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Placer County
Planning Services Division and
Environmental Coordination Services
Nikki Streegan
Shirlee Herrington
3091 County Center Drive
Auburn, CA 95603

Placer County Zoning Administrator/
Parcel Review Committee
3091 County Center Drive
Auburn, CA 95603

Re: Initial Study / Proposed Mitigated Negative Declaration
Sehr Winery
PLN18-00469
SCH# 2020019090

Dear Ms. Herrington, Ms. Streegan, and Zoning Administrator / Parcel Review Committee:

We appreciate the opportunity to provide the following comments on behalf of Jackie Hoyt and more than 30 other neighbors of the proposed Project. Many of my clients have submitted comment letters regarding the Initial Study and Mitigated Negative Declaration, and this letter is intended to supplement those comments, and those submitted by other agencies and members of the public.

As explained below, the Initial Study and Mitigated Negative Declaration (referred to together herein as "MND") for the Project does not comply with the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 *et seq.*) in certain essential respects. The Project is also inconsistent with existing General Plans and zoning.

While the County and the developer may understandably wish to avoid the costs associated with extensive environmental review, the MND does not fulfill the County's obligations under CEQA. It is our view that an Environmental Impact Report ("EIR") is required for the Project.

An overarching concern about the County's review of this Project is the fact that the MND ignores cumulative impacts of the Project, *plus* the Winery and Farm Brewery Zoning Text Amendment ("ZTA") currently being developed and scheduled for consideration by the County for approval on April 23, 2020. This failure of the cumulative impacts analysis also results in an improper segmenting of the Project review.

A. The MND Improperly Segments the Environmental Review

California courts have repeatedly and forcefully rejected attempts to avoid proper evaluation and disclosure of a proposed action's long-term environmental impacts. CEQA requires that lead agencies consider a project's full environmental impacts "at the earliest possible stage" and certainly before the project gains "irreversible momentum." (E.g., *City of Carmel by the Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 242.) Thus there is an overwhelming mandate against allowing agencies to defer the preparation of a full EIR until a later phase of the project; instead, CEQA mandates "that environmental considerations do not become submerged by chopping a larger project into many little ones – each with a minimal potential impact on the environment – which cumulatively may have disastrous consequences." (*Bozung v. Local Agency Formation Comm'n* (1975) 13 Cal.3d 263, 283-84; and see *No Oil v. Los Angeles* (1987) 196 Cal.App. 3d 223, 233, 237.) CEQA accomplishes this in part by defining the term "project" broadly to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change to the environment." (CEQA Guidelines §15378(a).) More specifically, "project" means the reviewed activity, which may be subject to several discretionary approvals. (CEQA Guidelines § 15378(c).) Thus, an agency must prepare an initial study considering the entirety of a project.

On April 13, 2020, the law firm of Shute, Mihaly & Weinberger submitted a comment letter to the County regarding the ZTA for wineries and breweries. The letter noted that the EIR for the ZTA is improperly segmented because it "is looking at the ZTA in isolation, as if no development will follow." (See April 13, 2020 letter, pp. 3-4.) The County apparently intends to approve the Sehr Winery Project, and *then* approve the ZTA. This approach makes no sense from a planning perspective, and it undermines the sufficiency of the environmental review for the ZTA and this Project.

In the case of this Project, the County is *currently* reviewing the ZTA, and at the same time reviewing the permit application for this individual winery Project. The MND for the Project does not mention one word about the ZTA. This approach violates the informational purposes of CEQA, and also violates the substantive requirements for adequate environmental review.

The County ignores the ZTA in the staff reports prepared for the Project, and there is no disclosure as to what, if any, of the conditions of approval for the Project would be undermined, erased, or modified in some way as a result of approval of the ZTA. It is possible that the ZTA will negate the entire analysis relying on the limitation of 6 promotional events per year with a maximum of 102 guests. (See Agenda packet, p. 74.) Will this condition be removed when the ZTA is passed allowing for unlimited

events? The County's failure to disclose and discuss this information violates CEQA, not to mention undermining the trust of an apprehensive citizenry.

The ZTA and the Project have been "connected" from the beginning of the process before the County. The ZTA has been going through the administrative process while the Project application has been moving along on a parallel track. It is inappropriate for the County to pretend that these projects are unrelated.

As the letter from Shute, Mihaly & Weinberger makes clear, the EIR for the ZTA is deeply flawed, and must be improved to meet CEQA's mandates. As it relates to this Project, the impacts of the ZTA must be considered, disclosed, and discussed in the MND in order to comply with CEQA.

B. Standard for use of a Negative Declaration

Where, as here, there is substantial evidence in the record to support a fair argument that the proposed project may have a significant effect on the environment, preparation of an EIR is required. (PRC §§ 21100, 21151; CEQA Guidelines § 15064; *Communities for a Better Environment v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319.)

The standard in reviewing an agency's decision not to prepare an EIR for a project is subject to the "fair argument test" and is *not* reviewed under the substantial evidence test that governs review of agency determinations under Public Resources Code sections 21168 and 21168.5. The "substantial evidence test" that generally applies to review of an agency's compliance with CEQA provides that if any substantial evidence in the record supports the agency's determination, then the determination will remain undisturbed.

In stark contrast, an agency's decision to omit the preparation of an EIR will not stand if *any* substantial evidence in the record would support a fair argument that the Project *may* have a significant effect on the environment. (*No Oil, Inc. v. city of Los Angeles* (1974) 13 Cal.3d 68, 75; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1000-1003; Pub. Resources Code § 21151.)

There is substantial evidence to support a fair argument that each of the Project impacts discussed below may indeed be significant, and a full EIR should be prepared for the Project.

C. The Project may Result in Significant Impacts

As noted above, the cumulative impacts analysis is inadequate under CEQA. The winery and brewery development that will occur under the ZTA, along with this Project (as well as other traffic-generating projects nearby) have not been adequately analyzed. Additionally, the following areas of impact may also be significant, also triggering the need for a full EIR.

It should also be noted that to the extent the County plans to place conditions on the Project that will be removed by the adoption of the ZTA, the analysis of the MND

relies upon the assumptions regarding the number of winery events each year, and the analysis of most areas of impact will be rendered completely inaccurate. For example, the parking area and the septic system have been proposed and analyzed based upon maximum numbers of visitors and events, and these analyses are useless if the intent is to impose conditions that will be eased by the ZTA.

1. Biological Resources

The MND contains outdated and inaccurate information regarding the status of the Project site, particularly with respect to jurisdictional wetlands. The MND begins with a reference to the Biological Resources Assessment prepared in September of 2018. (MND, p. 12.) There is also mention of a Wetlands Assessment and field surveys. (*Id.*) The MND goes on to provide a mitigation measure for impacts to wetlands as follows: “Prior to approval of Improvement Plans, the wetlands report shall be field verified by the U.S. Army Corps of Engineers, Regional Water Quality Control Board, and the California Department of Fish and Wildlife.” (MND, pp. 13-14, emphasis added.) This measure goes on to state that all necessary permits and mitigation credits will be provided to the County before Improvement Plans are approved.

In the fall of 2019, the Project developer decided to go ahead and begin grading and filling on the Project site. The California Department of Fish and Wildlife responded, as did the U.S. Army Corps of Engineers (“USACE”). USACE opened an investigation, ID#SPK-2019-00743. The mitigation measures identified in the MND are no longer viable, as the terrain has been graded and filled such that there can be no verification by the listed resource agencies. It is possible that the mitigation measure could be revised after USACE completes its investigation and concludes any regulatory action, but the MND will have to be revised to disclose the change.

2. Land Use and Planning

Several comment letters submitted to the County regarding the MND noted that the hours of operation identified for the Project, allowing events until 11:00 p.m., violate County Code section 17.56.340 D 8.c, which allows events to run from 10:00 a.m. to 10:00 p.m. Friday and Saturday and 10:00 a.m. to 8:00 p.m. on Sunday.

The comments submitted to the County on the MND make clear that compatibility with adjacent residential uses is unlikely. The additional traffic, noise, dust, and light are inconsistent with a residential neighborhood, and the MND identifies just three mitigation measures it claims result in a less than significant impact.

The three measures are: (1) MM XIII.1, limiting delivery hours, limiting outdoor noise for “day-to-day” operations, and noting that events will be subject to the Placer County Noise Ordinance; (2) MM I.1, governing lighting to prevent “spill over”; and (3) MM I.2, a photometric study requirement for lighting.

The concerns that were raised by members of the community included the increase in traffic running beside their homes and down their private drives, as well as noise associated with events, winery operations, and construction. The mitigation measures the MND offers as reducing these impacts to a level of insignificance do not

even address the event noise (other than a vague reference to the County ordinance), nor do the measures address how traffic will be directed to the winery (and kept out of residential lanes and driveways). The noise and lighting mitigation measures are not clear, effective, and enforceable as required by CEQA. There are also no performance criteria identified that would even allow an assessment of the success of these measures. The mitigation strategy is insufficient, and the record reflects a myriad of land use conflicts that have not been addressed at all in the MND.

3. Traffic Impacts

Several commenters also have expressed concern about the already congested traffic conditions, as well as safety concerns regarding the entrance to the Project site. The MND provides a brief dismissal of the question of whether there are any traffic safety concerns, stating that there are no safety issues associated with the entrance to the Project site because the entrance is pre-existing. (MND, p. 32.) The existing entrance to the Project site has never been used for a busy winery and events center, so there is no factual support for this conclusion. Further, the MND mentions in another section that the final landscape plans may have to be modified to address traffic safety, with no elaboration. (MND, p. 19.)

Additional safety concerns have been raised relating to the lack of visibility at the intersection entering Cavitt Stallman Road from Oak Pine Lane. This is also something the MND and staff reports fail to address. The only "discussion" of traffic safety appears in the agenda packet at page 5, where it is stated that the access driveway for the winery is "acceptable in accordance with standards of safety. Sight distance requirements and acceleration/ deceleration tapers for the Sehr Winery satisfy county safety standards." This bare conclusion is not supported by any evidence in the record.

The flow of traffic is also a concern that has been raised in comment letters, and is not mentioned or discussed in the MND. Comments have been submitted informing the County that privately maintained roads near the Project are often used as a shortcut Douglas Boulevard / Joe Rodgers Road and Cavitt Stallman Road. Concerns about winery traffic using Oak Pine Lane and Itchy Acres Road were raised by many Project neighbors. The staff reports for the Zoning Administrator do not address these concerns at all. Failure to address a potentially significant impact, evidence of which has been presented to the lead agency, violates CEQA.

The MND traffic impact analysis also suffers from an overarching lack of information and accuracy with respect to existing conditions and projections for a Project that will likely be modified almost immediately by the passage of the ZTA.

The Granite Bay Traffic circulation update has been underway for some time but not yet completed. Presentations provided by transportation engineering to the public at the Granite Bay Municipal Advisory Council have stated that traffic along Douglas Boulevard was much worse than anticipated (F level of service at some intersections). Multiple traffic surveys have been completed with public feedback indicating a strong desire to keep Douglas at 4 lanes. No solution has been reached. Thus, the information upon which the Project traffic analysis is based is incomplete and inaccurate. The EIR

for the ZTA for wineries and breweries also (as a result of improper segmentation of review) fails to discuss traffic impacts from the Project.

Finally, the Project description states that in addition to the winery, the Project will include olive oil production. There is no information in the traffic analysis regarding deliveries or other vehicle trips that will be associated with this aspect of the Project. This flaw also appears in the analysis of wastewater handling, discussed immediately below.

4. Utilities and Service Systems

The MND provides a very confusing picture of what will happen on the Project site with respect to wastewater. In the Project description it states that domestic wastewater will be treated in a leach field on the property “and a separate system will be located on the property to treat the wine production wastewater.” (MND, p. 2.) There is nothing in the MND showing where (or how) two separate septic and leach field systems will fit onto the Project site.

The staff report (page 6) states that “[a] total of one sewage disposal system would be constructed for the proposed project.” The staff report goes on to say that the sewage system will *not* be sufficient to handle the wastewater from promotional events and winery visitors. (Agenda packet, pp. 6-7.) Some vaguely described “special design features” will allow the inadequate system to “accommodate the sewage flows from infrequent events (i.e., six times per year).” (*Id.*) As noted above, once the County approves the ZTA for wineries and breweries, the limitations on events will no longer be in place, and every assumption regarding Project impacts, including wastewater impacts, will no longer be valid.

On August 27, 2019, a septic design memo was prepared for the Project, and it also states that winery wastewater will *not* be treated in the domestic septic system. (A copy of the August 27, 2019 memo is attached.) The memo also discusses the fact that the system is not sufficient to accommodate event flows, along with flows from the winery visitors, and then goes on to say that the pump tank will somehow allow the “surge” flows to be accommodated. There is no discussion of how the system will handle the capacity when the ZTA is approved.

Additionally, the August 27, 2019 memorandum regarding the domestic wastewater flows and treatment does not make any mention of the olive oil production activities that will occur as part of the Project. There is no information regarding the amount of olive oil that will be produced, or how much wastewater, solid waste, etc. will be produced by this activity.

The Central Valley Regional Water Quality Control Board will regulate the collection and treatment of winery wastewater, and the MND simply fails to even acknowledge or discuss the separate system that will be necessary to meet the State standards. In fact, the staff report specifically denies the existence of this separate, required system. This lack of information, failure to disclose, and failure to analyze, violates CEQA.

5. Cumulative Impacts

The CEQA Guidelines (§ 15130(b)) provide two methods for an adequate analysis of cumulative impacts:

1. The List Approach, which identifies all of the past, present and probable future projects contributing to the cumulative impact, including projects that are outside of the control of the lead agency.
2. The Projection Approach, which relies upon the cumulative impact analysis on a summary of projections of future development and impacts contained in an adopted general planning or related planning document, or in a prior environmental document that has been certified. These documents must be available to the public and actually describe or evaluate the regional or areawide conditions contributing to the cumulative impact.

The County took a shortcut and decided not to analyze cumulative impacts under either of the available approaches. The cumulative impacts analysis is non-existent, and consists only of a check-box “no” answer on the checklist. (MND, p. 38.) Accordingly, it does not meet CEQA’s requirements.

D. Conclusion

For the reasons set forth above, we believe that the MND fails to meet the requirements of the California Environmental Quality Act. Also, the Project conflicts with adjacent land uses. For these reasons, we believe the document should be withdrawn and a revised environmental document, a full EIR, should be prepared.

Very truly yours,



Marsha A. Burch
Attorney

cc: Jackie Hoyt
Project neighbors
Karin Schwab, County Counsel