



AGENDA ITEM NO: 3

CITY of CLOVIS

MEMO TO THE PLANNING COMMISSION

TO: Clovis Planning Commission

FROM: Planning and Development Services

DATE: November 16, 2023

SUBJECT: Consider items associated with approximately 77 acres of land located at the northeast corner of Shepherd and N. Sunnyside Avenues. Great Bigland, LP., owner/ applicant; Harbour and Associates, representative.

- a) Consider Approval, Res. 23-___, A resolution of the City of Clovis Planning Commission recommending that the City Council: (1) Certify the Final Project Environmental Impact Report for the Shepherd North Project; (2) Adopt CEQA Findings of Fact and a Statement of Overriding Consideration; and (3) Adopt a Mitigation Monitoring and Reporting Program.
- b) Consider Approval, Res. 23-___, GPA2021-006, A resolution recommending that the City Council approve a request to amend the circulation element of the General Plan to allow for the placement of a Shepherd Avenue access point on the north side of Shepherd Avenue, between N. Sunnyside and N. Fowler Avenues.
- c) Consider Approval, Res. 23-___, GPA2021-005, A resolution recommending that the City Council approve a request to amend the land use element of the General Plan for the Development Area (approximately 77 acres) from the Rural Residential land use designation to the Medium-High Density Residential land use designation.
- d) Consider Approval, Res. 23-___, R2021-009, A resolution recommending that the City Council approve a request to prezone property within the Development Area (approximately 77 acres) of the Project site from the Fresno County AL20 Zone District to the Clovis R-1-PRD Zone District.
- e) Consider Approval, Res. 23-___, TM6205, A request to approve a vesting tentative tract map for a 605-lot single-family planned

residential development subject to the City Council's approval of the annexation and sphere of influence expansion.

- f) Consider Approval, Res. 23-__, PDP2021-004, A resolution recommending that the City Council approve a request to approve a planned development permit for a 605-lot single-family residential development.

ATTACHMENTS:

- 1. Comment Letter – DiBuduo
- 2. Comment Letter – Wilson Homes
- 3. Comment Letter – Quail Run Community
- 4. Comment Letter – Remy Moose Manley
- 5. Comment Letter – Dean & Valerie Uhrig
- 6. Comment Letter – Lewis S. Smith
- 7. Comment Letter – Patrick Quigley
- 8. Comment Letter – Fresno Irrigation District
- 9. Comment Letter – Jared Callister

ADDITIONAL COMMENTS

Planning staff has received additional comment letters for the proposed Shepherd North Project being considered by the Planning Commission this evening. Nine comment letters are attached for the Commission's review and consideration. It's important to note that these letters are considered "late" comments pursuant to CMC 9.96.010.

September 16, 2023

Planning Commission
City of Clovis
1033 Fifth Street
Clovis, CA 93612

Re: Items associated with approximately 77 acres of land located at the northeast corner of Shepherd and N. Sunnyside Avenues

Dear Commissioners,

We are residents of Cole Ave. which is 1000 feet south of the proposed project and in an area known as the Dry Creek Preserve.

The Dry Creek Preserve is an important and sensitive location which will, in the future, be the connection between upscale North Clovis and historic Downtown Clovis. The City should be respectful to the impact City growth has on this area – an area which will, in all likelihood, be one of the only areas within the reach of the city that maintains a rural, agriculture lifestyle that many (erroneously believe) reflects the “Clovis Way of Life”. However, as discussed herein, the City has not sufficiently analyzed water, traffic, and annexation impacts of the project on the Dry Creek Preserve.

For the reasons stated herein, we are opposed to each of the following items set to be voted on during the November 16, 2023 meeting, each of which should fail to be adopted:

- Res. 23-__, A resolution of the City of Clovis Planning Commission recommending that the City Council: (1) Certify the Final Project Environmental Impact Report for the Shepherd North Project; (2) Adopt CEQA Findings of Fact and a Statement of Overriding Consideration; and (3) Adopt a Mitigation Monitoring and Reporting Program.
- Res. 23-__, GPA2021-006, A resolution recommending that the City Council approve a request to amend the circulation element of the General Plan to allow for the placement of a Shepherd Avenue access point on the north side of Shepherd Avenue, between N. Sunnyside and N. Fowler Avenues.
- Res. 23-__, GPA2021-005, A resolution recommending that the City Council approve a request to amend the land use element of the General Plan for the Development Area (approximately 77 acres) from the Rural Residential land use designation to the Medium-High Density Residential land use designation.
- Res. 23-__, R2021-009, A resolution recommending that the City Council approve a request to prezone property within the Development Area (approximately 77 acres) of the Project site from the Fresno County AL20 Zone District to the Clovis R-1-PRD Zone District.
- Res. 23-__, TM6205, A request to approve a vesting tentative tract map for a 605-lot single-family planned residential development subject to the City Council’s approval of the annexation and sphere of influence expansion.

- Res. 23-___, PDP2021-004, A resolution recommending that the City Council approve a request to approve a planned development permit for a 605-lot single-family residential development.

Our opposition is based on our review of the following documents attached to Agenda Item 3 for the November 16, 2023 Meeting Packet: 1. Draft Resolution CEQA; 2. Draft Resolution GPA2021-006; 3. Draft Resolution GPA2021-005; 4. Draft Resolution R2021-009; 5. Draft Resolution TM6205; 6. Draft Resolution PDP2021-004; 7. Applicant’s Justification for GPA2021-005 & GPA2021-006; 8. Applicant’s Development Standards – Citrea; 9. Applicant’s Development Standards – Elev8ions; 10. Applicant’s Development Standards – Regent Park; 11. Floor & Elevation Plans – Citrea; 12. Floor & Elevation Plans – Elev8ions; 13. Floor & Elevation Plans – Regent Park; 14. Open Space & Park Exhibit; 15. Draft Project EIR – Volume I; 16. Draft Project EIR – Volume II; 17. Final EIR, including Comment Letters, Responses to Comment; Letters and Text Revisions to the Draft EIR; 18. Correspondence from Commenting Agencies; and 19. Findings in Support of Project Applications

Water

A Kenneth D. Schmidt and Associates’ report from September 2023 entitled “Groundwater Conditions in the Vicinity of Proposed Tract 6205” addresses third party comments submitted during the review process, and importantly, disruption of recharge from rainfall.

The Schmidt Report states that there is south westerly flow of groundwater at the project site and that “[o]nly the north half of the project would appear to influence the groundwater in the rural residential area to the northwest.” The report however does not address the impact of the proposed development (including not only loss of storm water but loss of recharge from pecan tree irrigation) on the rural residential areas to the east or south of the proposed project.

Harbour and Associates (2023) have estimated the project average storm water runoff to be about 40 acre-feet per year. The storm water from the proposed development is anticipated to be sent to a flood control basin about a mile north of the project site. However, nothing in the Final EIR or the Schmidt Report address whether 40 acre-feet of annual recharge at a basin site a mile north of the proposed project site would contribute positively to groundwater levels in the rural residential areas surrounding the project site (including north, south, and east of the project site) sufficient to offset the loss of recharge from rainfall.

An Indoor Residential Water Use Study, authored by the California Department of Water Resources, reports that the current statewide median indoor residential water use is 48 gallons per capita per day (or about 17,500 gallons per capita per year). 40 acre-feet of water is equivalent to about 13,000,000 gallons of water – enough for about 750 individuals per year. This is a significant amount of water.

It is estimated that there are 500 rural residential properties within a mile of the proposed development. Nearly half of these residences are in the Dry Creek Preserve, the unincorporated area to the south of the proposed project. Half of the Dry Creek Preserve is southwest of the proposed project – the same direction with the Schmidt Report stated the groundwater flows.

Because the impact to groundwater irrigation and the proposed mediation has not adequately addressed the Dry Creek Preserve, the Final EIR is deficient and should not be accepted. For the same reasons, the project should not be approved.

Traffic

As the City is well aware, traffic on Sunnyside Ave. within the Dry Creek Preserve (“Rural Sunnyside Ave.”) is and will continue to become a significant issue as the City expands north of Shepherd. Rural Sunnyside Ave. is a two lane, double striped “no-passing” road that spans about one mile and is only about 24 feet wide. Within this one-mile stretch there are approximately 35 fronting residences and approximately 70 points of entry/exit onto Rural Sunnyside Ave. (including paved and unpaved driveways and access roads, transitions to arterial and adjacent streets).

Rural Sunnyside Ave. is a rural road in a rural environment. There are no streetlights. Several areas have mature trees or bushes which interfere with unobstructed line of sight. There is significant wildlife activity in the area which cross the road (Rural Sunnyside Ave. bisects the Dry Creek Preserve between the Dry Creek Canal and open space within the Dry Creek Preserve). Because there are no bike lanes or sidewalks cyclists and pedestrians share the roadway with the vehicles. Agricultural vehicles (including tractors, harvesting equipment, trailers, equine carriers, and the like) frequently utilize this road alongside “typical” roadway vehicles which may be passing through (including commuters, transport vehicles, construction vehicles, school busses, and waste disposal vehicles). All these factors and more require heightened awareness while driving this stretch... especially at night.

Waste collection vehicles, when collecting from the properties adjacent to Rural Sunnyside Ave., cannot pull off the roadway and instead stop in the lane (noting that stand alone and roll-off-type waste containers are placed just outside of the paved roadway to facilitate pickup). During their pickup from each residence along Rural Sunnyside Ave. the waste collection vehicles impede the flow of traffic while the waste containers are positioned, emptied, and re-positioned. Each stop, much less the cumulative impact of sequential stops along Rural Sunnyside Ave., causes a significant backup. This is especially true since the entire stretch of Rural Sunnyside Ave. is “no passing” – meaning all traffic is queued behind the waste collection vehicle while it completes the street pickup.

Similarly, school busses must stop in the roadway on Rural Sunnyside Ave. and impede the flow of traffic. Bus drivers may occasionally need to exit the bus to escort children across the roadway. In some cases, children are picked up at the bus stop by their parents who must also stop along the roadway. The alternative for those that are not picked up by their parents, is to undertake a dangerous walk along Rural Sunnyside Ave. It is especially dangerous due to the fact that there are no sidewalks, and in many places no dirt or gravel path, adjacent to Rural Sunnyside Ave.’s roadway.

There are numerous other examples of common conditions on Rural Sunnyside Ave. that make it uniquely more dangerous and deserving of attention. Long equine carries may need to reverse down portions of Rural Sunnyside Ave. as they back into their property. Oversized agricultural equipment may travel at a slow pace and significantly queue traffic that is unable to pass. During harvest time, agricultural vehicles, such as pecan shakers, sweepers, and harvesters, along with the harvesting crew, utilize Rural Sunnyside Ave. to move the slow oversized equipment from one orchard to another. Cyclists - that can only travel in roadway – either cause queued traffic behind them, or create a great risk of frustrated vehicles illegally overtaking them.

As shown above, Rural Sunnyside Ave. has unique traffic related concerns. This is unfortunate since it, along with Fowler Ave., is an important --- if not the most important --- route between the proposed project and any location in Clovis or Fresno that is south of Nees Ave. When Rural Sunnyside Ave. crosses

Nees Ave. it turns into the City's Sunnyside Ave. At this magical intersection Sunnyside Ave. transforms from a 24-foot wide, two lane, unlit road without a sidewalk to a 64-foot wide, four lane, lit road with a sidewalk. Unfortunately, however, neither the Draft EIR, the Final EIR, nor the traffic studies consider Rural Sunnyside Ave. to be anything other than a regular City road, though each admit the proposed project would significantly impact it.

The Final EIR addresses comments that were received regarding the Draft EIR. Master Response 7 (Traffic generation), Master Response 8 (Traffic Volume), Master Response 9 (Pedestrian and Cyclist Traffic), and Master Response 10 (Traffic calming/Improvements) states that the improvements identified in the traffic study --- sidewalks, curb and gutter along Sunnyside Avenue along the project frontage --- would help alleviate traffic congestion and safety issues within the project vicinity.

If these statements (or any other statement) is false, the Final EIR is untrustworthy. If these statements is true, then the Final EIR either (i) treats Sunnyside Ave. between Sheperd Ave. and Nees Ave. as not in the "vicinity" of the proposed project or (ii) fails to analyze the impact of the proposed project other than any particular impact which may be mitigated by the suggested improvements (i.e., it only finds impact to those matters which may be offset by signalization of Sunnyside/Shepherd and Sunnyside/Nees intersections. In any event, the presence of this statement underlies flaws in the Final EIR.

The responses further double down on the bizarre assertion that sidewalks north of Shepherd Ave. somehow mitigate impact south of Shepherd Ave. One of the comments to the Draft EIR was a letter from Norman D Morrison, dated September 4, 2023 and entitled "Comments in Opposition to/regarding Shepherd North Draft EIR E202310000202" ("Morrison Letter"). The Morrison Letter indicated deficiencies in adequately analyzing traffic impacts or identify mitigation measures on Sunnyside Avenue between Shepherd and Nees within the Dry Creek Preserve. Mr. Morrison is a resident on Rural Sunnyside Ave.

Rather than analyzing Mr. Morrison's comment along the situs of which it referred (i.e., Rural Sunnyside Ave.), Response R-4 again simply states "[t]he improvements proposed in the study would help address the traffic congestion issues.... within the project vicinity", and again touts the benefits of the improvements along the project frontage without identifying how such improvements would at all mitigate the impact on Rural Sunnyside Ave.

Whether these statements are false or at best misleading, they render the Final EIR unfit for acceptance. For the same reasons, the project should not be approved. The devil and deficiencies here are in the details: much like addressed above with respect to water, the Final EIR appears to not significantly address the impacts on traffic in the Dry Creek Preserve, and importantly, Rural Sunnyside Ave.

Sheperd Ave. Access Point

The project proposes an access point along Sheperd Ave. about 1000' east of the intersection of Sunnyside/Shepherd. Unlike the ill-advised access point to Heritage Grove permitted between the intersections of Sunnyside/Shepherd and Clovis/Shepherd, this stretch of Shepherd Ave. between the proposed access point and the intersection of Fowler/Shepherd is one lane in each direction. Rather than requiring the applicant to dedicate enough property to substantially convert Shepherd Ave. between Sunnyside Ave. and Fowler Ave. into four travel lanes (which would align with Shepherd Ave. east and west

of the project), the City apparently is committed to this stretch in a major arterial in North Clovis being a permanent pinch point. Because it will apparently remain a single lane from Fowler Ave. to Sunnyside Ave., any impediment to the flow of traffic appurtenant to the project along Shepherd Av. should be avoided. The City should not amend the circulation element of the General Plan to allow the Access Point as doing so would further congest an already congested stretch of Shepherd Ave.

Annexation

While the Draft EIR and Final EIR briefly address potential annexation issues to properties north of Shepherd Ave., it doesn't address a bigger concern for the City – annexation of properties in the Dry Creek Preserve south of Shepherd Ave.

Several people provided comments about annexation. Although it doesn't appear that any of these comments were directed to possible annexation of properties within the Dry Creek Preserve, it bears reminding that unconsented annexation of any property within the Dry Creek Preserve will significantly impact the proposed project and the City and its resources. The City should be reminded that most residents of the Dry Creek Preserve do and will object to annexation. Many of those which may choose to not formally object to annexation have executed annexation agreements which relieve them of many obligations and perceived benefits of being in the City.

Should the proposed project trigger annexation proceedings on property in the Dry Creek Preserve, the City and applicant should expect significant delays to final project approval.

The Final EIR should not be accepted since it fails to address the potential of the project to impact the potential for annexation in the "vicinity" anywhere south of the proposed project boundaries. For the same reasons, the project should not be approved. Should the City, however, accept the Final EIR, it should condition approval of the project on no property south of Shepherd Ave. being the subject of annexation proceedings.

Conclusion

The Final EIR is woefully deficient with respect to analyzing the impact of the proposed project and proposing mitigation measures therefor in the "vicinity" of the project: the impact to groundwater south of Shepherd; the impact to all traffic concerns on Sunnyside Ave. between Shepherd Ave. and Nees Ave.; and the potential for annexation of any property in the Dry Creek Preserve. As such, the Final EIR should not be accepted, and the project should not be approved. None of the resolutions should be passed.

Respectfully,

Marcus and Amy DiBuduo

City of Clovis Planning Commission

11-14-2023

Dear Planning Commissioners:

As you know, the Planning Commission is scheduled to consider this week Wilson Homes' proposed 605 unit project at the northeast corner of Shepherd & Sunnyside. It will consist of three proven products (Regent Park, Citrea & Elev8ions) which have each been successful workforce housing products that have proven to be attractively affordable for Clovis residents. Though the project will be designated at Medium-high density (7-15 units/acre), it will only build out at 7.77 units/acre. Importantly, the project will implement key principles of the Landscape of Choice report that the City Council has previously adopted as policy to seek modest increases in density (6-8 units/acre) and to not zone any more land for inefficient rural residential development. Further, we believe the proposed project implements a healthy balance between local concerns about increased densities and the increasing density mandates imposed on Clovis by the State.

Although some neighboring property owners have expressed concern about development of this property, we believe this project provides several very unique & important benefits for the City of Clovis:

1. Build 605 much needed workforce housing units to help reduce the City's significant & increasing housing deficit. This is especially needed now, since in the 1st quarter of this fiscal year the City only issued 94 building permits, which is only about ½ of the nearly 200 desired permits for that period.
2. Improve Shepherd Ave from a dangerous 2-lane curved County Road to 4-lane City standards to greatly improve traffic flow for residents throughout this area. As you know, street improvements generally only occur in conjunction with approved adjacent development.
3. Install the City's sewer force main between Sunnyside & Fowler, which is critical infrastructure to provide necessary sewer service in *Heritage Grove*.
4. Install the City's non-potable water main between Sunnyside & Fowler, which is necessary to serve *Heritage Grove*.
5. Construct a regional trail along Shepherd Ave, between Sunnyside & Fowler, to complete the final east-west missing link in the Clovis trail system.
6. Construct 24" water main along Sunnyside Ave, between Shepherd & Perrin.

Additionally, we proudly have introduced two new components in this project proposal that we believe have never before been proposed with projects in Clovis:

1. a universally accessible park; and
2. street access for (NEV) Neighborhood Electric Vehicles.

Both components seek to further open neighborhood accessibility for all citizens.

Because of the neighbor interest in the development of this property, there have previously been many meetings with neighbors and three previous public hearings with the City Council (timeline attached). Following a detailed presentation about the proposed project, the City Council voted unanimously at the March 2020 hearing, over neighbor opposition, to direct City Staff to move forward & contract with a consultant to prepare an Environmental Impact Report for this project. Actions presented this week for your review & recommendation will include: Expansion of the City Sphere of Influence, Certification of the EIR, General Plan Amendment, Pre-Zone, Vesting Tentative Map, and Annexation Proponency.

We respectfully request your approval of this important City of Clovis housing project.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leo & Todd Wilson". The signature is stylized and cursive, with a long horizontal line extending to the left.

Leo & Todd Wilson

Tract 6205 (N.E. corner, Sunnyside/Shepherd) Summary Timeline

4/2005 – Spensley option to purchase acquired by Leo Wilson for Battlin-Brooks, LP (Rich Wathen, Kevin Castanos, Leo Wilson) – option assumed solely by Leo in 2011

9/2011 – initial discussions w/City staff & Councilmembers re: N.E. corner of Shepherd/Sunnyside project

9/2014 – R. Wooley & H. Armstrong requested Leo Wilson delay request for Sphere change until after 2014, to not upset MOU discussion w/County. (12/2014 – 4th amendment to MOU approved by BOS adding 870 acres to Heritage Grove).

6/2016 – written Wilson request to City to amend SOI & facilitate proposed project at N.E. corner of Sunnyside/Shepherd

2016/2017 – discussions w/City & County & LAFCo staff re: SOI amendment for N.E. corner of Sunnyside/Shepherd

9/2017 – project DRC review

3/19/2018 – **City Council hearing** re: SOI amendment for N.E. corner of Sunnyside/Shepherd

4/2018 – joint City, County, LAFCo staff meeting re: SOI amendment for N.E. corner of Sunnyside/Shepherd

5/2018 – City Council hearing re: Lennar GPA/Rezone of N.W. corner of Sunnyside/Shepherd, including discussions of proposed SOI amendment re: N.E. corner of Sunnyside/Shepherd

9/10/2018 – **City Council hearing** re: N.E. corner of Sunnyside/Shepherd (formally directed staff discuss SOI amendment w/County & report back)

2/7/2019 – neighbor meeting hosted by city staff (in Council chambers)

5/1/2019 – neighbor meeting hosted by city staff

5/10/2019 – neighbor reps Wathen/Callister meeting w/developer

8/6/2019 – neighbor meeting w/developer

9/26/2019 – neighbor meeting w/developer (at Memorial Bldg)

10/17/2019 – neighbor meeting w/developer (at Memorial Bldg)

10/22/2019 – neighbor meeting w/developer (at Memorial Bldg)

11/7/2019 – neighbor meeting w/developer (in Broussard Office Conference Room)

12/10/2019 – neighbor rep Wathen meeting w/developer (Campagnia)

1/7/2020 – neighbor rep mtg w/developer (at Wilson office)

3/2020 – **City Council hearing** re: SOI amendment (directed staff to move forward & contract to prepare EIR)

11/2020 – neighbor meeting hosted by city staff

2021/2022/2023 – EIR preparation

5/25/2022 – Tract 6205 Scoping meeting and neighborhood Meeting

8/30/2023 – Pre-PC neighbor meeting w/developer & city staff (at Memorial Bldg)

November 13, 2023

City of Clovis Planning Commission

Clovis City Council

Re: Concerns and Position of The Quail Run 18 Association Regarding the Spensley Property Development—Shepherd North Project

Dear Members of the City of Clovis Planning Commission and City Council,

We, the undersigned, are residents of the Quail Run community and members of the Quail Run 18 Association (the "Association"), a community of homeowners deeply invested in the well-being and future of our neighborhood. We wish to express our position and concerns regarding the proposed development of the Spensley property (the "Project").

While the Association generally supports the proposed change in the Sphere of Influence boundary, it is imperative to convey our significant objections about the current development Project due to several critical factors:

1. **Density:** The proposed density of the Project raises concerns about its compatibility with the existing character and fabric of our neighborhood.
2. **Water:** Questions about water availability and sustainability in light of the new development need thorough examination.
3. **Noise, Traffic, and Light:** The increase in noise levels, traffic congestion, and light pollution due to the Project will detrimentally impact the quality of life for the residents.

As a result of these significant impacts, the Association is strongly opposed to the Project as currently proposed.

The Association has also deliberated on the possibility of annexation. While recognizing potential benefits, we have not formally requested annexation, primarily due to numerous unresolved queries. These include:

- Clarifications needed on the annexation process and associated fees.
- Detailed terms of the annexation agreement.
- Implications of increased property taxes.
- Other factors that might affect the Association's way of life.

While our community is vehemently opposed to the Project as it currently stands, we do acknowledge, however, that if some annexation of the Spensley property is to occur, then it may be prudent for the Association to also be annexed to avoid creation of an isolated county island.

It is essential to note that our stance on annexation is still under consideration, given the complexities and the need for comprehensive information to understand its full ramifications. Additionally, the rapid

development of events concerning this Project has left little time for a thorough and thoughtful analysis, which is necessary for a decision of this magnitude.

In light of these points, we urge the City of Clovis Planning Commission and City Council to consider our concerns and put the Project "on hold" until these concerns have been addressed. The Association is committed to a constructive dialogue and looks forward to working together towards a solution that respects the interests of our community and the broader objectives of the City of Clovis.

Thank you for your attention to these matters.

Sincerely,

DocuSigned by:
David Benjamin Jr
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Jonathan ...
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DocuSigned by:
Christian Diener
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Curtis Cookingham
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Kristi Diener
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Certificate Of Completion

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Certificate Pages: 5 Initials: 0
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Time Zone: (UTC-08:00) Pacific Time (US & Canada)

Status: Sent

Envelope Originator:
Laura Spurrier
7112 N Fresno St, Ste 450
7112 N Fresno St, Ste 450
Fresno, CA 93720
receptionist@flclaw.net
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Record Tracking

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receptionist@flclaw.net

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Signer Events

Christian Diener
chris@fivepointsranch.com
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Signature

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cindyreinke1588@comcast.net
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Electronic Record and Signature Disclosure:
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Curtis Cookingham
curtis.cookingham@sbcglobal.net
owner - thrive Physical Therapy
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david benjamin jr
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chris benjamin owner
Security Level: Email, Account Authentication (None)

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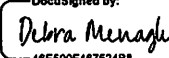
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Electronic Record and Signature Disclosure:
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Signer Events

Debra Menagh
dlmenagh@hotmail.com
Security Level: Email, Account Authentication
(None)

Signature

DocuSigned by:

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Signature Adoption: Pre-selected Style
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Timestamp

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Electronic Record and Signature Disclosure:
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Deidre Childers
dmcchilders51@gmail.com
Security Level: Email, Account Authentication
(None)

DocuSigned by:

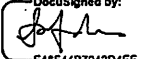
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Electronic Record and Signature Disclosure:
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Dr. Hedieh Arbabzadeh Goodwin
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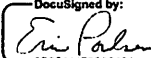
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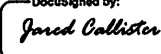
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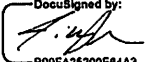
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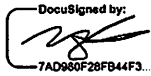
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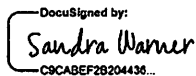
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November 16, 2023

VIA EMAIL and ELECTRONIC SUBMITTAL

City of Clovis
Planning Commission
Alma Antuna, Chair
Brandon Bedsted, Chair Pro Tem
Amy Hatcher, Commissioner
Joseph Hebert, Commissioner
Paul Hinkle, Commissioner

David Merchan, City Planner
1033 Fifth Street
Clovis, CA 93612
davidm@cityofclovis.com

Re: Agenda Item 3—Shepard North Project and items associated with approximately 77 acres of land located at the northeast corner of Shepherd and N. Sunnyside Avenues. Great Bigland, LP., owner/ applicant; Harbour and Associates, representative.

Dear Mr. Merchan, Honorable Chair Antuna, Chair Pro Tem Bedsted, Commissioner Hatcher, Commissioner Hebert, and Commissioner Hinkle:

This letter is submitted on behalf of our clients the Quail Run Community of 18 Homes and contains comments on the final Environmental Impact Report (EIR), which, as required by Guidelines¹ section 15132 and stated in the final EIR itself, includes the draft EIR prepared for the Shepard North Project (Project).

The EIR fails to comply with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA) because it is fundamentally flawed and fails as an informational document in multiple aspects, including the Project Description and the failure to adequately analyze the Project's impacts to aesthetics, including light and glare,

¹ The State CEQA Guidelines (Guidelines) are found in California Code of Regulations title 14, division 6, chapter 3, section 15000 et seq. and are binding on all public agencies in California.

agricultural resources, air quality and associated human health effects, noise, energy, groundwater, transportation, public utilities, including water supply, and cumulative impacts. Additionally, the EIR is internally inconsistent between several environmental impact analysis chapters, as well as the technical appendices.

Fundamentally, the EIR fails to analyze the magnitude of the Project's alteration of the physical environment, including impacts of the massive change in the intensity of use on existing, low-density neighborhoods immediately adjacent to the Project. The EIR also improperly treats the Project, which requires the conversion of 77 acres of agricultural land in the unincorporated county into 605 residential units—which is textbook “greenfield” development—as if it were an infill project in an already urbanized area in the City. Contrary to the conclusory and unsupported statements in the EIR, however, the proposed Project is vastly different from the existing, surrounding land uses (which, as the EIR admits, includes agricultural land and low-density rural residential). The EIR must analyze all potentially significant impacts of the Project on the environment, including the non-development areas, resulting from the drastic changes in intensity of use proposed by the Project. For example and as explained more fully herein, the EIR's Project Description acknowledges the existence and uniqueness of the Quail Run and Fowler neighborhoods (identified as Expansion Subarea North, and Expansion Subarea East, respectively), but the impact analysis chapters largely ignore these neighborhoods in discussing the environmental setting and baseline, resulting in deficient analyses that fail to adequately consider impacts to these components of the existing environment.

To remedy the defects in the EIR, the City of Clovis (City) must undertake additional analyses of the Project's environmental effects including, potentially, analysis and recommendation of mitigation measures for significant impacts, which will require adding significant new information to the EIR and trigger the need to recirculate the draft EIR for an additional round of public review and comments. Accordingly, the Planning Commission should direct City staff to revise and recirculate the EIR.

Lastly, the Planning Commission cannot lawfully approve the vesting tentative tract map without first complying with CEQA. As proposed in the City's agenda and agenda packet, staff recommend that the Planning Commission approve vesting tentative tract map TM6205 for the Project without first certifying the EIR. This is a clear violation of CEQA, which states “with private projects, approval occurs upon the earliest commitment to issue or the issuance by the public agency of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project.” (Guidelines, § 15352, subd. (b).) Here, the Planning Commission is proposing to commit the City to the Project, by granting the developer a vested right to develop the Project (see Gov. Code, § 66498.1, subd. (b)) without first complying with CEQA. As the California Supreme Court has explained “CEQA itself requires environmental review before a project's approval, not necessarily its *final* approval.” (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134, original italics.) The Planning Commission must defer approval of the VTTM

until after the EIR is certified. Moreover, as explained below, the EIR must be significantly revised and recirculated before it can be certified.

I. CEQA's General Requirements for EIRs.

“The foremost principle under CEQA is that the Legislature intended the act ‘to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’” (*Laurel Heights Improvement Assn. v. Regents of University of Cal.* (1988) 47 Cal.3d 376, 390 (*Laurel Heights I*)). “With narrow exceptions, CEQA requires an EIR whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment. [Citations.]” (*Id.* at pp. 390-391; see Guidelines, § 15002, subd. (f).) The basic purpose of an EIR is to “provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” (Pub. Resources Code, § 21061; see Guidelines, § 15003, subds. (b)-(e).) “Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees.” (*Laurel Heights I*, at p. 392.) The EIR “protects not only the environment but also informed self-government.” (*Ibid.*)

“CEQA serves ‘to ensure that public agencies will consider the environmental consequences of discretionary projects they propose to carry out or approve.’” (*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 689 (*WATER 2*)). “An EIR, as courts have often said, is ‘the heart of CEQA.’” [Citation.] It serves to ‘(1) inform the government and public about a proposed activity’s potential environmental impacts; (2) identify ways to reduce, or avoid, those impacts; (3) require project changes through alternatives or mitigation measures when feasible; and (4) disclose the government’s rationale for approving a project.’ [Citation.] To fulfill these purposes, an ‘EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” (*Id.* at p. 690.)

“‘Under CEQA, an agency must determine what, if any, effect on the environment a proposed project may have.’ [Citation.] To that end, the EIR ‘must identify and discuss ‘all significant effects on the environment’ of a proposed project.’ [Citations.] The term ‘[s]ignificant effect on the environment’ is defined as ‘a substantial, or potentially substantial, adverse change in the environment.’ [Citations.] Because a particular environmental effect can only be identified as significant after careful consideration, an EIR is required to discuss and analyze a possible impact of the project if there is a fair argument that it constitutes a significant effect on the environment.” (*Yerba Buena Neighborhood Consortium, LLC v. Regents of University of California* (2023) 95 Cal.App.5th 779 [313 Cal.Rptr.3d 701, 719].) “‘An agency must find a ‘fair argument’ if

there is any substantial evidence to support that conclusion, even if there is competing substantial evidence in the record that the project will not have a significant environmental effect.’ [Citation.] And we review the agency decision ‘de novo, with a preference for resolving doubts in favor of environmental review.’” (*Id.*)

II. The FEIR fails as an informational document because the Project Objectives are impermissibly narrow and foreclose consideration of feasible alternatives.

The Project Description in an EIR “must contain a statement of the project objectives. A lead agency must then use this statement to help it, among other things, develop a reasonable range of alternatives to the proposed project to evaluate in the EIR.” (*WATER 2, supra*, 78 Cal.App.5th at p. 691, citing Guidelines, § 15124.) “The process of selecting the alternatives to be included in the EIR begins with the establishment of project objectives by the lead agency. ‘A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings.’” (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1163.)

Here, the draft and final EIR contain the same Project Description, including the same Project Objectives. As stated in the final EIR:

The principal Project objective is the expansion of the City’s SOI to include the Project site, and the annexation/reorganization, approval and subsequent development of the Development Area.

The quantifiable objectives include the development of up to 605 single-family residential units. The quantifiable objectives include the development of open space totaling approximately 5.54 acres, including 2.25 acres of trails, 2.39 acres of promenade/pedestrian circulation, and 0.90 acres of parks. The Project objectives also include the installation of new public and private roadways that will provide pedestrian and vehicular access to the Project site and surrounding community areas, and other improvements, including water supply, storm drainage, sewer facilities and landscaping to serve the residential uses. (Final EIR, p. ES-2.)

Additionally, the EIR includes a list of “goals of the proposed development.”

- Provide residential housing opportunities that are visually attractive and accommodate the future housing demand in Clovis, consistent with policies stated in *A Landscape of Choice to modestly increase urban density*.

- Establish a mixture of housing types, sizes and densities that collectively provide for local and regional housing demand, consistent with City requirements as stated in the latest Regional Housing Needs Analysis (RHNA).
 - Provide infrastructure that meets City standards and is integrated with existing and planned facilities and connections.
 - Establish a logical phasing plan designed to ensure that each phase of development would include necessary public improvements required to meet City standards.
 - Expand the City's Sphere of Influence in order to establish a logical and orderly boundary that promotes the efficient extension of municipal services.
- (Final EIR, p. ES-2.)

The Project site is described as 155 acres including two defined areas, the "Development Area" and the "Non-Development Area." The Development Area is 77 acres and "[i]ncludes the parcels being annexed that will be entitled for subdivision and development. This will include a Sphere of Influence (SOI) Expansion, General Plan Amendment, Pre-zone, Annexation/Reorganization, Tentative Tract Map, Planned Development Permit, and Residential Site Plan Review." The Non-Development Area is 78 acres and "[i]ncludes the parcels being included in the SOI expansion that will not be entitled for subdivision or development. This includes two separate areas, each described as an Expansion SubArea. The two Expansion SubAreas total 78 acres and are defined as Expansion SubArea North and Expansion SubArea East." (Draft EIR, p. 2.0-1.)

Later, the EIR describes the Project as "primarily a residential development anticipated to provide up to 605 residential units. The Development Project would provide open space totaling approximately 5.54 acres, including 2.25 acres of trails, 2.39 acres of promenade/pedestrian circulation, and 0.90 acres of parks. Other uses to support and compliment the proposed residential development include public utility infrastructure, public and private roadways, curb/gutters/sidewalks, other pedestrian facilities, private parking, street lighting, and street signage." (Draft EIR, p. 20-5.)

The Project Objectives in the EIR share the same fatal flaw as those adopted by the County of Siskiyou in the *WATER 2* case. Specifically, the Project Objectives are impermissibly narrow and foreclose consideration of feasible alternatives to the Project, including alternative locations. Like the faulty EIR in *WATER 2*, the EIR here "largely defined the project objectives as operating the project as proposed." (78 Cal.App.5th at p. 692.) For example, the EIR states that "[t]he principal Project objective is the expansion of the City's SOI to include the Project site, and the annexation/reorganization, approval and subsequent development of the Development

Area.” (Draft EIR, p. 2.0-1.) “But if the principal project objective is simply pursuing the proposed project, then no alternative other than the proposed project would do. All competing reasonable alternatives would simply be defined out of consideration.” (*WATER 2*, at p. 692.) Likewise, the “quantifiable objectives” of the Project are identical to the elements of the Project itself. (See draft EIR pp. 2.0-1, 2.0-5.)

“In taking this artificially narrow approach for describing the project objectives, the County ensured that the results of its alternatives analysis would be a foregone conclusion. It also, as a result, transformed the EIR's alternatives section—often described as part of the ‘core of the EIR’ [Citation]—into an empty formality.” (*WATER 2*, supra, 78 Cal.App.5th at p. 692.) Moreover, this type of error is prejudicial because the EIR essentially “rejected anything other than the proposed project. In doing so, it prejudicially prevented informed decision making and public participation.” (*Id.* at p. 693.) Accordingly, the City must “revise the statement of the project objectives” and “revise the alternatives analysis in the light of this new statement.” (*Id.* at p. 699.)

III. The EIR fails to adequately analyze potentially significant impacts of the Project.

A. The EIR fails to adequately analyze the Project’s aesthetic impacts, including impacts to light and glare.

“‘Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.’ [Citation.] The Guidelines state that an EIR must include a description of ‘the physical environmental conditions in the vicinity of the project’ which constitute the ‘baseline physical conditions’ for measuring environmental impacts.” (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 657–658 (*San Joaquin Raptor*)).

Here, the environmental setting discussion in the Aesthetics chapter begins with general information about aesthetics, including an acknowledgment that “[s]cenic resources are specific features of a viewing area (or viewshed) such as *trees*, rock outcroppings, and historic buildings. They are specific features that act as the focal point of a viewshed and are usually foreground elements.” (Draft EIR, p. 3.1-1, italics added.) Similarly, the discussion of light and glare states that “[s]tationary sources of nighttime light include structure illumination, interior lighting, decorative landscape lighting, and streetlights. The principal mobile source of nighttime light and glare is vehicle headlamp illumination.” (*Id.* at p. 3.1-3.)

The EIR acknowledges that the Project site consists of “mainly rural residential and agricultural land and ha[s] very few sources of light and glare, allowing for clear day and nighttime views” because it is “distant from the more urban and densely populated

areas of Fresno and Clovis.” (Draft EIR, p. 3.1-3, emphasis added.)² The EIR, however, contradicts itself by also claiming that “[t]he existing light environment found in the Project site is considered typical of suburban areas.” (*Id.*) Similarly, the EIR acknowledges that “sky glow” is “of concern in more rural or natural areas where a darker night sky is either the norm or is important to wildlife[,]” but claims, “[d]ue to the urban nature of the City limits” that “[i]solating impacts of particular sources of light or glare is ... not appropriate or feasible for the proposed Project.” (*Id.*, emphasis added.)

No facts or evidence support the EIR’s contradictory claim that analyzing “particular sources of light and glare” is not feasible. The Project site and surrounding area are not within the “urban” City limits and, as the EIR admits, consist of “mainly rural residential and agricultural land” with “very few sources of light and glare.” (Draft EIR, p. 3.1-3; see also *id.* at p. 3.1-6 [“There are minimal existing light sources on and adjacent to the Project site”].) Moreover, the Project will add 605 residences, including new streetlights, and 5,705 new vehicle trips per day, (Draft EIR, Appendix I, p. 2-1) which are all potential sources of light and glare (Draft EIR, p. 3.1-3) to an area with “very few sources of light and glare.” Indeed, the EIR admits that there are no streetlights in the Non-Development Area. (Draft EIR, p. 3.1-6.) The EIR’s internal inconsistencies and failure to analyze the Project’s light and glare impacts on the surrounding rural residential and agricultural land constitute prejudicial abuses of discretion and require the City to revise and recirculate the EIR *with* the missing analyses.

The EIR also fails to adequately analyze and mitigate glare impacts on existing residences in the Non-Development Area. (See Draft EIR, pp. 3.1-14 through 3.1-15.) The EIR acknowledges that increased traffic generated by the Project could have light and glare impacts from car windshields and headlights, but presumes they will be insignificant because *housing within the Project site* would be developed in compliance with City standards in the General Plan and Municipal Code to minimize impacts from light and glare. (*Id.*, see also Final EIR, p. 2.0-23 [“the construction of park and open space areas ... provides some visual relief within residential subdivisions.” Emphasis added].) As discussed below, however, CEQA law makes clear that the EIR cannot presume the absence of impacts based solely on consistency with existing standards. (*East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 301 (*Livable City*)). Moreover, the new developments consistency with City standards does nothing to address light and glare impacts to the existing homes in the Non-Development Area. Similarly, the EIR claims that there would not be any significant impacts because the Project’s “single-family residential uses would be an extension of

² The EIR’s description of the “Visual Character” of the area surrounding the Project site supports this conclusion: “The SOI beyond the City’s Limits to the east, northeast, and north is dominated by agricultural uses and undeveloped open spaces. The Project site is located in the north, and the immediately surrounded area is best characterized as a mix of agricultural, suburban residential, and large estate lots with existing residences.” (Draft EIR, p. 3.1-4.)

single-family residential uses adjacent to the Project site.” (Draft EIR, p. 3.1-14.) This conclusory statement is completely unsupported by the facts, however, as the EIR admits that the existing residences have no streetlights, and the current environment has “very few sources of light and glare.” (See Draft EIR, pp. 3.1-3, 3.1-6.) The EIR completely fails to analyze light and glare impacts from Project structures (including second story windows) and traffic on the existing, immediately adjacent neighborhoods. (See Draft EIR, pp. 3.1-14 through 3.1-15.) Moreover, the final EIR does not remedy this deficiency. In fact, the final EIR admits that compliance with the City’s standards would not reduce light and glare impacts to insignificance, “and the overall level of light and glare in the Project site would increase in general as urban development occurs.” (Final EIR, p. 2.0-25.) The EIR must be revised and recirculated to analyze and mitigate this potentially significant impact.

An equally fatal flaw in the EIR’s analysis is the characterization of the existing environment on the Project site, specifically, the pecan orchard, as an island of agricultural land surrounded by urbanized development. (Draft EIR, p. 3.1-11; see also Final EIR, pp. 2.0-22 through 2.0-23.)³ On the contrary, the orchard, which has been actively farmed for approximately 50 years, is a visual buffer between the low-density neighborhoods in Expansion Subarea North and Expansion Subarea East and the more urbanized areas of the City south of Shepard Avenue. (See Draft EIR, p. 3.1-4 [“Agricultural lands provide for visual relief form urbanized areas and act as community separators to nearby urban areas”].) Contrary to the unsupported claim in the final EIR, the inclusion of less than one acre of parkland does not remedy the loss of 77-acres of trees, which, as the EIR admits, are visual resources. (Cf. Final EIR, p. 2.0-23.)

The EIR completely fails to analyze the impacts of eliminating the agricultural buffer created by the orchard. (See *Id.* at p. 3.1-5 [“The majority of the Development Area is in active agricultural use”].) Even worse, the EIR fails to analyze the impacts of replacing the existing visual buffer with highly urbanized, medium-high density residential development. Instead of performing this analysis or explaining why it is infeasible, the EIR concludes, without any support, that “the existing visual character of the Non-development Area would not change as part of the proposed Project.” (Draft EIR, p. 3.1-10; see also Final EIR, p. 2.0-21.) As stated above, this could not be further from the truth as the Project would destroy the existing agricultural buffer and replace it with the very urbanization that the orchard has shielded the Non-Development Area from for more than 50 years. The EIR must analyze the aesthetic impacts of razing the

³ Likewise, the Clovis General Plan EIR’s conclusion that, based on a programmatic analysis, the urbanization of agricultural lands would be less than significant, does not alleviate the City’s duty to analyze the specific aesthetic impacts of this Project on the surrounding environment, including the Non-Development Area. (Cf. Draft EIR, p. 3.1-11; see *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1321 [agency was required to analyze whether “site-specific new project might cause significant effects on the environment that were not examined in the prior program EIR”].)

existing 77-acre orchard and constructing 605 homes, including impacts to the existing neighborhoods of the non-development area.

Similarly, the EIR's conclusion that, because the Project would comply with the City's General Plan policies and Development Code, it "would not have a substantial adverse impact on scenic vistas, corridors, or resources *in the City of Clovis*" is completely unsupported. (Draft EIR, p. 3.1-11, emphasis added.) First, Project's destruction of the agricultural buffer would significantly impact visual resources, including trees (see Draft EIR p. 3.1-1) and the EIR's analysis of impacts cannot be artificially limited to the City limits, because the Project's aesthetic impacts will affect the Non-Development Area, which is not "in the City of Clovis."

Second and more importantly, "[c]ompliance with a general plan in and of itself 'does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects.' [Citation.] A project's effects can be significant even if 'they are not greater than those deemed acceptable in a general plan.'" (*Livable City*, *supra*, 5 Cal.App.5th at p. 301; see also *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732 [EIR required "if substantial evidence supports a fair argument that the Project may have significant unmitigated noise impacts, even if other evidence shows the Project will not generate noise in excess of the County's noise ordinance and general plan"]; *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1381 ["the fact that residential uses are considered compatible with a noise level of 65 decibels for purposes of land use planning is not determinative in setting a threshold of significance under CEQA"].) The EIR's repeated claim that the Project's compliance with City of Clovis General Plan policies and standards (cf. Draft EIR, pp. 3.1-11, 3.1-12) says nothing about the physical alteration of the environment that replacing 77 acres of orchard with 605 residences will cause. The EIR must be revised to analyze the Project's aesthetic impacts on the surrounding environment.

B. The EIR fails to adequately analyze the Project's impacts to agricultural resources.

The EIR's analysis of agricultural impacts acknowledges that the 77-acre Project site contains 63.60 acres of Prime Farmland and 11.44 acres of Farmland of Statewide Importance, as designated by the California Department of Conservation. (Draft EIR, pp. 3.2-5 through 3.2-6.) The EIR, however, ignores these designations based on a Land Evaluation and Site Assessment (LESA) model analysis that uses faulty assumptions about the feasibility of irrigated production at the orchard. (See *Id.*, see also Draft EIR, Appendix B [LESA analysis].) Specifically, the EIR claims, based on the presence of "hardpan" in 5 of 19 bore samples from the geotechnical engineering report (see Draft EIR, Appendix F) that "the majority of the property has a thin layer of productive soil, underlaid by a hardpan and perched water that is not conducive to sustain long term agricultural production." (Draft EIR, p. 3.2-7.) The fifty-plus years of agricultural production at the Project site belies this conclusion. Moreover, as indicated above, the

geotechnical report does not support this conclusion. Appendix F includes bore sample logs from 19 borings and identified “weakly cemented” silty sand in Borings B1, B3, at depths of approximately 8 feet, and B15, B16, and B18 at depths ranging from 2 to 4 feet. The bore samples also identified “clayey sand” in Borings B6, B7, B11, and B15 at depths of 8 to 14 feet. (Draft EIR, Appendix F.) Accordingly, the majority of bore samples (i.e., eleven of nineteen) do not contain “hardpan” and there is no evidence that the Project site contains only “a thin layer of productive soil” that has kept the orchard in continuous operation for more than fifty years. (Cf. Draft EIR, p. 3.2-7.)

The LESA analysis included with the EIR (Draft EIR, Appendix B) relied, in part, on the faulty assumption that “hardpan” covered the majority of the Project site (when, in fact, it was found in less than half of bore samples) to conclude that irrigated production is infeasible in drought years, making the Water Resource Availability score 30 out of 100, based on “Option 11.” (See also, Draft EIR, pp. 3.2-10, 3.2-16.) The LESA analysis concludes that, due to this infeasibility, the Project’s overall score is 50.50, with a Site Assessment score of 18 (largely based on the Water Resource Availability score of 30). (Draft EIR, p. 3.2-16; see Draft EIR, Appendix B.) Correcting the LESA score to remove the faulty assumptions that “hardpan” covers the majority of the site at depths of 2 feet, changes the Water Resource Availability score to 65, using “Option 7.” (See the Revised LESA analysis attached to this letter as Exhibit 1.) Based on the corrected Water Resource Availability score, the total LESA score for the Project site is 55.75, with a Site Assessment score of 23.25.

The draft EIR states that the Project would have a significant impact on agricultural resources if the total LESA score is greater than 50 out of 100 and both the Land Evaluation and Site Assessment component scores are greater than 20. (Draft EIR, p. 3.2-16.) Using the corrected LESA score (which does not rely on the faulty “hardpan” assumptions in the Draft EIR) the Project will have a potentially significant impact on agricultural resources, which the EIR must be revised to analyze and mitigate.

C. The EIR fails to adequately analyze the Project’s air quality impacts and associated human health effects.

The EIR acknowledges the significant increase in average daily trips generated by the Project and, correctly, concludes the Project will have a significant vehicle miles traveled (VMT) impact. (See Draft EIR, pp. 3.13-18 through 3.13-23.) The air quality analysis, however, downplays the significance of mobile source pollution generated by the Project and completely fails to analyze the potential for project generated traffic to have significant toxic air contaminant (TAC) impacts from ultrafine particles (UFPs) emitted by vehicle emissions, braking, and tire wear. The EIR also fails to analyze cumulative TAC emissions from project traffic combined with traffic levels presumed from buildout under the General Plan.

The EIR acknowledges the Supreme Court’s decision in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502 (*Friant Ranch*), which requires EIRs to analyze and disclose

the human health effects of a project's air quality emissions or explain why doing so is infeasible. (*Id.* at pp. 519-520.) The EIR claims to perform the required analysis, albeit in "qualitative" fashion. (Draft EIR, pp. 3.3-25 through 3.3-26.) Like the EIR in *Friant Ranch*, however, the Project's EIR "generally outlines some of the unhealthy symptoms associated with exposure to various pollutants" but "does not give any sense of the nature and magnitude of the 'health and safety problems caused by the physical changes' resulting from the Project." (*Friant Ranch*, at p. 522; see Draft EIR, pp. 3.3-28 through 3.3-30.) Instead, the EIR analyzes the Project's contribution to air pollution (Ozone and particulate matter (PM), specifically) and while the cumulative levels of those pollutants "would affect people[,] the Project's emissions would be less than the San Joaquin Valley Air Pollution Control District (SJVAPCD) thresholds of significance. (Draft EIR, pp. 3.3-29 through 3.3-30.) The EIR's conclusory statement that pollution "would affect people" does not come close to the analysis required by *Friant Ranch*. The EIR must be revised to either analyze whether the Project's air quality emissions would have significant human health effects or explain why doing so is infeasible.

Additionally, the EIR only considers the health effects of the Project's contribution to ozone and PM (PM₁₀ and PM_{2.5}, specifically). (See Draft EIR, pp. 3.3-28 through 3.3-30.) The EIR does not consider potential impacts from the Project generated traffic emissions of UFPs (including emissions from tailpipe emissions, braking, and tire wear), and does not analyze the potential human health effects of Project UFP emissions. UFPs are another air quality impact not discussed in the EIR. UFPs, particles with diameters less than 0.1 micrometers, are comprised mostly of metals that are known constituents of brake pads and drums, as well as additives in motor oil. (Exhibit 2, Cahill, Ch. 8, p. 80.) Generally, all engines can create UFPs, but especially diesel engines, and any vehicle's braking system. (Exhibit 3, Cahill, Very Fine and Ultrafine Metals and Ischemic Heart Disease in the California Central Valley 1: 2003-2007, p. 1130.) Traffic, particularly start-and-stop, generates UFPs. (See Exhibit 3, Cahill, Very Fine and Ultrafine Metals and Ischemic Heart Disease in the California Central Valley 1: 2003- 2007, p. 1131.) Recent research suggests that UFPs pose considerable health risks, such as increased risk of cardio-vascular disease and ischemic heart disease death rates, and loss of lung function. (Exhibit 4, Cahill, Artificial ultra-fine aerosol tracers for highway transect studies, pp. 31-32; see also Exhibit 5, Cahill, Very Fine and Ultrafine Metals and Ischemic Heart Disease in the California Central Valley 2: 1974-1991; Exhibit 3, Cahill, Very Fine and Ultrafine Metals and Ischemic Heart Disease in the California Central Valley 1: 2003-2007.) "The strongest correlations to [ischemic heart disease] mortality were found in very fine ... to ultrafine metals, with most tied to vehicular sources." (Exhibit 3, Cahill, Very Fine and Ultrafine Metals and Ischemic Heart Disease in the California Central Valley 1: 2003 - 2007, p. 1133.) Prenatal proximity to freeways and exposure to UFPs may be causally linked to increased autism rates in children. (Exhibit 6, Volk, Residential Proximity to Freeways and Autism in the CHARGE Study, p. 875.) Unlike diesel exhaust or other larger TAC emissions, UFPs are more persistent and do not dissipate easily over distances. (Exhibit 7, Cahill, Transition metals in coarse, fine, very fine and ultra-fine particles from an interstate highway transect near Detroit, pp. 340-341.) Moreover, the California Air Resources Board (CARB) has acknowledged that

the transition to zero emissions vehicles (ZEVs) will not eliminate all traffic emissions. (Exhibit 8, CARB Technical Advisory, p. 17 [“Non-tailpipe particulate matter emissions—like road dust, tire wear, and brake wear” are roughly equivalent in ZEVs and internal combustion engine vehicles, due to the higher weight of ZEVs].)

The EIR does not ever mention UFPs as a potentially significant air quality impact and therefore fails as an informational document. In addition to acknowledging these TAC emissions that will be exacerbated by the Project, the recirculated EIR will need to measure those emissions and correlate those emission levels to identified health risks, if feasible. If not feasible, the recirculated EIR will need to explain why so. As discussed above, the EIR correctly acknowledges the relevance of *Friant Ranch*, which explains the “EIR must provide an adequate analysis to inform the public how its bare numbers translate to create potential adverse impacts or it must adequately explain what the agency does know and why, given existing scientific constraints, it cannot translate potential health impacts further.” Here, the EIR has not even attempted to inform the public of the “bare numbers” with respect to mobile UFP emissions, let alone translate those numbers into quantifiable adverse impacts. The failure to do so is inexcusable given that recent scientific studies demonstrate that it is feasible to correlate TACs and UFP emissions levels to resulting human health risks. The EIR must make a good-faith effort to consider and analyze whether mobile source emissions (including UFPs) created by the Project would pose a potential health risk to future Project occupants.

Lastly, the EIR’s analysis of the Project’s consistency with the Air Quality element of the City’s General Plan is based on the false promise of compliance with mitigation measures that do not exist. The Land Use, Population, and Housing chapter of the EIR analyzes the Project’s consistency with various goals and policies of the City’s General Plan. (See, generally, Draft EIR, ch. 3.10.) With respect to Air Quality, the EIR claims that the Project is “consistent” with Air-Policy 1.1 in the Air Quality element of the City’s General Plan, which directs the City to “[r]educe greenhouse gas and other local pollutant emissions through mixed use and transit-oriented development and well-designed transit, pedestrian, and bicycle systems.” (Draft EIR, p. 3.10-19.) As stated above, the EIR finds the Project “consistent” with this policy because the Project would, allegedly, reduce VMT through pedestrian and bicycle systems and

as required by Mitigation Measure 3.13-1 in Section 3.13
of the Draft EIR, *the applicant would be required to*
implement measures, which are identified in the California
Air Pollution Control Officers Association’s (CAPCOA)
Draft Handbook for Analyzing GHG Emission Reductions,
assessing Climate Vulnerabilities, and Advancing Health and
Equity (GHG Handbook). Many of the strategies listed in
this mitigation measure pertain to transit, pedestrian, and
bicycle systems.
(Draft EIR, p. 3.10-19.)

Contrary to the discussion of consistency with Air-Policy 1.1, however, *there is no Mitigation Measure 3.13-1*. (Cf. Draft EIR, ch. 3.13 [Transportation and Circulation].) Accordingly, because there are no measures that “the applicant would be required to implement” regarding “transit, pedestrian, and bicycle systems” the EIR’s conclusion that the Project is consistent with Air-Policy 1.1 is unsupported. The EIR must be revised to analyze the Project’s consistency with the Air Quality element of the General Plan without relying on phantom mitigation measures.

D. The EIR fails to adequately analyze the Project’s energy impacts as required by Guidelines Appendix F.

The EIR includes a cursory analysis of potential energy impacts and assumes that the Project’s consistency with state and local laws, including building codes, supports determining that the Project’s energy impacts would be less than significant. (Draft EIR, pp. 3.7-27 through 3.7-30.) For example, the EIR claim the Project “would be responsible for conserving energy, to the extent feasible, and relies heavily on reducing per capital energy consumption to achieve this goal, including through statewide and local measures.” (*Id.* at p. 3.7-29.) The final EIR merely repeats this unsupported conclusion. (Final EIR, p. 2.0-27.) The EIR, however, contains no description of any specific measures the project would implement, and no commitment by the Project to do anything specific to conserve energy. (See *id.*) Instead, the EIR relies on regulated entities complying with laws and regulations to conclude that *the Project* would not have a significant energy impact. (*Id.*) Whether or not Pacific Gas & Electric (PG&E) complies with the law in general, however, says nothing about this Project’s potential energy impacts. In other words, there is no substantial evidence connecting PG&E’s compliance with the Statewide Renewable Portfolio Standard (RPS) with the efficiency and energy conservation efforts of the Project. (See *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4th 204, 225.) The EIR must be revised to actually analyze the Project’s consumption and conservation of energy to determine whether there will be a potentially significant impact or not.

Moreover, the EIR’s cursory energy analysis fails to consider renewable energy use in determining whether the Project could have a significant energy impact. CEQA requires the “EIR’s analysis of a project’s impacts on energy resources must include a discussion of whether the project could increase its reliance on renewable energy sources to meet its energy demand as part of determining whether the project’s energy impacts are significant.” (*League to Save Lake Tahoe Mountain etc. v. County of Placer* (2022) 75 Cal.App.5th 63, 164 (*League to Save Lake Tahoe etc.*)). As discussed above, the EIR concludes that the Project’s energy impacts would be less than significant based solely on regulated entities (i.e., PG&E) complying with the law and does not discuss renewable energy options for the Project itself. “Because the EIR did not address whether any renewable energy features could be incorporated into the project as part of determining whether the project’s impacts on energy resources were significant, it did not comply with CEQA’s procedural requirements, a prejudicial error.” (*League to Save Lake Tahoe etc.*, at p. 168.) The EIR must be revised to analyze renewable energy use as a component of

the Project's potential energy impacts and recirculated to allow the public to comment on this important issue.

E. The EIR fails to adequately analyze and mitigate the Project's noise impacts.

The regulatory setting in the EIR's noise analysis describes noise standards in the City's General Plan and ordinances. (Draft EIR, p. 3.11-7.) The EIR, however, does not discuss the County's General Plan policies and ordinances governing noise. (*Id.* but see Draft EIR p. 3.8-1 [analyzing hazards and hazardous materials impacts based, in part, on information from the Fresno County General Plan and Fresno County Zoning Ordinance].) Because the existing sensitive receptors surrounding the Project site are and would remain part of unincorporated Fresno County, the EIR should analyze noise impacts based on the County's noise policies and ordinances as well. (See *United Neighborhoods for Los Angeles v. City of Los Angeles* (2023) 93 Cal.App.5th 1074, 1096 (*UNLA*) ["No such deference is warranted, however, with respect to the City's determination of which policies apply to the Project. The principle that the City is uniquely positioned to weigh the priority of competing policies does not extend to the question of which policies are to be placed on the scales"].)⁴

The EIR acknowledges that Project generated traffic on Sunnyside Avenue between Shepard Avenue and "Project Intersection 1" will have a significant impact on the environment. (Draft EIR, p. 3.11-16.) The EIR, however, fails to measure, model, or analyze the potential noise impacts of Project generated traffic on Sunnyside Avenue north of "Project Intersection 1." (Cf. *id.*) Moreover, nowhere in the EIR is there any Project entryway identified as "Project Intersection 1." (See, e.g., Draft EIR, ch. 11 [Noise], ch 3.13 [Transportation].) The Transportation analysis identifies Study Intersection 23 as "Sunnyside Avenue/Project Driveway 1." (Draft EIR, Appendix I, Figure 4-2.) Assuming "Project Intersection 1" and "Project Driveway 1" are the same thing, then the EIR also fails to analyze the noise impacts of project generated traffic to off-site receptors along Lexington Avenue that will abut the public street identified as "Project Driveway 1" in the Transportation analysis. Moreover, the Noise Mitigation Measures in the EIR only address noise impacts to residences within the Project site and do nothing for existing off-site receptors. (See Draft EIR, p. 3.11-19 [Mitigation Measures 3.11-1 and 3.11-2].) Moreover, the final EIR does not remedy this deficiency. (Final EIR, p. 2.0-20.) The EIR must be revised and recirculated to analyze and mitigate

⁴ This same critique (the EIR's failure to analyze applicable Fresno County General Plan policies regarding impacts to existing homes that would remain in the unincorporated County) applies equally to other analyses in the EIR. For example, the EIR's analyses of aesthetic impacts, including light and glare, agricultural resource impacts, transportation impacts, air quality impacts, and groundwater impacts, all fail to consider Fresno County policies and ordinances in analyzing impacts to Fresno County residents. (See *UNLA, supra*, 93 Cal.App.5th at p. 1096.)

noise impacts to existing off-site receptors from project generated traffic along “Project Driveway 1” and/or “Project Intersection 1.”

The EIR admits that Project construction will generate noise levels *exceeding* the standards in the City’s General Plan for residential land use (see Draft EIR, 3.11-9 [Table 3.11-6: Maximum Exterior Noise Standards, “allowable exterior noise level (15-Minute Leq)” 55 dba from 7 a.m. to 10 p.m.]), and that the existing homes in the non-development areas will be subject to construction noise levels that are more than *double* the baseline measured in the technical noise analysis. (Draft EIR, p. 3.11-19 [“This would be a 13 dB Leq daytime increase in the ambient noise level at the residents along Perrin Rd., Purdue Ave., and East Lexington Ave”]; see Draft EIR, p. 3.11-4 [“A 10-db change is subjectively heard as approximately a doubling in loudness, and can cause an adverse response”].) Rather than proposing and analyzing feasible means of reducing these significant noise impacts, the EIR points to a handful of largely meaningless “strategies” including a prohibition on equipment idling and the use of already installed vehicle mufflers, and concludes, without any analysis, that these measures will reduce noise to less than significant levels. (Draft EIR, p. 3.11-20 [Mitigation Measure 3.11-4].)⁵ The EIR, however, contains no explanation, analysis, or substantial evidence to support this conclusion. (Cf. *id.*) The EIR must be revised to analyze whether this mitigation would actually reduce noise levels below the City’s threshold or include additional feasible measures to do so. For example, temporary noise barriers, combined with regular monitoring and reporting of construction noise levels are a few of the many feasible noise mitigation measures available for the City’s consideration. (See Exhibit 9.)

F. The EIR’s analysis of groundwater recharge is fundamentally flawed.

The EIR admits that “impervious surfaces such as pavement, *significantly reduce infiltration capacity* and increase surface water runoff.” (Draft EIR, p. 3.9-24, emphasis added.) As discussed above, however, the draft EIR presumes, without providing any analysis, that the presence of “hardpan” soils in fewer than half of the bore samples taken as part of the geotechnical analysis established that converting a 77-acre orchard to impervious surfaces would not significantly impact groundwater recharge. (Draft EIR, p. 3.9-25.) Several commenters pointed out the serious flaws in this conclusory claim, which is contradicted by the fifty-plus years of successful agriculture at the Project site. The final EIR retains the unsupported conclusion that hardpan makes the Project’s impacts on groundwater recharge less than significant, but also purports to adopt the conclusions in a supplemental hydrological analysis prepared for the applicant. (Final EIR, p. 2.0-8.) The supplemental hydrological analysis, however, acknowledges that deep percolation does occur at the orchard, despite the few areas of cemented and/or “clayey” soils found in the geological study. (Final EIR, Appendix L, pp. 9-10.) Moreover, the

⁵ Mitigation Measure 3.11-3 merely requires Project construction to occur during the City’s required hours of operation. (Draft EIR p. 3.11-20.) Because the Project’s construction noise impacts would be significant during the required construction hours, this mitigation measure is meaningless.

supplemental analysis admits that irrigation and deep percolation in the northern area of the orchard does affect groundwater levels in the Quail Run neighborhood. (*Id.*, p. 10.)

The EIR must be revised and recirculated to actually analyze the effects that replacing the orchard with 70+ acres of impervious surfaces will have on groundwater recharge rates. Even with the supplemental hydrological analysis, the EIR provides no comparison of groundwater recharge rates with or without the Project. (Final EIR, p. 2.0-8 [*“it can be presumed* that the Project site generally does not allow for a high level of groundwater recharge in its existing condition[,]*”* emphasis added].)⁶ The Supreme Court has “made clear, and recently reiterated, that “[i]nformation “scattered here and there in EIR appendices” or a report “buried in an appendix,” is not a substitute for “a good faith reasoned analysis.” ’ ’ ” (*Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 516.) The EIR fails as an informational document because it leaves the public and those affected by the Project to “guess” at what the potential groundwater recharge impacts would be.

The supplemental hydrological analysis concludes that the net effect of ceasing all groundwater pumping at the Project site, originally used for irrigation, would result in a benefit to local groundwater levels because more water would remain in the ground. (Final EIR, Appendix L, p. 13.) While this conclusion has superficial appeal, it is ultimately mistaken and unsupported by the evidence. First, the assumptions in the supplemental hydrological analysis conflict with the Water Supply Analysis (WSA). For example, the WSA states that current water use at the project site is 186.4 acre-feet per year (AFY) for irrigation and that the proposed 605 homes would require 255.8 AFY. (Draft EIR, Exhibit J, pp. 2-1, 3-1.) The supplemental hydrological analysis, however, claims that approximately 400 AFY will remain in the ground because irrigation of the orchard has ceased. (Final EIR, Appendix L, p. 9.) The supplemental hydrological analysis provides no explanation for its claim that *more than twice* the amount of water is used for irrigation than what is disclosed in the WSA. (Cf. *id.*) More importantly, there is no requirement or commitment in the EIR or WSA that the wells at the project site will be retired, nor any guarantee that the claimed 400 AFY will actually remain in the ground to benefit local groundwater levels. “Argument, speculation, [and] unsubstantiated opinion or narrative” do not constitute substantial evidence. (Guidelines, § 15384, subd. (a).) Accordingly, the EIR’s conclusion that groundwater recharge will not be negatively impacted by converting 77 acres of orchard to impervious surfaces is not supported by substantial evidence.

⁶ Similarly, the final EIR’s contention that “on-farm recharge does not result in the return of all pumped irrigation water” is completely beside the point. (Final EIR, p. 2.0-8.) As the supplemental hydrological analysis claims, approximately half of irrigation water at the orchard does return to the aquifer. (Final EIR, Appendix L, p. 9.) The issue the EIR fails to analyze is what impact the construction of 70+ acres of impervious surfaces would have on that recharge rate compared to the existing environment. The EIR must be revised and recirculated to include that analysis.

Lastly, the supplemental hydrological analysis explains that “Rural residential areas should have a net zero water balance, meaning that recharge of storm runoff should equal or exceed the consumptive use.” (Final EIR, Appendix L, p. 11.) The EIR, however, admits that storm runoff from the 77-acre project site would be collected and transported off-site into the City’s stormwater infrastructure, making the “net zero water balance” impossible to achieve for this rural residential area. (See Draft EIR, pp. 3.9-22 through 3.9-23.) The EIR fails to analyze the impacts of upsetting the existing groundwater balance caused by the Project. The EIR must be revised and recirculated to address the Project’s potentially significant groundwater recharge impacts.

G. The EIR fails to adequately analyze and mitigate the Project’s significant transportation impacts.

As stated above, the EIR admits that the Project would have a significant VMT impact. (Draft EIR, p. 3.13-23.) The EIR, however, incorrectly presumes that there are no feasible mitigation measures that could reduce this significant impact. CEQA case law is clear that an EIR cannot conclude an impact is significant and unavoidable without first exhausting all feasible mitigation measures. (*Friant Ranch, supra*, 6 Cal.5th at pp. 524-525 [“Even when a project’s benefits outweigh its unmitigated effects, agencies are still required to implement all mitigation measures unless those measures are truly infeasible.” Emphasis added].) Here, the EIR includes a perfunctory analysis of a handful of “Project design features” and fails to truly grapple with the issue. (Draft EIR, pp. 3.13-19 through 3.13-22.) As at least one commenter pointed out, however, the EIR fails to analyze the feasibility of public transit options to mitigate significant VMT impacts. (See Final EIR, p. 2.0-135.) The final EIR impermissibly dismisses this comment by pointing to the general discussion of transit in the environmental setting and concludes, without explanation, that transit was addressed in the EIR. (*Id.* at p. 2.0-136; see Draft EIR, p. 3.13-8.) The final EIR completely misses the point of the comment, which asks the City to analyze the potential of increased transit as mitigation for the Project’s admittedly significant VMT impacts, and must be revised to analyze whether feasible transit options exist that could reduce the Project’s significant VMT impacts. (Guidelines, § 15088, subd. (c) [comments raising “recommendations and objections ... must be addressed in detail giving reasons why specific comments and suggestions were not accepted”].) The final EIR fails to adequately respond to this comment.⁷ Additionally, as pointed out by Caltrans, the EIR should consider other potentially

⁷ The Final EIR also fails to adequately respond to many of the individual comments raising specific concerns about the Project’s impacts to existing residences in the Non-Development Area, including the Project’s traffic, noise, and groundwater impacts. (See, e.g., Final EIR, pp. 2.0-127, 2.0-154 [“the commenter then provides several paragraphs supporting the statement”]; Guidelines, § 15088, subd. (c).) Instead, the final EIR dismisses these individual concerns and point readers to generic discussions of the broad impact categories in the Master Responses. (*Ibid.*) The EIR must revised to actually consider and address the objections and recommendations raised in these comments.

feasible mitigation measures, such as creating a VMT Mitigation Impact Fee, to address the Project's significant VMT impacts. (Final EIR, p. 2.0-161.) Again, the final EIR improperly dismisses Caltrans comment without either adopting the recommendation of that expert agency or explaining why a VMT mitigation impact fee is not feasible mitigation for the Project. (*Id.* ["Comment noted"].) The EIR must be revised to actually consider and address Caltrans' comments and must be revised to analyze the feasibility of the many mitigation measures available to address the Project's significant VMT impact, including increased transit. (See Exhibit 10 [Caltrans SB 743 Program Mitigation Playbook], 11 [Berkely Law – Implementing SB 743].)

The EIR fails to analyze the Project's potential impacts to transit. The EIR acknowledges that public transportation services exist "within the Study Area." (Draft EIR, p. 3.13-8.) The EIR's analysis of impacts to the circulation system, including transit, bicycle, and pedestrian facilities, however, does not analyze the Project's potential impacts on these transit systems. (See *id.* at pp. 3.13-23 through 3.13-25.) The failure to consider this potential impact is a violation of CEQA and the EIR must be revised and recirculated to analyze the Project's potential impacts to the transit system. (*Yerba Buena Neighborhood Consortium, LLC v. Regents of University of California* (2023) 95 Cal.App.5th 779, 799-807 [EIR failed to analyze potential transit impacts].)

Moreover, the EIR's conclusion that the Project "would not result in a conflict with an existing or planned ... transit service/facility" is not supported by substantial evidence. (Draft EIR, p. 3.13-25.) The EIR claims that, despite "the absence of a fee program where the Project has an impact on the roadway network," the Project's impacts will be less than significant because "the Project will pay its respective fair share for the proposed improvements." (*Id.*) The EIR, however, includes no mitigation measures or any other enforceable requirement that the Project actually "pay its respective fair share" of anything. That, however, is not good enough to satisfy CEQA. (See *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 855, 857-858 [finding inadequate a mitigation measure that required the project applicant to "increase" the use of "produced water" and "reduce" the use of "municipal and industrial quality" water "to the extent feasible"; the terms "increase" and "reduce," even when modified by the phrase "to the extent feasible," are not specific performance standards]; *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79-80 [finding inadequate a mitigation measure that required a project applicant to expand a city's busing "capacity by paying an unspecified amount of money at an unspecified time in compliance with an as yet unenforced or unspecified transit funding mechanism." Emphasis added].) (See Guidelines, § 15126.4, subd. (a)(2) ["Mitigation measures must be full enforceable through permit conditions, agreements, or other legally-binding instruments"].) In the absence of any requirement that the Project actually pay for its fair share of roadway improvements, the EIR cannot claim the Project's impacts would be less than significant. Further, without a plan or program to actually construct the improvements, this "quasi-mitigation" is unenforceable and violates CEQA. (*Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1189.)

The EIR also ignores significant transportation safety impacts of the Project identified by Caltrans. As stated in Caltrans' comments on the draft EIR, Project traffic would significantly impact queueing at the SR 168 and Hendon Avenue interchange ramps and recommends mitigation measures for those impacts. (Final EIR, p. 2.0-159.) The final EIR, however, dismisses Caltrans' comments, claiming they relate to level of service (LOS) impacts that are no longer required in a CEQA analysis. (*Id.*)⁸ The EIR is mistaken. Caltrans published an Interim Local Development Intergovernmental Review (LDIGR) Safety Review guidance for state and local agencies to integrate into their CEQA analyses to address safety impacts on public roadways, including those under the jurisdiction of Caltrans, caused by traffic generated by development projects. (See Exhibit 12 [Caltrans LDIGR guidance].) Caltrans LDIGR guidance is completely consistent with the State's transition from LOS to VMT as the appropriate measure of transportation impacts. (See *id.*) Accordingly, the EIR's failure to analyze and mitigate the significant transportation safety impacts of the Project requires revision and recirculation.

H. The EIR fails to adequately analyze the environmental impacts of supplying the Project with water.

The EIR cites the WSA in support of its conclusion that the City has adequate water to supply the Project and that constructing water infrastructure would not significantly impact the environment. (See Draft EIR, pp. 3.14-26 through 3.14-30.) The WSA, however, admits that, based on the buildout assumptions in the City's General Plan, the Project's water supply will need to be replaced in order for there to be enough water to serve all the development contemplated in the General Plan. (Draft EIR, Appendix J, p. 8-1.) The EIR completely ignores this aspect of the WSA and does not include *any* analysis of the need to replace the Project's water supply at full build out of the General Plan, or the environmental impacts of doing so. (Draft EIR, pp. 3.14-26 through 3.14-30.) Notably, the cumulative impacts chapter of the EIR adopts the "projections" method for analyzing cumulative impacts, which requires the EIR to analyze the Project's individual contribution to impacts along with the development projections in local plans, including the City's General Plan. (Draft EIR, pp. 4.0-2 through 4.0-3.) The EIR fails to do so with respect to cumulative water supply impacts.

I. The EIR fails to adequately analyze the Project's cumulative impacts.

As stated above, the EIR adopts the "projections" methodology for analyzing cumulative impacts. (Draft EIR, pp. 4.0-2 through 4.0-3.) The purported analysis of cumulative impacts, however, simply repeats the previous analyses of the Project specific

⁸ Moreover, the final EIR's claim that mitigating the impacts identified by Caltrans are not feasible is completely unsupported by analysis or substantial evidence. (Cf. *id.*) The final EIR fails to explain what "geometric constraints" make Caltrans' proposed mitigation infeasible. (See Guidelines, § 15088, subd. (c).)

impacts and concludes that nothing would be different in the cumulative scenario. (See, e.g., Draft EIR, pp. 4.0-3 through 4.0-6, 4.0-9 through 4.0-10.) This analysis is fundamentally flawed.

The purpose of a cumulative impact analysis is to require agencies to consider whether the impacts of individual projects, even if less-than-significant on their own, may nevertheless be cumulatively considerable when analyzed together with the impacts of past, present, and reasonably foreseeable future projects. “‘The significance of a comprehensive cumulative impacts evaluation is stressed in CEQA.’ [Citation.] Proper cumulative impact analysis is vital ‘because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.’ [Citations.] ‘[C]onsideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services. This would effectively defeat CEQA’s mandate to review the actual effect of the projects upon the environment.’” (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214–1215.)

Here, the EIR does not actually consider the cumulative impacts of development projections in the General Plan together with the Project. Instead, the EIR concludes, because the individual impacts of this Project are small (as discussed above, however, the EIR is flawed in claiming that many of the Project’s impacts are less than significant) there is no need to go to the next step and measure the Project’s impacts together with those of development projected in the General Plan. (See, e.g., Draft EIR, pp. 4.0-3 through 4.0-6, 4.0-9 through 4.0-10.) The EIR must be revised to complete all the required steps of a CEQA compliant cumulative impacts analysis and then recirculated for an additional round of public review.

IV. The proposed resolution approving the vesting tentative tract map lacks adequate findings to support approval.

The Agenda Packet for the Planning Commission meeting includes a proposed resolution approving the Vesting Tentative Tract Map (VTTM) for the Project. (Agenda Packet, Attachment 5, pp. 80-82.) The proposed resolution includes a list of “findings” that the Subdivision Map Act (Map Act) requires before approving a tentative map. (*Id.*, at p. 81; see Gov. Code, §§ 66473.5, 66474.) These findings, like all other administrative findings, “must ... bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 (*Topanga*)). The proposed findings simply repeat the language required by the Government Code and do nothing “to bridge the analytic gap between the raw evidence and ultimate decision or order” here, i.e., the approval of the

VTTM. The findings contain no explanation of how or why each of the required findings can be made here. (See Agenda Packet, Attachment 5, pp. 80-82.) As explained by the Supreme Court, “a findings requirement serves to conduce the administrative body to draw legally relevant subconclusions supportive of its ultimate decision; the intended effect is to facilitate orderly analysis and minimize the likelihood that the agency will randomly leap from evidence to conclusions.” (*Topanga*, at p. 516.) The findings must be revised to actually address the criteria listed in the Government Code and explain why the Project and VTTM complies with those requirements.

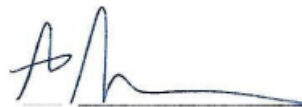
V. Conclusion

As discussed above the EIR is fundamentally flawed in multiple respects and fails as an informational document. In order to comply with CEQA, the EIR must be revised to include significant new information and then recirculated to ensure adequate public participation and informed government. As the first decision-making body to consider the EIR, the Planning Commission must ensure that it complies with CEQA before the City certifies it as such. In its current state, certification of the EIR would be a prejudicial abuse of discretion under CEQA. Moreover, the Planning Commission cannot approve the VTTM without first complying with CEQA and, as discussed above, revising the proposed findings to comply with the law.

On behalf of the Quail Run Community of 18 Homes, we ask that the Planning Commission consider these comments and direct City staff to revise and recirculate the EIR to bring it into compliance with CEQA and revise the VTTM findings.

Please contact my office if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Nathan O. George', with a long horizontal flourish extending to the right.

Nathan O. George

Enclosures

Exhibits 1-12 are available at:

<https://www.dropbox.com/scl/fi/mcfwb1pe68dcdyr3folv2/Exhibits-for-Quail-Run-Comments-on-Shepard-North-Project-00687213xB0A85.PDF?rlkey=q6ma47o42up7056h4f0pj8ett&dl=0>

City of Clovis
Planning Dept.
1033 Fifth St
Clovis CA 93612

RE: GPA2021-006, GPA2021-005, R2021-009, TM6205, & PDP2021-004

We are writing to register our objection to the Wilson Homes development for the above project. Eventually, most of this area will be developed and though we're not excited about that we understand property owners rights to develop and/or expand the current use of their property. Also, City of Clovis is anxious to expand their sphere of influence to provide more housing particularly low to moderate income housing to meet California state requirements which Clovis is lacking. Consider the following:

*605 single-family homes is too many for this area due to limited roadways to handle increased traffic in our area. The stated top figure for square footage of homes (3020) is a large home not a low to moderate size home making it expensive to buy or rent. This will not address Clovis' housing shortage for low to moderate income families.

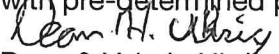
*In our area there are existing water shortages. This was brought up by residents at the last neighborhood meeting. Developer's answer that water will be from city wells is not satisfactory. All water going into city wells is ground water from all areas including Dry Creek Preserve area.

*The traffic and water issues above do not reflect the total buildout and occupancy of the 2 Woodside Home developments already approved by the City and under construction; one on Teague and a larger one Fowler.

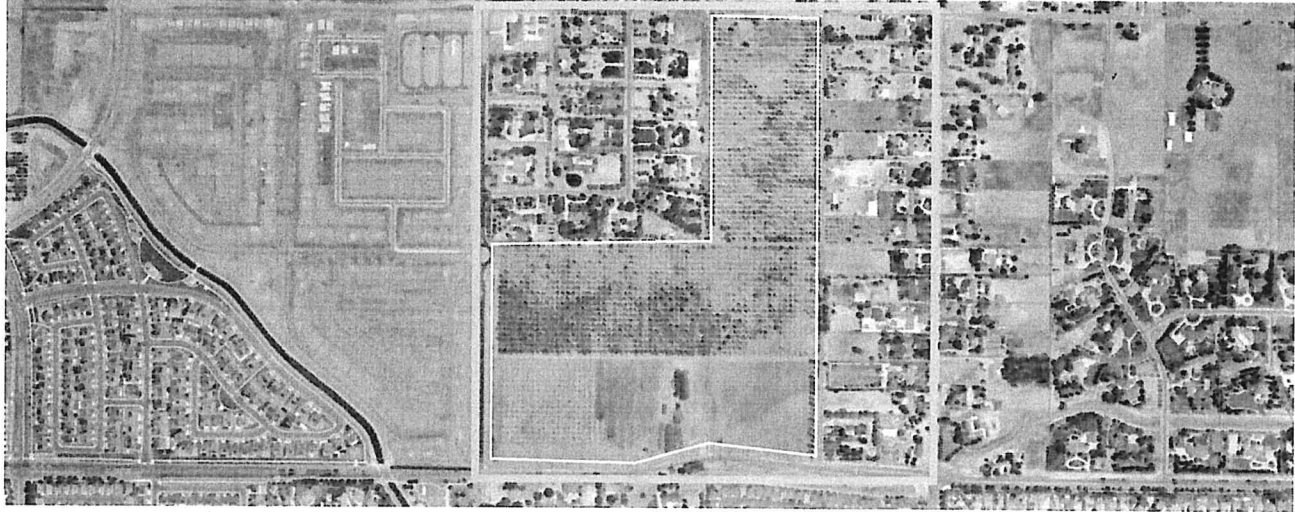
* A stop sign put in at Teague and N. Sunnyside was discussed during approval for the Woodside Home developments as a way to mitigate traffic on N. Sunnyside. This has not been installed to date. We continue to see more and faster traffic coming from Nees or N. Shepherd from both directions because there are no traffic calming impediments. N. Sunnyside is a rural 2 lane country road but now used as a highway by commuters with speeds sometimes in excess of 80 mph. The posted speed limit is not adhered to and is 45 mph.

When Woodside homes proposed their projects they held many neighborhood meetings and were receptive to neighbor's concerns. Despite some contentious meetings they were open to discussion and worked with neighbors on concessions like lowering the amount of units and align houses facing Teague to be street facing to avoid a walled fortress look. This was brought up to Wilson Homes at the last meeting and they dismissed even discussing downsizing the number of homes and stated as if in a threatening way that if they can't build the 605 amount they would not move forward with the project or they would build apartments. Additionally, at one point they criticized some of our neighbor's existing homes as not being very nice or valuable when stating how their project will greatly improve our area. As to the traffic issues, their response that it will not be a problem because they had a study done and kept going back to that opinion despite input from those in attendance it's already a problem.

Many of us feel there is no honest effort to even try to address neighborhood concerns at these meetings which is one of the purposes for holding them. If this project continues there must be neighborhood meetings that truly allow input and discussions, not a dictatorial presentation with pre-determined plans like the last one.


Dean & Valerie Uhrig
8570 N Sunnyside Ave.
Clovis CA

GENERAL AREA MAP



CITY of CLOVIS

CITY HALL - 1033 FIFTH STREET - CLOVIS CA 93612



quadrant
FIRST-CLASS MAIL
PRSR - IMI
\$000.57
10/30/2025 ZIP 93612
043MS1234CDP

US POSTAGE

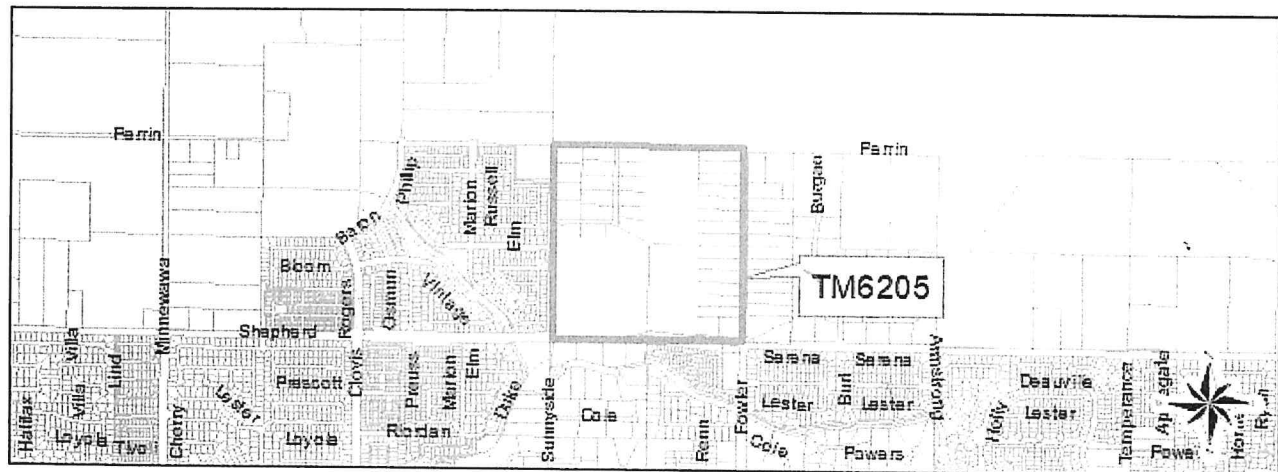
UHRIG DEAN H & VALERIE A TRUSTEES
OR CURRENT RESIDENT
8570 N SUNNYSIDE
CLOVIS CA 93611

2025-10-30 10:28:00
ZIP 93612

THIS IS A LEGAL NOTICE

GPA2021-006, GPA2021-005, R2021-009, TM6205, & PDP2021-004

SPECIFIC LOCATION MAP



November 16, 2023

Dave Merchen
City of Clovis
Via Email

RE: Wilson Homes Development at Shepherd & Sunnyside Ave in Clovis

Dear Dave:

Per my recent emails, the neighbors to the north of the Wilson Homes development are extremely concerned about the access point onto Perrin Avenue on the north side of the property. Perrin Ave., Stanford Ave, etc. are small county roads with no centerline striping, no curbs, no sidewalks and no street lighting. Providing access to this county road from a 600+ residential development is not prudent or safe.

We would like to propose a compromise solution that this northern access point be used for emergency vehicles only with some sort of gate.

As it is now, if you're walking your dog or your kids are riding a bike, there have been numerous near misses on our street. By adding an exit point for 600+ homes, this will create a dangerous condition that is unacceptable. Please pass along this major concern to the Planning Commission and the Fire Dept so that a solution can be found. Thank you.

Sincerely,



Lewis S. Smith
(559) 349-8615
lsmith@retailcalifornia.com
9544 N. Stanford Ave
Clovis, CA 93619

David Merchen

From: PC Public Comments <email@cityofclovis.com>
Sent: Thursday, November 16, 2023 10:46 AM
To: David Merchen
Subject: [External] Planning Commission Public Comments

Planning Commission Meeting Date: 2023-11-16

Item Number: 3

Name: Patrick Quigley

Email: patquigley@sbcglobal.net

Comment: You are shoehorning a high density development into an established rural neighborhood. We have lived on Stanford Ave for over 40 years and do not want the attendant traffic from 601 sfds, 1200 cars, and 2500 people. I object to to Perrin/Stanford access point south of my home. Stanford is not improved and cannot handle the traffic. Wilson should design project access out to Fowler Ave.

Supporting Files (2 Max.):

Date: November 16, 2023

Time: 10:45 am

Remote IP: 99.60.168.33

David Merchen

From: PC Public Comments <email@cityofclovis.com>
Sent: Thursday, November 16, 2023 10:59 AM
To: David Merchen
Subject: [External] Planning Commission Public Comments

Planning Commission Meeting Date: 2023-11-16

Item Number: 3

Name: Patrick Quigley

Email: patquigley@sbcglobal.net

Comment: Res 23-TM6205

The tract map crams 10 sfd/acre into a small area with inadequate access and infringes on the adjacent , established rural neighborhood. The surrounding rural roads cannot support the traffic which will be generated , eg . on Sunnyside (north and south of Shepherd), Stanford, Perrin, and Ticonderoga.

Supporting Files (2 Max.):

Date: November 16, 2023

Time: 10:58 am

Remote IP: 99.60.168.33



2907 S. Maple Avenue
Fresno, California 93725-2208
Telephone: (559) 233-7161
Fax: (559) 233-8227

CONVEYANCE. COMMITMENT. CUSTOMER SERVICE.

November 16, 2023

Mr. George Gonzalez
City of Clovis
Department of Planning and Development Services
1033 Fifth Street
Clovis, CA 93612

RE: Final EIR and Findings of Facts & Statements of Overriding Considerations for the proposed Shepherd North Project, Clovis, CA
N/E Shepherd and Sunnyside avenues

Dear Mr. Gonzalez:

The Fresno Irrigation District (FID) has reviewed the Final EIR and Findings of Facts & Statements of Overriding Considerations for the proposed Shepherd North Project led by the City of Clovis, APNs: 557-021-19, 20, & 21. The project site is approximately 155-acres and includes an approximate 77-acre Development Area and an approximate 78-acre Non-Development Area. The development area includes parcels that will be annexed and will be entitled for subdivision and development of up to 605 residential units, parkland, and private infrastructure. FID has the following comments:

1. FID previously reviewed and commented on the proposed project on August 1, 2023, and June 7, 2022, as Notice of Availability of a Draft EIR for the Shepherd North Project. The comments and conditions still apply and a copy has been attached for your review.

Thank you for submitting this for our review. We appreciate the opportunity to review and comment on the subject documents for the proposed project. If you have any questions, please feel free to contact Ben Negley at (559) 233-7161 extension 7413 or bnegley@fresnoirrigation.com.

Sincerely,

Laurence Kimura, P.E.
Chief Engineer

Attachment

ATTACHMENT 8

\\fdifs01\Eng\Agencies\Clovis\EIR\Shepherd North Project\Shepherd North Project EIR_Final FID Comment.docx

BOARD OF DIRECTORS

President RYAN JACOBSEN Vice-President JERRY PRIETO, JR. CHRISTOPHER WOOLF
GEORGE PORTER GREGORY BEBERIAN General Manager BILL STRETCH

George Gonzalez

From: Jared Callister <callister@flclaw.net>
Sent: Thursday, November 16, 2023 12:51 PM
To: George Gonzalez; George Gonzalez
Cc: Rich Wathen
Subject: [External] JRC Public Comment slides (planning commission.pptx
Attachments: JRC Public Comment slides (planning commission.pptx

George,

Below are my comments for tonight's hearing. I have attached some slides I may reference as well.

Note that I may be late to the meeting and if I am not there, I've asked another member of the community to read my letter on my behalf.

Good evening, members of the Clovis Planning Commission. My name is Jared Callister, and I reside at 9318 N. Sunnyside Ave., Clovis. I tried my best to make it here this evening to deliver these comments in-person but I have a daughter receiving an award and a son undergoing physical therapy tonight at this time. I write these comments as a concerned member of the Quail Run 18 Association. Our association consists of 18 homeowners who find themselves at the heart of the proposed Spensley property development.

While we have entrusted the law firm of Remy Moose & Manly to articulate many of our legal concerns, we, the members of the Quail Run 18, also feel it imperative to voice our specific issues and personal experiences. We fully endorse and agree with our law firm's comments that the EIR for this Project is insufficient.

Let's be clear: this development will have a significant impact on neighboring communities. It defies common sense to argue otherwise. The magnitude of change and impact on our lives cannot be overstated. This is a case where common sense must prevail.

This development process is rushed and hurried, lacking adequate evaluation of the complex challenges facing our community. It's important to note that this development, positioned in County Service Area 51, is an area with a history of water issues. Additionally, its proximity to the Dry Creek Preserve raises significant complicating factors.

While it may seem that this development has been "years" in the making, the reality is that the only item "years" in the making was the concept of a Sphere of Influence boundary change. Indeed, the actual tract map was only released with the Draft EIR just a few months ago.. The final EIR was issued just two weeks ago. This accelerated timeline is out of the ordinary and not in alignment with what we were led to expect.

For years, we were told by the City that this would be a multi-step process, allowing for community input at every stage: first the Sphere of Influence change, followed by annexation and proposed entitlements, and then, at a later stage a tract map. Instead, what we are witnessing is a rapid

consolidation of these steps into a single action. This approach contradicts the very essence of proper planning.

The intent of a step-by-step process is to be deliberative, allowing all stakeholders to understand, contribute, and voice their concerns effectively. The current trajectory of this project, as proposed, is unacceptable without substantial revisions.

Therefore, I urge the Planning Commission to vote no on this project and to put this project on hold. In reality, the Developer needs to go back to the drawing board and actually present a tract map that takes into consideration the input from the community. There is a need for genuine engagement with the community members. We ask for a reconsideration and revision of the tract map to reflect the concerns and inputs of all stakeholders.

Thank you for your time and consideration.