

January 7, 2010

By Fax & Electronic Mail

Clearlake Redevelopment Agency
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**Re: Mitigated Negative Declaration and Proposed Entitlement Approvals
for Clearlake Airport Redevelopment Project**

January 7, 2010 Meeting of Clearlake Redevelopment Agency

To the Clearlake Redevelopment Agency:

On behalf of the Sierra Club, Lake Group, please accept the following comments on the initial study and proposed mitigated negative declaration (“MND”) for the Clearlake Airport Redevelopment project referenced above (“Project”), to be anchored by a Lowe’s Home Improvement Warehouse.

We previously submitted comments on the MND during the public review period that closed on December 31, 2009. In those comments, we objected to the absence of substantive, fact-based analysis in the areas of air quality, traffic, and urban decay in the MND, and requested that the City prepare a full EIR to examine the Project’s numerous potentially significant environmental impacts.

The January 4, 2010 staff report contains no responses of any kind to the points we and others have raised concerning the adequacy of the MND under CEQA, and staff evidently continues to recommend adoption of the MND as is. Accordingly, we were compelled to consult with technical experts in air quality, traffic engineering, and retail economics to review the record to date to determine whether and to what extent the Project may in fact have significant impacts, thus triggering a full EIR under CEQA. The three consultants are:

- Tom Brohard, P.E., a professional traffic engineer with 37 years of experience, including service as City Traffic Engineer for over a dozen communities in Southern California. He is currently the Consulting City Traffic Engineer to the City of Indio and provides traffic engineering services to the Cities of Big Bear Lake and San Fernando.

- Greg Gilbert of Autumn Wind Associates, an air quality consultant with 10 years of experience with California air agencies and 8 years of air quality consulting experience.
- Joanne Brion of Brion & Associates, an urban economics and planning consultant with over 20 years of experience in fiscal impact analysis, retail sales leakage analysis, financial feasibility analysis, and economic impact assessment.

Copies of these experts' technical reviews, together with their respective *curricula vitae*, are attached to this letter and incorporated by reference. Their conclusions are summarized later in this letter.

I. Legal Standard for EIR Preparation

Following is a restatement of the legal standard for EIR preparation under CEQA as originally set forth in our letter to your Executive Director dated December 31, 2009.

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.

Note once more 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, substantial evidence in the form of expert opinion supported by facts establishes the Project will have several significant impacts, thus triggering CEQA's requirement to prepare a full EIR.

II. Traffic Impacts Are Significant And Unmitigated

As Mr. Brohard documents in his comments, and as summarized below, the Project not only may but will have significant unmitigated traffic impacts, thus triggering a full EIR.

A. Cumulative Impacts Are Considerable

As discussed in our December 31, 2009 letter, 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). We objected that the decision to confine the analysis to a list of *current* projects that will be occupied in 2010 – the current year – ignores the cumulative effects of the substantial volumes of traffic that will be generated by foreseeable *future* projects over a reasonable planning horizon. We also objected to the decision to confine the analysis to the traffic impacts associated with projects within the City of Clearlake, which ignores CEQA's mandate to consider projects outside the control of the City.¹

Mr. Brohard's analysis shows that the Project will in fact make a considerable contribution to significant cumulative traffic impacts by the year 2030. His analysis is based on the County-wide Regional Transportation Impact Fee Program Draft Report that is expressly referenced in the MND. Note this Report was prepared by the same traffic consultant that prepared the Traffic Impact Study for the MND. Mr. Brohard also considered data provided by Caltrans in connection with its evaluation of impacts from development of a portion of the Route 20 Principal Arterial Corridor, which includes the portion of SR 53 bordering the Project site.

Based on the information contained in the Fee Program Draft Report and the Caltrans data, Mr. Brohard identified specific roadway segments and intersections in the MND's traffic study area that will suffer degraded Levels of Service as a result of planned growth over the next 20 years. He then shows how this Project will make a considerable contribution to the traffic on those segments and at those intersections. Needless to say, the MND proposes no adequate mitigation of any kind for these

¹ Caltrans also objected to the City's failure to evaluate future cumulative conditions. Rex Jackman, letter to Dale Neiman, December 29, 2009. The City's traffic consultant incorrectly responded that CEQA does not require this analysis.

cumulative impacts. As stated in our earlier letter, proposed Mitigation Measure 39, payment of impact fees if adopted, does not meet CEQA's requirements for payment of impact fees as mitigation for cumulative impacts. A full EIR is required to provide an accurate analysis of the Project's cumulative traffic impacts.

B. The MND Understates Trip Generation and Hence Overall Traffic Impacts

Mr. Brohard's review also concludes that the MND fails to use the trip rates from the industry standard reference publication, ITE, Trip Generation, 9th Edition. Instead, it employs trip rates based on flawed studies of a handful of northern California Home Depots and fast food restaurants. This data patently is not reliable, as there is no significant correlation between the trip rates of these establishments on the one hand, and either the size of the facilities or the population of the cities in which they are located on the other. The MND expressly admits this lack of correlation and acknowledges that the data "tended not to make intuitive sense." Traffic Impact Study, pp. 9, 11.

Mr. Brohard concludes that the unjustified use of the much lower trip rates from the northern California facilities understates the Project's traffic impacts substantially. An EIR must be prepared to project traffic impacts based on credible trip generation data.

C. The MND Overstates Pass-By Trips, Which Also Understates Traffic Impacts

Pass-by reductions are reductions in projected trip generation estimates that recognize that some trips to a facility are made by cars already on the road. As Mr. Brohard indicates, ITE provides pass-by reduction percentages based on empirical studies of PM peak hour conditions.

Mr. Brohard shows that the Traffic Impact Study made two fundamental errors in applying pass-by trip reductions to this Project. First, while acknowledging that ITE's maximum observed pass-by trip reduction percentage should be lowered for the proposed home improvement facility based on the lack of substantial surrounding traffic, the Traffic Impact Study failed to adjust the pass-by reductions for the four restaurant uses proposed at the same site. Second, the Traffic Impact Study applied pass-by reductions that ITE identified as appropriate for *PM peak hour* traffic to the *Saturday midday* traffic – even though neither ITE nor the Traffic Impact Study provides any justification for doing so. As Mr. Brohard observes, pass-by reductions are not applicable to Saturday midday trips because such trips are not time-constrained.

We note that Caltrans also objected to the use of pass-by trip reduction rates in excess of 15% without site/development specific information. Rex Jackman, letter to Dale Neiman, December 29, 2009. The MND's traffic consultant incorrectly stated that the pass-by reductions were based on ITE data, when in fact ITE does not provide any data to support Saturday midday pass-by reductions.

The overstatement of pass-by reductions understates the Project's traffic impacts substantially. When correct pass-by assumptions are employed, the results will likely show Project impacts are likely significant. Accordingly, an EIR must be prepared to evaluate traffic impacts based on credible pass-by rates.

III. Air Quality and Greenhouse Gas Impacts Are Significant And Unmitigated

The attached comments of Greg Gilbert establish that the Project also will cause or make a considerable contribution to unmitigated significant air quality and greenhouse gas impacts. Mr. Gilbert's comments also demonstrate that the analysis in the MND fails to meet CEQA's requirements for the evaluation and mitigation of impacts. These points are summarized as follows.

A. The Project May Cause Or Contribute To A Significant Carbon Monoxide Concentration

Mr. Gilbert shows that the MND's dismissal of carbon monoxide impacts based on the claim that traffic volumes are much less than projected in the 1990 redevelopment Plan EIR is contradicted by the very data on which it purports to rely. Based on data presented in the MND itself, Mr. Gilbert demonstrates that 2007 traffic volumes are already in excess of projected 2010 volumes at one intersection, which of course does not even consider traffic growth since 2007, the Project's traffic, or traffic from foreseeable future development.

Using the 2007 data, Mr. Gilbert points out that the predicted 8-hour carbon monoxide concentration may already exceed to regulatory standard. Thus, because the Project will contribute additional traffic to this intersection, it must be considered to make a considerable contribution to a potentially significant impact.

B. The Project May Cause or Contribute To Significant Health Risks From Diesel Particulates

In our December 29, 2009 comments we objected to the MND's disregard of health risks from diesel toxics despite the presence of sensitive receptors at a school and hospital in the immediate vicinity. Please note that the Lake County Air Quality Management District also requested that the City conduct a health risk assessment and propose mitigation for diesel toxics, pointing out that this issue had not been evaluated in the Redevelopment EIR. Sara Nave, memorandum to Dale Neiman, Dec. 28, 2009.

Mr. Gilbert points out that a health risk assessment must be conducted, and he provides substantial evidence that the Project may cause a significant impact. Based on studies by both the Office of Environmental Health Hazard Assessment and the Bay Area Air Quality Management District, Mr. Gilbert shows that toxic emissions from expected levels of diesel engine use will lead to cancer risks in excess of recommended thresholds.

In view of this evidence, an EIR must be prepared that evaluates and mitigates impacts from toxic diesel emissions during both the construction and operational phase of the project.

C. The MND's Projection Of Greenhouse Gas Emissions Is Incomplete

The MND purports to adhere to the OPR technical advisory for evaluating greenhouse gas emissions. Part of that advisory requires that the City quantify the Project's emissions of greenhouse gas.

Mr. Gilbert demonstrates that the quantification provided in the MND is incomplete and understates the Project's emissions. In particular, it omits emission caused by the Project's electricity use, its disposal of solid wastes, and its construction. These major sources of emissions are subject to analysis and mitigation. Without quantifying these emissions, there is no basis for the MND to claim that it has followed the OPR technical advisory. Nor is there any basis in fact to claim that the Project's emissions do not make a considerable contribution to a cumulatively significant impact.

D. The Project Will Make A Cumulatively Considerable Contribution To Greenhouse Gas Emissions

Mr. Gilbert explains that the MND's analysis of the significance of the Project's greenhouse gas emissions is fundamentally inadequate. He explains that the significance analysis suffered from the following defects:

- The claim of consistency with CARB discrete early action strategies is irrelevant because these strategies do not apply to the Project;
- The claim that the project is not a major source of emissions is not relevant to a determination whether it is one of many sources of emissions that make a considerable contribution to a significant impact; and
- Mere Title 24 compliance does not demonstrate that the Project is inherently energy efficient or that it will make the necessary reductions compared to business-as-usual conditions.

Because the MND does not furnish an adequate analysis of the significance of the Project's emissions, Mr. Gilbert provides such an analysis and concludes that the emissions will in fact be cumulatively considerable. In particular, he demonstrates that even the understated emissions calculated by the MND would exceed the numeric thresholds identified by the California Air Pollution Control Officers Association in its white paper on CEQA and Climate Change. These numeric thresholds were determined to be highly correlated with meeting the AB 32 goals for emission reductions, which goals reflect scientific data on necessary emissions reductions. Thus, the Project's

emissions would in fact make a considerable contribution to greenhouse gas emissions and global warming because they exceed numeric thresholds that are necessary to meeting essential emission reductions.

As Mr. Gilbert explains, the City cannot use the Project's purported compliance with the MND's inappropriate significance criteria to foreclose consideration of this evidence that shows that the Project's effects are significant. *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109. The City must prepare an EIR to evaluate the Project's greenhouse gas emissions with reference to meaningful and adequate criteria.

IV. Urban Decay Impacts Are Significant And Unmitigated

As discussed in our prior comments, the MND's one-page 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 based purely on narrative and speculation and hence does not constitute substantial evidence under CEQA.

Joanne Brion & Associates ("JBA") prepared an analysis, also attached, of the potential economic impacts of the proposed Lowe's on other home improvement/building material retailers in Lake County. Specifically, JBA gathered current retail sales data for Lake County from the State Board of Equalization and compared this information to an estimate of retail demand using consumer spending data compiled and published by the Bureau of Labor Statistics. JBA also reviewed data from the County's recent "Lake County Taxable Retail Potential Analysis" prepared by the Center for Economic Development at California State University, Chico (March 2008).

As documented in the JBA report, current data establish the following:

- The market for home improvement retail has declined significantly in recent years, and there is virtually no market support whatsoever for a new major home improvement business in the County.
- Of all retail business categories in the County for which sales data are available, the building materials category is currently the best served within the County relative to household demand. In other words, the County is not experiencing any discernable sales leakage in the home improvement/building materials retail category. Accordingly, any sales generated by the Lowe's project will simply be captured from existing retailers in the County,.
- Based on Lowe's own data supplied in an EIR for a store proposed in Santa Rosa last year, the project here can expect to generate approximately \$38 million in annual sales. This amounts to **69 percent** of total existing home improvement sales across 40 retailers County-wide according to Board of

Equalization data. Thus, these 40 existing retailers will see their **combined** sales shrink to approximately \$16 million.

- The magnitude of this sales shift will almost certainly cause a number of these retailers to close. Given the current state of economic stagnancy in the County, it is likely that such closures will lead to long-term vacancies and hence urban decay.

Indeed, the current long-term vacancy (approximately six months) of the former Rite-Aid store in Clearlake's largest shopping center, as well as that of a Sprouls furniture store followed by a Thrifty Drug in another center are clear evidence that re-tenanting of retail vacancies is simply not occurring in the market area.

JBA's analysis, coupled with basic common sense, establishes that the Lowe's store will very obviously cause stores to close in the area, and that urban decay will inevitably result. A full EIR is required for this reason as well.

V. Conclusion

CEQA is clear that if there is any substantial evidence the Project *may* have one or more significant environmental impacts, the County *must* prepare an EIR. The existence of evidence to the contrary is immaterial. We submit that the attached comments of Mr. Brohard, Mr. Gilbert, and Ms. Brion clearly constitute "expert opinion supported by facts" and hence substantial evidence sufficient to support the requisite "fair argument" triggering EIR preparation. For these 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.



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On behalf of the Sierra Club, Lake Group