

THE FROG EATERY & LOUNG

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December 06, 2012

AGENDA ITEM 3

Andrew Malik

Director Development Services
City of Tracy
324 E.11th. Street
Tracy, CA. 95376

**RE: The Frog Eatery & Lounge
Pavillion Parkway Plaza Center
2706 Pavillion Parkway (AKA 1000)
Units: A-1 & A-2 Tracy, CA 94303
APN # 212-290-470**

Mr. Malik,

Per our phone conversation, your suggestion and my request regarding permit fees, as they would apply to our project; I am asking for some substantial consideration regarding said fees do to the repeated delays by the City over the last seven months and the last minute date change for the hearing on December 4, 2012 to December 18, 2012, which has effectively cost us the Holidays and the entire year; amounting to over \$75,000.00 in loses and business exposure; as everyone knows this time of the year is the busiest, which is now lost.

We need assistance in this regard.

Thank You.



Gary Gardino

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AGENDA ITEMS 4 & 5



Horizon
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Horizon Planet
Conserving the Best in California

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D.E.S.

December 18, 2012

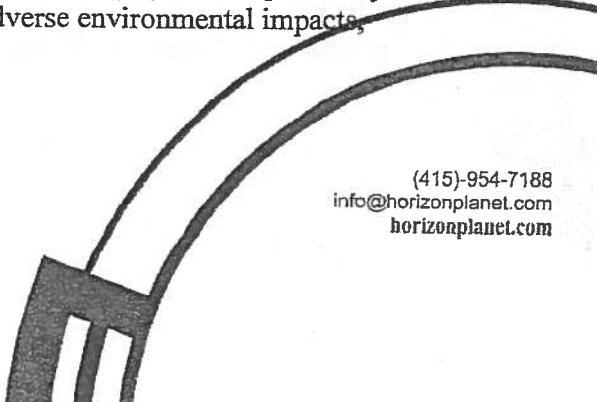
Bill Dean
City of Tracy
Development and Engineering Services
333 Civic Center Plaza
Tracy, CA 95376

**Re: Tracy City Council Consideration of MacDonald and Valpico Apartments Project;
Preparation of Environmental Impact Report(s) Required Under California
Environmental Quality Act**

Dear Mr. Dean,

We submit this letter on behalf of Horizon Planet, the purpose of which is to inform the City of Tracy City Council that the analyses under the California Environmental Quality Act ("CEQA;" Public Resources Code section 21000 et seq), and the approval documents related to such analyses, for the 60-unit residential apartment project proposed for development near the intersection of Valpico Road and South MacArthur Drive (the "MacDonald Apartments Project"), and the 184-unit residential apartment project proposed for development immediately adjacent to the above (referred to herein as the "Valpico Apartments Project"), are woefully inadequate. These two projects are being considered by the City Council under Agenda Items 4 and 5, respectively.

Meaningful analysis effectuates one of CEQA's fundamental purposes: to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." (*Laurel Heights Improvement Ass'n v. Regents of the University of California*, 6 Cal.4th 1112, 1123 (1993).) To accomplish this purpose, an EIR must contain facts and analysis, not just an agency's bare conclusions. (*Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal.3d 553, 568 (1990).) The City's decision to approve the MacDonald Apartments Project on the basis of CEQA streamlining exemption provisions, and to approve the Valpico Apartments Project on the basis of a mitigated negative declaration, violate applicable law. Ultimately, and as explained below, the City must prepare environmental impact reports ("EIRs") for each of the projects, since a fair argument supported by substantial evidence exists that each project, independently and cumulatively, would result in potentially significant and adverse environmental impacts, many of which are significant and unavoidable.



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I. The City Illegally Segmented Environmental Review of the Two Apartments Projects, in Violation of CEQA,

A lead agency under CEQA must provide a complete project description when evaluating the environmental effects of that project, and may not split a large project into small pieces so as to avoid environmental review of the entire project. (*Orinda Ass'n v. Board of Supervisors*, 182 Cal.App.3d 1145, 1171 (1986).) The City has artificially narrowed the scope of environmental review for the MacDonald Apartments Project and Valpico Apartments Project by identifying them as two separate projects, when in fact they constitute two parts of the same development. While the two developments appear to be sponsored by different applicants, each project would provide, on development sites that lie directly adjacent to one another, various numbers of three-story apartment buildings containing 24 units with the exact same dimensions and floor plans. (Compare MacDonald Apartments Project, Attachment D, p. 2 and Attachment E, p. 1 with Valpico Apartments Project, Attachment I, p. 5 and Attachment G, p. 1.) Moreover, elevation drawing demonstrate at least some of these apartment buildings may be architecturally indistinguishable. (Compare MacDonald Apartments Project, Attachment D, p. 3 with Valpico Apartments Project, Attachment I, p. 1.) Finally, it should not be lost on the Planning Commission that these two projects share a common point of ingress and egress, Glenbriar's Drive. Indeed, on site plan in the Valpico Apartments Project application package depicts both developments, and with matching landscaping. (Valpico Apartments Project, Attachment J.)

Aside from the physical aspects discussed above, it is not possible to disentangle the two projects from an entitlement standpoint. For instance, the MacDonald Apartments Project appears to site apartment buildings in close proximity, violating section 10.08.1610(d) of the City's Municipal Code which requires that the minimum distance between buildings equal the average height of the two buildings involved. According to the site plan for the MacDonald Apartments Project (Attachment C), it appears some of the 48-foot tall apartment buildings are located as close to 27 feet from one another. Such a layout only would be permitted through amendment to section 10.08.1610(d) -- a zoning text amendment that only is proposed *in association with the Valpico Apartments Project*. Clearly, the MacDonald Apartments Project could not comply with City ordinance without approval of the Valpico Apartments Project, demonstrating the two projects are really one.

The continuity of the project sites, the similarity of the uses, the replication of architectural designs, the shared circulation system, and the interdependence of entitlements all indicate the 60-unit MacDonald Apartments Project and the 184-unit Valpico Apartments Project are in fact two components of the same development for the purposes of CEQA. Despite this reality, the City has prepared separate environmental review processes for each project, neither of which contemplates the other. Therefore, each analysis indicates there are lesser impacts than what would occur if the City evaluated a single, integrated 244-unit apartment project. In the alternative, and as explained in much greater detail below, the City's analyses for each of the projects fails to account for the other in a cumulative environmental analysis.

II. A CEQA Streamlining Exemption is Not Appropriate for the MacDonald Apartments Project; the City Must Prepare an EIR.

City staff purport to rely on a CEQA streamlining provision under Public Resources Code section 21083.3 and Title 14, California Code of Regulations (“CEQA Guidelines”), section 15183, to avoid environmental review of the MacDonald Apartments Project. Such reliance is ill-informed, and illegal in these circumstances.

Under the aforementioned streamlining provisions, a certified environmental impact report (“EIR”) for a planning or zoning action may be used to eliminate, or to reduce the scope of, environmental review for later development projects that are consistent with the planning or zoning action. Section 21083.3 applies when a parcel has been zoned, or designated in a community plan (such as a general plan), to accommodate a particular density of development, and an EIR was certified for that action. A later development project is deemed consistent with the planning or zoning action where the project’s proposed density is equal to or less than the density for the project site in the prior action, and the project complies with any density related standards in the plan. (CEQA Guidelines § 15183(i)(2).)

Here, City staff has concluded that the MacDonald Apartments Project is consistent with the high-density land use designation that the City’s General Plan assigns to the MacDonald Apartments Project site. However, as explained above, the MacDonald Apartments Project and the Valpico Apartments Project are two components of the same project, and the Valpico Apartments portion is not consistent with the General Plan, requiring an amendment thereto. If one “reverse engineers” the piecemealing that has occurred, it becomes evident the MacDonald Apartments Project, because it includes the additional 184 dwelling units being proposed on the adjacent site, is not consistent with the General Plan and the land uses and densities it assigns to the parcels concerned. Therefore, at a threshold level, it would be inappropriate to avoid a full-blown CEQA analysis for the MacDonald Apartments Project by relying on Public Resources Code section 21083.3 and CEQA Guidelines section 15183.

Even assuming, for the sake of argument, the City has not illegally segmented the two apartments projects being considered, the streamlining framework the City will consider adopting for the MacDonald Apartments Project is inappropriate under CEQA.

First, one of the approvals associated with the MacDonald Apartments Project is a change to citywide parking standards. The City has not conducted any CEQA review for this proposal and, insofar as the City meant to rely on CEQA’s streamlining provisions, this zoning text change to the City’s municipal code is not the type of site-specific proposal contemplated by the streamlining frameworks identified above. Nor has the City evaluated the environmental impacts of minimizing distances between buildings under Municipal Code section 10.08.1610(d); while the project approval documents do not include this entitlement, as explained before, approval of a zoning text amendment is necessary to implement the MacDonald Apartments Project. This proposal too constitutes a citywide zoning action, and is not eligible for evaluation under the streamlining provisions upon which City staff seek to rely. City staff has attempted to put square pegs into round holes.

Second, City staff's reliance on streamlining under Public Resources Code section 21083.3 and CEQA Guidelines section 15183 for the MacDonald Apartments Project fails because the City has ignored various statutory limitations on the use of these provisions, which limitations directly apply here. For example, the application of the above streamlining provisions is subject to the following limits:

- Section 21083.3 does not exempt analysis of impacts that are "peculiar to" the parcel or the project if those impacts were not addressed as significant impacts in the previous EIR -- here, the City's General Plan EIR. (Pub. Res. Code § 21083.3(a)-(b); CEQA Guidelines § 15183(b)(1)-(2).)
- Section 21083.3 does not exempt analysis of significant impacts that are peculiar to the parcel or project if substantial new information shows that the impact will be more severe than was described in the prior EIR. (Pub. Res. Code § 21083.3(a)-(b); CEQA Guidelines § 15183(b)(4).)
- Section 21083.3 does not exempt a requirement to analyze a project's potentially significant off-site impacts or cumulative impacts, if the impacts were not discussed in the previous EIR. (Pub. Res. Code § 21083.3(c); CEQA Guidelines § 15183(b)(3).)

The MacDonald Apartments Project has numerous peculiar impacts that the City's General Plan EIR did not contemplate, including without limitation discussion of the MacDonald Apartments Project site's particular aesthetic resources, agricultural resources, biological resources, geology, contamination from previous land uses employing hazardous materials, hydrological resources, mineral resources, and water considerations. (*See* Pub. Res. Code § 21083.3(a)-(b); CEQA Guidelines § 15183(b)(1)-(2).) Each of these impacts are set forth in the discussion of the Valpico Apartments Project below, and are incorporated here by reference; while the environmental analysis of the Valpico Apartments Project does not expressly refer to the MacDonald Apartments Project site, its implementation of the same uses (e.g., three-story apartment buildings), as well as its direct adjacency to the Valpico Apartments Project site, mean it is appropriate to infer the environmental challenges associated with the latter site would also be associated with the former.

The CEQA analysis for the MacDonald Apartments Project also fails because it neglects to account for numerous off-site impacts, including without limitation those related to air quality, greenhouse gases, noise, public services, public utilities, and traffic. (*See* Pub. Res. Code § 21083.3(c); CEQA Guidelines § 15183(b)(3).) As before, each of these impacts is further discussed in connection with the Valpico Apartments Project, below, and this discussion is incorporated herein by reference.

Finally, the City cannot rely on CEQA streamlining provisions to approve the MacDonald Apartments Project because the administrative record of proceedings completely fails to evaluate cumulative impacts of the project, having failed to evaluate the combined impacts of the MacDonald Apartments Project in combination with the Valpico Apartments Project¹ and the Tiburon Village Project that has been approved for development immediately to the north of the

¹ Again, the MacDonald Apartments Project and the Valpico Apartments Project are two components of the same project; this and all cumulative impacts discussions in this comment letter are presented in the event the City, and a reviewing judicial body, disagree that the two nominal projects are actually parts of a single development project that has been illegally piecemealed.

MacDonald Apartments Project site. (See Pub. Res. Code § 21083.3(c); CEQA Guidelines § 15183(b)(3).) The above comment is not to say that only the Valpico Apartments Project and the Tiburon Village Project must be included in a cumulative scenario; there may be additional projects that are reasonably foreseeable, and that the analysis must consider.

For all of the above separate and independent reasons, the City's reliance on CEQA streamlining provisions under Public Resources Code section 21083.3 and CEQA Guidelines section 15183 for approval of the MacDonald Apartments Project is inappropriate. As the discussion of the Valpico Apartments Project, below, demonstrates, there is a fair argument that development of either project would result in significant and unavoidable impacts, thus warranting preparation of an EIR.

In addition, due to the above defects in the CEQA analysis, each of the proposed findings related to approval of the MacDonald Apartments Project is flawed and inadequate under applicable law.

III. A Mitigated Negative Declaration is Not Appropriate for the Valpico Apartments Project; the City Must Prepare an EIR.

CEQA provides that a lead agency may issue a negative declaration and may avoid preparing an EIR only if "[t]here is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." (Pub. Res. Code § 21080(c)(1).) In making this determination, the agency must consider the direct and indirect impacts of the project as a whole (CEQA Guidelines § 15064(d)), as well as the project's growth-inducing and cumulative impacts. (See *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal. App. 3d 1325, 1333.) An agency must prepare an EIR whenever it is presented with a "fair argument" that a project "may" have a significant effect on the environment, even if there is also substantial evidence to indicate the project will not. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75; CEQA Guidelines § 15064(f)(1). A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. (*Id.* at 83, n. 16.) This standard sets a "low threshold" for preparation of an EIR. (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252.) Where there are conflicting opinions regarding the significance of an impact, the agency must treat the impact as significant and prepare an EIR. (CEQA Guidelines § 15064(f)(1); *Stanislaus Audubon Soc. v. County of Stanislaus*, 33 Cal. App. 4th 144, 150-51 (1995).)

In this case, the City's reliance on an Initial Study/Mitigated Negative Declaration ("IS/MND"), dated October 15, 2012, for the approval of the Valpico Apartments Project is not appropriate because there exists a fair argument that construction and operation of the project would result in significant and adverse environmental effects. These effects, as well as other material omissions of the mitigated negative declaration that bear on the City's compliance with CEQA, are identified in detail below.

Project Setting. A CEQA document must describe the environmental setting for the project, which is made up of the physical environmental conditions in the vicinity of the project viewed from a local *and* regional perspective. (CEQA Guidelines § 15125(a).) The project setting in the

IS/MND is woefully inadequate. (See IS/MND, p.4) There is no mention of Gladys Poet-Christian Elementary School, about ¼ mile to the northwest; no description of the Tom Hawkins Elementary School, also located about ¼ mile from the Valpico Apartments Project site; and no discussion of exactly how close nearby single family residences are to the site, where such residences may be located less than 150 feet from project-related activities. Nor does the analysis disclose the existence of a watercourse approximately ¼ northwest of the site, or describe in any detail existing drainage patterns on or around the site. Such details are instrumental to, without limitation, analysis of air quality, biological resources, hydrology, and noise effects. Given the dearth of information about these known sensitive receptors, the City should revisit the analysis and ensure that the project setting identifies all sensitive resources and populations that could affect topical analyses required under CEQA. Moreover, there is no discussion of the regional setting for the Valpico Apartments Project.

Project Description. A CEQA document should contain an accurate and consistent project description that includes all components of the project. (*City of Santee v. County of San Diego*, 214 Cal.App.3d 1438, 1450 (1989).) Here, the project description for the 184-unit Valpico Apartments Project consists of three paragraphs. (IS/MND, pp. 4-5.) The description fails to include, among other things, a detailed description of construction activities. Details regarding timing and equipment are necessary to fully evaluate impacts related to biological resources, noise, traffic, air quality, and other considerations.

The project description also fails to state, as discussed above, that the MacDonald Apartments Project really is an integral, functionally related part of the Valpico Apartments Project.

Finally, the project description fails to contemplate that approval of the Valpico Apartments Project would entail a change to citywide density laws, as it includes a zoning text amendment that would reduce the minimum distance between main buildings on a site in a High Density Residential zone to as little as six feet (whereas the minimum distance currently must be equal to the average height of the buildings involved). The City utterly has failed to conduct any CEQA analysis on this change, which raises the prospect of significant environmental impacts concerning public safety (e.g., fire protection, emergency access), aesthetics, land use, and other considerations. In a staff report, which is not part of the IS/MND, City staff assert that building and fire codes address fire and safety considerations, but making such conclusions warrants treatment in a CEQA document, and must be based on substantial evidence.

Each of the findings related to the above-identified project description issues are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Aesthetics Impacts. The IS/MND indicates that there is a less-than-significant impact on the existing visual character or quality of the Valpico Apartments Project site and its surroundings. (IS/MND, p. 18.) However, the IS/MND fails to take into account that the Valpico Apartments Project site is among the last large-scale, open spaces in this section of the City. In addition, the site offers, from public roads and surrounding neighborhoods, a view of the parcel to the north of the Valpico Apartments Project site, which also constitutes undeveloped open space, and contains numerous trees. It should be noted the IS/MND fails to account for any trees on or in the vicinity of the Valpico

Apartments Project site. Placing high-density residential development on the site would substantially degrade the visual quality of an open-space resource, contributing to the urbanization of the rural and agricultural character of the area, and impacts would be significant. It is noteworthy that the General Plan EIR determined that aesthetic impacts related to the conversion of agricultural lands to urbanized uses would be a significant and unavoidable impact and, therefore, the contribution of the Valpico Apartments Project to this effect also would constitute a significant and unavoidable impact. (General Plan Supplemental EIR ["SEIR"], p. 6-19.) An EIR must be prepared in light of these facts.

The IS/MND also fails to account for the fact that there are public views from local roadways and neighborhoods of Mount Oso and the Altamont Hills, and that the construction of multiple, three-story buildings would block public views of these aesthetic resources. Views of surrounding hillsides and the Diablo range constitute scenic resources that specifically are identified as such in the City's General Plan. (General Plan Amended EIR, p. 47) Thus, there are potentially significant impacts to scenic vistas and resources that the IS/MND does not acknowledge or disclose, much less analyze. By obstructing views of such resources from public vantage points, development of the 48-foot tall, three-story apartment buildings associated with the Valpico Apartments Project would be significant and unavoidable, requiring preparation of an EIR.

The IS/MND utterly fails to evaluate cumulative impacts including, without limitation, how development of the Valpico Apartments Project site, combined with existing and reasonably foreseeable development, contributes to the degradation of the open space quality of the immediate vicinity and, in general, the rural, agricultural character the City, and contributes to light and glare impacts. To this end, the analysis fails to recognize that the MacDonald Apartments project would occur immediately west of the Valpico Apartments Project site, and be developed concurrently. There also is no mention anywhere in the IS/MND of the Tiburon Village Project except for a fleeting reference that stormwater facilities will be constructed in tandem with its development. Accordingly, there exist numerous, cumulative significant impacts the IS/MND has not identified.

Finally, each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Impacts to Agricultural and Forest Resources. The IS/MND acknowledges that the Valpico Apartments Project site is underlain by soils that are considered prime farmland soils by the California Department of Conservation and the USDA Soil Conservation Service. (IS/MND, p. 20.) However, in considering the question as to whether the Valpico Apartments Project would convert prime farmland to non-agricultural use, the IS/MND inexplicably indicates the project would have "no impact." The IS/MND then acknowledges the General Plan EIR found impacts related to the conversion of prime farmland to be significant and unavoidable, and appears to support the project-specific "no impact" determination on the basis that the Valpico Apartments Project would have no impacts in addition to what has been studied previously. However, a fallacy is at work. By interpreting CEQA in such a manner, any developer that seeks to implement a project on agricultural lands would be able to do so without making any feasible

efforts to mitigate the conversions of such lands, including without limitation the preservation of off-site agricultural lands or payment into agricultural fee mitigation programs. Essentially, the Valpico Apartments Project is implementing a significant and unavoidable impact identified in the General Plan EIR, and not mitigating this impact to the extent feasible. This failure violates CEQA, and warrants preparation of an EIR.

In addition, the IS/MND utterly fails to evaluate cumulative impacts on agricultural resources in the City. To this end, the analysis fails to recognize, without limitation, that the MacDonald Apartment project would occur immediately west of the Valpico Apartments Project site, and that the Tiburon Village Project is approved for development to the north.

Finally, each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Air Quality Impacts. There are numerous problems with the air quality analyses contained in the IS/MND.

The analysis of operational impacts, and specifically insofar as it concerns criteria air pollutants, fails to account for all sources of project-related emissions, having only quantified mobile source emissions. (*See, e.g., IS/MND, p. 26.*)² To properly account for a project's emissions, one must also account for area source and energy consumption emissions, such as emissions resulting from the consumption of natural gas and electricity usage. Water usage and solid waste disposal also may generate emissions of criteria air pollutants. The analysis also fails to take into account emissions generated by the MacDonald Apartments Project occurring immediately next door. The IS/MND has artificially reduced emissions forecasts and, because the analysis has simply ignored multiple, substantial sources of such pollutants, there is a fair argument that impacts are potentially significant.

Moreover, while the IS/MND purports to analyze whether the Valpico Apartments Project conflicts with or obstructs implementation of an applicable air quality plan, the analysis appears to rest only upon a conclusion that the project does not generate emissions that exceed quantitative thresholds for certain criteria air pollutants. There is no discussion of whether the project is consistent, for instance, with the San Joaquin Valley Air Pollution Control District's State Implementation Plan and other attainment plans which, in part, take into account growth in population and vehicle miles traveled. Because the Valpico Apartments Project is at odds with citywide growth assumptions, it is necessary to conduct further analysis of this peculiarity and its impact on air quality plans. Again, the Valpico Apartments Project site was listed in the City's General Plan as a location for commercial development; thus, placing high-density residential development on this same site would result in unanticipated residential growth and the displacement of commercial development to a less central location, upsetting assumptions on population growth and vehicular travel utilized by the air district. To the extent the City has indicated the Valpico Apartments Project site cannot accommodate commercial development for economic reasons in a staff report, these assertions are not in the IS/MND, are conclusory, and

² The modeling data for mobile sources, as summarized in Table 1 at page 26, was not included in the City's agenda packet, and there is no way to verify the accuracy of this analysis. For this reason alone, the IS/MND fails to provide substantial evidence that mobile source emissions would be less than significant.

are not based on any relevant substantial evidence, such as market analyses. For these reasons, there exists a fair argument the Valpico Apartments Project has a significant impact to the implementation of applicable air quality plans, and an EIR is necessary.

The carbon monoxide (“CO”) hotspots analysis included in the IS/MND also is insufficient. The IS/MND lists three thresholds of significance (IS/MND, p. 25), but only addresses two in its discussion. That is, the IS/MND states a significant adverse impact would occur where a project contributes to CO concentrations “exceeding CAAQs of 9 parts per million [ppm] averaged over 8 hours and 20 ppm for one hour,” but never addresses this quantitative threshold. Rather, the IS/MND addresses two other thresholds related to intersection levels of service and traffic volumes, and concludes that no significant impact would occur. (IS/MND, p. 25.) The IS/MND thus is deficient, and a fair argument exists that there remain potentially significant impacts related to CO hotspots.

Regarding odors, the IS/MND fails to evaluate the impacts of odors from construction, which would employ significant diesel-powered equipment. A potentially significant impact exists in this respect.

In addition, the IS/MND utterly fails to evaluate cumulative impacts regarding criteria pollutants and toxic air contaminants. To this end, the analysis fails to recognize, without limitation, that the MacDonald Apartments project would occur immediately west of the Valpico Apartments Project site, and be developed concurrently, and that the Tiburon Village Project would be implemented immediately to the north.

Finally, each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Impacts to Biological Resources. The IS/MND acknowledges that special status raptor species and burrowing owls occur within the vicinity of the Valpico Apartments Project site, and that the site and surrounding grasslands provide at least medium-quality foraging opportunities for such species, yet the document discusses only the potential for protected species to *nest* in the vicinity of the site. (IS/MND, pp. 30-31.) The IS/MND does not evaluate the potentially significant impact related to the loss of acknowledged foraging habitat, and the unaddressed facts identified above raise a fair argument of such an impact.

The evaluation of impacts to species insofar as they may be nesting on or near the project site also is inadequate. Specifically, the IS/MND fails to acknowledge that raptors species could settle in nearby trees prior to construction. Without pre-construction surveys and other mitigation, a potentially significant impact could result for this separate and independent reason. The mitigation measure that is included (Mitigation Measure 5) addresses only burrowing owls, and not other avian species.

The IS/MND also fails to acknowledge the potential for the San Joaquin kit fox and other protected mammals to frequent the Valpico Apartments Project site. Moreover, while the analysis in the IS/MND on page 33 states no wetlands are located on the project site, it is not

clear any wetlands delineation was undertaken by a qualified professional. The IS/MND also fails to acknowledge that there is a watercourse within ¼ mile northwest of the Valpico Apartments Project site, and what implications this has on the analysis of biological resources. These omissions make for an inadequate environmental review under CEQA.

Regarding wildlife corridors, it is acknowledged that the Valpico Apartments Project site serves as foraging habitat for raptor and other species, and indeed a protected species was seen crossing the boundary of the site. (IS/MND, p. 33.) The IS/MND also acknowledges that burrows for the burrowing owl were observed on site, though were not currently inhabited due to the absence of ground squirrels. (IS/MND, p. 31.) The IS/MND concludes a field survey did not reveal any wildlife corridors or wildlife nursery sites on or adjacent to the Valpico Apartments Project site, yet the observed presence of raptor species, and evidence of roosting by the burrowing owl on the project site, contradicts this conclusion. There is a fair argument that a substantial impact would result regarding wildlife corridors, requiring preparation of an EIR.

In addition, the IS/MND utterly fails to evaluate cumulative impacts on biological resources. To this end, the analysis fails to recognize that the MacDonald Apartments project would occur immediately west of the Valpico Apartments Project site, and be developed concurrently, and that the Tiburon Village Project would be implemented immediately to the north.

Finally, each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Impacts to Cultural Resources. There exists a single family dwelling unit lying immediately west of the Valpico Apartments Project site, and within the MacDonald Apartments Project site. No information about this residence has been provided, including whether it is more than 50 years old and, therefore, must be evaluated for historic significance. The cultural setting and cultural landscape of the home, as those terms are defined by the Secretary of the Interior, also should be evaluated. Implementation of the Valpico Apartments Project would affect this potential resource, and implementation of the MacDonald Apartments Project would result in its demolition. The IS/MND must disclose more information about this residence to the west.

The IS/MND Fails to Identify or Analyze Potentially Significant Impacts Concerning Greenhouse Gas Emissions (“GHGs”). The IS/MND concludes the Valpico Apartments Project would generate 1,913 metric tons of carbon dioxide equivalent (MTCO₂e) emissions per year and, while acknowledging that the City of Tracy has not established a threshold of significance for evaluating emissions levels, concludes project-related emissions are “relatively small.” (IS/MND, pp. 46-67.) While the City may not have adopted significance standard, regional air districts have. For instance, the Bay Area Air Quality Management District has established a threshold of 1,100 MTCO₂e per year. The fact that the Valpico Apartments Project generates 73 percent greater emissions than the emissions threshold set by a neighboring air district, in and of itself, constitutes a fair argument that the project may have a potentially significant impact. The City’s neglect in identifying a threshold does not relieve it of responsibility for undertaking an analysis pursuant to CEQA, and the IS/MND’s qualitative assessment of project-related emissions as being “relatively small” is simply not supportable.

The excessive GHG emissions associated with the Valpico Apartments Project demonstrates there is a fair argument of a significant impact, requiring preparation of an EIR.

Moreover, the GHG emissions calculated as a result of project implementation appear only to account for mobile sources, and are artificially depressed. A proper quantification of project emissions would require an accounting of area sources, energy consumption, emissions related to the disposal of solid waste, and emissions related to water consumption. The IS/MND omits any mention of these sources, and thus the quantification it does provide is not adequate under CEQA. Due to the project's significant GHG emissions, and the resulting contribution to global climate change, a fair argument of a significant impact exists, and an EIR must be prepared.

The IS/MND also fails to evaluate the impact on vehicle miles traveled that would result from displacing the commercial uses that the General Plan programmed for the project site. Presumably, displacement of a commercial use, while increasing the on-site housing inventory, would result in an imbalanced land use plan that would increase greenhouse gases associated with mobile sources. A City staff report, and not the IS/MND, provides no more than a cursory discussion of such impacts, explaining only -- and without any evidentiary support -- that the market would not support commercial facilities on site. This is not adequate under CEQA. Note, the omission in discussing this displacement in land uses also creates an unstudied land use impact that should be evaluated in an EIR.

In addition, the IS/MND utterly fails to evaluate cumulative impacts regarding the combined emissions of the Valpico Apartments Project, existing projects, and other reasonably foreseeable projects. To this end, the analysis fails to recognize, without limitation, that the MacDonald Apartments project would occur immediately west of the Valpico Apartments Project site, and be developed concurrently, and that the Tiburon Village Project would be implemented immediately to the north. Because climate change is a worldwide issue, any analysis of GHG emissions should contemplate a list of at least citywide projects.

Finally, each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Impacts Related to Hazards and Hazardous Materials. While the IS/MND discusses the use of hazardous materials that results from the operation of residential uses (IS/MND, p. 49.), the environmental analysis does not contemplate hazardous materials that may be used in conjunction with construction activities. Moreover, the IS/MND omits any discussion of whether there may be artificial or naturally occurring hazardous materials in the soils within or near the project site, and that may be disrupted through construction of the project. The extremely close proximity of residential homes and schools makes such an analysis critical.

Moreover, the IS/MND makes conclusions that impacts would be less than significant despite evidence that toxic activities have occurred on the project site in years past. For instance, insofar as the Valpico Apartments Project site was used for railroad activities, agriculture, diesel storage, and a sand and gravel extraction area (see IS/MND, p. 50.), there may be pesticides or diesel contaminants in the soil. Insofar as the IS/MND makes reference to Phase I assessments, such

studies have not been provided in an appendix to the IS/MND or in the City's agenda packet for the project, and thus the City's conclusions are not supported by substantial evidence in the administrative record of proceedings. It also is noted that soil samples apparently taken as part of a Phase II assessment occurred only near stockpiled soil, pits, and the vicinity of a former underground storage tank, and were not comprehensive. Separately and independently, the IS/MND is not adequate because it fails to include this Phase II assessment for public review, and thus the City's summary of the determinations made in this assessment is not supported by anything that would qualify as substantial evidence. Greater attention should be given to these issues given that there exist schools and residential homes in the immediate vicinity of the Valpico Apartments Project. Accordingly, there exists a fair argument that intensive construction activities, occurring on property that previously accommodated a number of land uses that utilized hazardous materials, and within extremely close proximity of residential homes and schools, would have the potential to cause a significant impact.

In addition, the IS/MND utterly fails to evaluate cumulative impacts regarding the combined risks associated with the Valpico Apartments Project, existing projects, and other reasonably foreseeable projects. To this end, the analysis fails to recognize, without limitation, that the MacDonald Apartments project would occur immediately west of the Valpico Apartments Project site, and be developed concurrently, and that the Tiburon Village Project would be implemented immediately to the north.

Finally, each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Impacts Related to Hydrology. The IS/MND only addresses hydrological impacts associated with operation of the Valpico Apartments Project, and not construction impacts. The development of high-density apartment buildings will require substantial construction activities, which could cause dust, dirt, diesel, and other pollutants to be carried offsite and degrade water quality. This is a potentially significant impact that is mentioned (*see* IS/MND, p. 56), but never analyzed. Construction activities also have the potential to alter existing drainage patterns on the site and the area, which is not discussed in the IS/MND and could be potentially significant.

While the IS/MND addresses groundwater recharge, its discussion is not adequate. The IS/MND acknowledges the Valpico Apartments Project would add 5.38 acres of impervious surface, but concludes merely that the relatively large size of the groundwater basin in the Tracy area makes this new impervious surface insignificant. (IS/MND, p. 54.) The analysis fails, among other reasons, because it does not delineate in any manner the size or boundaries of the basin; demonstrate to what extent the basin already is covered with impervious surface; or discuss whether there already are any existing problems with groundwater recharge. Nor does the IS/MND discuss the Tracy Regional Groundwater Management Plan, including but not limited to its Basin Management Objectives, and evaluate the consistency of the project with these land use planning documents. These omissions in the EIR make for an inadequate CEQA document, and a complete analysis of groundwater conditions and recharge potential must be included as part of an EIR.

The IS/MND also fails to demonstrate that the project's stormwater conveyance system is adequate. The IS/MND states a temporary storm drainage system would remain in place until the downstream storm drain system is constructed with the Tiburon Village Project, as indicated in the City's Stormwater Master Plan. (IS/MND, p. 55.) First, the City's master plan was designed in contemplation of different uses on the Valpico Apartments Project site (i.e., commercial development, not high density residential development), and so it is incorrect to assume that project-related runoff can be accommodated by infrastructure included in that plan, and expected as part of the Tiburon Village Project. To properly conclude the Valpico Apartments Project would not have hydrological impacts, a thorough stormwater capacity analysis must take place that evaluates existing and programmed capacity of the City's off-site infrastructure.

The IS/MND also fails to acknowledge there is a watercourse within ¼ mile northwest of the Valpico Apartments Project site, and how the hydrology of the site affects this watercourse. This omission is a glaring one, and should be evaluated in an EIR.

Finally, the IS/MND utterly fails to evaluate cumulative impacts regarding all of the above hydrological effects resulting from development of the Valpico Apartments Project, existing projects, and other reasonably foreseeable projects. To this end, the analysis fails to recognize that the MacDonald Apartments project would occur immediately west of the Valpico Apartments Project site, and be developed concurrently, and that the Tiburon Village Project would be developed to the north. Combined, these projects would entail substantial construction activities and create substantial amounts of new impervious surface, with the effect of significantly introducing pollutants into the environment and degrading water supply, altering the existing drainage of the area, and interfering with groundwater recharge.

Each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Impacts Related to Mineral Resources. The IS/MND acknowledges the Valpico Apartments Project site lies within a Mineral Resources Zone, as identified in the General Plan EIR, and that the site was previously used for sand and gravel extraction. The IS/MND then concludes "it is likely that all usable aggregate materials for the project site have already been removed," though cites no evidence or authority supporting this conclusion. The analysis is conclusory, and this omission results in a defective CEQA analysis. A thorough evaluation of site-specific mineral resources must be included in a project EIR.

The IS/MND Fails to Identify or Analyze Potentially Significant Noise Impacts. The IS/MND, in calculating noise from mobile sources and their effect on the Valpico Apartments Project, appears to use traffic counts from the MacArthur Drive Widening Noise Study. (See IS/MND, p. 61.) As the City failed to make this document available for public review, it is unclear when traffic counts for this separate project were taken, and whether they reflect an accurate CEQA baseline for the Valpico Apartments Project.³ For instance, if the traffic counts were taken

³ It is noted the City's agenda packet and its website do not include a single appendix or technical memorandum to the IS/MND; even though the main document asserts such things exist. To that end, even if such documents do exist, they are not part of the administrative record of proceedings for either

before the commencement of environmental review for the Valpico Apartments Project, there would be an artificially reduced baseline scenario taken into account, which would reduce the significance of reported impacts. The analysis therefore fails because there is no evidence it takes into account existing baseline conditions.

The noise analysis also makes use of improper methodology. That is, the analysis in the IS/MND establishes a threshold based on 65 Ldn, which is a day-night metric that adds a penalty to evening noise, whereas noise measurements related to the project are based on peak-hour noise, which is a different metric and does not include noise penalties for noise experienced after daytime hours. Given the project-related noise of 63 Leq is only two decibels below the significance threshold of 65 Ldn (*see* MND, p. 61), and given the failure to ascribe the appropriate penalties to the project-related noise levels, it appears there would be an exceedance that the IS/MND does not identify. Separately and independently, the noise analysis improperly segments noise sources, accounting only for mobile noise sources, and does not evaluate vehicular noise in combination with other project-related operational noises. No does the noise analysis make reference to any General Plan policy, such as Policy P5, requiring that interior noise levels not exceed 45 Ldn. Finally, the noise analysis in the IS/MND fails to account for roadway noise occurring under future conditions, when background noise levels would increase due to growth in population, traffic, and activities associated with surrounding uses. Certainly noise experienced by homes would be in excess of 65 Ldn under future scenarios. Therefore, there are potentially significant impacts related to mobile source noises that the IS/MND on pages 60 to 61 does not address, and that must be addressed in an EIR.

With regard to groundborne vibration, the IS/MND concludes that impacts are less than significant (IS/MND, p. 61), but the analysis fails to address construction-related traffic involved with the transport of materials and machinery to the Valpico Apartments Project site, which could pass within close proximity to adjacent residential uses on Valpico Road. There is a fair argument the project may have significant impacts related to groundborne vibration on nearby sensitive receptors.

The analysis in the IS/MND also fails to properly address increases in noises associated with operation of the Valpico Apartments Project. Whereas the analysis concludes that project-related traffic would generate less than one decibel of noise above existing ambient conditions (*see* IS/MND, p. 62), it is unclear what baseline the analysis has adopted, and whether it is appropriate. Moreover, the analysis should include an “existing” scenario, measuring impacts of the project on conditions existing at the commencement of environmental review, and future scenarios that evaluates project-related noise combined with background noise generated by future surrounding uses, traffic, and population. (*See Sunnyvale West Neighborhood Assoc. v. City of Sunnyvale City Council*, 190 Cal.App.4th 1351 (2010); *Pfeiffer v. City of Sunnyvale City Council*, 100 Cal.App.4th 1552 (2011); *Madera Oversight Coalition, Inc. v. County of Madera*, 199 Cal.App.4th 48 (2011).) A future scenario also should be evaluated, especially in light of conclusions in the General Plan’s environmental review documents that demonstrate impacts from vehicular traffic on nearby roadways would exceed thresholds adopted in future years. (*See* General Plan SEIR, p. 4.14-20; *see also* p. 4.4-23, Table 4.14-6 [showing noise levels on Valpico

the Valpico Apartments Project or the MacDonald Apartments Project. It further is noted the IS/MND does not state the location at which technical documents would be available for public review.

Road, east of Tracy Boulevard, would be 71 Ldn at 75 feet; noise levels on MacArthur Drive in vicinity of Valpico Road to be 67 and 73 Ldn at 75 feet].) It is strange the IS/MND does not even acknowledge this evidence in the General Plan SEIR, which confirms the Valpico Apartments Project would be contributing to a substandard condition and, in itself, raises a fair argument of a significant impact. Impacts likely are significant and unavoidable, as off-site noise impacts resulting from vehicular noise usually cannot be mitigated, since mitigation would require the construction of sound walls along all affected roadway segments. Such walls are infeasible because they would require encroachment onto private property not within the control of the applicant, and would raise aesthetic concerns.

Second, and respecting thresholds of significance, the IS/MND never sets a threshold for judging what noise increase is acceptable, nor incorporates any local planning criteria or ordinances. Without any clear noise threshold, it is not possible to undertake a legally adequate significance analysis.

Third, the analysis does not account for collective noise increases from project-related vehicle traffic and other sources, such as lawnmowers, leafblowers, HVAC systems, and other rooftop mechanical equipment, and thus the IS/MND has "piece-mealed" impacts, in violation of CEQA. Finally, it is unclear at what distance the single decibel increase, as reported in the IS/MND, was calculated. Again, there exist single family homes virtually adjacent to the Valpico Apartments Project site and affected roads. No semblance of a formal noise study has been prepared for the Valpico Apartments Project, and there has been an utter disregard for existing planning studies that contemplate severe degradations to the noise environment in the vicinity of the project site, all in violation of CEQA. For all the above reasons, the IS/MND has failed to account for project impacts, and there is a fair argument that a significant impact may result.

The analysis of construction-related noise also is flawed. The IS/MND acknowledges that residential homes should not experience noise levels in excess of 65 Ldn (*see* IS/MND, p. 1), but the project's environmental review acknowledges noise from construction activities "could create temporary noise levels of up to 90 dBA at 50 feet." (IS/MND, p. 62.) Even assuming the 90 dBA is not artificially low -- since large trucks related to project construction, and accessing the site via Valpico Road, would pass within closer proximity to homes -- there would be a clear exceedance of noise thresholds at adjacent homes. This is to make no mention of a 45 Ldn interior noise threshold set forth in the General Plan. Meanwhile, the prescribed mitigation measures (IS/MND, p. 63) are inadequate. Restricting hours of construction does not reduce noise levels, and the record is devoid of any evidence that the noise controls contemplated, including mufflers, engine shrouds, and tinkering with staging areas, would be effective. Moreover, restrictions on hours of construction to daytime hours has no meaning where nearby sensitive receptors are elementary school children, who are learning and taking tests during such periods of time; in fact, concentrating construction activities during school hours could exacerbate impacts. Given the noise levels involved and the proximity of sensitive receptors, impacts with regard to construction-related noise would be significant and unavoidable.

Finally, the IS/MND utterly fails to evaluate cumulative impacts regarding the combined construction or operational noise levels associated with the Valpico Apartments Project, existing projects, and other reasonably foreseeable projects. For instance, the analysis fails to recognize

that the MacDonald Apartments project would occur immediately west of the Valpico Apartments Project site, be constructed at the same time, and share the Glenbriar Drive access point, and that the Tiburon-Village Project would be developed to the north, also potentially at the same time. Combined, these projects would entail a substantial addition of vehicle trips, generating significant cumulative noise, substantial stationary source noises, and substantial construction activities that could occur simultaneously or, in the event they occur consecutively, they would lengthen the exposure of local residents to substantial noise. There are potentially significant, if not potentially significant and unavoidable impacts that would result from implementation of the Valpico Apartments Project, and an EIR must be prepared.

Each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Impacts Related to Public Services. The IS/MND fails to properly evaluate environmental impacts related to fire protection. Without citing any authority, the analysis states the Valpico Apartments Project site lies within the Fire Department's 5-minute response zone, and impacts would be less than significant. (IS/MND, p. 66.) There is no means by which the reader can understand whether the Fire Department's threshold is close to exceedance, and how response times would be impacted from the development of 184 residential units (which is to make no mention of the cumulative development that would actually be occurring in the vicinity). It should be noted that the General Plan EIR and other studies evaluated a commercial buildout of the Valpico Apartments Project site, and not high-density residential, and these studies therefore are not relevant in analyzing the impacts of the Valpico Apartments Project. Moreover, even if fire personnel can reach the Valpico Apartments Project site within five minutes, the increase in service population very well could cause an exceedance at the periphery of the local fire department's service area. This impact is not even acknowledged, much less studied. Therefore, a fair argument exists that the project could have a potentially significant impact, requiring the addition of facilities -- with attendant undisclosed and analyzed impacts -- to maintain acceptable service ratios.

Independently, a failure to maintain service ratios could result in adverse environmental impacts to public safety, and the IS/MND has not evaluated this impact. It is not certain any new fire facilities will be built in a timely manner, and thus impacts would be significant and unavoidable.

The IS/MND also fails to evaluate environmental impacts related to police protection in an adequate manner. The analysis acknowledges the City has a 5-minute response time threshold that the Valpico Apartments Project site is 2 miles away from the nearest police station, and that current response times range from 7 minutes to 30 minutes. (IS/MND, pp. 66-67.) The IS/MND does not acknowledge, however, that the addition of 184 high-density residential units will exacerbate an unacceptable situation. It should be noted that the General Plan EIR and other studies evaluated a commercial buildout of the Valpico Apartments Project site, and not high-density residential, and these studies therefore are not relevant in analyzing the impacts of the Valpico Apartments Project. Residential units generate more service calls than commercial development. In light of the above, a fair argument exists that the project could have a

potentially significant impact, requiring the addition of facilities to maintain acceptable service ratios.

Independently, a failure to maintain service ratios could result in adverse environmental impacts such as blight and other aesthetic impacts, and the IS/MND has not evaluated this impact. It is not certain any new police facilities will be built in a timely manner, and thus impacts would be significant and unavoidable.

Regarding school facilities, the IS/MND provides that the project applicant will pay appropriate fees, resulting in a less-than-significant impact. (IS/MND, p. 67.) While SB 50 provides that impacts on school facilities are fully mitigated by payment of certain fees, SB 50 does not relieve a lead agency of determining whether a project would require the construction of new school facilities, and determining what environmental impacts – e.g., offsite traffic and infrastructure impacts -- would result from such construction activities. The addition of 184 high density residential units will result in increased enrollment in various schools, and this has not been evaluated in the General Plan EIR and other studies, which have evaluated a commercial buildout of the Valpico Apartments Project site (which generates no increases in enrollment). In light of the above, a fair argument exists that the project could have a potentially significant impact associated with the addition of school facilities necessary to maintain acceptable service ratios.

Regarding other public facilities, the IS/MND acknowledges the Valpico Apartments Project will increase demand on amenities that include libraries, hospitals, and cultural centers, and potentially impact such facilities, but the IS/MND concludes mere payment of a fee will reduce impacts to a less-than-significant level. (IS/MND, p. 68.) Payment of a fee does not reduce physical impacts, and the City must demonstrate in addition that any remitted fees are tied to a fee program that ensures improvements will be financed and constructed in a timely manner. (*See Anderson First Coalition v. City of Anderson*, 130 Cal.App.4th 1173 (2005).) The IS/MND has not cited or referenced any evidence to support these facts, and a fair argument therefore exists a significant impact could occur to libraries, hospitals, cultural centers, and other public amenities.

In addition to each of the individual project impact analyses discussed above, the IS/MND utterly fails to evaluate cumulative impacts to police, fire, school, and other public facilities. For instance, the analysis fails to recognize that the MacDonald Apartments project would occur immediately west of the Valpico Apartments Project site, and that the Tiburon Village Project would be developed to the north. Combined, these projects would accommodate hundreds, if not thousands, of new residents. There are potentially significant, if not potentially significant and unavoidable impacts, that would result from implementation of the Valpico Apartments Project in combination with other reasonably foreseeable projects, warranting preparation of an EIR.

Each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Impacts Related to Recreation. Regarding demand for parks and recreational facilities, the IS/MND acknowledges

the Valpico Apartments Project will increase demand on such resources, and potentially impact such resources, but concludes mere payment of a fee will reduce impacts to a less-than-significant level. (IS/MND, p. 69.) Payment of a fee does not reduce physical impacts, and the City must demonstrate the fees are tied to a fee program that ensures necessary improvements will be financed and constructed in a timely manner. (See *Anderson First Coalition v. City of Anderson*, 130 Cal.App.4th 1173 (2005).) The IS/MND has not cited or referenced any evidence to support these facts, and a fair argument therefore exists a significant impact could occur.

In addition to each of the individual project impact analyses discussed above, the IS/MND utterly fails to evaluate cumulative impacts to parks and recreational facilities. For instance, the analysis fails to recognize that the MacDonald Apartments project would occur immediately west of the Valpico Apartments Project site, and share the Glenbriar Drive access point, and that the Tiburon Village Project would be developed to the north. Combined, these projects would accommodate hundreds, if not thousands, of new residents. There are potentially significant, if not potentially significant and unavoidable impacts, that would result from implementation of the Valpico Apartments Project in combination with other reasonably foreseeable projects.

Each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Transportation/Traffic Impacts. There are numerous problems with the analysis of traffic in the IS/MND.

The IS/MND contains assumptions that artificially minimize environmental impacts, having failed to support the selected distribution of traffic, the intersections to be studied, and potential future connections that would be induced through development of the Valpico Apartments Project. First, the assumed distribution of project trips is not supported by any clear evidence. The IS/MND says that trip distribution is based on “existing travel patterns, knowledge of the study area, and input from City staff.” Knowledge of existing travel patterns is irrelevant, since there are no high-density apartment complexes in the vicinity of the study area that provide a template for future study, and making references to nonspecific “knowledge” and “input” does not provide the reader of the IS/MND with any intelligible information about the distribution choices made in the document. It would seem a much greater percentage of traffic from the Valpico Apartments Project would travel through the Valpico Road/McArthur Drive intersection than the 45 percent identified in the analysis, given the proximity of the site to the north-south thoroughfare McArthur Drive. (IS/MND, p. 72.)

Second, even if a majority of project-related traffic is expected to travel to and from areas the west of the Valpico Apartments Project site, the assumption that it was unnecessary to evaluate impacts to the major intersection of Valpico Road and South Tracy Boulevard is a critical omission, and results in a defective analysis pursuant to CEQA. This omission is especially glaring in light of the fact this intersection already operates at a level of service C, whereas degradation to level of service D would constitute a significant impact. (See General Plan SEIR, p. 4.4-32, Table 4.4-9.) Third, there is no discussion in the IS/MND of potential connections between Glenbriar Drive and DeBord Drive, which could facilitate more traffic to and from the intersection of Glenbriar Drive and Valpico Road than contemplated in the analysis, and also

more traffic to and from the intersections of MacArthur Boulevard, DeBord Drive, and Montclair Lane.

The IS/MND also fails to evaluate the Valpico Apartments Project's traffic impacts against existing conditions, as required by CEQA. (*Sunnyvale West Neighborhood Assoc. v. City of Sunnyvale City Council*, 190 Cal.App.4th 1351 (2010); *Pfeiffer v. City of Sunnyvale City Council*, 100 Cal.App.4th 1552 (2011); *Madera Oversight Coalition, Inc. v. County of Madera*, 199 Cal.App.4th 48 (2011).) While the analysis purports to include an "existing plus project" scenario (IS/MND, p. 72), the document acknowledges this scenario in fact evaluates a "near-term" scenario (IS/MND, p. 70.)

The IS/MND, in addition, fails to properly evaluate a future, cumulative scenario. It does not appear the IS/MND or the 2004 Valpico Town Center Project traffic study, which the IS/MND incorporates, properly accounted for all development projects that are foreseeable in 2012. For instance, it is not clear the neighboring MacDonald Apartments Project has been contemplated. Use of a study that is eight years old to project traffic is inappropriate. The problematic nature of doing so is evident from the level of service calculations included in the IS/MND, given (1) traffic would be expected to grow over time; and (2) the delays forecasted to occur at the study intersection of MacArthur Drive and Valpico Road in year 2025 -- and under a cumulative scenario that includes the project and purportedly other reasonably foreseeable projects -- are *less* than what is forecast to occur under the near-term scenario that contemplates only the addition of project traffic. (Compare Table 5 with Table 6, IS/MND, p. 73.) There is a critical flaw in the IS/MND, rendering the analysis inadequate under CEQA. A new analysis of the 2025 scenario must be included in an EIR that clearly discloses growth projections and an updated list of foreseeable projects. Given that the intersection of MacArthur Drive and Valpico Road already is at level of service C, and a degradation to level of service D would make for a significant impact, there is a fair argument that, if the IS/MND properly accounted for future growth associated with the Valpico Apartments Project and reasonably foreseeable projects, a significant impact would occur, without certainty that feasible mitigation exists. An EIR therefore must be prepared.

The IS/MND also is inadequate because it fails to evaluate whether the Valpico Apartments Project conflicts with the applicable congestion management plan. The document also fails to evaluate whether the project conflicts with adopted policies, plans, or programs regarding public transit or pedestrian facilities, or otherwise decreases the performance or safety of such facilities, either through increased ridership or the generation of traffic that delays service. All of these analyses are required by the current version of Appendix G to the CEQA Guidelines and are missing from the IS/MND.

Other traffic analyses that are missing from the IS/MND are determinations or studies relating to impacts to roadway segments in the vicinity of the project site, including along Valpico Road, South Tracy Boulevard, and MacArthur Drive; queuing impacts; and impacts resulting from the addition of project trips to freeway segments, many of which already are operating at substandard conditions. (See General Plan SEIR, p. 4.4-22, Table 4.4-7.) Note, the segment of Valpico Road between Lammers Drive and MacArthur Drive and the segment of MacArthur Drive between Valpico Road and north of Schulte Road already are expected to be unable to

accommodate traffic levels in their current configurations, and it is puzzling the IS/MND does not acknowledge these degradations, acknowledge the contribution of the Valpico Apartments Project to these degradations, or require the Valpico Apartments Project to contribute to the improvements of these roads: (See General Plan SEIR, p. 4.4-55, Table 4.4-11; see also General Plan SEIR, p. 4.4-57 [“Linne Road, Valpico Road, and MacArthur Drive are a few of the roadways which would have to be widened to provide an acceptable level of service”])

Consistency with the City’s Roadway Master Plan also should be evaluated to determine if implementation of the Valpico Apartments Project requires any specific improvements not already contemplated in that study.

Each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

The IS/MND Fails to Identify or Analyze Potentially Significant Impacts Related to Utilities and Service Systems. The IS/MND does an inadequate job of analyzing impacts to wastewater facilities. First, the Valpico Apartments Project would locate a use on the project site that was not contemplated for high-density residential development in any citywide master plans, the General Plan, or previous EIRs related to expansions of the Tracy Wastewater Treatment Plan (WWTP). Even if the IS/MND has accurately estimated wastewater demands of the project to be 33,264 gallons per day (or a reported 0.0033 mgd, which is inaccurate by at least a factor of 10; see IS/MND, p. 77), it is unclear whether this addition can be accommodated in programmed, citywide systems for wastewater. Therefore, insofar as the IS/MND may assert there will be adequate capacity at the WWTP (see IS/MND, pp. 76-77), there is no analysis demonstrating this to be the case. Moreover, WWTP facilities aside, there remains uncertainty about whether wastewater pipelines connecting the project site to the WWTP have adequate capacity. A complete capacity analysis must be prepared to demonstrate that no significant impact would occur, and that no further off-site improvements are needed. Furthermore, there is no analysis of how wastewater generated by the Valpico Apartments Project would not result in any Regional Water Quality Control Board violations; the IS/MND says the project would not cause violations, but offers no analysis in support of this assertion. (See IS/MND, p. 77.) These omissions make the IS/MND inadequate, and there are unstudied, potentially significant impacts.

The IS/MND also contains an inadequate analysis of impacts to water facilities and available water supply. As discussed before, the Valpico Apartments Project would locate a use on the project site that was not contemplated in any citywide master plans or in the General Plan, and so previous studies are not relevant in determining impacts of the Valpico Apartments Project. Moreover, in terms of water supply, the IS/MND analysis correctly looks to citywide supply and demand as the correct scope of analysis, but fails to account for both existing citywide demand and projected, future citywide demand. For instance, the IS/MND fails to identify a citywide cumulative project list or account for that demand in evaluating whether the Valpico Apartments Project demand would exceed projected supplies in future years. A complete supply-demand analysis must be prepared to demonstrate that no significant impact would occur.

To the extent that the IS/MND does engage in a water demand-analysis, it obfuscates the impacts involved. That is, in comparing supply and demand figures, the IS/MND singularly talks about

maximum, existing water supply amounts (31,500 acre feet per year) and suggests, without citing any evidence, that water supplies of 49,500 acre feet per year may be available. (IS/MND, p. 77.) The IS/MND then compares these amounts to a single year of recent demand (16,603 acre feet per year). (IS/MND, p. 77) This approach cherry picks statistics, suggesting water demand would be well below supply in future years. The City's most recent Urban Water Management depicts a different story, and concludes that water demand would increase to 33,600 acre feet per year in year 2035, exceeding the IS/MND's "certain" supply amount of 31,500 acre feet per year. The analysis in the IS/MND is result-oriented, and the technical memorandum that purportedly supports it, apparently written by West Yost Associates, has not been made available for public review, having been presented neither in the City's agenda packet nor on the City's website. City decision-makers should be aware that the City's General Plan determined that "there is currently insufficient water supply secured to serve projected development under total buildout of the proposed General Plan," and that impacts in this regard are significant and unavoidable. (General Plan SEIR, p. 6-21.).

The need to study water supply in greater detail is more acute because the Valpico Village Apartments Project appears to require three times more water than a usual high-density apartments project, and thus its development is clearly outside the contemplation of any previous water supply study, whether prepared for the City's Urban Water Management Plan, the City's General Plan, or otherwise. For instance, high-density residential development is expected, under the Citywide Water System Master Plan (March 2012) to require 220 gallons per day per dwelling unit, meaning 184 units would generate a demand for about 40,000 gallons per day, whereas the Valpico Apartments Project is expected to generate a demand for 0.17 million gallons per day, or 170,000 gallons per day -- three times the demand of an ordinary project. (See IS/MND, p. 77.) Meanwhile, the demand associated with commercial projects -- the type of project assumed in the City's General Plan -- is only 2.0 acre feet per acre per year. (Citywide Water System Master Plan.) For a project site of 8.75 acres, that makes for a demand of 16.9 acre feet per year, compared to the estimated demand of 55 acre feet per year for the Valpico Apartments Project. (See IS/MND, p. 77.)

In sum, the development of the Valpico Apartments Project would increase demand by more than three times the amounts assumed in all previous water supply assessments. Given this conclusion, and the inadequacy of the information provided in the IS/MND, a complete water supply assessment must be undertaken, consistent with industry practice, that evaluates, in detail, the water supply service area, existing and future available water supplies, and water demand and supply during a range of normal, single dry, and multiple dry years, and that takes into account all existing land uses and all reasonably foreseeable development projects. There is a fair argument the project would have a potentially significant effect, and that impacts would be significant and unavoidable, and these issues should be evaluated in an EIR.

The IS/MND also is deficient because it contains absolutely no analysis of electricity usage required by the Valpico Apartments Project, and whether there is capacity in existing systems to serve the project.

The IS/MND's analysis of solid waste is deficient because, while the analysis discusses existing capacity at a nearby landfill (IS/MND, p. 79), it does not quantify the amount of solid waste that

would be generated by the Valpico Apartments Project, nor does it discuss how much waste is expected to be generated by existing and other reasonably foreseeable uses. There essentially is no supply-demand discussion, and this omission violates CEQA.

To the extent not already identified above, the IS/MND also is inadequate because it fails to evaluate cumulative impacts regarding water service, wastewater service, electricity service, and solid waste service.

Each of the findings related to the above-identified environmental impact areas are inadequate because they mirror the above deficiencies.

Applicability of Public Comments to MacDonald Apartments Project. Each of the comments above that are made with respect to the Valpico Apartments Project apply equally to the development of the MacDonald Apartments Project. The adjacency of the project sites, the similarity of the uses, the replication of architectural designs (including exterior dimensions, floor plans and, in some cases, architectural facades), the shared circulation system, the interdependence of entitlements, and the concurrent timing of their development compel the conclusion that these developments comprise a single project for purposes of CEQA.

The two projects should have been studied under the same CEQA review process but, for the sake of argument, even if the City or a reviewing court disagreed, the City still must evaluate the cumulative impacts of the two projects. As demonstrated above, nowhere in either project administrative record is there an iota of analysis devoted to cumulative impacts.

Recirculation Required Even if EIR Did Not Need to be Prepared. Though the City must prepare an EIR to evaluate the impacts identified above, even assuming, for the sake of argument, that the City or a reviewing court disagrees, the IS/MND must be recirculated under CEQA Guidelines section 15073.5. Pursuant to CEQA, once a negative declaration has been circulated, it must be recirculated for another round of review and comment if it is "substantially revised" after the public notice of the first circulation has been given. A substantial revision includes circumstances where a new, avoidable significant effect is identified, and to reduce that effect to a level of insignificance, mitigation measures or project revisions must be added. The analysis above shows that, in many cases, the IS/MND failed to disclose significant impacts. Recirculation therefore is required under CEQA.

IV. Conclusion.

Any City decision to approve the MacDonald Apartments Project on the basis of CEQA streamlining exemption provisions, and to approve the Valpico Apartments Project on the basis of a mitigated negative declaration, would violate CEQA and all other applicable law. As explained above, there is a fair argument each of these projects would have significant and adverse environmental impacts and, indeed, significant and unavoidable impacts, requiring that the City prepare an EIR to evaluate the environmental impacts of their construction and operation.

Sincerely,

Jeff Smith

Horizon Planet

1. Role of a council member.
2. Economic development practices.
3. Growth management.
4. Public safety.
5. Budget management.
6. Capital improvement projects (CIP).

1. How would you describe the role of a council member?
 - a. What is a council member's role regarding operational issues?
 - b. What is a council member's role regarding personnel issues?
 - c. If a council member receives a request or complaint from a citizen regarding city services, how should the council member deal with the matter?
 - d. Describe what you would consider a conflict of interest for a council member.

2. What is your opinion regarding the city's economic development practices?
 - a. Do you agree with the practice of creating incentives to encourage some businesses to come to Tracy?
 - b. Would you want to change the practice and if so, how?
 - c. How should the city fund such incentives?
 - d. What else should the city be doing to promote economic development?

3. What is your opinion regarding the city's management of growth?
 - a. Are you familiar with the General Plan?
 - b. Are you familiar with the growth management ordinance (GMO)?
 - c. What are your feeling regarding development agreements?
 - d. What changes, if any, would like to make regarding how Tracy deals with growth?

4. What is your opinion regarding public safety in Tracy?
 - a. How should public safety staffing levels be determined?
 - b. Are you familiar with the police department's strategy to combat gang activity in Tracy?
 - c. What, if any, changes would you like to see made to that strategy?
 - d. If fiscal restrictions forced a reduction to public safety budgets, what should be the council's role in resolving the problem?

5. What is your opinion regarding how the city manages its' budget?
 - a. Have you reviewed the city budget?
 - b. What do you feel is an appropriate level of fiscal reserves?
 - c. If the city sees a budget surplus over the next few years as a result of Measure E, what should be done with the funds?
 - d. When Measure E expires what should be done if annual expenses continue to exceed revenues?

6. What is your opinion regarding how the city handles capital improvement projects (CIP)?
 - a. Are you familiar with the CIP process?
 - b. Do you feel there is adequate public input into establishing CIP priorities?
 - c. Should the process be changed and if so, how?
 - d. What are your thoughts regarding CIP funding?