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**March 8, 2022**

**VIA EMAIL AND U.S. MAIL**

Eric Porter - Planner  
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**Re: Opposition to Proposed Adoption of Mitigated Negative Declaration**  
**Project:** Kelseyville Christian Academy, Use Permit 21-52, Initial Study 21-54  
**Project Location:** 5805 Live Oak Drive, Kelseyville (the "Property")

Dear Mr. Porter:

We are writing on behalf of our client Kelsey Creek MHP LLC, the owner of Kelsey Creek Mobile Home Park located at 5855 Live Oak Drive and 5725 Live Oak Drive #51, Kelseyville, CA 95451 (collectively, "Kelsey Creek MHP"). Kelsey Creek MHP is a full-time residential community occupied by young families and retirees. The Kelsey Creek MHP community directly abuts the northern, eastern, and western boundaries of the Property and its residents, owners, and management have serious concerns regarding the significant environmental impacts posed to their homes, property, and livelihood by the Project. Kelsey Creek MHP opposes the adoption of a Mitigated Negative Declaration ("MND") because (1) the Project Description in IS 21-54 is inadequate, (2) IS 21-54 fails to consider or analyze the environmental concerns and potential impacts of the Project, and (3) CEQA requires a complete EIR to be prepared for the Project.

**Discussion**

**1. The Initial Study Project Description is Inadequate Under CEQA.**

The Project Description provided in IS 21-54 does not describe the whole of the project with sufficient detail or accuracy, and therefore, deprives the public and responsible agencies of the ability to fully review and comment on the Project. The purpose of an initial study is to determine

whether a project may have a significant impact on the environment. (14 CCR § 15063.) The initial study must describe and analyze all phases of the project, implementation and operation. (14 CCR § 15063(a)(1).) The project description should contain documentation of the factual basis used by the agency for the finding that an MND is appropriate and that the project will not have a significant effect on the environment. (14 CCR § 15063(c)(5).) A complete and accurate project description is a necessary first step in any evaluation of the potential environmental impacts of a project. (*City of Redlands v. County of San Bernadino* (2002) 96 Cal.App.4th 398,406.)

The Project Description in IS 21-54 is inadequate under CEQA because it is limited to an informal outline of the physical dimensions of the proposed improvements to the Property and does not describe the project as a whole. There is no indication anywhere in IS 21-54 or the Notice of Intent whether the use permit being applied for is major or minor. This missing piece of information is critical to any review of the Project. The Project Description also lacks any discussion of how the Property will be developed, the extent of grading, or how long construction will occur on the Property. No grading or construction plan was provided. There is no discussion of how the improvements will be oriented on the Property in relation to the neighboring residents or what impacts such orientation may have. While the IS 21-54 Impact Categories generally reference “*Site Plans*,” no site plans or conceptual map were included in the Project Description or IS 21-54. These referenced site plans are not available online or directly accessible by the Public. It is difficult to see how any member of the public or public agency could comment on the Project without a review of the site plans. There is also no discussion of how the proposed school on the Property will be operated, including the hours of operation, estimated students in attendance, number of permanent or part-time faculty and staff, or any other information concerning the operation of the school pursuant to the Project. There is no discussion of meal preparation or service for the students. There is no discussion of lighting, traffic, drainage, fire preparedness or emergency access and egress. There is no discussion of school security or vandalism prevention. The Project Description also lacks any reference to or discussion of documentation, data, or other evidence which was used by the Planning Division to find that an MND is appropriate. In sum, the Project Description in IS 21-54 cannot support the finding of an MND because it fails to adequately describe the project as a whole and fails to describe its phases of development, implementation, or operation.

## **2. The Initial Study Fails to Analyze the Environmental Concerns and Potential Impacts of the Project in Violation of CEQA.**

“All phases of project planning, implementation, and operation must be considered in the initial study of the project.” (14 CCR § 15063(a)(1).) The identification and analyses of environmental effects provided in the initial study must be supported by “evidence.” (14 CCR § 15063(d)(3).)

The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the agency and should be, “to the extent possible,” based on scientific and factual data. (14 CCR 15064(b)(1).) The agency must consider direct physical changes in the environment and reasonably foreseeable indirect physical changes in the environment which may be caused by the project. (14 CCR § 15064(d).) The ultimate decision of whether or not the project may have a significant effect on the environment must be based on substantial evidence in the record of the agency. (14 CCR § 15064(f).) The following categories, but not limited to the following, are inadequately addressed by IS 21-54:

Aesthetics and Planning: IS 21-54 fails to consider the physical changes to the environment which will result from the Project. The Property is vacant unimproved land. The Kelsey Creek MHP community directly abuts the northern, eastern, and western boundaries of the Property with residential lands occupied by small dwellings. The construction of a school on the Property (of an unknown size and total occupancy), and in lands zoned “R3” residential, will change the physical environment and aesthetics of the area. IS 21-54 should contain an analysis of how the buildings and improvements constructed on the Property pursuant to the Project will affect the ability of these neighboring residents to look out their window, enjoy their back yards, or continue to live life in their homes. There is no discussion of the proximity of the classrooms, offices, restrooms and recreational facilities to these residential dwellings or of whether such proximity will or will not create a significant impact on these neighbors. There is no substantive discussion or analysis of proposed setbacks or whether the proposed setbacks comply with Article 12 of the Lake County Zoning Ordinance or are conditioned as to mitigate the potential for significant impacts on the residential neighbors. Additionally, there is no factual or substantive discussion of the proposed lighting for the Project or its potential impacts. Moreover, the IS 21-54 impact categories provide an erroneous analysis based on property zoned as “R2” residential, not the “R3” zoning of the Property. IS 21-54 is inadequate at its core because it fails to provide the basic information needed to evaluate whether the Project will have a significant impact on the aesthetics of the area and the proposed adoption of an MND is based on an erroneous environmental analysis.

Air Quality and Greenhouse Gas Emissions: The initial study must contain an analysis of the project’s greenhouse gas emissions to determine potential impacts to the environment. Such analysis should take into account (1) the extent to which the project may increase emissions as compared to the existing environmental setting, (2) whether emissions exceed a threshold of significance that the agency determines applies to the project. The agency’s determination must be supported by “substantial evidence.” (14 CCR § 15064.4.) IS 21-54 fails to provide an adequate analysis of air quality and emissions impacts because there is no substantive or factual discussion of the proposed construction or grading activities or any information concerning the increased traffic from students, staff and faculty, deliveries or “waiting parents.” None of the documentation referenced in IS 21-54 is specific to the Project and its potential impacts. Instead,

IS 21-54 contains an erroneous analysis of potential gas emissions from indoor commercial cannabis cultivation. Additionally, IS 21-54 states that the Project applicant will store fuel on site for use in its vehicles. An analysis of what vehicles will be used in operation of the Project and their impact on air quality and greenhouse gases should be included. The analysis of Greenhouse Gas Emissions found in IS 21-54 seems to be generally directed at commercial cannabis projects and is not germane to this Project. Accordingly, IS 21-54 contains an erroneous environmental analysis and cannot support the adoption of an MND.

Transportation Impacts: The initial study must analyze the potential transportation impacts of a project. The environmental impacts of a project caused by transportation is evaluated through a consideration of the amount and distance of automobile travel, and other transit, attributable to the project. (14 CCR § 15063.3.) The agency should use models and data to perform a quantitative and/or qualitative analysis of the transportation impacts of the project and document and explain its findings. (14 CCR § 15064.3(b).) The Project Description provides that it will result in an increase of an estimated 150 student pickups and 150 student drop offs per day, five days per week. These numbers do not include construction related activities or transportation of faculty and staff or deliveries. Thus, the Project will result in an increase of at least 300 daily vehicle trips to the Property. Despite this, Section XVII of IS 21-54 contains no discussion of potential transportation impacts from these 300 additional trips per day from student drop offs and pickups. Where will these 150 vehicles, two times per day everyday park? The Project is limited to 30 parking spaces total. Live Oak Drive is a small two-lane road serving many residential units, the California Highway Patrol regional station, and potentially a school with an unknown number of students, staff, and faculty. What happens when CHP must quickly respond to an emergency and Live Oak Drive is congested with 150 student pickups? While IS 21-54 asserts that the “project would not impair or interfere with an adopted emergency response or evacuation plan,” none of the referenced documents are relevant to this analysis. Moreover, IS 21-54 asserts that the County Road Department had no adverse comments related to “increased construction, delivery or employee-related trip,” however it appears that no information regarding the 300 daily student trips was provided or analyzed. These types of serious safety and traffic concerns and additional environmental concerns deserve careful analysis. IS 21-54 contains no substantive discussion or analysis of potential transportation impacts and no traffic study was conducted. Therefore, IS 21-54 is inadequate and cannot provide the basis to adopt an MND.

Noise: IS 21-54 lacks any substantive discussion of the potential that the operation of a pre-k through 9<sup>th</sup> grade school on the Property will significantly increase daily noise levels for the neighboring residents. Increased noise caused by the construction and operation of the school is a serious concern for the young families and retirees who reside next to the proposed classrooms and recreational areas. IS 21-54 fails to provide a description of the proposed construction activities, grading, or the estimated duration of construction. IS 21-54 also indicates that night

work is permitted, however, night work is explicitly exempt from the mitigation measures provided and no analysis was directed at night work. Additional factual analysis is required to determine the potential impacts from increased noise on the environment and how these impacts may be mitigated so that the neighbors may continue to live in a comfortable and peaceful environment.

Hydrology: Lack of adequate drainage and flooding are serious concerns among the Project's residential neighbors. Section X of IS 21-54 asserts that "storm water on the site will be able to percolate into the soil based on the small (9,000 sq. ft.) footprint of the construction proposed on the 2.2 acre site." The analysis provides that "the likelihood of storm-related runoff migrating to neighboring sites is extremely limited given the...small footprint." IS 21-54 also asserts that the "location of Cole Creek, which runs in between the flat terrain on the project site" will limit the risk of runoff. The hydrology and drainage analysis provided in IS 21-54 is faulty because it is based on incorrect information. The Project Description outlines a construction footprint, and new non-permeable surface area, of greater than 50,000 sq. ft. The "9,000 sq. ft." base number used in the environmental analysis of the Project is completely erroneous. Consequently, the entire environmental analysis provided by IS 21-54 is faulty. Moreover, Cole Creek is not located on or near the Property, and thus, that analysis seems to be based on a different project location, not this Project. The Project area is also prone to severe flooding during the rainy months.<sup>1</sup> The residential properties surrounding the Property sustain dangerous flooding during winter rains. There is no drainage infrastructure on the Property or storm drains or culverts along Live Oak Drive. Rather than percolating into the soil, the storm-water runoff migrates to the east, across Kelsey Creek MHP toward Kelsey Creek, at the same time flooding the residences in the area. In or around 2016, the property located at 5795 Live Oak Drive was developed with a small housing complex. The development of this apartment complex, which is adjacent to both the Property and Kelsey Creek MHP, increased the extent of flooding and drainage issues impacting the Project area. No storm-water drainage plan or other plans to develop drainage infrastructure for the Property or Live Oak Drive have been proposed for this Project. The environmental review of the Project must address and analyze these serious flooding and drainage concerns. An EIR is required to fully understand the extent of the issue and the appropriate solution before any development may begin. IS 21-54 cannot form the basis to adopt an MND because the analysis of hydrology, drainage, and flooding is incomplete and based on erroneous information.

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<sup>1</sup> Enclosed with this letter are several photographs taken during early 2019 which depict some of the hydrology, flooding, and drainage issues impacting the site area and Kelsey Creek MHP.

**3. An EIR Is Required Because Substantial Evidence Supports a “Fair Argument” that the Project May Have a Significant Environmental Impact.**

An MND is permissible only when an initial study demonstrates with substantial evidence that, after incorporating mitigation measures, a proposed project “clearly” will not cause “any significant effect on the environment.” (See Pub. Rec. Code §§ 21064.5; 21080(c)(2); 14 CCR §§ 15070; 15369.5.) By contrast, an EIR is required where there is a fair argument based on substantial evidence that any aspect of the project, either individually or cumulatively, may cause one or more potentially significant impacts on the environment, regardless of whether the overall effect of the project is beneficial. (14 CCR §§ 15063(b)(1)(A); 15064(a)(1); 15064(f)(1).) If the agency receives “any” substantial evidence supporting a fair argument that the project may cause significant environmental impacts, then an EIR is required irrespective of the existence of substantial evidence indicating otherwise. (14 CCR 15064(a)(1), (f), (g).) The burden is on the agency to demonstrate through substantial evidence and fact-based analysis, mitigation measures, and project design changes that there is no possibility that the proposed project may cause significant impacts to the environment.

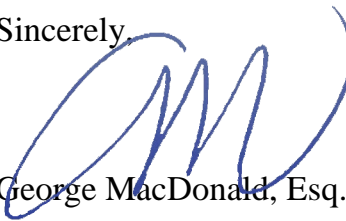
As discussed above, the environmental analysis provided in IS 21-54 lacks a detailed or fact-based substantive analysis, is based on erroneous factual assumptions and applications, and is not supported by substantial evidence in the record. This shows that the Planning Division, which is the “lead agency” for CEQA review of the Project, does not have the information needed to conduct an environmental review of the Project to the extent required by CEQA. An EIR is necessary here to provide the Planning Division, public agencies, and members of the public with such sufficient, fact-based information and a clear understanding of the environmental impacts posed by this Project. Moreover, there is substantial evidence supporting a fair argument that the Project will have a significant impact on the environment. As discussed above, the Project will significantly change the environmental setting and aesthetics of the area, will significantly increase noise, traffic, and congestion leading to air quality, transportation, and emergency safety issues, and will exacerbate the already existing concerns in the project area concerning hydrology, drainage, and flooding, among other issues. Therefore, an EIR is required by law.

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### **Conclusion**

Thank you for your attention to this comment and consideration of the concerns of Kelsey Creek MHP and its residents regarding the potential environmental impacts of the Project. Please direct any question, communications, or other information concerning the subject matter of this letter to: Kelsey Creek MHP, c/o George MacDonald, Esq., Katzoff & Riggs LLP, 9779 Broadmoor Way, Kelseyville, CA 95451, or by email to [gmacdonald@katzoffriggs.com](mailto:gmacdonald@katzoffriggs.com).

Sincerely,

A handwritten signature in blue ink, appearing to be 'GM', written over the printed name.

George MacDonald, Esq.

GM:krl

encls.









