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Via Facsimile and Email

Mayor Jean Quan and
Members of the Oakland City Council
City of Oakland
1 Frank H. Ogawa Plaza
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c/o Darin Ranelletti
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Re: June 21, 2011 Hearing Re: Amendment to the Oakland Zoo Master Plan (Agenda Item #9.2)

Dear Mayor Quan and City Council Members:

On behalf of Friends of Knowland Park, we are writing to inform you that the California Environmental Quality Act (“CEQA”) and State Planning and Zoning Law prohibit the City Council from approving the proposed Amendment to the Oakland Zoo Master Plan (“the project” or “the Amendment”) until it prepares a full Environmental Impact Report (“EIR”) or, at least, a Supplemental EIR and remedies the project’s inconsistencies with the City of Oakland’s General Plan. We prepared these comments in conjunction with Tom Brohard and Associates, a licensed Professional Civil Engineer and Professional Traffic Engineer in California. The report prepared by Mr. Brohard is attached hereto as Exhibit A (“Brohard Report”).

Since the Planning Commission first met on this project on March 16, 2011, the City and the Zoo’s consultants have prepared mountains of documents in an attempt to justify their failure to prepare a full EIR for this project. Despite the reams of paper, two simple facts remain: (1) the project has changed substantially since it was originally approved in 1998 and (2) it would cause numerous significant impacts with

respect to native grasslands, Alameda Whipsnake (“AWS”) habitat, visual resources, traffic, and greenhouse gas (“GHG”) emissions, to name a few.

The City’s repeated refrain that—in light of the 1997 mitigated negative declaration adopted for the project—it simply cannot require the preparation of an EIR for the project, is wholly devoid of legal support. First, CEQA case law requires that in cases, such as here, where a project has changed so substantially since it was originally approved, it must be regarded as a “new project” and be considered with a fresh pair of eyes. Indeed, the 1997 MND was prepared *14 years ago* before greenhouse gases were considered under CEQA, before AWS was discovered on the project site and before the Zoo decided to change the project to impact several *more* acres of rare native grassland than under the previous plan. Moreover, the 1997 MND analyzed a different project—namely, the 1996 Master Plan—which was environmentally superior to the project that was ultimately approved in 1998. Second, even if this project can rightfully be considered a revision to the approved Master Plan, the project clearly meets the criteria for requiring a subsequent or supplemental EIR (“SEIR”). See CEQA Guidelines § 15162(b) (“If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency *shall* prepare a subsequent EIR if required under subdivision (a)).”

Thus, for the reasons set forth below and in letters submitted on behalf of FOPK and others, the Council must uphold FOPK’s appeal, deny the project and require the preparation of an EIR.

I. The Notice of Public Hearing is Misleading and Wrong.

As a threshold matter, the Notice of Public Hearing for the project contains grave errors that, unless corrected and re-noticed pursuant to the requirements of the Brown Act and the City’s Sunshine Ordinance, will confuse the public and effectively stifle public comment.

A. Appellants and Members of the Public May Submit New Evidence Into the Record.

The Council should correct language in the Notice of Public Hearing for this project, which suggests that members of the public may not submit any issues/evidence that was not already raised in the filed appeals and submitted to the Planning Commission. The Notice is misleading and wrong. CEQA expressly permits members of the public to submit comments and evidence “during the public comment period provided by this

division or prior to the close of the public hearing on the project before the issuance of the notice of determination.” Pub. Res. Code § 21177. The courts have elaborated on this provision:

[I]f a public hearing is conducted on project approval, then new environmental objections could be made until close of this hearing. If the decision making body elects to certify the [environmental document] without considering comments made at this public hearing, it does so at its own risk. If a CEQA action is subsequently brought, the [environmental document] may be found to be deficient on grounds that were raised at any point prior to close of the hearing on project approval.

Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184, 1201.

Here, there is no question that the City Council is holding a public hearing on the project and has not yet filed the operative notice of determination. *See* Staff Report, p. 10 (explaining that the NOD filed after the Planning Commission decision is not operative because an appeal was filed and that a new NOD will be filed). In addition, as discussed below, only the City Council has jurisdiction to approve the Amendment; the Planning Commission merely recommended its approval. Thus, the public may submit new evidence and testimony before and during the public hearing on the project.

Furthermore, it is not necessary that the public raise every issue to the Planning Commission so long as they are raised to the final decision making body, which in this case is the City Council. *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1212; *Browning-Ferris Industries v. City Council* (1986) 181 Cal.App.3d 852, 860; *see also* Kostka & Zischke, CEB, *Practice Under the California Environmental Quality Act* § 23.102 (stating rule). The City must correct the Notice of Public Hearing and re-notice the meeting.

B. The Notice Incorrectly States that the Planning Commission and Parks and Recreation Commission Approved the Amendment.

The Notice of Public Hearing and the Draft Resolution for today’s meeting incorrectly state that the purpose of the meeting is to consider “Upholding The Decisions of the City Planning Commission And Parks And Recreation Advisory Commission Approving The Amendment To The Oakland Zoo Master Plan.” The Staff Report adds to the confusion by stating that the City Council should “uphold the decision of the Planning

Commission to approve the amendment to the Master Plan.” Staff Report, p. 17. But that is not what these Commissions did. The Planning Commission does not have jurisdiction to approve the Master Plan amendment so it merely recommended its approval. *See, e.g.*, March 16, 2011 Planning Commission Staff Report, p. 11 (“*Recommend* approval to the City Council of the proposed amendment to the Zoo Master Plan.”[emphasis added]). Pursuant to the Management Agreement between the City and the East Bay Zoological Society, the *City Council*, not the Planning Commission, must approve all amendments to the Master Plan. *See* Agreement Between East Bay Zoological Society, Inc. and City of Oakland (May 23, 2005) ¶ 5; *see also* email correspondence from D. Rannelletti to T. DeBoni (Mar. 28, 2011).

Furthermore, the Draft Resolution fails to take any action on the Amendment itself. It merely upholds the Planning Commission’s actions on the required permits. The City must correct the Notice of Public Hearing and the draft resolution and re-notice the meeting.

II. The City Should Have Analyzed the Amendment to the Oakland Zoo Master Plan as a New Project Under CEQA.

The Amendment to the Zoo Master Plan is so markedly different from the original Master Plan that it constitutes an entirely new project for CEQA purposes. As such, the City should have conducted new, independent environmental review for the Amendment. Instead, the Subsequent Mitigated Negative Declaration/Addendum (“Addendum”) claims the Amendment only makes “minor technical changes” to the original Master Plan or, as clarified in staff’s responses, to the “outcome of the CEQA analysis,” and that an Addendum to the original 1998 MND is appropriate. Even if this were true, which it is clearly not given that the “outcome of the CEQA analysis” resulted in piles of paper several inches, the City misses the point. The 1996 Master Plan, which was evaluated in the 1997 MND is so different from the proposed Amendment that any attempt to piggyback on this outdated document violates CEQA’s purpose of ensuring proper disclosure and mitigation of environmental impacts.

CEQA section 21166 requires subsequent environmental review for a project if certain criteria are met. Similarly, Guidelines sections 15162 and 15164 clarify and elaborate the circumstances under which a subsequent EIR or MND or an addendum are required. These sections, however, are inapplicable to “a new project . . . that has many of the same characteristics of an earlier project approved for the same site.” *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, 1297, 1300-01. In such a case,

the lead agency must conduct independent environmental review of the impacts of the new project. *Id.* The Amendment to the Zoo Master Plan is just such a project.

The Amendment proposes such vast changes to the originally evaluated Plan that it has now become a new project that is merely “planned for the same land and involving similar mixes of uses.” *Lishman* at 1300. The 1997 MND evaluated impacts that would have resulted from the 1996 Master Plan. In contrast to the currently proposed Amendment, the 1996 Master Plan contemplated a 25-acre “California 1820” exhibit, included no perimeter fence and was “designed to minimize disturbance to undeveloped areas by clustering new development and efficiently using existing developed areas.” 1997 MND, p. 2.¹ The proposed Amendment, on the other hand, proposes a 56.26-acre California exhibit, installation of an entirely new Veterinary Medical Hospital, a vastly expanded and relocated Interpretive Center, replacement of a previously approved road shuttle bus system with an aerial electric gondola system, addition of on-site (versus off-site) breeding activity, a new overnight camping area, and a perimeter fence. Furthermore, as shown in site maps, the California exhibit was relocated to the upper reaches of Knowland Park—where the Park’s most sensitive biological resources are located. *Compare* Addendum Figures 2-20 and 2-21.

The City cannot rely on a document that evaluates a completely different project (the 1996 Master Plan) to assess the environmental effects of an effectively new project (the proposed Amendment), regardless of whether they happen to share some of the same land and involve similar uses. *Save Our Neighborhood*, 140 Cal.App.4th at 1300. In fact, the City failed to address at all the “threshold question [of] whether we are dealing with a change to a particular project or a new project altogether.” *Id.* at 1301.

The City appears to agree. Indeed, where convenient, the City takes the position that certain aspects of the 1998 Master Plan are in fact “different projects.” Table 2-2 of the Addendum lists Master Plan project components and states whether or not they have been completed. The Arroyo Viejo Creek restoration project is cited as a component of the Arboretum Element of the 1998 Plan. The staff report (page 2) also refers to the restoration of Arroyo Viejo Creek as part of the 1998 Master Plan that has already been

¹ The Addendum states that the previously-approved Master Plan authorized 61.54 acres of development. Addendum, p. 2-44. It is unclear how the City arrived at this figure based on the documents presented. In any event, it is clear that the City conducted its environmental review on the 1996 Master Plan, not on the larger-scale project that the City ultimately approved.

completed. Yet in response to pointed questions from the Regional Water Quality Control Board regarding the Zoo's failure to comply with mitigation reporting requirements for the Creek restoration project, the City explains that the Creek project "is a separate project from the current proposal." Staff Report, App. H, p. 16. While we object to the City's failure to comply with mitigation and monitoring requirements, we wholeheartedly agree with the City's conclusion.

In sum, the new project components to the Zoo Master Plan vary so substantially from the original Plan that the City should have conducted independent review of their environmental impacts as a new project. Because it failed to do so, the Addendum violates CEQA.

III. Even If the Amendment is Not a New Project, The City Should Have Prepared a SEIR.

As set forth in our March 14, 2011 letter, the project would result in numerous significant impacts that are not mitigated to less than significant levels. The City's Responses dated April 20, 2011 and its supplemental responses prepared for tonight's meeting completely fail to refute these undeniable conclusions. Without repeating the previously identified defects, we point out just some of the impacts that will remain significant despite project mitigation.

A. The Project Will Result in Significant Traffic Impacts.

The Addendum's traffic impact analysis is riddled with errors, inconsistencies and omissions that, once corrected, will reveal that the project will result in significant unmitigated traffic impacts. While the Brohard Report provides a complete accounting of each deficiency, certain of the most egregious problems are set forth below:

- The Addendum's traffic analysis relies on attendance figures that appear to be significantly underestimated. The traffic analysis is sensitive to changes in attendance rates such that incorrect estimates could greatly alter the traffic analysis.
- The Addendum ignores its own significance criteria that, if properly applied would result in an inevitable conclusion that traffic impacts will be significant at one or more key intersections.

- The Addendum presents inaccurate baseline traffic volumes. It uses faulty methodology (rather than the industry standard methodology recommended by the Institute of Transportation Engineers) and uses traffic counts recorded in January and April, rather than in summer when extended zoo hours would affect PM peak traffic. These errors result in an inaccurate baseline.
- The Addendum's analysis of baseline traffic volumes at key intersections in the vicinity of the project includes multiple discrepancies between adjacent intersections. It fails, for example, to explain how *hundreds of vehicles* could, according to the City's/Zoo's traffic model, disappear between adjacent intersections without anywhere to go but a gas station.
- The Traffic Study omits trips generated by new employees at the proposed Veterinary Medical Hospital and California exhibit.
- The Addendum assumes a vehicle occupancy rate of 3.6 visitors per vehicle, when the Traffic Study (Appendix K-6) indicates a vehicle occupancy rate of 3.46 or lower. Multiplied by hundreds of thousands of visitors per year, this discrepancy results in a vast understatement of project trip generation.

Notwithstanding the seriously flawed Addendum's claim that no significant traffic impacts will be caused by the proposed project, the Brohard Report shows that the Project would result in potentially significant traffic impacts. Specifically, project-related traffic will result in impacts to intersection #2 at Golf Links Road / I-580 Westbound On-Ramp (i.e., delays of 6.4 seconds in the PM peak hour and 4.8 seconds in the weekend peak hour). Addendum at 3.11-44, Table 3.11-11. In accordance with the significance criteria outlined in the Addendum, this level of delay would result in a significant impact. Addendum at 3.11-26. The Addendum offers no mitigation for these significant traffic impacts.

In sum, we have identified a number of grave errors in the Addendum's traffic analysis. When these errors in the traffic analysis are corrected, a number of additional significant traffic impacts will be created by the project at other study intersections such as Golf Links Road at Mountain Boulevard/Zoo Drive where the peak hour traffic signal warrant is already nearly satisfied. Consequently, an EIR must be prepared for the Oakland Zoo Master Plan Amendment to properly identify, evaluate, and analyze the significant traffic impacts that will occur and to propose feasible mitigation measures.

B. The Addendum Fails to Adequately Analyze and Mitigate the Project's Construction and Operational Greenhouse Gas Emissions.

The 1998 MND did not consider climate change impacts at all. The Addendum considers climate change and GHG emissions, as it must, but fails to conduct the analysis properly, which results in an undercounting of emissions. Had the City conducted the proper analysis, it would have concluded that the project would exceed the Bay Area Air Quality Management District's ("BAAQMD's") threshold and result in significant impacts.

1. The Addendum Misstates the Correct Threshold of Significance.

As an initial matter, the Addendum states that the thresholds of significance are based on BAAQMD's established thresholds for GHG gas emissions, but the document misinterprets the District's thresholds. The Addendum states that the project's impacts would be considered significant if the emissions exceed *both* the 1,100 metric tons threshold and the 4.6 metric tons of CO₂e per service population annually threshold. Addendum at 3.5-15. The Addendum further states that the impact would be considered less than significant if a project's emissions are below *either* of these thresholds. The document's interpretation is inaccurate. The BAAQMD's thresholds of significance clearly state that exceedance of the 1,100 metric ton threshold *or* the 4.6 metric tons of CO₂e per service population annually threshold would result in a significant impact. BAAQMD Guidelines Table 2-1 at 2-2.

2. The Addendum Fails to Adequately Analyze Construction-Related Greenhouse Gas Impacts.

The Addendum's treatment of construction period emissions is contrary to recommendations in the District Guidelines. Specifically, the District recommends that the Lead Agency quantify and disclose GHG emissions that would occur during construction, and make a determination of the significance of these emission impacts. BAAQMD Guidelines at 2-6 and 8-7. The District Guidelines also recommend that projects incorporate best management practices ("BMPs") to reduce GHG emissions during construction. *Id.* at 2-6. Here, contrary to the clear guidance provided by the District, the Addendum fails to establish a threshold of significance for construction emissions and instead annualizes the construction period emissions over a 40-year period and then adds them to estimated emissions during operation. Addendum at 3.5-15. By annualizing construction period emissions over 40 years, the analysis presents a watered-

down version of the emissions that can be expected during the 3.5-year construction period, thereby artificially minimizing the potential impacts.

Having evaded its obligation to determine the level of significance of project-related construction emissions, the Addendum then fails to identify BMPs to reduce or avoid the project's impacts related to construction period emissions to the extent feasible. CEQA requires that "lead agencies shall consider feasible means...of mitigating the significant effects of greenhouse gas emissions." CEQA Guidelines §15126.4. A revised analysis must evaluate separately the project's construction emissions, determine the level of significance of those emissions, and implement BMPs to minimize potential impacts to the extent feasible.

3. The Addendum Fails to Adequately Analyze Operational Emissions.

The largest source of operational emissions is from motor vehicles. *See* Addendum, Table 3.5-3. As discussed above, the Addendum's failure to accurately assess attendance projections and future project-related traffic impacts result in a significant undercounting of operational greenhouse gas emissions. Once these errors are corrected, the City must re-do its operational emissions analysis, the result of which will certainly trigger BAAQMD's thresholds.

4. The Addendum Underestimates the Project's GHG Emissions by Failing to Include Analysis of Black Carbon.

The Addendum's estimate of the project's GHG emissions fails to account for its black carbon emissions. Black carbon, which is a component of soot, is produced by incomplete combustion and is a significant contributor to global warming. Although combustion produces a mixture of black carbon and organic carbon, the proportion of black carbon produced by burning fossil fuels, such as diesel, is much greater than that produced by burning biomass. *See* Exhibit B, Ramanathan and Carmichael, Global and Regional Climate Changes Due to Black Carbon, Scripps Institution of Oceanography. Here, the Addendum's analysis of motor vehicle emissions—especially from diesel trucks—failed to account for black carbon's contribution to GHG emissions.

Black carbon heats the atmosphere in a variety of ways. First, it is highly efficient at absorbing solar radiation and in turn heating the surrounding atmosphere. Second, atmospheric black carbon absorbs reflected radiation from the surface. Third, it

evaporates low clouds. Notably, black carbon is often associated with other aerosols such as sulfates, which greatly increases its heating potential. *Id.*

Due to black carbon's short atmospheric life span and high global warming potential, reducing black carbon emissions offers an opportunity to mitigate the effects of global warming trends in the short term. *Id.* It is estimated that black carbon is the second greatest contributor to global warming behind carbon dioxide. *Id.* In developed countries, diesel combustion is the main source of black carbon. Diesel particulate matter is approximately 75 percent elemental carbon. See Exhibit C, EPA, 2002 Diesel Health Assessment.

Construction and operation of the project will require the use of diesel powered trucks and equipment and will result in exceedances of particulate matter, which will result in significant black carbon emissions. Addendum at 3.2-18 to 3.2-20. Yet, the Addendum ignores this contributor to climate change when evaluating GHG emissions. Black carbon emissions must be quantified and mitigated as part of the new or Supplemental EIR for the project.

C. The Project Will Result in Significant Biological Impacts.

1. Impacts to the Alameda Whipsnake Remain Significant Despite Mitigation.

Since the last Planning Commission hearing, the Zoo has prepared a draft AWS Mitigation and Monitoring Plan that sets forth more details about how the Zoo intends to mitigate its permanent impacts on 16.6 acres of AWS habitat. While this Plan is helpful in bridging the information gap, it fails to support the City's conclusion that impacts to the AWS will be reduced to less than significant levels.

First, the Plan's mitigation ratios and details about the proposed conservation easement are merely "draft" and have not been incorporated into the relevant Mitigation Measure 14C. For example, Mitigation Measure 14C merely requires 1:1 mitigation, whereas the draft AWS Plan considers up to 3:1 mitigation. Thus, the City has failed to comply with CEQA's requirement that mitigation measures be "fully enforceable through permit conditions, agreements or other binding instruments." CEQA Guidelines § 15126.4(a)(2).

Even if these details were incorporated into Mitigation Measure 14C, the City would still be unable to conclude that impacts to AWS were mitigated to less than significant levels. The Addendum establishes a performance standard of "no net loss."

See Mitigation Measure 14C. Yet the project would result in a net loss of 16.6 acres because no new habitat will be created or restored. Indeed, the Plan proposes to conserve habitat within Knowland Park that is already considered to be of the “highest quality.” Draft AWS Plan, p. 14. Moreover, because the habitat is in Knowland Park, it is already protected from development by the Oakland General Plan. Thus, the Addendum, under its own significance threshold, cannot escape the conclusion that impacts will remain significant and unavoidable.

2. Impacts to Native Grasslands Remain Significant Despite Mitigation.

The proposed mitigation for native grasslands suffers from similar defects. The project will impact approximately 14 acres of grasslands, four of which have been identified by recent surveys as being native. As mitigation, the Zoo is required to “enhance” 17.2 acres of grasslands. Again, however, the project would still result in a net loss of native grasslands since the grasslands identified for enhancement are “relatively intact” and already protected from development by the Oakland General Plan. To the extent the grasslands would degrade in quality due to infestation by non-native species, such degradation is caused by operation of the Zoo and should be addressed by the Zoo regardless of the project. Indeed, it appears the Zoo is trying to get credit for work that it should be doing even without project approval. This is not mitigation, and it is certainly not enough to support the Addendum’s less than significant conclusion.

IV. The Addendum Fails to Adequately Analyze Cumulative Impacts.

CEQA unequivocally requires lead agencies to disclose and analyze a project’s “cumulative impacts,” defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” Guidelines § 15355. These impacts may result from a number of separate projects, and occur when “results from the incremental impact of the project [are] added to other closely related past, present, and reasonably foreseeable probable future projects,” even if each project contributes only “individually minor” environmental effects. Guidelines §§ 15355(a)-(b). A lead agency must prepare an EIR if a project’s possible impacts, though “individually limited,” prove “cumulatively considerable.” § 21083(b); Guidelines § 15064(i).

The CEQA Guidelines set forth two alternative methods for analyzing cumulative impacts: (1) a list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency; or (2) a summary of projections contained in adopted planning documents.

Guidelines § 15130(b)(1). The Addendum does not list past, present and probable future projects that would result in cumulative impacts; nor does it contain a summary of projections in adopted planning documents. Because the City failed to follow either one of these required methodologies, its cumulative impacts analysis fails to comply with CEQA.

Furthermore, with respect to biological impacts, the Addendum completely fails to address the importance of native grasslands and AWS habitat on a regional basis. These sensitive natural resources are so rare, and their populations so isolated, that any impact to them should be considered cumulatively considerable. Instead, the analysis completely ignores the current impaired state of these resources.

V. The Project is Inconsistent with the Oakland General Plan and the Oakland Zoo Master Plan Itself.

A. The Project is Inconsistent with the Oakland General Plan.

FOKP and others have pointed out that the proposed Amendment is tantamount to trying to fit a square peg in a round hole. The project violates numerous General Plan policies related to open space, visual resources, and transportation, to name a few. For example, our March 14 letter explains why construction of the project's 34,000-square foot Interpretive Center on a ridgeline would violate OSCAR policy REC-1.3, which strongly discourages new non-recreational buildings in City parks unless certain exceptions apply. The City's claim that it falls into one or more of the exceptions is unsupported and erroneous.

First, the City claims that it is not feasible to locate the Interpretive Center elsewhere because its services are associated with the California exhibit. The City's explanation fails, however, to explain how the Center's office space is a "service" that cannot be located off-site or in the already developed portion of the Zoo, since, according to the Addendum, no offices are needed to house new employees. Indeed, the 1998 plan included a modest "low profile" 7,500-square foot visitor center structure. Certainly if it was feasible to comply with the OSCAR policy in 1998, it should be feasible now.

Second, there is no basis for City's assertion that the Center should be exempt from the policy because it is being developed pursuant to an adopted master plan. The Center is *not* being developed pursuant to the adopted master plan; it may only be constructed if the Oakland Zoo Master Plan is *amended*. Taking the City's position to its logical conclusion, the Zoo would be able to amend its master plan to place a skyscraper within park boundaries and still qualify for an exemption to the policy. Planning laws do

not work that way. OSCAR Policy REC-1.3 limits what the Zoo may include in its Amendment, not vice versa.

B. The Project Is Inconsistent with the 1996 Zoo Master Plan.

The 1996 Master Plan sets forth a modest vision for the California exhibit. It proposes a 25-acre California exhibit (1997 MND, p. 2) and sets forth its guiding policy to avoid environmental impacts: “The 1996 Master Plan needs to be sensitive to environmental issues, and should try to avoid potential impacts where possible.” 1996 Master Plan, p. 2. In light of concerns regarding the loss of acreage of natural lands within the California exhibit, the Master Plan explains that it was “designed to focus on improvement of already developed lands and to reduce the amount of natural lands impacted.” *Id.*, p. 25.

In stark contrast, the proposed Amendment seeks to develop 56 acres for the California exhibit and shuns the Master Plan’s avoidance policy by placing the bulk of the development in the upper reaches of Knowland Park where sensitive biological resources are most prevalent. Despite the name of this project, it appears the City does not actually plan to amend the 1996 Master Plan. Thus the project is inconsistent with its own planning vision.

VI. Conclusion.

For the reasons set forth above, the Council must uphold FOPK’s appeal, deny the project and require the preparation of an EIR.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP


Catherine C. Engberg

Attachments:

- Exhibit A – Tom Brohard and Associates Report & Resume
- Exhibit B – Global and Regional Climate Changes Due to Black Carbon
- Exhibit C – Excerpt of 2002 Diesel Health Assessment