

December 31, 2009

By Fax & Electronic Mail

Mr. Dale W. Neiman, Executive Director
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**Re: Draft Mitigated Negative Declaration for Clearlake Airport
Redevelopment Project**

Dear Mr. Neiman:

On behalf of the Sierra Club, Lake Group, please accept the following comments on the initial study and draft mitigated negative declaration (“MND”) for the Clearlake Airport Redevelopment project referenced above (“Project”). As will be discussed in greater detail below, the initial study is analytically inadequate in several important respects, and cannot support the conclusion that the Project will have no significant unmitigated environmental impacts. On the contrary, evidence establishes the Project may have several significant unmitigated environmental effects, especially in the areas of traffic, air quality, and urban decay. Accordingly, the City of Clearlake Redevelopment Agency (“City”) must prepare and circulate a full environmental impact report (“EIR”), in accordance with CEQA, before it may lawfully consider the Project.

I. Legal Standard for EIR Preparation

CEQA requires all local agencies to prepare, or cause to be prepared by contract, an EIR for any project that they intend to carry out or approve which “may have a significant effect on the environment.” Pub. Resources Code § 21151(a). If there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment, “the agency shall prepare a draft EIR.” CEQA Guidelines (hereafter “Guidelines”), 14 C.C.R. § 15064 (a)(1), emphasis added.

Importantly, substantial evidence of an actual impact need not be established; if there is substantial evidence in the record that a project may have a significant effect on the environment, the lead agency must prepare an EIR. *Id.*, subd. (f)(1); *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000-1003. In other words, if a lead agency is presented with a “fair argument” that a project may have a significant effect on the environment, even after mitigation measures are implemented, the lead

agency shall prepare an EIR “even though it may also be presented with other substantial evidence that the project will not have a significant effect.” Guidelines, § 15064(f)(1), *citing No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.

California courts routinely describe the “fair argument” test as “a low threshold requirement for the initial preparation of an EIR that reflects a preference for resolving doubts in favor of environmental review.” *County Sanitation Dist. v. Kern County* (2005) 127 Cal.App.4th 1544, 1579; *see Stanislaus Audubon Society, Inc. v. County of Stanislaus, supra*, 33 Cal.App.4th at p. 151; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-1317. This extremely liberal evidentiary standard is founded upon the principle that, because adopting a negative declaration has a “terminal effect on the environmental review process,” *Citizens of Lake Murray Area Association v. City Council* (1982) 129 Cal.App.3d 436, 440, resolving any doubts in favor of preparing an EIR is necessary to “substitute some degree of factual certainty for tentative opinion and speculation.” *No Oil, supra*, 13 Cal.3d at p. 85.

Note further that because “CEQA places the burden of environmental investigation on government rather than the public,” an agency “should not be allowed to hide behind its own failure to gather relevant data.” *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311. If a local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. “Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” *Id.*

In sum, any reasonable doubts over whether the project may have significant adverse impact on the environment must be resolved in favor of requiring a full EIR. As discussed below, numerous such doubts exist.

II. Inadequate Analysis of Air Quality Impacts

A. Diesel Exhaust Emissions/Toxic Air Contaminants

Diesel equipment will be used during the Project’s construction phase, and diesel trucks will be used to deliver merchandise during its operational phase. The particulate fraction of diesel exhaust has long been recognized as a toxic air contaminate (“TAC”) by the California Air Resources Board and other agencies due to its carcinogenic properties. Despite this, the MND provides no meaningful or quantitative assessment of the health risks that may be associated with toxic diesel particulate emissions from the Project. Instead, the MND dismisses this risk on the basis of the unsubstantiated claim that the particulates are “typically confined to within 300 feet of a project site” and the observation that the Clearlake Community School is 600 feet away. MND, pp. 11-12. No data is provided regarding the distance to Saint Helena Hospital Clearlake, which is directly across 18th Avenue from the Project site.¹ No consideration is given to the health

¹ See directions at hospital website at <http://www.shhclearlake.org/index.php>.

risks from diesel particulates during the operational phase of the Project. Because the potential health risks from toxic diesel emissions are not found to be significant, no mitigation is proposed for this risk.

The City should ensure that a quantitative health risk assessment is prepared to evaluate the health risks of diesel emissions during both the construction and operational phase of the Project. If this risk is found to be significant, all feasible mitigation must be proposed.

B. Carbon Monoxide Emissions

The MND concludes the Project will not contribute to carbon monoxide concentrations that exceed regulatory thresholds. The basis of this conclusion is a table that purports to show that traffic levels will not exceed the traffic levels predicted in the 1990 EIR for the Redevelopment Plan. MND, pp. 10-11.

The MND presents this table and claims that the modeling undertaken in 1990 demonstrates that there will be no significant impact:

Predicted Worst Case Carbon Monoxide Concentrations in PPM

Location	ADT	1990		2010	2007	2010	
		CO Concentrations		Predicted	Actual	CO Concentrations	
		1-Hour	8-Hour	ADT	ADT	1-Hour	8-Hour
Lakeshore at S.R. 53	9,700	9.2	5.5	23,200	15,600	13.9	8.3
Old Hwy at SR 53	2,300	8.4	5.0	4,500	5,600	13.6	8.2
Lakeshore at Old Hwy 53	11,100	7.9	4.7	25,600	15,600	8.2	4.9
Applicable Standard		20.0	9.0			20.0	9.0

ADT: Average Daily Traffic

As shown by the above table, the model, which considered the level of development proposed on the Site predicted that none of the locations would exceed the carbon monoxide standards in 2010. And the actual traffic volumes are much less than predicted. As such, the increase in emissions from the Project would be less than significant.

MND, p. 11.

As is apparent from the MND itself, it is simply not true that “actual traffic volumes are much less than predicted.” The table indicates that the 2007 Actual ADT (average daily trips) at Old Highway at SR 53 is already 5,600 trips, well in excess of the 4,500 trips predicted for 2010. Thus, there is no substantial evidence that carbon monoxide concentrations at this intersection will be below the regulatory threshold.

In addition, the MND fails to identify the source of the 2007 Actual ADT data in the table at page 11, which is not contained in the Traffic Impact Study for the Project. Furthermore, any analysis of carbon monoxide concentrations must be based on traffic levels that will occur *after* the Project is operational, not two years ago. The analysis should evaluate carbon monoxide levels based on projections of future traffic that take into account past, current, and probable future development, including the Project.

The City must ensure that carbon monoxide modeling is provided and that it is based on realistic and current data.

C. Greenhouse Gas Emissions

The MND's analysis of greenhouse gas impacts is based on the technical advisory issued by OPR pending adoption of amendments to the CEQA Guidelines by the California Natural Resources Agency.² The OPR technical advisory requires that the City quantify greenhouse gas emissions, assess their significance, and identify alternatives and mitigation if they are found to be significant. The MND quantifies greenhouse gas emissions as 1,786 metric tons per year of CO₂. However, the MND fails to provide a meaningful assessment of the significance of this figure.

The MND identifies the following criteria of significance:

- A) Does the proposed Project conflict with any of the ARB discrete early action strategies?
- B) What is the relative size of emissions of the proposed Project in comparison to the estimated greenhouse gas of major facilities that are required to report greenhouse gas emissions (25,000 metric tons/year CO₂). Does the Project conflict with the State goals of reducing greenhouse gas emissions in California to 1990 levels by 2020, as set forth by the timetable established in AB-32, such that the proposed Project greenhouse gas emissions would result in a substantial contribution to global climate change?
- C) Are the basic parameters of the proposed Project inherently energy efficient?

MND, p. 14.

As discussed below, these three significance criteria are irrelevant, legally deficient, incomplete, and/or misleading. The City must provide a meaningful analysis the Project's contributions to greenhouse gas emissions and climate change.

² We note that the draft CEQA Guidelines have been available for months and that the City could easily have based its analysis on them. Since the Resources Agency is charged to approve new Guidelines for greenhouse gas evaluation by December 31, 2009, *before* the Project is scheduled for review, the City should have based its analysis on these Guidelines.

1. The relative quantity of Project-caused emissions is irrelevant to an analysis of cumulative impacts

The MND concludes with reference to its second criteria of significance that the Project's impacts are not cumulatively considerable because the Project would represent only a small percent of the State's greenhouse gas emissions, and because it "would not be classified as a major source of greenhouse gas emissions." MND, p. 14. This claim betrays a fundamental misunderstanding of the requirements of cumulative impact analysis and of the courts' rejection of the notion that an agency may ignore cumulative impacts on the basis that they are *de minimis*.

In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 719 the court rejected the agency's argument that because air pollution levels were already bad it could treat the project's incremental emissions as minor. The court held that it is improper to use the severity of the existing cumulative problem "to trivialize the project's impact." *Id.* This approach to assessing the significance of cumulative air quality impacts was impermissibly based on a ratio or comparative approach under which the agency dismissed the project's impacts as "relatively minor when compared with other sources." *Id.* The court noted that if agencies were allowed to use this approach, the greater the cumulative problem, the less significant a project's impacts would appear. In fact, an agency must consider the collective or combined effects of the project and all other sources. Under the proper approach, the more severe the existing environmental problem, the *lower* the threshold should be for treating a project's incremental contribution as considerable. *Id.* at 721. Thus, in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 118-119 struck down former CEQA Guidelines Section 15064(i)(4) that permitted a *de minimis* exception in cumulative impact analysis because it promoted precisely the impermissible "ratio approach" or "comparative approach" to cumulative impact analysis employed by the MND.

Here, the MND's analysis and conclusion with respect to its second criterion of significance suffer from precisely the same analytical defects the courts rejected in *Kings County Farm Bureau* and *Communities for a Better Environment*. Accordingly, the analysis and conclusion cannot constitute substantial evidence that the Project's cumulative impacts would not be considerable. Given the realities of global climate change caused by millions of emission sources, an agency may not simply dismiss the potential significance of emissions from any project by claiming that it is not "a major source." MND, p. 14.

2. The Project does in fact conflict with relevant strategies and mitigation measures intended to combat global warming

The MND's first significance criterion for greenhouse gas impacts, consistency with the CARB Discrete Early Action Strategies, is simply irrelevant because it consists

of a set of proposed regulations that are to be applied to *other* industries and are not applicable to the Project.

The California Air Resources Board's "Discrete Early Action Strategies" consist of eleven measures that CARB intends to implement as regulations by January 1, 2010, including Sulfur Hexafluoride reductions, reduction of emissions from consumer products, truck efficiency standards, a tire inflation program, reduction of PFCs from the semiconductor industry, a green port program, refrigerant tracking and recovery, cement production efficiency practices, allowance of blended cements, and research regarding nitrogen land application efficiency. See Air Resources Board, AB 32- Staff Proposed Additional Early Action Items, available at: www.arb.ca.gov/newsrel/nratt090707.htm. Indeed, the MND *admits* that this first criterion is irrelevant to the analysis of the significance of the Project's greenhouse gas emissions: "[n]one of these measures are applicable to the Project and none would be impeded by the Project implementation." MND, p. 14.

In focusing on one set of entirely irrelevant greenhouse gas reduction strategies that are only a small part of the State's plans to implement AB 32 to address global climate change, the MND ignored a host of other measures that have been proposed for greenhouse gas reduction that *are* applicable to the Project. For example, the general outline of measures that the Project should in fact implement have been proposed by the California Attorney General, by CARB in its AB 32 Scoping Plan, and by the Governor in his Green Building Executive Order S-2—04. Office of the Attorney General, The California Environmental Quality Act, Addressing Global Warming Impacts at the Local Agency Level ("AG's Mitigation Measures") available at www.ag.ca.gov/globalwarming as "Mitigation Measures"; CARB, Climate Change Scoping Plan, December 2008 ("Scoping Plan"), available at www.arb.ca.gov/cc/scopingplan/document/scopingplandocument.htm; Office of the Governor of California, Executive Order S-2—04, available at <http://gov.ca.gov/executive-order/3360/>.

For example, the following measures identified in these strategies designed to combat global climate change could be implemented by the Project:

- The Scoping Plan calls for a million solar roofs by 2020. Scoping Plan, pp. 53. The AG's Mitigation Measures also call for solar heating and renewable energy. The Project could implement a solar roof. Its failure to do so conflicts with the implementation of AB 32.
- The Scoping Plan calls for local imposition of green building standards that would meet a target of zero net energy and for imposition of the currently voluntary CBSC Green Building Standards Code. Scoping Plan, p. 57. The Governor's Green Building Executive Order S-2—04 calls for use of green building standards such as the LEED Silver standard to attain 20% increases in building efficiency. Executive Order S-2—04. The AG's Mitigation measures call for implementation of a number

of energy efficiency measures, including cool roofs, efficient lighting and heating, landscaping, and LED lighting. The Project could be required to implement these measures and/or to meet LEED Silver standards. Its failure to do so conflicts with the implementation of AB 32.

- The Scoping Plan calls for a high recycling/zero waste strategy. Scoping Plan, pp 62-63. The AG's Mitigation Measures also identify solid waste measures that should be implemented. The project could be required to implement a zero waste or high recycling strategy. The failure to require such a strategy conflicts with the implementation of AB 32.
- The Scoping Plan calls for water efficiency measures to reduce energy associated with water use. Scoping Plan, pp. 65-66. The AG's Mitigation Measures also call for measures for conservation of water and related energy. The failure to require such measures conflicts with the implementation of AB 32.

In view of these obvious examples of the Project's failure to implement *essential and applicable* strategies to combat climate change, the MND's finding that the Project does not conflict with admittedly *irrelevant and inapplicable* strategies does not constitute substantial evidence to support the conclusion that it will not make a considerable contribution to the obviously cumulatively significant problem of climate change.

3. Compliance with unadopted policy guidance, even if it had been shown, cannot support a finding that the Project's climate change impacts are not cumulatively considerable.

Even if the CARB Discrete Early Action Strategies were a relevant and complete list of climate change measures, or even if the Project did comply with the other measures identified above, the City could not use that compliance as the basis of a finding that its impacts are not cumulatively considerable. None of these strategies constitute a comprehensive, adopted plan for addressing greenhouse gas emissions with which the Project can be found compliant.

Under CEQA, a lead agency may only determine that compliance with an applicable plan or mitigation program renders a cumulative impact insignificant if: 1) the plan or mitigation program is "previously approved"; 2) the plan or program "provides *specific* requirements that will avoid or substantially lessen the cumulative problem"; and 3) the plan or program "is specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency." CEQA Guidelines, § 15064(h)(3) (emphasis added); *see also* OPR Technical Advisory, CEQA and Climate Change, available at <http://www.opr.ca.gov/index.php?a=ceqa/index.html> ("CEQA authorizes reliance on *previously approved plans and mitigation programs that have adequately analyzed and*

mitigated GHG emissions to a less than significant level as a means to avoid or substantially reduce the cumulative impact of a project.”) (emphasis added).

None of the CARB Discrete Early Action Strategies and none of the other strategies suggested above constitute “a previously approved plan or mitigation program.” CEQA Guidelines, § 15064(h)(3). None of them “provide[] *specific* requirements that will avoid or substantially lessen the cumulative problem.” CEQA Guidelines, § 15064(h)(3) (emphasis added).

For example, the proposed strategies in the CARB Scoping Plan and the AG’s Mitigation Measures do not have a timeline for implementation, defined performance criteria or specific requirements. The lack of specific performance criteria in these strategies foreclose their use as valid mitigation program under CEQA Guidelines, § 15064(h)(3). Indeed, the vague nature of many of the strategies identified in the CARB Scoping Plan and the AG’s Mitigation Measures contravene basic standards for CEQA mitigation. *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793-94 (mitigation invalid where it failed “to articulate specific performance criteria”). Moreover, because many of the strategies are not yet defined or implemented, they also cannot be relied upon to “avoid or substantially lessen the cumulative problem.” CEQA Guidelines, § 15064(h)(3).

Without collective implementation of the proposed measures and a showing that each measure contains specific performance standards such that compliance would achieve quantifiable reductions sufficient to meet California’s emission reduction targets, there is no legitimate basis to assume that these strategies would avoid the cumulative problem of greenhouse gas emissions. As a collection of largely unadopted proposals that may be developed at some future juncture, the strategies do not function as a mitigation program and are contrary to CEQA’s prohibition against deferred and uncertain mitigation measures. CEQA Guidelines, § 15126.4(a)(1)(B) (“[f]ormulation of mitigation measures should not be deferred until some future time”); *Fed’n of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th, 1252, 1261 (rejecting adoption of mitigation measures where “city failed to provide that the mitigation measures would actually be implemented”).

In addition, the strategies do not constitute a plan or program that is “specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency.” CEQA Guidelines, § 15064(h)(3). Indeed, as an assemblage of inchoate proposals, the strategies discussed above are simply not at a stage to be specified in law or adopted by an agency. Because these strategies do not meet the standards set forth under CEQA Guidelines section 15064(h)(3), the City cannot rely on them to determine that the Project’s cumulative impact on global warming is less than significant. Otherwise, the City could make an end run around the safeguards explicitly provided under CEQA Guidelines section 15064(h)(3) by simply pointing to compliance

with a collection of prospective and undeveloped measures for which virtually any project could be deemed compliant.

Furthermore, none of the strategies discussed above provides “specific *requirements* that will avoid or substantially lessen the cumulative problem.” For example, the AG’s Mitigation Measures are merely “measures and policies that *could* be undertaken.” Finally, neither the Executive Order S-20-04 nor the AG’s Mitigation Measures are a program that “is specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency.” CEQA Guidelines, § 15064(h)(3). The CARB Discrete Early Action Measures are inchoate proposals that have yet to be adopted by the relevant agencies. And the measure in the AG’s Mitigation Measures are not even intended to constitute “law enforced or administered by” the Attorney General’s Office through a public review process.

Regardless, the general strategies discussed above, including the relevant measures in the Scoping Plan, the Executive Order S-20-04, and the AG’s Mitigation Measures, are clearly relevant to any proper analysis and mitigation of greenhouse gas impacts. They do in fact identify a number of potentially relevant mitigation measures, albeit without adequate performance specifications. What these strategies cannot provide, however, is a plan on the basis of which the City may determine that the Project’s impacts are not cumulatively considerable under CEQA Guidelines, § 15064(h)(3).

Accordingly, the City must use some other method to determine whether the Project’s impacts are cumulatively considerable, such as comparison of the Project’s emissions to a numeric standard. If that comparison reveals that the Project’s emissions are cumulatively considerable, then the City should impose appropriate mitigation, which may be based on the general strategies discussed above.

4. Title 24 compliance is not substantial evidence that the Project’s greenhouse gas impacts are not considerable

The MND’s third criterion of significance is whether the “basic parameters of the proposed Project [are] inherently energy efficient.” MND, p. 14. The MND’s sole evidence for finding this to be the case is that the Project will comply with Title 24 energy efficiency standards. MND, p. 15. This “analysis” does not constitute substantial evidence that the project’s impacts are not cumulatively considerable.

The MND offers absolutely *no* evidence that compliance with the business as usual Title 24 energy efficiency standards will meet the greenhouse gas reduction goals required to address global climate change. AB 32 clearly contemplates the requirement for energy efficiency that goes beyond Title 24. Indeed, the need for Executive Order S-20-04 to ensure more efficient building standards cannot be reconciled with the suggestion that Title 24 is itself adequate.

III. Inadequate Analysis and Mitigation of Traffic Impacts

A. The MND's cumulative impact analysis is inadequate

The MND concludes that the Project will not make a considerable contribution to a cumulatively significant traffic impact based on the Traffic Impact Study's analysis of cumulative traffic conditions. MND, pp. 43-44. The Traffic Impact Study projected cumulative conditions by adding to current traffic volumes the traffic expected to be generated from a list of projects projected to be built and occupied within the City of Clearlake by the year 2010. Because this analysis was not based on a reasonable horizon year or on consideration of projects outside the City of Clearlake, there is no substantial evidence to support the conclusion that the impacts will be less than cumulatively considerable.

CEQA requires that a cumulative impact analysis consider the effects of the Project "in connection with the effects of past projects, the effects of other current projects, and *the effects of probable future projects.*" CEQA Guidelines, § 15355(b) (emphasis added). In doing this, an agency must discuss either "a list of past, present or reasonably anticipated future projects producing related or cumulative impacts, *including those projects outside the control of the agency*" or "a summary of projections contained in an adopted general plan or related planning document which is designed to evaluate regional or area-wide conditions." CEQA Guidelines, § 15130(b) (emphasis added).

Here, the decision to confine the analysis to a list of *current* projects that will be occupied in 2010, contemporaneously with the Project, ignores the cumulative effects of the substantial volumes of traffic that will be generated by foreseeable *future* projects over a reasonable planning horizon. Furthermore, the decision to confine the analysis to projects within the City of Clearlake ignores CEQA's mandate to consider projects outside the control of the City.

That there is a substantial foreseeable increase in traffic within the study area for the Project is evident from the City and County efforts to project this traffic through the year 2030 and to devise an impact fee program to address cumulative impacts from future development. It is likely that cumulative impacts at several of the study area intersections will in fact be significant over the next 20 years based on growth inside and outside the City of Clearlake, and based on the decision to use SR 53 as part of the Route 20 Principal Arterial Corridor. During this time period the Project can be expected to make a considerable contribution to these impacts. The MND fails to evaluate this impact and accordingly fails to provide substantial evidence that the impact will not be considerable.

B. The MND is equivocal about the significance of cumulative impacts

The MND is equivocal about the significance of the Project's cumulative impacts with regard to the intersection of Old Highway 53/Lakeshore Drive. First, it claims that

this impact will *not* be significant based on the City's apparent adoption of a LOD D standard in May 2009.³ Then, however, despite this, and despite CEQA's provision that mitigation may not be imposed for impacts that are not significant (CEQA Guidelines, §§ 15126.4(a)(3), 15041(a)), the MND nonetheless proposes Mitigation Measure 39 requiring that the Project pay traffic impact fees to address congestion, specifically at this intersection. The MND cannot reconcile its requirement for mitigation with a finding that the impact is less than cumulatively considerable.

C. Mitigation through payment of impact fees is inadequate

Even if the MND expressly acknowledged the significance of cumulative impacts, the proposed Mitigation Measure 39 does not meet CEQA's requirements for impact fees as mitigation for cumulative impacts. The City has not in fact adopted an impact fee or committed itself to the necessary improvements. Significantly, Mitigation Measure 39 requires a fair share contribution from the Project only if the City adopts an impact fee.

When impact fees are proposed as mitigation, the record must contain evidence that the necessary infrastructure improvements will actually be constructed when needed. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728. An agency must provide substantial evidence that the impact fees will be used to implement a "reasonable, enforceable plan or program that the relevant agency commits itself to implementing." *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188. In *Anderson First Coalition*, a project was required to pay 16.87% of the cost of Phase I improvements to an I-5 interchange and "to participate in the program" to provide Phase II improvements to that interchange. *Id.* at 1188. Even though the City stated that "it is preparing an update to the Traffic Impact Fee Program to include the I-5 interchange" and "condition 16 requires payment of the impact fee," the Court found that this provision was too vague and speculative to constitute a "reasonable, enforceable plan or program." *Id.* at 1189. Thus, a provision that a project pay a future fee is not sufficient when the project covered by that fee has not yet been adopted or the fee has not been determined. In sum, fee-based mitigation requires that the specific improvement projects actually be included in an adopted, enforceable plan or program *and* that this program include funding provisions that can be attained.

IV. Inadequate Analysis of Urban Decay Impacts

The MND's discussion of potential urban decay effects focuses at first on the current blighted character of the Project site itself, and discusses what are expected to be the benefits of redevelopment. The discussion of the Project's potential to cause urban decay elsewhere in the City and environs as a result of sales capture and store closures is limited to approximately one page. The MND states, with no documentary support, that the Lowe's Home Improvement Warehouse component of the Project would affect only

³ The Traffic Impact Study, completed in 2008 for a different project, concludes that the impact at this and other intersections *is* significant because that study employs a LOS C significance criterion.

two businesses in the area, Mendo Mill and Four Corners Building Supply. MND at p. 32. It then speculates, again with no analysis or documentary support, that Mendo Mills is unlikely to close because of a recent expansion and alleged customer service improvement. It further speculates that if Four Corners were to close, the site would be redeveloped “within a reasonable period of time.” We submit that the MND’s truncated discussion does not constitute substantial evidence to support the conclusion that the Project has no potential to cause urban decay in Clearlake. *See* CEQA Guidelines § 15384(a) (“Argument, speculation, unsubstantiated opinion or narrative . . . does not constitute substantial evidence”).

First, in terms of scope, the MND ignores several other potentially competing retailers in Lowes’ primary and secondary market area that may be impacted. These include: Highlands Nursery, 3445 Old Hwy 53, Clearlake; Sears, 14870 Olympic Drive, Clearlake; Day’s Supply (hardware), 11455 Clayton Creek Road, Lower Lake; and Kelseyville Lumber, 3505 Merritt Road, Kelseyville. Clearly the Project carries at least a potential to capture significant sales from these stores, leading one or more of them to close. If this occurs, and the buildings in question are not quickly re-tenanted, urban decay could well occur.

Second, the MND simply glosses over the woeful economic conditions that currently prevail, including the significant decline in the housing and construction industry throughout the region and State. The recession has hit the home improvement business sector particularly hard and is not expected to recover for a number of years. Thus, it is highly likely that there is no new demand for home improvement and the Project will negatively impact existing home improvement businesses.

Finally, in terms of methodology, the MND failed to undertake any quantitative analysis of any kind. In the five years since *Bakersfield Citizens for Local Control v. City of Bakersfield* was decided, urban decay analyses have become a standard part of CEQA review for large retail projects such as this. These analyses routinely include: (1) a definition of the project’s primary and secondary trade areas; (2) an accurate inventory of potentially affected retailers in those areas; (3) market area sales calculations by retailer type; (4) retail demand forecasts and sales leakage estimates; (5) project sales capture estimates; (6) documentation of baseline urban decay conditions in affected retailer areas; and (7) analysis of re-tenanting potential in the event of closures.⁴ The MND contains nothing approaching this level of detail in its discussion. On the contrary, there are no data or facts of any kind offered in support of its summary conclusions that the Project has no potential to cause urban decay at all.

⁴ For a recent example of such an analysis for another Lowe’s Home Improvement Warehouse proposed in Santa Rosa (which that City turned town in part due to impacts on local retailers), see: http://ci.santa-rosa.ca.us/departments/communitydev/development/Pages/CD_EIR_Lowes.aspx.

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Absent actual substantial evidence in the form of facts and documentary analysis, this conclusion is invalid. The City must conduct a meaningful urban decay analysis in an EIR before considering this Project further.

V. Conclusion

For all the foregoing reasons, we respectfully urge the City not to adopt the MND as current drafted, and to defer consideration of the Project until a full EIR is prepared and circulated for public review and comment in accordance with CEQA.

Thank you for your consideration of these comments.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.

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

Mark R. Wolfe
John H. Farrow

On behalf of the Sierra Club, Lake Group

MRW:ms