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*Admitted in Colorado

December 3, 2019

Via Email and U.S. Mail

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Re: Extension of the Comment and Review Period and Request for Documents Referenced in the Draft EIR, Oakley Logistics Center Project (SCH No. 2019029113), DA 01-18, DR 12-18, GP 04-18, RZ 08-18, TM 05-18


Dear Mr. Cole, Mr. McMurray and Ms. Vreonis:

6-1

We are writing on behalf of the **Oakley Residents for Responsible Development** ("Oakley Residents") concerning the Oakley Logistics Center Project (SCH No. 2019029113), DA 01-18, DR 12-18, GP 04-18, RZ 08-18, TM 05-18 ("Project") to respectfully request:

1. that the City provide the below-listed documents, as well any other documents referenced in the Draft Environmental Impact Report ("Draft

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6-1
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December 3, 2019
Page 2

EIR”) prepared for the Project, as required by Section 21092(b)(1) of the California Environmental Quality Act (“CEQA”);¹

2. that the City extend the public review and comment period on the Draft EIR by at least 45 additional days from the date that it makes the documents available; and
3. that the City postpone the December 17, 2019 joint City Council / Planning Commission hearing on the Project, until the City complies with CEQA.

Oakley Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public impacts associated with Project development. Oakley Residents includes: the International Brotherhood of Electrical Workers Local 302; Plumbers & Steamfitters Local 159; Sheet Metal Workers Local 104; Sprinkler Fitters Local 483, their individual members and families, and other individuals that live and/or work in Oakley and the surrounding area.

Our requests are based on the City’s failure to make available to the public all the documents referenced in the Draft EIR prepared for the Project for the entire duration of the public comment period, as required by CEQA.

It is well-settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.² Thus, CEQA affords the public a right of access to the documents and supporting evidence that the lead agency relies upon to reach its conclusions and findings in a CEQA document.³ These documents must be made available to the public for the entire comment period.⁴

¹ Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 15, § 15000 et seq. (“CEQA Guidelines”).

² *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 (Whatever the lead agency considers must be in the environmental review document; “what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

³ Pub. Resources Code, § 21092(b)(1); CEQA Guidelines, § 15087(c)(5).

⁴ Pub. Resources Code, § 21092(b)(1); *Gentry v. City of Murrieta* (1996) 36 Cal.App.4th 1369, 1385, fn. 12.



6-1
Cont'd

December 3, 2019
Page 3

The courts have held that the failure to provide even a few pages of a CEQA document for even a portion of the CEQA review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional time for public review and comment on the CEQA document.⁵ “In light of case law emphasizing the importance of ensuring that the public can obtain and review documents on which agencies rely for the environmental conclusions ... agencies should ensure that they literally comply with this requirement.”⁶

In other words, the City was obligated to provide not just those documents specifically listed and numbered in the “list of references” section of the Draft EIR, but to provide all documents which the City referenced in its analysis and mitigation of impacts in the Draft EIR, and to make those documents available to the public for the *entire comment period*.

Here, the comment period began on October 16, 2019.⁷ On November 19, 2019, we submitted a request for immediate access to all documents referenced in the Draft EIR.⁸ On November 21, 2019, the City responded to our request by providing the documents listed in the Draft EIR’s Chapter 8, “References.” By limiting its response to just those documents listed in Chapter 8, the City failed to comply with CEQA, as this response did not include many documents which were referenced and cited in the Draft EIR, but were not listed in Chapter 8.

Based on our review, documents which were not provided include, *but are not limited to*, the following:

1. Department of Toxic Substances Control, Initial Study Chemours Oakley Site Sediment, Soil and Groundwater Corrective Studies (June 29, 2018);
2. 2010 Highway Capacity Manual;

⁵ *Ultramar v. South Coast Air Quality Management Dist.* (1993) 17 Cal.App.4th 689, 699.

⁶ Remy, Thomas, Moose & Manley, *Guide to the California Environmental Quality Act*, pp. 342-343 (Solano Press, 2007).

⁷ Notice of Availability for the Oakley Logistics Center Project Draft EIR (Oct. 16, 2019).

⁸ Letter from Janet Laurain to Libby Vreonis and Joshua McMurray *Request for Immediate Access to Documents Referenced in the DEIR and Separate Request for Public Records – Oakley Logistics Center Project* (SCH #2019029113, DA 01-18, DR 12-18, GP 04-18, RZ 08-18) (Nov. 19, 2019) attached hereto at **Exhibit A**.



6-1
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December 3, 2019
Page 4

3. Caltrans, Guide for the Preparation of Traffic Impact Studies (Dec. 2002);
4. 2017 Countywide Comprehensive Transportation Plan (Sept. 2017);
5. East County Action Plan Routes for Routes of Regional Significance (Sept. 2017);
6. East County Action Plan, Final 2000 Update;
7. The City of Oakley's 2017 Traffic Impact Fee Update;
8. CARB Methods to Assess Co-Benefits of California Climate Investments, Vehicle Miles Traveled;
9. Contra Costa Transportation Authority, Contra Costa Countywide Bicycle and Pedestrian Plan; and
10. East Contra Costa County Habitat Conservation Plan / Natural Communities Conservation Plan (ECCC HCP/NCCP).

While we appreciate the City's efforts to provide access to the documents listed in Chapter 8, the City has otherwise failed to provide all documents referenced in the Draft EIR in its analysis and mitigation of impacts for the Project for the entire comment period, which began on October 16, 2019. This failure directly violates CEQA's procedural mandates.

To remedy this deficiency, the City must:

1. immediately provide access to all of the above-referenced documents, as well as any other documents not produced in response to our request;
2. extend the public review and comment period by at least **45 additional days** from the date that the City releases those documents; and
3. postpone the December 17, 2019 joint City Council / Planning Commission hearing on the Project, until the City complies with CEQA.

4567-007j



**6-1
Cont'd**

December 3, 2019
Page 5

Please feel free to call or email me with any questions. Thank you for your prompt attention to this matter.

Sincerely,



Sara Dudley

SFD:lj
Attachment

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