MARSHA A. BURCH
ATTORNEY AT LAW

131 South Auburn Street
GRASS VALLEY, CA 95945

Telephone:
(530) 272-8411

mburchlaw@gmail.com

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Via electronic mail and hand delivery

Grass Valley City Council
125 E. Main Street
Grass Valley, CA 95945

Re: Negative Declaration for the Whispering Pines Specific Plan Text Amendment – 1A Corporate Business District.
Application No. 15PLN-31

Dear Council Members:

We appreciate the opportunity to provide the following comments on behalf of Daniel and Linda Ketcham regarding the above-referenced project. The Ketcham residence is located adjacent to the Whispering Pines subarea SP-1A, and many of the residents there are deeply concerned about the proposed text amendment and the cursory level of environmental review. These comments are intended to supplement comments submitted previously by others during the review process.

As explained below, the Initial Study and Negative Declaration (referred to together herein as "ND") for the Project does not comply with the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 *et seq*.) in certain essential respects.

It is unclear from the record documents why the City is processing a text amendment to the Specific Plan through a private application where no development project is being proposed. While they City may understandably wish to avoid the costs associated with extensive environmental review, the ND does not fulfill the City's obligations under CEQA. It is our view that an Environmental Impact Report ("EIR") is required for the Project.

An overarching concern in this case is the fact that the ND ignores potentially significant adverse impacts while deferring analysis to the future. CEQA does not allow for such deferral of analysis where potential impacts are foreseeable, and it also does not allow for a lead agency to segment a project – breaking it into pieces as is done here – into a text amendment followed by the development proposal(s) likely to be submitted as a result of the amendment. There is substantial evidence in the record of potential significant impacts, requiring the preparation of an EIR for the Project.

Further, the tiering process was not properly executed in the ND, and even if it had been, a negative declaration is not allowed to be tiered from an EIR where findings of significant and unavoidable impacts were made, and so the process is not available at all for the tiering of a negative declaration in this case.

I. The ND is improperly "tiered" from the 1984 Master EIR for the Whispering Pines Corporate Community Specific Plan

Former CEQA Guidelines section 15152(f)(3)(C) provided an opportunity to use a negative declaration when a first tier EIR addressed significant and unavoidable effects, where overriding considerations were previously adopted. In 2002, that section was stricken as invalid by the court in *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 129 (overruled on other grounds by *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1125).

The Master EIR determined that implementation of the Specific Plan would result in adverse impacts that would be significant and unavoidable. These included loss of natural vegetation, impacts to timber lands, and increased traffic and air quality impacts. (1984 Master EIR for the Whispering Pines Corporate Community Specific Plan ["1984 EIR"], pp. 6-10 to 6-11.) The City found that the Specific Plan itself would have significant and unavoidable impacts, necessitating findings of overriding considerations. (See Public Resources Code § 21081.) Those unmitigated impacts still exist, and so a negative declaration is not possible or permitted by CEQA.[1]

Even if the EIR could support the tiering of a negative declaration (which it does not), the procedure followed by the City does not comply with the requirements of CEQA.

One of the requirements of tiering is to inform the public that the agency is using tiering. (Public Resources Code § 21094(e); Guidelines § 15152(g); and *Friends of the Santa Clarita River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1383-1384.) There is reference to the "Master EIR" in the March 15, 2016 Staff Report and ND, but the concept of tiering is not adequately disclosed to the public.

Where a lead agency intends to rely on an earlier environmental document for its analysis of a project's impact, the Initial Study, at the very least, should summarize, with supporting citations, the specific relevant conclusions of the existing documents. Only then can the public determine whether the agency's reliance on extant data is in fact proper. (See *Emmington v. Solano County Redevelopment Agency* (1987) 195 Cal.App.3rd 491, 501-503.) The initial study does not cite to a single chapter, page or analysis from the 1984 EIR.

Public Resources Code section 21094 sets forth the procedure to be followed for tiered EIR's. Subdivision (a) provides in pertinent part: "Where a prior [EIR] has been

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[1] The Planning commission Staff Report states that the mitigation measures from the 1984 EIR will apply to the Project, and yet those mitigation measures are not included in the approval, nor is a Mitigation Monitoring and Reporting Program proposed as part of the Project, as required by CEQA.

prepared and certified for a program [or] plan, ... the lead agency for a later project that meets the requirements of this section shall examine significant effects of the later project upon the environment by using a tiered [EIR], except that the report on the later project need not examine those effects which the lead agency determines were ... examined at a sufficient level of detail in the prior [EIR] ...." Of particular significance to the present Project, subdivision (c) provides: "For purposes of compliance with this section, an initial study shall be prepared to assist the lead agency in making the determinations required by this section. The initial study shall analyze whether the later project may cause significant effects on the environment that were not examined in the prior [EIR]."

The record does not support a finding that the previous EIR fully analyzed the impacts associated with the proposed text amendment. The Staff Report states that the manufacturing uses proposed to be added to the SP-1A area are "similar" to the light industrial uses allowed already. It goes on to say that the uses are "consistent with the current SP-1A zone." (*Id.*, p. 6.) This is simply not true. A text amendment would not be necessary if the proposed uses were consistent with the zone. The industrial uses proposed to be included could have serious and significant impacts, and those impacts were not addressed at all in the 1984 EIR.

For example, the SP-1A area adjacent to a residential neighborhood would allow dry cleaners, chemical manufacturers and food processing. Of the more than 22,000 dry cleaning plants in the nation, it is estimated by EPA and the State Coalition for Remediation of Dry Cleaners that 75% of these plants have some level of contamination.[2] The State Water Resources Control Board ("SWRCB") has found that dry cleaners are a major contributor to groundwater contamination.[3] The SWRCB also found that the leading cause of drycleaner contamination is wastewater discharges to sewers and septic systems. The SWRCB also regulates food product processing and manufacturing (also allowed by the text amendment) because of the wastes and byproducts associated with these industries.[4] There is nothing in the ND or the Staff Report discussing the potential for contamination from uses such as food production, dry cleaning or "chemical manufacturing" that would be allowed as a result of the text amendment.

The analysis in the ND and the Staff Report do not discuss the *actual* changes that will result from the text amendment. Further, it is obvious from the 1984 EIR that the potential for toxic contamination, noise and odors associated with the uses allowed by the text amendment in SP-1A were not analyzed, and so there is no support for the conclusion that the 1984 EIR evaluated the impacts of the Project.

II. The Project requires review by the Airport Land Use Commission

Based upon our review of the Nevada County Airport Land Use Commission's ("ALUC") airport influence area map, it appears that the Project area lies within the area of influence. Under Public Utilities Code section 21676(b), when the City adopts or

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[2] . http://www.drycleancoalition.org/survey/
[3] http://www.environmental-law.net/wp-content/uploads/2014/04/2007-Santa-Clara.pdf
[4] http://clrblu.com/wp-content/uploads/2013/03/wastewater_food_industry.pdf

approves any amendment to a general or specific plan affecting property within an airport influence area, it must be referred to the Nevada County ALUC for determination with the ALUC's plan prior to approval by the local agency.

The ALUC polices and maps are included in Chapter Two of the land use compatibility plan.[5]

III. The Initial Study improperly defers needed environmental review

If the changes proposed by the text amendment had been adequately reviewed by the 1984 EIR, then the City could make a finding that no further environmental review is required. As discussed above, the 1984 EIR very clearly reviewed the impacts of the SP-1A area containing businesses that would result in a "campus-like" environment; something compatible with adjacent residential uses. The 1984 EIR did not evaluate the industrial/manufacturing uses proposed by the text amendment.

The EIR's stated purpose was to analyze and mitigate the impacts that were not dealt with through the tailoring of the Specific Plan to mitigate parcel-specific impacts. (EIR, p. 1-3.) The EIR stated that the Specific Plan was prepared to "reflect all possible mitigations of the Environmental Assessment in sufficient detail to guide future land use decisions on individual parcels." (*Id.*) Thus, the EIR evaluated the impacts of the specific plan in detail, and not in a broad-brush approach that would allow the expansion into heavier chemical and industrial uses without further environmental review.

The EIR stated that the Specific Plan would include a "Corporate District (SP-1A)" that would be set aside for "large, intermediate and small firms, particularly 'high-tech', seeking to build facilities on improved sites within the highest quality environment." (EIR, p. 1-11.)

CEQA requires consideration of the indirect and secondary impacts of an amendment to a general plan or zoning ordinance where such impacts are reasonably foreseeable. (Guidelines § 15358(a)(2).) While CEQA does not require speculation, it requires the agency to forecast project impacts and use "its best efforts to find out and disclose all that it reasonably can." (Guidelines § 15144.) CEQA recognizes the degree of specificity will be less in evaluating amendments to a zoning ordinance or general plan but nevertheless requires agencies consider the ultimate consequences of such changes to the physical environment. (Guidelines §§ 15146, 15378; and *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398.)

CEQA places the burden of environmental investigation on the agency. An "agency should not be allowed to hide behind its own failure to gather relevant data." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

The ND here fails to evaluate the reasonably foreseeable ultimate consequences of this Project, violating CEQA's overarching informational purposes. The ND repeatedly states analysis is deferred until a "development proposal" is received or

[5] http://www.nctc.ca.gov/documents/NCALUC/NCALUCP%20Final%209-21-11%20-%20Chapter%202%20-%20Policies.pdf

some other future time. The vast majority of the conclusions in the ND are not based on substantial evidence or *any* evaluation.

The ND claims that it is a program level document (see p. 3), and incorrectly claims that no detailed analysis of the ultimate and foreseeable impacts is required. CEQA allows the preparation of program EIRs to evaluate a series of related actions or a policy issue, and subsequent projects are then considered in light of the "program" EIR. This Project is *not* being evaluated in a program EIR, but instead proposes the adoption of a negative declaration with no mitigation at all for a *site-specific* amendment to the Specific Plan. The deferral of analysis permitted with a program EIR does not justify deferral here. The foreseeable (indeed, obvious) potential impacts of the industrial uses that will be allowed by the text amendment must be analyzed, and mitigation measures, including performance standards, must be adopted now.

While development-level analysis may presently be impossible, the City can reasonably forecast the impacts of the text amendment. Further, there is no assurance that in depth review will *ever* occur. If the City makes a finding now that the text amendments change nothing, as the Staff Report states: the uses are "consistent with the current SP-1A zone…", then it is fairly certain that future industrial proposals will be deemed to also fall within the scope of the original 1984 EIR, and yet another negative declaration with no mitigation proposed will likely be prepared.

IV. The ND is inadequate and an EIR must be prepared to evaluate the potentially significant effects of the Project

The adoption of a negative declaration is improper where there is evidence that the Project may result in significant environmental impacts. There are several areas of impact where a fair argument exists that the Project may have a significant effect on the environment. There is no discussion in the staff report to the Planning Commission regarding the concerns raised by project neighbors regarding noise and other impacts that will be felt most keenly by the residential neighbors adjacent to the amended SP-1A Project area. The newly allowed uses include potentially noisy, chemical-heavy, smelly and unsightly uses under any standard, and yet the ND proceeds as if there is no difference between the old SP-1A and the amended version, deferring any real review to an unspecified future time when specific development proposals are received.

It is improper to rely on the 1984 EIR, particularly without any analysis to determine whether the outdated information contained in that document could possibly support tiering at this point.

For example, the 1984 EIR found that all nearby intersections except Brunswick Road/Sutton Way were operating at acceptable levels of service. (EIR, p. 2-4.)[6] The 2020 General Plan indicates that the intersection of Whispering Pines and Brunswick Road is operating at a level of service of F. The ND fails to address the new environmental baseline and the potential traffic impacts of the Project.

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[6] The City defines and acceptable level of service as a grade of "D" or better. (See 2020 General Plan 4-6.) A level of service "F" is a "total breakdown…stop and go operation," and is unacceptable and requires mitigation.

Traffic mitigation identified by the 1984 EIR included: an 8-phase signal to be placed at E. Main/Idaho-Maryland Road/Freeway 49 on-off ramp intersection and the Idaho-Maryland intersection approach should be widened; "Idaho-Maryland Road from the main site access to the Freeway 49 northbound on-off ramp should be realigned where needed to provide adequate stopping sight distance…"; and one emergency turnout (long enough for a truck) should be provided in each direction along the project's Idaho-Maryland Road frontage. (EIR, pp. 6-45 to 6-46.) Have all of the mitigation measures been implemented? Have the off-site traffic mitigation fees been paid? The lack of analysis in the ND prevents the public and the decision makers from understanding the potential impacts of the Project.

The 1984 EIR stated that there was insufficient capacity in the Loma Rica NID system to serve the Specific Plan area. (EIR, p. 2-6.) The EIR also identified a potential stormwater treatment capacity shortfall. (EIR, p. 2-8.) Have these conditions changed? The ND does not analyze the Project's impacts to utilities in any meaningful way.

The 1984 EIR found a cumulative impact requiring a new fire station. (EIR, p. 2-11.) Has the new fire station requirement been fulfilled? If not, the proposed text amendment will expand the allowed uses into areas that include toxic chemicals and other, hazards; resulting in an even greater impact than that of the Specific Plan as originally adopted.

Also important for the type of proposed uses, the 1984 EIR found that the City should develop and adopt a hazardous material management ordinance. (EIR, p. 4-10.) This does not appear to have been done. Again, the significant impacts of the Specific Plan have yet to be mitigated, and so a negative declaration is not a possibility under any procedural mechanism for the Project.

It does not appear that mitigation required by the 1984 EIR has even been completed. The record is rife with evidence that the Project may result in significant impacts, and the ND simply fails to provide the required level of review for the Project.

V. The Project is inconsistent with the General Plan and the Specific Plan

The Specific Plan EIR stated that certain findings would be required in order to approve any future amendments to the Specific Plan. One of the required findings is that "[t]he change will not adversely affect adjacent properties and can be properly serviced." (EIR, p. 5-4.) There is no evidence in the record to support a conclusion that the change will not adversely affect adjacent properties or that it can be serviced because there is no meaningful analysis of these issues.

The ND falsely assumes that the text amendment will not result in any change to the Specific Plan. The change is considerable and will allow potentially noxious uses to be placed within 100 feet of existing residential development. The 100-foot buffer was determined an adequate noise mitigation for the SP-1A area as proposed and analyzed in 1984, and the EIR did *not* anticipate industrial uses in the SP-1A area. (See EIR, p. 6-28.)

The 2020 General Plan policies also preclude approval of the Project without considering impacts to adjacent land uses, particularly residential. The following are some of the applicable policies:

- 4-LUG Protect and enhance the character of established single family neighborhoods.
- 9-LUO Preservation of existing neighborhoods.
- 10-LUO Protection of present quality of life.
- 16-LUP Maintain zoning that promotes protection of existing single family residential areas from inappropriate encroachments.

The Staff Report discusses the General Plan, stating that the site is designated as "Business Park," and goes on to state as follows: "CBP and I/S allow mixed land uses and contain specific performance and design standards." The CBP designation does *not* allow dry cleaning plants or metal fabrication. (See City Development Code, p. 2-39.) The Development Code does not include an "Industrial/Services" designation, but the types of uses allowed by the proposed text amendment are allowed with a permit within the M-1 (Light Industrial) designation. The Staff Report does not discuss the fact that the Business Park designation in the General Plan is further refined by the designations in the Specific Plan. The SP-1A designation includes only those uses included in the CBP designation discussed in the Development Code.

Dry cleaners, chemical manufacturers and other heavy industrial uses are not compatible with the adjacent residential uses and are not consistent with the Specific Plan. This is obvious when one looks to the State regulatory agencies' data regarding these uses. The record does not contain any evidence or analysis that would support a contrary conclusion.

VI. Conclusion

The 1984 EIR evaluated the SP-1A "Corporate District" and projected that it would include offices, research and development and "hi-tech." (EIR, p. 1-13.) The EIR described the SP-1A area of the Specific Plan as owned largely (73%) by one owner, allowing for the "best opportunity to develop as a large scale, corporate park…" and that together with the CC&Rs, would ensure the "preservation and enhancement of a campus-type atmosphere throughout the parcel." (EIR, p. 3-6.)

The entire environmental analysis relied upon an overall "area-wide" set of design elements meant to enhance "this image:" Whispering Pines theme, campus-like atmosphere, entrance gateway treatment, buffer areas and Wolf Creek Parkway. The entire effort was designed with the following intent for the SP-1A portion of the plan area: to provide site planning guidelines to "help create a campus-type atmosphere for the Whispering Pines Corporate Community. The intent is to create a business complex that compliments Grass Valley's small town character." (EIR, pp. 3-10 to 3-11.)

The 1984 EIR did not evaluate *any* uses in the SP-1A area that are comparable to the uses proposed to be included by the text amendment. In fact, the entire EIR was

The City may amend the Specific Plan, but it must do so in a way that is consistent with the General and Specific Plan, and must prepare the appropriate environmental review, taking into account the changes to the regulatory and environmental setting since 1984, as well as all impacts that will be associated with the proposed text amendment.

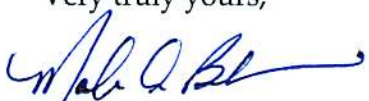
The 1984 EIR is simply too outdated to meet CEQA's current requirements. For example, the Guidelines for greenhouse gas emissions have changed. The ND, tiering from the 1984 EIR, states that there are no standards to apply, and vaguely concludes that greenhouse gas emissions may be evaluated later. (ND, pp. 22-23.) This conclusory analysis falls short of CEQA's requirements.

The applicable CEQA Guidelines (effective on March 18, 2010), clarified how greenhouse gas ("GHG") emissions should be analyzed and mitigated under CEQA. These Guideline requirements are *not optional*. The adopted changes to the CEQA Guidelines include detailed requirements for analysis, none of which are met by the ND.

Through reliance on the 1984 EIR, CEQA's standards for disclosure and review cannot be met. Changes to traffic, air quality and possibly water supply and other issues also need to be taken into account. The proposed uses, some of them including the potential for contamination, waste and byproducts must be analyzed at this stage, as the potential impacts are foreseeable.

Because of the issues raised above, we believe that the ND fails to meet the requirements of the California Environmental Quality Act and the Project is inconsistent with the General and Specific Plans and its approval will violate the planning laws. 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: Daniel and Linda Ketcham
Michael G. Colantuono, City Attorney