or triple. With this in mind, it is highly concerning the wastewater treatment plant only has a 5.1 mgd capacity but already receives 4.5 mgd in dry-weather flows. This facility is likely to experience repeated overflows during wet weather events, to which the Project will contribute. The City's failure to consider cumulative peak wet weather flows to these wastewater facilities invalidates the MND.

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Energy Efficiency and Conservation

The City is required, and failed, to discuss whether the Project includes the wasteful consumption of energy that may be mitigated. As mentioned, the remote location of the Project from necessary school, police, and fire services will cause the wasteful consumption of energy that could have been avoided with better planning. Further, the City's failure to consider mitigation in the form of rooftop solar and installing electric vehicle charging stations in both the residential and commercial components of the Project stands out as a lost opportunity at energy savings. The City must recirculate the MND or draft an EIR that contains an adequate discussion of this topic.

Conclusion

Southwest Carpenters thanks the City for providing an opportunity to comment on the MND. Pursuant to Section 21092.2 of the Public Resources Code and Section 65092 of the Government Code, Southwest Carpenters request notification of all CEQA actions and notices of any public hearings concerning this Project, including any action taken pursuant to California Planning and Zoning Law. In addition, pursuant to Public Resources Code section 21167(f), please provide a copy of each Notice of Determination issued by the City in connection with this Project and please add Southwest Carpenters to the list of interested parties in connection with this Project and direct all notices to my attention. Please send all notices by email, or if email is unavailable, by U.S. Mail to:

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Very truly yours,
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