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February 13, 2023

**VIA EMAIL ONLY**

Phil Dunsmore, Community Development Director  
Kelly Gleason, Senior Planner  
City of Atascadero  
Community Development Department  
6500 Palma Avenue  
Atascadero, CA 93422  
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Lara Christensen, City Clerk  
City of Atascadero  
6500 Palma Avenue  
Atascadero, CA 93422  
**Email:** [cityclerk@atascadero.org](mailto:cityclerk@atascadero.org)

**Re: Further Request for Immediate Access to Public Records  
Relating to Barrel Creek Planned Development Project (PNLN  
No. DEV21-0066; Environmental Document No. 2022-0005; SCH  
No. 2022120699)**

Dear Mr. Dunsmore, Ms. Gleason and Ms. Christensen:

I am writing to follow up on our January 11, 2023 requests, on behalf of Californians Allied for a Responsible Economy for *immediate access* to all documents referenced, relied upon or incorporated by reference in the Initial Study/Mitigated Negative Declaration (“MND”) prepared by the City of Atascadero (“City”) for the Barrel Creek Planned Development Project (PNLN No. DEV21-0066; Environmental Document No. 2022-0005; SCH No. 2022120699) (“Project”), proposed by Legacy Realty and Development, LLC.

The California Environmental Quality Act (“CEQA”) requires that “all documents referenced in the draft environmental impact report or negative declaration” be available for review and “readily accessible” during the entire comment period.<sup>1</sup> On January 11, 2023, CARE CA submitted requests for immediate access to such documents pursuant to CEQA and California Public Records Act (“PRA”). On January 13, 2023, the City produced some responsive documents. However, the only documents produced by the City were the publicly available Initial Study and MND for this project and a mailing affidavit for the Notice of Public Hearing regarding the January 17, 2023 Planning Commission

<sup>1</sup> PRC §§ 21092(b)(1) (emphasis added); 14 Cal. Code Regs. (“CCR”) § 15072(g)(4).

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hearing for the Project; the City also provided links to other publicly available documents such as the City's Municipal Code and stormwater management plan, FEMA floodmaps and the San Luis Obispo Council of Governments' ("SLOCOG's") Regional Transportation Plan.

Based on our review of the revised MND posted on February 3, 2023, there are additional documents that the MND purports to rely on for its analysis of the Project's potentially significant environmental impacts, and which have not been produced. For example, the MND includes a September 2022 Transportation Impact Study ("TIS") in support of its transportation impact analysis. The TIS includes a cursory VMT analysis which is purported to be based on the SLOCOG travel demand model. The TIS includes none of the information necessary to evaluate the use of the model; none of the inputs, assumptions, calculations or modeling files are provided. Please produce all documentation reflecting or setting forth the inputs to the SLOCOG travel demand model used to analyze the Project's VMT impacts, as described in the September 2022 Barrel Creek TIS. In addition, please produce any computation sheets supporting the traffic queueing analysis set forth in the TIS.

In addition, the CalEEMod materials attached to the MND with respect to the air quality and greenhouse gas analyses do not include complete output files, including files showing what changes were made to default values used in the modeling. Without those files, the MND's air modeling and analysis cannot be verified. We therefore request that the City produce the output files associated with the CalEEMod modeling used to estimate the Project's air emissions as described in the revised MND. This request includes, but is not limited to, all ".json" files.

Without access to these critical MND reference documents during the public comment period on the MND, CARE CA and other members of the public are precluded from having the meaningful opportunity to comment on the MND as required by CEQA. Without having access to these documents, CARE CA and other members of the public are unable to evaluate the accuracy of the City's impact analysis, or the City's conclusion that VMT and air quality impacts will be insignificant and not require mitigation.

We request *immediate access* to review the above documents pursuant to section 6253(a) of the Public Records Act, which requires public records to be "open to inspection at all times during the office hours of the state or local agency" and provides that "every person has a right to inspect any public record." Gov. Code §

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6253(a). Therefore, the 10-day response period applicable to a “request for a copy of records” under Section 6253(c) does not apply to this request.

The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the CEQA review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.<sup>2</sup> It is also well settled that an MND may not rely on hidden studies or documents that are not provided to the public.<sup>3</sup> By failing to make all documents referenced in the MND “readily available” during the current comment period, the City is violating the clear procedural mandates of CEQA, to the detriment of CURE CA and other members of the public who wish to meaningfully review and comment on the MND. Accordingly, we request that the City extend the public comment period for at least 20 days after the requested documents are produced.

Sincerely,



Richard M. Franco

RMF:acp

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<sup>2</sup> *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>3</sup> *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).