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February 22, 2023

Via Email and Overnight Mail

Phil Dunsmore, Community
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City of Atascadero
Kelly Gleason, Senior Planner
6500 Palma Avenue
Atascadero, CA 93422
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Re: Comments on Revised MND for Barrel Creek Planned Development Project (PNLN No. DEV21-0066; Environmental Document No. 2022-0005; SCH No. 2022120699)

Dear Mr. Dunsmore and Ms. Gleason:

We are writing on behalf of **Californians Allied for a Responsible Economy ("CARE CA")** with respect to the revised Initial Study/Mitigated Negative Declaration ("MND")¹ prepared 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 Project proposes to develop a mixed-use development at the intersection of Del Rio Road and San Ramon Road in the City of Atascadero ("City"), San Luis Obispo County, California. The Project includes a proposal for 48,000 square feet ("sf") of commercial/light industrial space, a 120-room hotel, 40 multi-family apartment units, 5,000 sf of restaurant or brewery space, 16 short-term stay cottages, and a 20-lot single family subdivision. The Project address is 6010, 6020, 6030 Del Rio Rd. and 1505, 1855 San Ramon Rd., Atascadero, CA 93422 on Assessor Parcel Numbers: 049-131-043, 044, 052, 058, and 066.

¹ As used herein, "MND" refers to the revised Initial Study/Mitigated Negative Declaration released by the City on or about February 3, 2023.

On February 3, 2023, the City released its revised MND. On February 7, 2023, CARE CA provided the City with its initial comments on the revised MND.² Those comments addressed numerous ways in which the MND fails to comply with the California Environmental Quality Act³ (“CEQA”), including the lack of a complete, accurate and stable Project description, failure to adequately analyze the Project’s potentially significant impacts with respect to air quality, energy, noise and transportation or to support the MND’s conclusions with substantial evidence, and failure to perform a proper cumulative impacts analysis. We also explained why the City may not make the necessary findings to support approval of the Project’s required entitlements.

CARE CA provides these additional comments following further review of the MND with its experts Matt Hagemann, P.G., C.Hg., and Paul Rosenfeld, PhD⁴ and Daniel Smith, P.E.⁵ In addition to the issues raised in our February 7, 2023 MND Comments, the SWAPE Comments explain how the MND fails to adequately evaluate the Project’s impacts, and provides substantial evidence supporting a fair argument that the Project’s construction and operational emissions of toxic air contaminants (“TACs”) will cause significant risks of cancer to nearby residents. The Smith Comments further explain why the MND’s transportation impacts analysis lacks substantial evidence supporting its conclusions. For these reasons, and the reasons set forth in the February 7, 2023 MND Comments, the MND does not comply with CEQA and the City is required to prepare a legally adequate EIR for the Project.

I. STATEMENT OF INTEREST

CARE CA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes Atascadero residents Lucas Falkenstern and Matt Macias and

² See February 7, 2023 letter from Richard M. Franco to City of Atascadero Planning Commission re Agenda Item #3-Barrel Creek Planned Development Project (the “February 7, 2023 MND Comments”). These comments are incorporated herein by reference.

³ Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. (“C.C.R.”) §§ 15000 et seq. (“CEQA Guidelines”).

⁴ Mr. Hagemann’s and Dr. Rosenfeld’s comments are set forth in the February 20, 2023 letter from SWAPE to Richard M. Franco re Comments on the Barrel Creek Planned Development Project (“SWAPE comments”), attached hereto as **Exhibit A**.

⁵ Mr. Smith’s comments are set forth in the February 21, 2023 letter from Daniel T. Smith to Richard M. Franco re (“Barrel Creek Planned Development IS/MND”) Smith Comments”), attached hereto as **Exhibit B**.

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Paso Robles resident Frank Ortega, and other individuals who live and work in Atascadero and the surrounding area.

CARE CA advocates for protecting the environment and the health of their communities' workforces. CARE CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits, and which minimize adverse environmental and other impacts on local communities. CARE CA members live, work, recreate, and raise their families in the City of Atascadero 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, CARE CA 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 MND IS INADEQUATE AS A CEQA DOCUMENT AND AN EIR IS REQUIRED

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.⁶ "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government."⁷ The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."⁸

CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.⁹ CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard. Under that standard, a lead agency "shall" prepare

⁶ See Pub. Resources Code § 21000; CEQA Guidelines § 15002.

⁷ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citations omitted).

⁸ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁹ See Pub. Resources Code § 21100.

an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.¹⁰

In contrast, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

(1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur*, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may* have a significant effect on the environment.¹¹

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”¹² The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.¹³ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.¹⁴

“Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions

¹⁰ Pub. Resources Code §§ 21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

¹¹ Pub. Resources Code § 21064.5 (emphasis added).

¹² See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

¹³ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

¹⁴ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

might also be reached.”¹⁵ According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064, subdivision (f):

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The City failed to adequately investigate, analyze, disclose and mitigate the Project’s potentially significant impacts. Therefore, the City’s conclusions that the Project will have less than significant impacts are unsupported by substantial evidence and an EIR is required.

III. THE MND FAILS TO ADEQUATELY ANALYZE OR MITIGATE THE PROJECT’S POTENTIALLY SIGNIFICANT HEALTH RISKS

A lead agency’s significance determinations must be supported by accurate scientific and factual data.¹⁶ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.¹⁷ A key purpose of the initial study is to provide documentation of the factual basis for the MND’s finding that the Project will not have a significant impact on the environment.¹⁸ Indeed, it is an abuse of discretion under CEQA where an agency’s decision is not supported by the findings, or the findings are not supported by the evidence.¹⁹ CEQA requires that the initial study disclose data or evidence upon which the study relies. “Mere conclusions simply provide no vehicle for judicial review.”²⁰

These standards apply to lead agencies’ evaluations of public health impacts of a project under CEQA. In *Sierra Club v. County of Fresno*, the California Supreme Court affirmed CEQA’s mandate to protect public health and safety by holding that an EIR fails as an informational document when it fails to disclose the

¹⁵ CEQA Guidelines § 15384(a).

¹⁶ 14 C.C.R. § 15064(b).

¹⁷ *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

¹⁸ *Citizens Ass’n for Sensible Development v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

¹⁹ *Id.*; Code of Civil Procedure § 1094.5(b).

²⁰ *Citizens Ass’n*, *supra*, 172 Cal.App.3d at 171.

public health impacts from air pollutants that would be generated by a development project.²¹ In *Sierra Club*, the Supreme Court held that the EIR for the Friant Ranch Project—a 942-acre master-planned, mixed-use development with 2,500 senior residential units, 250,000 square feet of commercial space, and open space on former agricultural land in north central Fresno County—was deficient as a matter of law in its informational discussion of air quality impacts as they relate to adverse human health effects.²² As the Court explained, “a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact.”²³ The Court concluded that the County’s EIR was inadequate for failing to disclose the nature and extent of public health impacts caused by the project’s air pollution. As the Court explained, the EIR failed to comply with CEQA because after reading the EIR, “the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”²⁴ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.²⁵

Furthermore, in *Berkeley Jets*, the Court of Appeal held that a CEQA document must analyze the impacts from human exposure to toxic substances.²⁶ In that case, the Port of Oakland approved a development plan for the Oakland International Airport.²⁷ The EIR admitted that the Project would result in an increase in the release of toxic air contaminants (“TACs”) and adopted mitigation measures to reduce TAC emissions, but failed to quantify the severity of the Project’s impacts on human health.²⁸ The Court held that mitigation alone was insufficient, and that the Port had a duty to analyze the health risks associated with exposure to TACs.²⁹ As the CEQA Guidelines explain, “[t]he EIR serves not

²¹ *Sierra Club*, 6 Cal.5th at 518–522.

²² *Id.* at 507–508, 518–522.

²³ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

²⁴ *Id.* at 518. CEQA’s statutory scheme and legislative intent also include an express mandate that agencies analyze human health impacts and determine whether the “**environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly**.” (Public Resources Code § 21083(b)(3) (emphasis added).) Moreover, CEQA directs agencies to “take immediate steps to identify any critical thresholds for the **health and safety of the people** of the state and take all coordinated actions necessary to prevent such thresholds being reached.” (Public Resources Code § 21000(d) (emphasis added).)

²⁵ *Sierra Club*, 6 Cal.5th at 518–522.

²⁶ *Berkeley Jets*, 91 Cal.App.4th at 1369–1371.

²⁷ *Id.* at 1349–1350.

²⁸ *Id.* at 1364–1371.

²⁹ *Id.*

only to protect the environment but also to demonstrate to the public that it is being protected.”³⁰

Here, the City used the initial study checklist authorized by the CEQA Guidelines in preparing its findings for the MND.³¹ Among the City’s findings are that the Project will not expose sensitive receptors to substantial pollutant concentrations. Impact findings like this one must be explained to show that there is some evidence supporting the findings.³² However, the City ignores the California Supreme Court’s mandate to evaluate the nature and magnitude of air pollution impacts on public health, as well as guidance from state and local public health agencies to do the same. The MND fails to evaluate potentially significant impacts to nearby sensitive receptors. Indeed, it fails to even identify the nearest sensitive receptors, a crucial omission given that the Project site is currently zoned for residential use and the site is surrounded on three sides by single family residences. The MND contains no discussion, let alone a specific finding, as to the Project’s impacts on neighboring sensitive receptors. There is no disclosure or analysis of TACs that will be emitted during Project construction and operations or the impact on nearby sensitive receptors.

As detailed in the SWAPE Comments, the Project will produce diesel particulate matter (“DPM”), a TAC, from construction equipment over a period of at least five years.³³ Project operations are expected to generate 2,751 daily vehicle trips, which would produce additional exhaust emissions and continue to expose nearby sensitive receptors to emissions including DPM.³⁴ The MND, though, contains no evaluation of Project-generated emissions of TACs or their potential adverse impacts on human health.

The SWAPE Comments cite the Office of Environmental Health Hazard Assessment’s (“OEHHA”) guidance for conducting health risk assessments in California, which recommends that all short-term projects lasting at least 2 months assess cancer risk- to nearby sensitive receptors.³⁵ Furthermore, OEHHA recommends that exposures from projects lasting more than six months should be evaluated for the duration of the project.³⁶ The Project’s anticipated construction schedule exceeds both of these thresholds, warranting preparation of a quantified health risk analysis (“HRA”) for the entire construction period. The Project’s

³⁰ 14 C.C.R. § 15003(b).

³¹ 14 C.C.R. § 15063(d) and (f), and Appendix G.

³² 14 C.C.R. § 15063(d)(3).

³³ SWAPE Comments, pg. 1.

³⁴ *Id.*, pg. 2.

³⁵ *Id.*

³⁶ *Id.*

operational phase will likewise exceed these thresholds, and should be evaluated for the entire 30-year residential exposure duration as indicated by OEHHA's guidelines.

In addition, the San Luis Obispo County Air Pollution Control District ("SLOAPCD") recognizes that diesel particulate matter from construction equipment is a TAC.³⁷ "Depending on the construction site location and proximity to sensitive receptors, a project that generates high levels of construction emissions, including diesel PM, may be required to perform a health risk assessment to evaluate short-term exposures to high pollutant concentrations and, if necessary, to implement mitigations measures."³⁸ The APCD further recognizes that proximity of sensitive receptors, including residential dwelling units, to a construction site constitutes a special condition and may require a more comprehensive evaluation of diesel particulate matter ("DPM") impacts.³⁹ "Sensitive receptor locations for a project need to be identified during the CEQA review process and mitigation to minimize toxic diesel PM impacts need to be defined. The types of construction projects that typically require a more comprehensive evaluation include large-scale, long-term projects that occur within 1,000 feet of a sensitive receptor location(s)."⁴⁰ This Project will involve construction over 5-8 years, and there are numerous single-family residences well within 1,000 feet of the Project boundaries. Despite the fact that it cites and incorporates the APCD Handbook by reference, the City ignores the requirement to identify sensitive receptors, to perform a "more comprehensive" health risk analysis, or to define mitigation to minimize toxic DPM impacts.

SWAPE performed a preliminary HRA of the Project's construction and operational health risk impacts to existing residential sensitive receptors using the annual PM₁₀ exhaust estimate from the MND's CalEEMod output files.⁴¹ This analysis calculated the excess cancer risk to the maximally exposed individual resident near the Project site, using applicable HRA methodology prescribed by OEHHA, as recommended by SLOAPCD.⁴² SWAPE found that the excess cancer risk over the course of a residential lifetime (30 years) is approximately 58.1 in one million, exceeding the SLOAPCD threshold of 10 in one million and representing a

³⁷ San Luis Obispo Air Pollution Control District CEQA Air Quality Handbook, pg. 2-1, available at https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/CEQA_Handbook_2012_v2%20%28Updated%20MemoTable1-1_July2021%29_LinkedwithMemo.pdf, last accessed on February 7, 2023.

³⁸ *Id.*

³⁹ *Id.*, pg. 2-3.

⁴⁰ *Id.*

⁴¹ SWAPE Comments, pgs. 4-8.

⁴² *Id.*, pg. 5.

potentially significant impact not disclosed or analyzed in the MND.⁴³ This screening level analysis warrants an EIR with a full health risk analysis that properly evaluates health risk impacts associated with Project construction and operation. If this analysis confirms that the Project would result in significant health risks, all feasible mitigation measures should be adopted to reduce the risk to less than significant levels. SWAPE's comments identifies numerous feasible mitigation measures that are available to reduce emissions.⁴⁴ While the MND includes some mitigation measures mainly targeted at reducing dust from construction, it fails to adopt many of the feasible measures recommended by SWAPE to reduce emissions of TACs.

The City therefore must prepare an EIR that properly discloses and analyzes the Project's potentially significant air quality impacts, identifies the nearest sensitive receptors, includes a health risk analysis that fully analyzes potentially significant impacts of the Project's construction and operations on these receptors, and adopts appropriate and feasible mitigation measures.

IV. THE MND FAILS TO PROVIDE SUBSTANTIAL EVIDENCE SUPPORTING ITS TRANSPORTATION IMPACTS ANALYSIS

A. Vehicle Miles Traveled

The MND concludes that the Project will have a less than significant impact on vehicle miles traveled ("VMT"). The MND's impact analysis is based on a Traffic Impact Study ("TIS"), which contains a brief VMT analysis but fails to provide substantial evidence in support of the City's VMT conclusions.

The CEQA Guidelines are explicit regarding the requirements for a CEQA document's analysis of transportation impacts.⁴⁵ While a lead agency has discretion to choose the most appropriate methodology to evaluate a Project's VMT and may use models to estimate VMT, "[a]ny assumptions used to estimate vehicle miles traveled and any revisions to model outputs should be documented and explained in the environmental document prepared for the project."⁴⁶ This Guideline specifically incorporates the standards set forth in Guidelines section 15151, i.e., the environmental document must contain a sufficient degree of analysis to provide decision makers with information that enables them to make a decision which

⁴³ *Id.*

⁴⁴ *Id.*, pgs. 8-11.

⁴⁵ 14 CCR §15064.3.

⁴⁶ 14 CCR §15064.3(b)(4).

intelligently takes account of the Project's environmental impacts.⁴⁷ As detailed below, the MND for this Project utterly fails to comply with these standards and is therefore invalid as an informational document under CEQA.

We previously pointed out the inherent and unexplained contradictions in the TIS' conclusions: "[t]he project is expected to increase overall regional VMT slightly and reduce residential, office, and retail VMT."⁴⁸ We also explained how the City's failure to provide any of the inputs to San Luis Obispo Council of Governments ("SLOCOG") travel demand model preclude the public and decision makers from assessing the accuracy of the MND's VMT analysis.⁴⁹

Mr. Smith's comments further describe the unexplained and unsupported contradictions in the VMT analysis. For example, the TIS' VMT modeling results are summarized in Table 8, which reveals that the Project would *increase* overall regional VMT by 669 miles over a Year 2020 regional baseline, yet the residential, employment-generating and retail components of the Project would *respectively decrease* regional totals by 3,397, 562 and 646 miles (4,605 total).⁵⁰ Mr. Smith poses the critical question: "what else is there in the Project that would offset this net VMT decrease of 4605 plus adding another 669 miles VMT?"⁵¹ Because none of the inputs to the SLOCOG model are provided, this outcome remains "contradictory and incomprehensible."⁵²

Additionally, Mr. Smith points out that Table 13 of the TIS purports to show that the Project would have a VMT per capita resident of 11.13 miles and VMT per employee of 3.12 miles. The VMT per capita resident for the Project is supposedly only 61.3 percent of the regional average for Year 2020 and only 22.9 percent of the regional VMT per employee.⁵³ According to Mr. Smith, these VMT levels impliedly assume an "extraordinary level of Project trip internalization and short trip making that is unreflective of the rest of the County."⁵⁴ Without access to the Project's inputs to the SLOCOG model, there is no way of knowing whether or not the VMT analysis reasonably and accurately represents the Project's VMT impacts, and the MND's conclusions remain unsupported.

⁴⁷ 14 CCR §15151.

⁴⁸ September 2022 Barrel Creek Transportation Impact Study, pg. 28.

⁴⁹ See February 7, 2023 MND Comments, pg. 14.

⁵⁰ Smith Comments, pgs. 1-2.

⁵¹ *Id.*, pg. 2.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

Compounding its failure to document and explain the assumptions used in its VMT analysis, the City refused to provide the relevant traffic demand model inputs despite several requests for this information. On January 11, 2022, we requested that the City provide immediate access pursuant to CEQA to “any and all documents referenced, incorporated by reference, and relied upon” in the Project’s MND.⁵⁵ While the City produced some responsive documents, it did not produce any documents related to the VMT analysis or the SLOCOG travel demand model. On February 13, 2023, following release of the revised MND, we sent a follow-up letter to the City specifically requesting “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.”⁵⁶ The City declined to produce the requested information, stating “[w]e do not control SLOCOGS data sets, rather, traffic engineers work with SLOCOG to build their model into their analysis tools.”⁵⁷ The City provided a weblink to the SLOCOG’s modeling homepage, which provides no information specific to this Project. As the lead agency, however, the City is responsible for ensuring that the MND’s conclusions are supported by substantial evidence, and is prohibited from relying on hidden studies or documents that are not provided to the public.⁵⁸

The City’s refusal to provide the requested modeling data not only violates CEQA by failing to document and explain the assumptions used in its VMT analysis, it deprives the public and the ultimate decision maker (the Atascadero City Council) of the information necessary “to make a decision which intelligently takes account of the Project’s environmental impacts.”⁵⁹ The MND lacks

⁵⁵ **Exhibit C**- January 11, 2023 letter from Sheila M. Sannadan to City of Atascadero re Request for Immediate Access to Documents Referenced in the Initial Study/Mitigated Negative Declaration-Barrel Creek Planned Development Project.

⁵⁶ **Exhibit D**- February 13, 2023 letter from Richard M. Franco to City of Atascadero re Further Request for Immediate Access to Public Records Relating to Barrel Creek Planned Development Project.

⁵⁷ **Exhibit E**-February 15, 2023 email correspondence from Kelly Gleason, Senior Planner, to Richard M. Franco.

⁵⁸ *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal. App. 4th 173, 194 (CEQA does not allow delegation of responsibility to assess environmental impacts to another party subject to approval of staff without the underlying information; CEQA document must reflect independent judgment of lead agency), citing *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307; *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“Whatever is required to be considered in an [CEQA document] 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.”).

⁵⁹ 14 CCR §§ 15064.3 and 15151; *Cal. Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal. App. 4th 957, 986-87 (omission of information necessary for informed discussion of impacts constitutes

substantial evidence supporting its conclusions with respect to VMT, and the City and must prepare an EIR that analyzes these impacts and supports its conclusions with substantial evidence so that the public and decision makers may properly evaluate the Project's transportation impacts.

B. Traffic Queueing Analysis

The MND includes a Level of Service ("LOS") analysis with respect to the Project's traffic impacts that suffers from the same defects as the VMT analysis: it lacks supporting substantial evidence that would allow the public and decisionmakers to evaluate the Project's impacts.

As Mr. Smith explains, the TIS identifies some LOS conditions that would exceed the City's General Plan policy levels when traffic from already-approved projects and this Project are added to existing conditions.⁶⁰ The TIS also identifies some hazardous conditions where queues would exceed available storage. Specifically, when Project traffic is added to forecast Year 2035 traffic levels, unsatisfactory LOS is expected to occur at more locations and queue exceedances of available storage are forecast to occur at more locations and with more severity.⁶¹ The MND includes some mitigation measures for these conditions, but provides no calculations or any other evidence that demonstrate the proposed mitigation measures will successfully and sufficiently mitigate these potentially hazardous traffic conditions such to comply with the General Plan.⁶²

Because the MND lacks substantial evidence supporting its conclusion that mitigation measures will reduce traffic impacts to less than significant levels, it does not comply with CEQA.⁶³

V. CONCLUSION

CEQA requires that an EIR be prepared if there is substantial evidence demonstrating that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment.⁶⁴ As discussed herein and in our

failure to proceed in manner required by law where it precludes informed decision-making by agency or informed participation by public).

⁶⁰ Smith Comments, pg. 2.

⁶¹ *Id.*

⁶² As mentioned above, we specifically requested that the City produce "any computation sheets supporting the traffic queueing analysis set forth in the TIS." See Exhibit D. The City has not produced any such documents.

⁶³ 14 CCR §15070(b).

⁶⁴ Pub. Res. Code § 21151; 14 CCR §15063(b)(1).

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February 7, 2023 MND Comments, there is substantial evidence supporting a fair argument that the Project would result in significant adverse impacts that were not identified in the MND, and that are not adequately analyzed or mitigated. The MND also fails to contain the basic information and analysis required by CEQA, deficiencies which “cannot be dismissed as harmless or insignificant defects.”⁶⁵ The City cannot approve the Project until it prepares an EIR that resolves these issues and complies with CEQA.

Sincerely,

A handwritten signature in blue ink, appearing to read 'R. Franco', is written over a light blue horizontal line.

Richard M. Franco

Attachments
RMF:acp

⁶⁵ *Bakersfield Citizens for Local Control v. Bakersfield* (“Bakersfield”) (2004) 124 Cal. App. 4th 1184, 1220.