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February 21, 2020

VIA U.S. MAIL AND EMAIL

County of Lake
Community Development Department
Planning Division
Attn: Eric Porter - Planner
255 N. Forbes Street
Lakeport, CA 95453
Tel: (707) 263-2221
Email: eric.porter@lakecountyca.gov

Re: Supplemental Response of KIMCO Development, Inc. and Valley Oaks Land & Development, Inc. to Appeal of UP 19-09;
Record ID - AB 19-07: Appeal of the Valley Oaks Grocery Outlet Project
Project: Valley Oaks Grocery Outlet, located at 18765 Hartmann Road and 18196 and 18426 Hwy 29, Middletown, California 95467
Project Approval Date: October 24, 2019
Appeal Hearing Date: March 3, 2020 at 10:00 a.m.

Dear Mr. Porter:

As you are aware, our office represents KIMCO Development, Inc. and Valley Oaks Land & Development, Inc. (collectively, "Owner") regarding the specific subplan known as the Valley Oaks Grocery Outlet (the "Subproject"). We write to provide supplemental information to the Board of Supervisors in response to the Appeal filed on behalf of Lake County Local on or about October 31, 2019 regarding the approval of UP 19-09. This information is being submitted as a supplement to the initial response of Owner submitted by our office on or about December 5, 2019.

Introduction

The arguments set forth by Lake County Local ("Appellant") through its attorney Tal Finney ("Finney") are frivolous and in furtherance of the larger campaign of corporate grocer enterprises to oppose any Grocery Outlet development in California. The motivations of Appellant are clearly

commercial and form an entirely improper basis to appeal the approval of UP 19-09. The Board of Supervisors must not allow outside corporate influencers to manipulate local matters through an improper appeal. The Appeal of Lake County Local must be denied.

1. Identity of Appellant “Lake County Local”

There is nothing “Local” about Appellant. The *only* signatory to the Amended Appeal, which was filed on or about November 5, 2019, is Lamont Kucer. No other “member” of Lake County Local has been identified and the group is essentially unknown. Mr. Kucer is the Manager of Foods Etc., IGA, a grocery store located in Clearlake and a direct competitor of Grocery Outlet. Mr. Kucer is acting as a proxy for corporate grocery store interests. Moreover, there is no indication that Lake County Local is an incorporated organization. No member of Lake County Local appeared at any public hearings or submitted a public comment concerning UP 19-09. The first time Lake County Local surfaced concerning the Subproject was when Finney filed the Appeal on its behalf. Mr. Kucer has not attended any meetings or hearings related to the Subproject, did not submit a public comment in relation to approval of UP 19-09 and has no prior history of participation in local environmental advocacy or organizations.

Tal Finney, attorney for Appellant of the law firm Finney Arnold LLP in Los Angeles, is involved in numerous appeals throughout California, all focused on obstructing the development of Grocery Outlets or other affordable grocery options. All the appeals initiated by Finney are frivolous and commercially motivated on behalf of his true clients, Alberton’s, Safeway and Vons, etc. Alberton’s, Safeway, and Vons are all subsidiaries of Cerberus Capital Management. The only “appeals” filed by Finney relate to new grocery store construction in close proximity to existing Alberton’s and Safeway stores and are filed on behalf of nonexistent “coalitions.” Moreover, Finney’s associate, Chris Micheli, Esq., owns and operates a commercial lobbying entity, Aprea & Micheli, which lobbies for corporate interests on behalf of the California Grocers Association.

7. Finney’s Campaign to Obstruct Grocery Outlet Developments.

The following provides a summary of some of the appeals of Grocery Outlet developments recently initiated by Mr. Finney:

1. The present appeal of the Grocery Outlet development in Hidden Valley Lake filed October 31, 2019 by Tal Finney of Finney & Arnold LLP on behalf of “Lake County Local.” The allegations of Finney with respect to the instant appeal are verbatim to the allegations of the other appeals filed by him to the point of being boilerplate. It is clear that the allegations made by Finney and the series of appeals initiated by him are brought in bad faith and have nothing to do with the environmental concerns of the local community.

2. Appeal of a Grocery Outlet development in Orcutt, Santa Barbara County, California filed in 2019 by Tal Finney of Finney & Arnold LLP on behalf of "Residents for Orcutt Sensible Growth."

The Orcutt appeal filed by Finney was based on allegations that the EIR was outdated, failed to consider traffic-related matters and provided an inadequate analysis of the traffic, air quality, ground water, noise and other environmental impacts of the development and that "members" of "Residents for Orcutt Sensible Growth" were unable to attend the public hearing on the use permit because it was held on a Tuesday at 9:00 a.m.

The Santa Barbara County Board of Supervisors denied the appeal and voted unanimously to approve the project as proposed. The Board found that the process had not been rushed at all, as Finney alleged, and a lot of work went into the EIR and its addendum. The Board expressed its disappointment in the "late appeal" brought by Finney in an effort to obstruct the development. A copy of the news article covering the hearing is enclosed herewith. Finney then filed a Petition for Writ of Mandate in the Santa Barbara County Superior Court, which is currently pending. A copy of the Petition is also enclosed herewith.

3. Appeal of Grocery Outlet Development in Taft, Kern County, California filed in 2019 by Tal Finney of Finney & Arnold LLP on behalf of "Keep Taft Great."

The Taft appeal filed by Finney was based on allegations that the project failed to comply with CEQA requirements because the EIR and soil testing was "too old" and claims that "members" of "Keep Taft Great" would be impacted by traffic, noise, air quality, soil quality, ground water quality, health, safety and other impact from construction of the Grocery Outlet. Finney argued that a full EIR should be redone.

The Planning Commission denied the appeal and voted unanimously to approve the project as proposed. The Taft Planning Commission saw through Finney and the "suspect" coalition, "Keep Taft Great." The Commission recognized that Finney was a "hired-gun" for Albertsons who was engaging in these appeals on behalf of Albertson's, Safeway, and Vons throughout California. A copy of the news article covering the hearing is enclosed herewith.

Finney has been using the same boilerplate form of appeal since 2010 to oppose affordable grocery store projects which his corporate clients deem threatening to their profit margin. This is clear market manipulation and must not be permitted in Lake County. Enclosed herewith is an appeal filed by Finney on July 16, 2010 in Placer County California to oppose the expansion of a Wal-

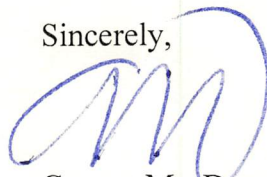
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Mart to include groceries wherein Finney makes the same arguments based on allegations of an antiquated EIR and failure to adequately consider traffic mitigation and air, water, and soil quality. Finney has been engaging in what amounts to market manipulation for over a decade. Not only are the actions of Finney and his clients a clear manipulation of the local free market, they constitute unfair business practices and are a violation of fair-trade regulations. The Board of Supervisors must not permit Finney and his corporate clients to manipulate the market in Lake County.

Conclusion

The Board of Supervisors must not allow big money corporate influences to manipulate local development and commerce in Lake County. Similar to the findings of the Taft Planning Commission in denying the Taft appeal filed by Finney, Lake County residents speak up when they are not happy about something and do not "hide" behind someone to do that. The Lake County Board of Supervisors must see that the Appeal is yet another bad faith action filed by Finney in furtherance of the campaign of his corporate clients to oppose affordable grocery options in rural communities. The Board must deny the Appeal and unanimously vote to approve UP 19-09.

Sincerely,



George MacDonald

GM:krl
encls.

Taft Midway Driller

Grocery Outlet plan approved despite opposition

Posted Jan 14, 2020 at 11:04 AM

Attorney representing “Keep Taft Great” says more environmental studies are needed

The Taft Planning Commission voted unanimously Wednesday to approve a site plan for a proposed grocery store over the objections of an attorney representing a group characterized as “Keep Taft Great” and the threat of possible litigation.

Tal Finney, a Los Angeles-based attorney claimed the project is moving forward without adequate environmental studies and the members of “Keep Taft Great” would be impacted by “traffic, noise, air quality, soil quality, ground water quality, health, safety and other impacts” from construction of the store.”

Finney said soil studies done on the site are too old and inadequate.

Greg Aguirre, president of Capitol Rivers, the developer, on the other hand, characterized Finney as a “hired gun” working for Albertson’s to keep a competitor out of the Taft market.

Commissioners seemed, too, seemed skeptical of the motives and the identity of the opposition to the store.

Grocery Outlets has proposed a 18,000 square foot discount grocery store on a site just east of the Dollar General store on the south side of Supply Row just east of South Tenth Street.

The Dollar General project, which opened in the fall of last year, was approved without any protests.

The Grocery Outlet project was on the Planning Commission's Dec. 4 agenda for approval but that action was tabled after the City received a letter from Finney protesting the project and he testified against it at a public hearing.

A Bakersfield man has also protested construction of the store, and a nearby resident has raised concerns about trucks using Front Street but said he is not opposed to the project.

Aguirre said Finney has been involved in similar challenges at several locations in California, all involving discount grocery stores proposed in close proximity to existing Albertson's, Safeway and Vons stores, all of which are part of the same company.

He challenged Finney's motives at the Planning Commission meeting and questioned the authenticity of "Keep Taft Great" in an email to the Taft Midway Driller.

"The whole thing smells a little fishy and it's not driven by environmental issues of people in the community of Taft," Aguirre told the Planning Commission. "We're extremely skeptical of the motives."

Finney said economics isn't behind the challenge

"The whole concept of this thing being a grocery store issue is not the correct way to look at it," he said.

Finney said testing technology and what is considered a containment have changed in the past 12 years and a full environmental impact report should be done "so that the public knows what's going on here."

City Planning and Community Development Director Mark Staples said soil at the site was tested in 2007 after the City purchased the land, again in 2008 and 2012 and more recently after Capitol Rivers expressed an interest in buying it.

Staples also said the land qualifies for an exemption as an infill development through the California Environmental Quality Act (CEQA).

Finney said several members of Keep taft Great were in the audience, but none stood up when asked by the Planning Commission to do so.

Commissioner asked if any members of Keep Taft Great were Albertson's employees.

Finney said he didn't know.

"There's no need for them to be demonized," he said.

Finney said later he thought they were "chilled by Aguirre's comments.

But the Planning Commission was skeptical of the claims of the both Finney and James Kell, a Bakersfield resident opposing the project.

Kell was asked who he worked for but declined to answer.

Commissioner Jerry Livingston made the motion to approve the site plan as presented.

"My experience with the people in this town is that people in taft speak up when they're not happy with something," he said "We don't usually have someone hide behind someone to do that."

The vote was 4-0 on a roll call vote to approve the project.

The Commission's vote can be appealed to the Taft City Council or a CEQA action can be taken.

Finney said he will consult with his client before taking any action.



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The Orcutt Gateway project proposed for this site south of Clark Avenue at the eastern edge of Orcutt earned the approval of the Santa Barbara County Board of Supervisors on Tuesday. The project calls for a grocery store, gas station, car wash and restaurant. (Janene Scully / Noozhawk photo)

By Janene Scully, Noozhawk North County Editor | @JaneneScully | November 19, 2019 | 9:38 p.m.

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BSA Scout Girls in action during Trails to First Class Event

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In unanimously blessing the Orcutt Gateway Retail Commercial Center Project, the board rejected an appeal filed by Residents for Orcutt Sensible Growth, identified as a group of local residents contending they would be greatly affected by the development.



The project called for a new shopping center on six acres south of Clark Avenue between Highway 101 and Stillwell Road.

The land also is part of an area dubbed Key Site 2 in the Orcutt Community Plan (OCP), a blueprint spelling out future development for the community and approved more than two decades ago

"I'm just going to cite that this is 22 years old. Everybody's known that this is going to be a commercial parcel from 22 years ago. and they spent scads of time on the

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commercial space, and a gas station with 12 fuel pumps, a convenience store and a car wash.

"This has been the cumulation of five years of work. This has not been a rushed process at all," said applicant Gavin Moores. "It's really disappointing to go through this amount of work ... and to find such a late appeal come in with studies that are outdated and that are probably inaccurate as well."

The appeal cited traffic circulation, air quality and public safety among concerns, county planner Dana Eady said.



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The appellant, represented by Los Angeles-based attorney Tal Finney, called the project's environmental impact report outdated since it was done in 1995 as part of the Orcutt Community Plan, with a supplemental report for the specific development completed in July 2019.

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"The Santa Barbara County Planning Commission and Board of Supervisors respective reliance on this outdated document is an improper abuse of discretion," Finney said, calling for an analysis that assesses cumulative impacts of proposed developments near Highway 101.

County Counsel Michael Ghizzoni disagreed, saying state law sets a high bar for requiring additional environmental review in cases like this.

Much of the discussion Tuesday centered on traffic-related matters, including who should be responsible for required road improvements such as a proposed new signalized intersection and a median on Clark Avenue.

Chris Sneddon, [Santa Barbara County Public Works Department](#) deputy director of

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"It seems to make sense to do some kind of fair-share ratio for the future improvements that this developer can't build even if they came in today," he said, adding that both staff and representatives were still working on reaching the number.

Adam said the developers could return to the board, if needed, to resolve the matter.

"There's a recognition up here on the dais it's a very odd circumstance, and it's going to need to be massaged," Adam said. "I think it's something we should be able to work out."

Meanwhile, construction has started for an unrelated smaller development at the corner East Clark Avenue and Stillwell Road.

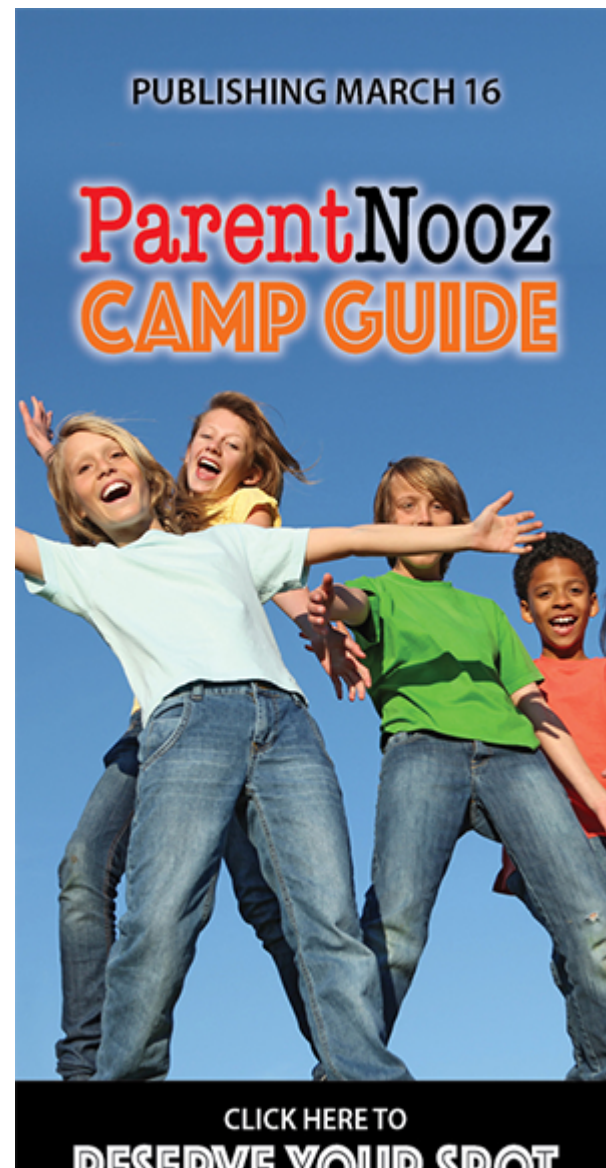
Additionally, Key Site 1's proposal for the Orcutt Marketplace, which is in the early review stages, calls for development of a 422,000-square-foot, mixed-use residential/commercial shopping center on the north side of Clark Avenue, just west of Highway 101.

— *Noozhawk* North County editor Janene Scully can be reached at jscully@noozhawk.com. Follow Noozhawk on Twitter: [@noozhawk](#), [@NoozhawkNews](#) and [@NoozhawkBiz](#). Connect with *Noozhawk* on Facebook.

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We also expect to work together with the reader who asked the winning questions to find the answer together. Noozhawk's objective is to come at questions from a place of curiosity and openness, and we believe a transparent collaboration is the key to achieve it.

The results of our investigation will be published here in this Noozhawk Asks section. Once or twice a month, we plan to do a review of what was asked and answered.

Thanks for asking!

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PLANNING APPEALS

CDRA

The specific regulations regarding appeal procedures may be found in the Placer County Code, Chapters 16 (Subdivision), 17 (Planning and Zoning), and 18 (Environmental Review Ordinance).

(T20080157)

—OFFICE USE ONLY—

Last Day to Appeal 7-19-10 (5 pm)

Letter ☒

Oral Testimony _____

Zoning CPD-De

Maps: 7-full size and 1 reduced for Planning Commission items

Appeal Fee \$ 504.-

Date Appeal Filed 7-16-10

Receipt # 10-0064898

Received by L. Blum

Geographic Area CENRear

—TO BE COMPLETED BY THE APPLICANT—

- Project name Bohemia Retail Project
- Appellant(s) APACE - Alliance for the Protection of the Auburn Community Environment

Address	Telephone Number	CA	Fax Number
<u>P.O. Box 4951</u>	<u>Auburn</u>	<u>CA</u>	<u>95604-4951</u>
	City	State	Zip Code
- Assessor's Parcel Number(s): 052-102-012, 052-102-013, 052-102-017, and 052-102-053 (CUP); 052-102-056 (MUP)
- Application being appealed (check all those that apply):

<input type="checkbox"/> Administrative Approval (AA-_____)	<input type="checkbox"/> Tentative Map (SUB-_____)
<input checked="" type="checkbox"/> Use Permit (CUP/MUP- (SEE BELOW))	<input type="checkbox"/> Variance (VAA-_____)
<input type="checkbox"/> Parcel Map (P-_____)	<input type="checkbox"/> Design Review (DSA-_____)
<input type="checkbox"/> General Plan Amendment (GPA-_____)	<input type="checkbox"/> Rezoning (REA-_____)
<input type="checkbox"/> Specific Plan (SPA-_____)	<input type="checkbox"/> Rafting Permit (RPA-_____)
<input type="checkbox"/> Planning Director Interpretation _____ (date)	<input type="checkbox"/> Env. Review (EIAQ-_____)
<input type="checkbox"/> Minor Boundary Line Adj. (MBR-_____)	<input type="checkbox"/> Other: _____
- Whose decision is being appealed: (CUP) PCPA20080157/ (MUP) PMPA20100058
Placer County Planning Commission (see reverse)
- Appeal to be heard by: Placer County Board of Supervisors (see reverse)
- Reason for appeal (attach additional sheet if necessary and be specific):
Legally inadequate Environmental Impact Report. See attached.

(If you are appealing a project condition only, please state the condition number)

Note: Applicants may be required to submit additional project plans/maps.

Signature of Appellant(s) Tal C. Finney
on behalf of APACE

Basis of Appeal

The legal basis for the appeal is the Planning Commission's improper approval of the Project EIR, due to its legally deficient analysis regarding Air Quality, Urban Decay analysis, and Cumulative Impacts of the No Canal Street Project. California law provides that an EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project. Bakersfield Citizens for Local Control v. City of Bakersfield, 124 Cal.App.4th 1184, 1197 (2004) ("Bakersfield"). Thus, the omission of relevant information can preclude informed decision-making and informed public participation, regardless of whether a different outcome would have resulted if the public agency had complied with the disclosure requirements. Id. at 1198.

The Bohemia EIR failed to adequately identify and evaluate the potential environmental impacts of the No Canal Street Project, and thus failed as an informational document to permit complete and informed decision-making and informed public participation.

I. Deficient Air Quality Analysis

The EIR utterly fails to provide a meaningful analysis of air quality impacts expected under the No Canal Street Project. When an EIR fails to disclose the extent of the negative environmental effects of a proposed project, mitigation measures and alternatives cannot be even be considered. Thus, the EIR failed to meet the most basic standard of providing information to enable the public and the decision-makers to evaluate the known physical environmental impacts of the Project.

The FEIR clearly states that "implementation of the Project will result in significant impacts in regard to air quality." (FEIR, ch. 1, p. 12). It continues that "because the under No Canal Street Alternative is projected to increase traffic congestion at the primary access, and CO emissions are directly related to traffic congestion, the under No Canal Street Alternative would have greater impacts as compared to the proposed Project," and "more air pollutants" would be "emitted by [No Canal Street Alternative] Project-related traffic." (DEIR, ch. 17, p. 10). This point is plainly reflected in Table 17-2, which shows that the No Canal Street Alternative will result in greater air quality impacts than the proposed Project -- and the proposed Project has significant and unavoidable air quality impacts.

Despite the concession that the No Canal Street Alternative will have grave air quality impacts, neither the DEIR alternatives chapter (ch 17) nor the air quality analysis chapter (ch. 9) provides any data regarding this alternative's increase in pollutants or analysis regarding the greater air quality impacts. The public -- and the reviewing body -- lacks any data to assess the increased air quality operational impacts of the No Canal Street Project on study area intersections, impacts on nearby sensitive receptors and residential neighborhoods, or potential mitigation measures. There is no

way to assess the extent to which the No Canal Street Project negatively impacts air quality, because no data has been provided.

In addition, the FEIR's "enhanced analysis" of the No Canal Street Project also failed to provide any data regarding the increased air quality impacts, yet somehow concluded that the impacts would be less than significant. (FEIR, ch. 1, p. 13-14). Without the data pertaining to this "greater impact," the public – and the reviewing body – cannot assess, let alone conclude, that impacts would be less than significant, and whether any mitigation measures may be appropriate. This complete lack of data pertaining to impacts that are known to be more significant than a Project that is already significant and unavoidable utterly fails to meet CEQA's information threshold.

The EIR must meet the most basic standards regarding providing information about Projects and Project alternatives. The FEIR failed to discuss the known, grave air quality impacts in detail sufficient for the public to discern from the FEIR the "analytic route" the agency will travel "from evidence to action," and thus precluded analysis of suitable mitigation measures. Topanga Assn. for a Scenic Community, *supra*, 11 Cal.3d at 515. In this regard, the EIR completely failed as an informational document to enable the public to evaluate the potential physical environmental impacts. The omission of this relevant information precludes informed decision-making. Bakersfield, *supra*, 124 Cal.App.4th at 1197. Supplemental analysis is required.

II. Deficient Socio-Economic or Urban Decay Analysis

The EIR's urban decay analysis fails to meet the basic requirement for adequacy, completeness, and full disclosure. CEQA Guidelines §15151. For the reasons outlined below, the EIR's urban decay analysis is not legally adequate, and warrants rejection of the EIR by the Placer County Planning Commission.

A. Outdated Data Undermine ERA's Conclusions

ERA's analysis in Appendix U to the draft EIR is flawed. Most of the financial data in the report is from 2006 or 2007. The few references to more recent data, as recent as early 2008, are from national sources and are not local. The response to Comment Letter #3 indicates that the ERA adjusted its data to reflect 2010 information, but that adjustment was made only for population growth – no economic adjustments were made. Inexplicably, the ERA relied on pre-recession data, though it is intended to provide a comprehensive analysis of the regional economic impact of the Project.

In addition to failing to update its information, the ERA did not include complete data regarding the length of the recession. It is critical to recognize that ERA prepared its report during the effects of the recession, but did not collect or cite to any data from the beginning of the recession (i.e., from September 2008 to present). Thus, the ERA's conclusion that retail in the Auburn region "is performing relatively well" despite the recession is highly suspect at best, because this myopic conclusion is based

only on a fraction of the relevant data. The ERA also relied on outdated assumptions to conclude that median incomes are rising in Placer County. It is economically irresponsible to claim a linear growth in income based on data from the robust growth of the 1990s and the housing "bubble" of the 2000s.

Similarly, the ERA skipped over the short-term impact of the Project on urban decay (shuttered stores), and leaped to the conclusion that, in the long term, retail in Auburn will boom. The ERA offered no explanation for its conclusion that Auburn will get its assumed oversupply of demand from store closings, especially since the analysis acknowledges that the Project will cause some further closings.

Absent this information, the EIR's socio-economic analysis does not meet the basic requirement for adequacy, completeness, and a good faith effort at full disclosure. CEQA Guidelines §15151. The omission of this relevant information precludes informed decision-making. Bakersfield, *supra*, 124 Cal.App.4th at 1197.

B. Deficient Retail Trade Area and False Conclusions

Auburn is a suburb of the Sacramento metropolitan area, yet the ERA treats Auburn as an isolated community. Ignoring the reality of Sacramento's influence, the ERA simply "split the distance" between the Project and existing retail within the general area. The Socio-Economic chapter of the DEIR conceded that "retail in the trade area is concentrated in Auburn and along I-80." (DEIR, ch. 16, p. 4). It also acknowledged that "a majority of the population growth occurred in the southwest portion of the County... population growth in central and northeast Placer County... was lower than the rest of the County." (DEIR, ch. 16, p. 5). Thus, as the population of Placer County increases, it will be more concentrated in the southwest portion of the County, and I-80 will be the main thoroughfare for retail demand in the Retail Trade Area.

Despite these facts, the Retail Trade Area inexplicably includes large areas of central and northeast Placer County. This misrepresents the population centers and areas of retail demand for Placer County. By focusing the Retail Trade Area on lower population areas with less existing retail establishments and less retail demand, the urban decay data regarding existing and projected retail supply and demand is skewed, and the urban decay effects of the Project is minimized. This also conveniently created a Project Retail Trade Area that artificially excluded existing and planned retail developments, such as a supercenter in the Loomis area, that will compete with the Project.

The EIR's socio-economic analysis created a skewed Retail Trade Area by misrepresenting the reality of Sacramento's influence, the existing population along I-80, and the actual population centers in Placer County. Also, the EIR failed to analyze concerns regarding competition with existing and proposed retailers in the Retail Trade Area. The EIR inappropriately relied on this data to make the unfounded conclusion that the Project would not result in any significant urban decay impacts. Without accurate

information, the EIR's socio-economic analysis does not meet the basic requirement for adequacy, completeness, and a good faith effort at full disclosure. CEQA Guidelines §15151. The omission of this relevant information precludes informed decision-making. Bakersfield, supra, 124 Cal.App.4th at 1197.

C. No Urban Decay Analysis of Supercenters

The EIR also fails to assess the grave urban decay impacts of supercenters. The EIR's urban decay analysis should address the unique urban decay impacts of a supercenter, due to the likelihood that the Project will operate as a supercenter with extended operational hours. Supercenters are known to raise unique additional environmental impacts. Bakersfield, supra, 124 Cal.App.4th at 1213. In addition, though a tenant has not been identified for the Project, the EIR's urban decay analysis should factor in the blemished record of supercenters, such as Wal-Mart, regarding their contributions to urban decay, and the need for mitigation measures. Laurel Heights Improvement Assn of San Francisco v. The Regents of the University of California, 47 Cal.3d 376, 420 (1988).

Many news and research articles have been admitted into the record regarding the unique and damaging effects that supercenters have on their adjacent communities, due to the lack of proportion between supply and population demand; loss of jobs and tax revenue; and increased noise, traffic, and crime. Thus, where the shortcomings of previous projects are known, they should be applied to the proposed Project and thoroughly analyzed. Id. Here, the urban decay impacts of a proposed supercenter must be analyzed, including the known deleterious effects on communities of supercenters such as Wal-Mart.

III. Deficient Cumulative Impacts Analysis

A. Insufficient Project Analysis

The EIR failed to properly analyze cumulative impacts of the No Canal Street Project. The FEIR concedes that the No Canal Street Alternative would lead to greater traffic and air quality impacts at the Primary Access than the proposed Project. (FEIR, ch. 1, p. 6). However, the cumulative analysis did not study the No Canal Street Alternative. The increased traffic impacts of the No Canal Street Alternative have not been thoroughly studied as it relates to cumulative impacts. The omission of this relevant information precludes informed decision-making. Bakersfield, supra, 124 Cal.App.4th at 1197.

In addition, the cumulative analysis states that "the air and noise studies that were prepared for the Project were based on the traffic data." (DEIR, ch. 18, p. 2). Thus, because the traffic data used for the cumulative analysis only considered the Project options, and not the No Canal Street Alternative, the cumulative air and noise analyses are also deficient in that they also failed to analyze the No Canal Street Alternative. The EIR fails to ensure that the public and relevant decision-makers can

meaningfully consider the issues raised by this alternative. The omission of this relevant information precludes informed decision-making. Bakersfield, supra, 124 Cal.App.4th at 1197.

B. Insufficient Cumulative Supercenter Analysis

Finally, the cumulative analysis does not properly analyze the impact of supercenters. The cumulative impact analysis did not appear to consider that supercenters (Project option 2) draw from a larger regional market than more typical shopping centers with the same total square footage of retail space, and thus have unique impacts that must be analyzed. In addition, the Project's cumulative impacts analysis should factor in the blemished record of supercenters, such as Wal-Mart, regarding their damaging effects on communities, and the need for cumulative mitigation measures. Laurel Heights Improvement Assn of San Francisco, supra, 47 Cal.3d at 420.

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SANTA BARBARA**

16 **RESIDENTS FOR ORCUTT SENSIBLE**
17 **GROWTH, GINA LORD-GARLAND**

18 Petitioners,
19 vs.

20 **THE SANTA BARBARA COUNTY BOARD**
21 **OF SUPERVISORS, SANTA BARBARA**
22 **COUNTY PLANNING COMMISSION,**

23 Respondents.

24 **THE MINSON COMPANY,**

25 Real Party in Interest.

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
12/19/2019 9:53 PM
By: Elizabeth Spann, Deputy

Case No.: 19CV06707

VERIFIED PETITION FOR WRIT OF
MANDATE CCP § 1094.5 (§ 1085);
PUBLIC RESOURCES CODE § 21000 ET
SEQ. (CALIFORNIA ENVIRONMENTAL
QUALITY ACT)

26 Petitioners, Residents for Orcutt Sensible Growth, and Gina Lord-Garland (collectively
27 “Petitioners”), alleges as follows:

28 1. This action challenges the November 19, 2019 decision of the Santa Barbara
County Board of Supervisors (the “Board of Supervisors”), which evaluated the recommendation
by the Santa Barbara County Planning Commission (the “Planning Commission,” collectively,

VERIFIED PETITION FOR WRIT OF MANDATE CCP § 1094.5 (§ 1085); PUBLIC RESOURCES CODE §
21000 ET SEQ. (CALIFORNIA ENVIRONMENTAL QUALITY ACT)

1 with the Board of Supervisors, "Respondents"), to approve a request by The Minson Company,
2 the project owner, for approval of a Tentative Parcel Map, a Development Plan, two (2)
3 Conditional Use Permits and an Overall Sign Plan (the "Project Approvals") for the development
4 of a new retail commercial center (the "Orcutt Gateway Retail Commercial Center"), located on
5 a 5.95 gross acre portion of land commonly known as key site 2 ("Key Site 2") in the Orcutt
6 Community Plan ("OCP") area. The Board of Supervisors approved the request by The Minson
7 Company also based upon a previously certified Final Environmental Impact Report ("Final
8 EIR") which was certified on July 22, 1997, a 22-year old document, and an Addendum to the
9 Final EIR, dated July 15, 2019. Further details on Key Site 2 are provided hereinbelow.

10 **JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
12 ("CCP") §§ 1087, 526, 1085, and 1094.5, and California Public Resources Code ("PRC") §§ 21168
13 and 21168.5. This Court also has the authority to issue a writ of mandate directing the Board of
14 Supervisors to vacate and set aside the Project Approvals for the Project under the CCP §§ 1085
15 and 1094.5. Venue for this action properly lies in the Santa Barbara County Superior Court,
16 because Respondents and the Project are located in Santa Barbara County.

17 3. Petitioner is an unincorporated association of residents who rent and own property
18 and around Orcutt, who are adversely affected by this Project approval, and who are beneficially
19 interested in the quality of life in Orcutt through responsible construction project planning and
20 development.

21 4. Petitioner is beneficially and directly interested in the actions of the Board of
22 Supervisors and the Planning Commission in approving the Project, which would directly,
23 adversely and irreparably affect Petitioner, the environment, and the larger community of Orcutt,
24 as described herein.

25 **THE PARTIES**

26 5. Petitioner is an unincorporated association of individuals who will be adversely
27 affected by the traffic, air quality, soil quality, ground water quality, noise and other impacts
28

VERIFIED PETITION FOR WRIT OF MANDATE CCP § 1094.5 (§ 1085); PUBLIC RESOURCES CODE §
21000 ET SEQ. (CALIFORNIA ENVIRONMENTAL QUALITY ACT)

1 generated by the Project. Petitioner includes individuals and their families, who live and work in
2 the community of Orcutt. Because they are local residents, the individual members of Petitioner
3 would be directly affected by the traffic, air quality, soil quality, ground water quality, noise, and
4 other environmental impacts created by the Project. In addition, individual members may also
5 work on the Project itself. As such, they would be first in line to be exposed to any health and
6 safety hazards that exist on the Project site.

7 6. Individual Petitioner, Gina Lord-Garland lives and works in the immediate Orcutt
8 community and will be adversely affected by the traffic, air quality, soil quality, ground water
9 quality, noise and other impacts generated by the Project.

10 7. Respondents, the Planning Commission and the Board of Supervisors, are each a
11 local government agency and a political subdivision of the State of California, charged with
12 the authority to regulate and administer land use activities within its boundaries, subject at all
13 times to the obligations and limitations of all applicable state, federal, and other laws,
14 including the California Environmental Quality Act ("CEQA") and Public Resources Code
15 ("PRC") § 21000 *et seq.*, the CEQA Guidelines, Title 14 of the California Code of
16 Regulations, § 15000, *et seq.* ("CEQA Guidelines"). The Planning Commission is the Lead
17 Agency under CEQA for the preparation of required environmental review of the Project. The
18 Board of Supervisors is the legislative body for the County of Santa Barbara, and, thus, has the
19 authority to legislate land use and policy, including changes thereto, within its jurisdiction. As
20 the legislative body for the County of Santa Barbara, the Board of Supervisors is ultimately
21 responsible for the approval of the Project.

22 8. Real party in interest, The Minson Company ("Applicant," "Developer," or "Real
23 Party") is the applicant for the entitlements that constitute the Project. Based on the
24 Applicant's status as the sole identified applicant and developer of the Project, and on
25 Petitioner's information and belief, Applicant adequately represents the interests of any and all
26 other non-joined parties in the Project.

27 9. As a result of the objections posed by its constituent members, and others
28 Petitioner has exhausted, or is excused from exhausting, all of its administrative remedies, and
now seeks the assistance of the Court to resolve the issues set forth herein pursuant to PRC §

1 21177(a).

2 10. Moreover, as a result of the actions of Respondents as hereinbefore alleged,
3 Petitioner has been compelled to engage attorneys to challenge the *ultra vires* actions of
4 Respondents and to advance costs in connection therewith. Petitioner will accordingly seek the
5 recovery of attorneys' fees and costs upon the successful conclusion of this case.

6 **STATEMENT OF FACTS**

7 **Project Background: Environmental Review and Approval**

8
9 11. Prior to the adoption of the OCP, the County prepared, considered, and certified the
10 OCP Final Environmental Impact Report (entitled OCP EIR, 95-EIR-01), which had been
11 certified on July 22, 1997 (the antiquated "Final EIR"). The future development of
12 approximately 283,500 sq. ft. of commercial development across Key Site 1, Key Site 2 and Key
13 Site 3 (as each are defined in the OCP) was reviewed under CEQA as part of the antiquated Final
14 EIR. The antiquated Final EIR provided site specific analysis of the Project's land use and
15 zoning designation, as well as a cumulative impact analysis of build-out of the OCP. The
16 County prepared, considered and certified an Addendum to the Final EIR, dated July 15, 2019.

17 12. The improvements planned for the Project at Key Site 2 are the subject of this
18 litigation because Key Site 1 and Key Site 3 have neither been approved nor reviewed
19 environmentally in the last 2 decades. Access to the Key Site 2 would be provided from three (3)
20 new driveways from Clark Avenue. Improvements to Clark Avenue would include a new
21 signalized intersection at Clark Avenue to align with the future access road into the very
22 extensive Key Site 1 to the north. The existing roadway into Sunny Hills Mobile Home Park,
23 which is situated directly behind Key Site 2, and which would be the most heavily affected area
24 by the development of Key Site 2, would be retained and limited to right-turns in/out only. The
25 Project includes 184 parking spaces (including 10 handicap accessible spaces), and 10 parking
26 spaces for bicycles. A public multipurpose trail located within the 35-foot wide landscaped
27 buffer is proposed along Clark Avenue. The Project includes approximately 65,085 sq. ft. of new
28 landscaping including perimeter landscaping, landscaped medians, and a 35-ft. wide landscaped
buffer averaged along Clark Avenue. The Project also includes the installation of an 8-ft. tall

1 block wall along the rear property line abutting the Sunny Hills Mobile Home Park. The Project
2 land is currently vacant, but grading is occurring on the property in preparation for construction
3 of the Project, despite Petitioner's oral and written objections, and despite this Petition.

4 13. The Owner's Project Approval requests are embodied within the following Planning
5 Commission Case Numbers (collectively, the "Cases"):

6 a) Case No. 16TPM-00000-00001 (application filed on August 12, 2016) for
7 approval of a Tentative Parcel Map in compliance with County Code Chapter 21 to subdivide
8 5.95 gross acres into 4 lots of 2.27 gross acres (proposed parcel 1), 0.79 gross acres (proposed
9 parcel 2), 1.47 gross acres (proposed parcel 3), and 1.42 gross acres (proposed parcel 4);

10 b) Case No. 16DVP-00000-00009 (application filed on August 12, 2016) for
11 approval of a Final Development Plan in compliance with Section 35.82.080 of the County Land
12 Use and Development Code (LUDC), on property zoned C-2, to develop a new retail commercial
center of 42,921 square feet;

13 c) Case No. 16CUP-00000-000017 (application filed on August 12, 2016) for a
14 Conditional Use Permit to allow for a drive-through fast food restaurant on proposed parcel 2 in
15 compliance with Section 35.82.060 of the LUDC, on property zoned C-2;

16 d) Case No. 16CUP-00000-00018 (application filed on August 12, 2016) for a Minor
17 Conditional Use Permit to allow for a mechanical carwash on proposed parcel 4 in compliance
18 with Section 35.82.060 of the LUDC, on property zoned C-2;

19 e) Case No. 16OSP-00000-00002 (application filed on August 12, 2016) for
20 approval of an Overall Sign Plan in compliance with Section 35.82.150 of the LUDC, on
property zoned C-2; and

21 f) to accept the addendum to the antiquated Final EIR ("Addendum").

22 14. After considering the Addendum together with the Final EIR, the Board of
23 Supervisors determined that no subsequent EIR would be prepared for this Project. The Board of
24 Supervisors then issued the Project Approvals, which in turn approved the development of Key
Site 2.

25 15. The Final EIR identified significant effects on the environment in the following
26
27
28

1 categories: Geology/Soils/Flooding, Water Resources, Traffic/Circulation, Noise, Air Quality,
2 Wastewater, Fire Protection, Solid Waste, and Visual Resources/Open Space. At the November
3 19th hearing, the Board of Supervisors found there were no new significant environmental
4 impacts as a result of this Project. The decision of the Board of Supervisors presumes to allow
5 the developer to construct the Project on Key Site 2, and operates in stark contravention of
6 CEQA and the CEQA Guidelines.

7 16. The significant impacts the Project would cause include traffic, air quality, soil
8 quality, ground water quality, and noise effects on the environment. The impacts, which
9 Respondents have seemingly ignored, would effect a terrible nuisance for the surrounding
10 residential neighborhoods, resulting in serious health, safety and other issues. Importantly, the
11 Project overlooks the 101 freeway. Any construction of a commercial development, including a
12 12-pump gas station, along the 101 freeway will necessarily increase traffic in the local area. The
13 influx of commercial traffic at the planned commercial development and accompanying gas
14 station will sharply clash with the residential neighborhoods that are in very close proximity to
15 the Project.

16 17. Moreover, the cumulative impacts that the Project creates, and that will be increased
17 by the further development of Key Site 1 and Key Site 3, will drastically and adversely affect the
18 quality of life for existing residents. The Project Approvals dismissed the Project's impacts on
19 traffic, air quality, soil quality, ground water quality, noise and other issues in a cursory fashion
20 based upon flawed and grossly outdated information that was not supported by substantial
21 evidence. Petitioners request that this Court vacate and set aside the Project Approvals and
22 compel Respondents to undertake a reasonably appropriate environmental review that they
23 should have been done under CEQA.

24 18. The Planning Commission prepared an agenda report for the City Manager in
25 advance of the regularly scheduled August 14, 2019 Planning Commission meeting wherein the
26 Planning Commission recommended approval of the Project Approvals (the "Report"). The
27 Report failed reasonably and/or adequately to consider the impact of the traffic, air quality, soil
28 quality, ground water quality, noise and other impacts to the community, both during

1 construction, and after the Project is built. The failure to consider these environmental issues
2 renders the Report ineffective as an adequate informational environmental document. The traffic,
3 air quality, soil quality, ground water quality, noise, and other environmental impacts foreseeably
4 to be caused by the Project are significant and unavoidable. The Report, accordingly, lacks
5 substantial evidence to support its conclusions and fails to properly mitigate the Project's
6 significant environmental impacts.

7 19. In addition to the issues presented above, Petitioners noted in their Public Comments,
8 the Report does not properly assess the significance of Project-level greenhouse gas ("GHG")
9 impacts under CEQA and does not adequately address how specific mitigation strategies might
10 be implemented at the Project level. Respondents' adoption of the Report was arbitrary and was
11 not supported by substantial evidence.

12 20. On October 14, 2019, and, separately, on October 15, 2019, Petitioner submitted
13 written comments on the Report which pointed to the Report's inadequate analysis of the
14 Project's traffic, air quality, soil quality, ground water quality, noise and other environmental
15 impacts and charged that the Respondents failed to adopt feasible mitigation measures to reduce
16 these construction and Project related environmental impacts. The proximity of the Project to
17 residential neighborhoods, the planned construction of a 12-pump gasoline fueling station with
18 canopy and related equipment (i.e., the installation of several underground storage tanks) all
19 combine to create negative impacts on the community that must be fully analyzed.

20 21. Moreover, irregularities occurred at the Board of Supervisors' public hearing to
21 consider the Project. Firstly, the hearing was held at 9:00 a.m., on Tuesday, November 19th - right
22 at the start of a workday. For this reason, many of the members of Petitioner, who wanted to
23 attend the hearing and speak about the Project, could not attend. The effect was that concerned
24 citizens, including members of Petitioner, were unable to be heard. Furthermore, the meeting was
25 held at a satellite office, in Santa Maria, rather than the main office of the Board of Supervisors,
26 in Santa Barbara, a fact that was noticed to the public a scant few days before the hearing.
27 Fortunately, Santa Barbara's government has video conference capability such that Counsel for
28 Petitioner was able to attend the hearing while being physically present at the Board of

Supervisors, in Santa Barbara. After the public hearing, the Board of Supervisors implemented the Project Approvals by a 5 to 0 vote.

22. Petitioner has served on Respondents and the Real Party of Interest a Notice of Petitioner's Intent to file this CEQA Petition. Proof of Service of this notification, with the notification, is attached hereto as Exhibit A, and is made a part hereof.

23. Petitioner has requested that the Planning Commission and Board of Supervisors each prepare their respective portion of the record of proceedings in the above-captioned proceeding and that they employ alternative methods of record preparation as appropriate pursuant to PRC § 21167.6(b)(2) in order to save costs. A true and correct copy of Petitioner's request is attached hereto as Exhibit B and is incorporated herein by this reference.

FIRST CAUSE OF ACTION

(VIOLATION OF CEQA; Respondents Did Not Consider All Feasible Mitigation Measures)

24. Petitioner hereby incorporates by reference each and every allegation set forth above.

25. Under CEQA, the Board of Supervisors cannot approve the Project as proposed because there are feasible mitigation measures available which would substantially lessen one or more of the Project's significant environmental effects. PRC § 21002. For example, on information and belief, the Developer failed to consider alternative sites that might be better suited for the development. There are any number of alternative sites that might have been chosen, none of which would pose the detrimental impacts to the surrounding residential communities as are posed by the current chosen site. The Respondents must consider reasonable mitigation measures to address the environmental impacts clearly identified herein in an environmental review that should be directed by this Court. See CEQA Guidelines §15088.

26. The antiquated Final EIR, as amended by the Addendum, fails to adequately consider several types of significant adverse environmental impacts to local residents, including traffic and circulation, air quality and GHG emissions as well as noise and safety issues. Petitioner commissioned a traffic report by KOA that studied the potential effects of the planned construction at Key Site 1, Key Site 2 and Key Site 3, respectively ("Traffic Report"), and

1 submitted that Traffic Report to the Board of Supervisors as part of its comments on the Project.
2 As noted, above, the three (3) Key Sites represent an enormous amount of development being
3 contemplated over time. However, only Key Site 2 has been currently approved. This
4 augmented, piecemeal approval of the Key Sites, expressly disfavored by CEQA, will create
5 cumulative negative impacts on the environment, including GHG emissions, traffic, air quality,
6 soil quality, ground water quality, and noise effects on the environment. These negative impacts
7 will have a significant effect upon the surrounding residential community, which will increase
8 over time if the Project Approvals are not set aside, and if Key Site 1 and Key Site 3 are
subsequently approved as planned.

9 27. Further to Petitioner's impending traffic woes, the morning, afternoon and other
10 peak-hour commute times will be permanently greatly increased throughout the area if the
11 Project is developed as currently approved (particularly if the densely packed Key Site 1 is
12 eventually approved). As noted earlier, Key Site 2 is located directly adjacent to the Sunny Hills
13 Mobile Home Park, which will be seriously negatively impacted by the development in several
14 ways. Firstly, prior to construction, during construction, and for an unknown period of time
15 thereafter, Sunny Hills Mobile Home Park residents will be forced to make right turns only out
16 of their mobile home park to and from Clark Avenue. This will make ingress and egress to and
17 from the property onerous by creating a situation where residents who are coming from the
18 direction of the 101 freeway will be forced to drive several blocks out of their way to make a U-
19 turn to get back to Sunny Hills Mobile Home Park. The need to make a U-turn in traffic
20 increases the risk that a major traffic accident will occur. The more often residents make that U-
turn, the greater the probability that a major accident will occur.

21 28. There is no indication that any precautions have been made by the Developer to
22 protect area residents from property damage and injury that may result from this unwelcome
23 change to their ingress and egress, and during general travel throughout the area, because of the
24 extended presence of large construction vehicles in the area that are moving massive amounts of
25 earth and rock. As previously stated, there is no indication of when this change to the residents'
26 ingress, egress and general travel access will be made. More importantly, as noted above, there is
27 no indication of how long this situation will persist.

1 29. Petitioner noted earlier that Key Site 2 is located across Clark Avenue from Key Site
2 1. The two sites are eventually supposed to be connected via a private driveway. However, at this
3 time, the two site plans show the driveways not matching up. Residents in the area are being told
4 to just “trust” that the situation will be rectified without causing even further congestion and
5 uncertainty in the area. Indeed, the Developer of Key Site 2 is only responsible for making
6 improvements to the yellow line in the center of Clark Avenue. The developer of Key Site 1
7 (whoever that may eventually be) will be responsible for making the improvements from the
8 yellow line in the center of Clark Avenue to the edge of Key Site 1. There is no indication that
9 Clark Avenue will be safe and fully navigable during the span of these two developments, or that
10 a dangerous situation will not occur due to the staggered improvement schedule along Clark
Avenue.

11 30. The plans for Key Site 1 adversely impact Petitioner and the public because this
12 multi-use complex is slated to include a very densely packed residential area. Key Site 1 is in
13 early phases of public review and hasn’t been presented to the public for comments yet. This
14 planned use will create the most densely packed residential/commercial area of Orcutt.
15 Traffic patterns and commute times in the area will be dramatically negatively impacted.

16 31. The fact that Key Site 1 and Key Site 2 are in such different stages of entitlement
17 approval adversely impacts Petitioner and the public. The permitting process has been rushed
18 and segmented. The public’s concerns regarding the planning and entitlements process has not
19 been properly taken into account.

20 32. As noted, above, Key Site 2 is located directly adjacent to the Sunny Hills Mobile
21 Home Park. Many of the residents there are older and/or are otherwise considered to be sensitive
22 receptors. The dust, soot, exhaust, fumes and other particulate matter that will necessarily
23 increase due to large construction vehicles, and further due to permanently increased traffic in
24 the area, will create negative health impacts on the residents of Sunny Hills Mobile Home Park,
and other area residents, who are sensitive receptors.

25 33. Additionally, while it is admirable that the County and the Developer sought to
26 reduce noise and traffic from the loading dock of the building to be erected, the choice to
27 approve a 15-foot reduction of the required 25-foot rear yard setback to just 10 feet is not
28

1 justified. Several problems are created by this reduction in space.

2 34. The presence of a building that is taller than the homes in Sunny Hills Mobile Home
3 Park will block sunlight and airflow, which may increase the residents' cost of utilities and will
4 potentially worsen the effects on them of the increased pollution in the area.

5 35. The area's air quality is certain to be adversely impacted by the planned
6 construction, which between Key Site 2, and the later construction of Key Site 1 and Key Site 3,
7 will create adverse impacts for area residents for an unknown period of time (of at least 2 to 3
8 years given the size of the development projects). Sensitive receptors may experience prolonged
9 and significant impacts to their health.

10 36. These negative health effects on area residents will be exacerbated by the
11 construction of a 12-pump gas station as part of Key Site 2. Not only will this increase poor air
12 quality and soil contamination during construction, but nearby residents will be permanently
13 adversely impacted by known carcinogens that will be pumped into underground tanks, as well
14 as exhaust and fumes created by cars (many of which will belong to non-residents of Orcutt)
15 using the gas station. This may adversely affect the water table in addition to the health of nearby
16 residents.

17 37. Additionally, detergents, waxes and other chemicals used by the car wash will be
18 rinsed away, and may flow into the ground, eventually reaching the water table. This will have
19 deleterious effects on nearby residents.

20 38. Although the findings of the Santa Barbara County Planning Commission stated that
21 no cars will be able to drive behind the building to be erected adjacent to the Sunny Hills Mobile
22 Home Park, of Key Site 2, no provisions have been made to ensure that no one can walk back
23 there undetected. This creates an opportunity for a homeless enclave to develop, and additional
24 opportunities for criminal activities, like drug use, prostitution, gang violence and other nefarious
25 activities to occur.

26 39. The proximity of homes just over the fence in the Sunny Hills Mobile Home Park
27 presents an opportunity for criminals to victimize these residents under cover of a building that
28 shields such criminals from the eyes of security and the police.

40. The significant issues raised, above, and the failure of the Santa Barbara County

1 Planning Commission (Planning Commission) to comprehensively consider the issues presented
2 by Key Site 1 and Key Site 2, and public concerns in relation to these issues, require the Santa
3 Barbara County Board of Supervisors to set aside the Project Approvals and to reopen the matter
4 for further environmental review.

5 41. As demonstrated above, the Report fails to adequately disclose, evaluate, and mitigate
6 the Project's environmental impacts, resulting in a legally deficient environmental review. The
7 Respondents must prepare new a full EIR, that addresses these inadequacies and must circulate
8 the EIR for public review to consider these critical issues.

9 **SECOND CAUSE OF ACTION**

10 **(VIOLATION OF CEQA; Project Fails to Conform to State and Regional Air Quality,** 11 **Transportation and Traffic, and Anti-Urban Sprawl Laws and Regulations**

12 42. Petitioner hereby incorporates by reference each and every allegation set forth above.

13 43. Local construction projects have regional impacts, and cumulative regional impacts
14 affect the entire State of California. Since the County of Santa Barbara adopted and certified the
15 Antiquated Final EIR, the State of California and the Santa Barbara County Association of
16 Governments ("SBCAG") have enacted legislation and policies that require local governments to
17 dramatically reduce greenhouse gas emissions and to adopt a forecasted development pattern for
18 the region which integrates transportation networks and other transportation measures and
19 policies in order to achieve these emission reductions. Furthermore, the State of California and
20 SBCAG have adopted policies to reduce urban sprawl and create walkable communities through
21 their planning authorities.

22 44. The Project, which is situated within one of California's last pristine coastal
23 communities, does not enhance the Orcutt community in the manner of making Orcutt walkable
24 or reducing GHGs. Indeed, as noted earlier, this community is situated along the 101 Freeway.
25 Developing a dense commercial retail center on this site will necessarily impact the local
26 community's traffic patterns, air quality and noise levels. It is a well-known fact that 101
27 freeway is currently being expanded in the area of Santa Barbara. Some Santa Barbara residents
28 feel the expansion is creating more harm than good to the local community. Commute times, air

1 pollution, and noise have all increased dramatically in recent years, with no end in sight. If the
2 Project Approvals are allowed to stand, and if Key Site 2 is allowed to be developed as planned,
3 Orcutt will be the next local Santa Barbara County community to crowd out its own residents
4 and inundate them with negative environmental impacts.

5 45. SBCAG is one of a number of regional government agencies that analyzed the
6 regional usage of automobiles. Specifically, they analyze where residents start their commute,
7 their destination and their purpose in traveling. The goal is to reduce the amount of automotive
8 usage. Despite the fact that the studies are conducted regionally, this is a statewide effort. By
9 implementing the Project Approvals, Orcutt is not contributing to the GHG reduction, or traffic
10 commute reduction as California's cities are required to do in contravention to the goals of the
11 SBCAG.

12 46. Respondents' Project Approvals are based on the 22-year-old Final EIR, are which is
13 highly problematic. When the Final EIR was generated in the 1990s, the GHG emission review
14 requirement simply didn't exist. The Addendum to the Final EIR didn't sufficiently deal with
15 new GHG and renewable energy requirements that have been set by the State of California, and
16 that have increased in recent years. Petitioner's Traffic Report speaks to these issues. The Board
17 of Supervisors summarily dismissed the Traffic Report, without sufficiently reviewing it, and set
18 forth the Project Approvals.

19 47. If the Project Approvals are allowed to stand, and if the other Key Sites are then
20 approved, the cumulative impact of these approvals will adversely effect Orcutt, and its
21 residents. These approvals do not accomplish what the State wants, nor do they accomplish the
22 goals of the SBCAG, namely, to end the era of urban sprawl and to create walkable communities
23 in heart of California's central coast.

24 48. The CEQA Guidelines provide insight into the use of EIRs that were crafted before
25 laws are changed in a local area. CA PRC § 21083.3 provides that "if a parcel has been zoned to
26 accommodate a particular density of development or has been designated in a community plan to
27 accommodate a particular density of development and an [EIR] was certified for that zoning or
28 planning action, the application of [CEQA] to the approval of any subdivision map or other
project that is consistent with the zoning or community plan shall be limited to effects upon the

1 environment which are peculiar to the parcel or to the project and which were not addressed as
2 significant effects in the prior [EIR], or which substantial new information shows will be more
3 significant than described in the prior [EIR].”

4 49. The inclusion of a 12-pump gasoline fueling station at Key Site
5 2 is peculiar to the Project and this impact was not adequately addressed as significant effects in
6 the Final EIR, or in the Addendum. Moreover, Petitioners’ traffic study *inter alia* constitutes new
7 information that demonstrates the effects created by the development of Key Site 2 will be more
8 significant than described in the Final EIR.

9 **THIRD CAUSE OF ACTION**

10 **(CEQA VIOLATION; Findings Are Not Supported by Substantial Evidence**

11 50. On or about August 14, 2019, the Planning Commission issued a report (“Report”)
12 wherein they served and filed certain findings, in Attachment A to the Report, that a previous
13 environmental document can be used per CEQA § 15162 as the environmental review for the
14 Project (the “Findings”).

15 51. The Findings are deficient in that they are not supported by substantial evidence. For
16 example, the Planning Commission found that the Project changes described in the Addendum
17 are only minor technical changes or additions. Due to the Finding of a lack of changes to the
18 Project, the Planning Commission found, and the Project Approvals definitively forestall major
19 revisions to the Final EIR as required by CEQA Guidelines § 15162(a)(1),(2),(3), which states as
20 follows:

21 52. CEQA Guidelines § 15162(a)(3)(A) mandates further environmental
22 review of Key Site 2 because the circumstances under which the Project is undertaken
23 have significantly changed since the Final EIR was drafted. New information of
24 substantial importance, which was not known and could not have been known with the
25 exercise of reasonable diligence at the time the Final EIR was certified as complete,
26 and as amended by the Addendum, shows the Project will have one (1) or more
27 significant effects not discussed in the Final EIR, as amended by the Addendum.

28 53. Specifically, as noted, above, California’s greenhouse gas emissions
reduction laws did not exist when the antiquated Final EIR was drafted. Neither the

1 Final EIR nor the later adopted Addendum consider either the greenhouse gas
2 emissions reduction laws or the goals of the SBCAG to end the era of urban sprawl and
3 to create walkable communities in heart of California's Central Coast. The Final EIR is
4 an old document that does not consider current issues in Orcutt, California's central
5 coast, or the State of California, and for this reason, these documents are inadequate as
6 an environmental review. Additionally, the Addendum to the Antiquated Final EIR,
7 dated July 15, 2019, did not adequately update the Final EIR, nor adequately address
8 these issues either. This Court must set aside the Project Approvals and order
9 Respondents to conduct a fulsome environmental review that includes public input to
10 the process.

11 54. For example, Petitioner's Traffic Report speaks directly to many of
12 these issues, but the Traffic Report was dismissed out of hand by the Board of
13 Supervisors in favor of the Project Approvals. This lack of consideration for, and
14 compliance with, State and regional planning goals, oversight and regulations is serious
15 and renders the Final EIR, and its Addendum, inadequate as an environmental review
16 for the Project. Thus, the Respondents' reliance on CEQA Guidelines § 15162(a) in
17 determining that no further environmental review is necessary was in error. Petitioner
18 asserts that the Project must be considered in light of California's, and the central
19 coast's, visions for our future as required by the State's greenhouse gas emissions
20 reductions laws, and SBCAG's policies to eliminate urban sprawl, and that a fulsome
21 environmental review be conducted on the Project that considers these important issues.

22 55. The Planning Commission's Findings state that, "except to the extent
23 that site-specific impacts are analyzed for the Key Sites in Volume II of the [Final]
24 EIR, the environmental review performed on the [OCP] was done at a program level [in
25 that it analyzed environmental impacts potentially generated by the future development
26 of 45 Key Sites] and is not intended to suffice for project-specific review," including a
27 review of Key Site 2. Thus, Respondents' reliance on the Final EIR, as amended by the
28 Addendum in determining that no further environmental review shall be undertaken, is
problematic at best.

1 56. Furthermore, by the Planning Commission's own admission in the
2 Addendum, the programmatic antiquated Final EIR is an insufficient environmental
3 document to determine the Key Site-specific adverse impacts at Key Site 2. Instead, the
4 Addendum provides a blanket statement, on Page 3, that, "There have been no
5 substantial unanticipated changes to the proposed [P]roject, the [P]roject site, or
6 circumstances surrounding the [P]roject that would require further environmental
7 analysis." Petitioner asserts that (as set forth, above) such is not the case, and, for this
8 reason, Respondents erred in relying on the antiquated Final EIR, as amended by the
9 Addendum, in determining that no further environmental review is necessary.

10 57. The Planning Commission's Findings state, on Page 2, that the Board of
11 Supervisors found the adverse impacts identified in the antiquated Final EIR as
12 significant have been "mitigated to the maximum extent feasible, and to the extent
13 these impacts remain significant and unavoidable after implementation of mitigation
14 measures, such impacts are acceptable when weighed against the overriding social,
15 economic and other considerations set forth in the Statement of Overriding
16 Considerations as adopted by the Board of Supervisors for the Orcutt Community
17 Plan."

18 58. In determining that no substantial changes have occurred with respect to
19 the circumstances under which the Project is undertaken, the Report found there is no
20 new information of substantial importance. As noted above, Petitioner strongly
21 disagrees.

22 59. Further to the deficiencies relied upon by Respondents, the Statement of
23 Overriding Considerations, drafted by the Planning Commission as of July 22, 1997, is
24 deficient in the following particulars. Firstly, this document was also drafted prior to
25 the creation of California's greenhouse gas emissions reduction laws and SBCAG's
26 anti-urban sprawl policies. For this reason, the Respondents' reliance on the Statement
27 of Overriding Considerations constitutes an insufficient environmental review of the
28 Project. Secondly, the Statement of Overriding Considerations expressly admits that
Orcutt has competing interests, involving numerous, and sometimes competing, social,

1 land use, public service, and environmental factors. The Orcutt Community Plan has
2 been developed in consideration of the community's circumstances, needs, and desires,
3 including, but not limited to, competing factors regarding "providing for population
4 growth, providing housing for all residents, encouraging economic development and
5 provision of jobs, ensuring availability of public services, providing environmental
6 resource and open space protection, and mitigating environmental impacts as identified
7 in [the Final EIR]." While these are important factors for a community's development,
8 Petitioner posits that the Respondents improperly issued the Project Approvals at the
9 expense of providing environmental resource, open space protection, and mitigating
10 impacts as identified in the Final EIR. Finally, the components of an EIR have changed
11 since 1997, nullifying the usefulness of the Final EIR which was erroneously relied
12 upon in adopting the Findings.

13 **FOURTH CAUSE OF ACTION**

14 **(VIOLATION OF CEQA; Inadequate Response to Comments)**

15 60. Petitioners hereby incorporate by reference each and every allegation set forth
16 above.

17 61. Respondents failed to adequately respond to comments submitted by Petitioner,
18 and by other members of the public. Instead, the responses given to numerous comments
19 regarding the Project's impacts to, traffic, air quality, soil quality, ground water quality, noise and
20 other issues regarding the adequacy of the Report's treatment of mitigation measures and
21 alternatives are conclusory, evasive, confusing, or otherwise non-responsive and contrary to the
22 requirements of CEQA.

23 62. By failing to provide adequate responses to public comments and proposed
24 alternatives, Respondents failed to proceed in the manner required by law. Moreover,
25 Respondents' finding that adequate responses to comments were provided is not supported by
26 substantial evidence.
27
28

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, the Petitioners pray for relief as follows:

3 1. For Alternative and Peremptory Writs of Mandate, commanding Respondents:

4 a. to vacate and set aside approval of the Project Approvals, including Case No.
5 16TPM-00000-00001; Case No. 16DVP-00000-00009; Case No. 16CUP-00000-000017; Case
6 No. 16CUP-00000-00018; Case No. 16OSP-00000-00002; and the Addendum to the Final EIR.

7 b. to undertake a reasonable and appropriate environmental review for the Project;

8 c. for reasonable attorneys' fees and costs otherwise incurred herein; and/or

9 d. any such relief as this Court deems adequate and proper.

10 Respectfully, submitted this 19th day of December 2019.

11 **FINNEY ARNOLD LLP**
12 **R. BRUCE TEPPER, ALC**

13 

14
15 _____
16 Tal C. Finney, Esq.
17 Attorneys for Petitioner,
18 Residents for Orcutt Sensible Growth

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VERIFICATION

I am the President of Residents for Orcutt Sensible Growth, which is a party to this action and I am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. The matters stated in it are true of my own knowledge except as to those matters that are stated on information and belief, and as to those matters I believe them to be true.

Executed on December 18, 2019 at Orcutt, Ca.

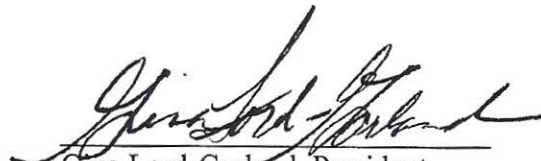

Gina Lord-Garland, President
Orcutt Sensible Growth

EXHIBIT A

NOTICE OF INTENT TO FILE CEQA ACTION

(See Next Page)

VERIFIED PETITION FOR WRIT OF MANDATE CCP § 1094.5 (§ 1085); PUBLIC RESOURCES CODE § 21000 ET SEQ. (CALIFORNIA ENVIRONMENTAL QUALITY ACT)

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

**RESIDENTS FOR ORCUTT SENSIBLE
GROWTH, GINA LORD-GARLAND**

Case No.:

Petitioner,
vs.
**THE SANTA BARBARA COUNTY BOARD
OF SUPERVISORS**

**NOTICE OF INTENT TO FILE A
VERIFIED CEQA PETITION FOR WRIT
OF MANDATE**

Respondents
THE MINSON COMPANY,

Real Party in Interest.

1. **PLEASE TAKE NOTICE that**, pursuant to Public Resources Code section 21167.5, Petitioner intends to seek leave of court on December 18, 2019, to file a petition for writ of mandate under the provisions of the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) against respondents Santa Barbara County Board of Supervisors (collectively, the "Respondent").

2. This action challenges the November 19, 2019 decision of the Santa Barbara County Board of Supervisors (the “Board of Supervisors”), which evaluated the recommendation by the Santa Barbara County Planning Commission (the “Planning Commission,” collectively, with the Board of Supervisors, “Respondents”), to approve a request by The Minson Company, the project owner, for approval of a Tentative Parcel Map, a Development Plan, two (2) Conditional Use Permits and an Overall Sign Plan (the “Project Approvals”) for the development of a new retail commercial center (the “Orcutt Gateway Retail Commercial Center”), located on a 5.95 gross acre portion of land commonly known as key site 2 (“Key Site 2”) in the Orcutt Community Plan (“OCP”) area.

Respectfully, submitted this 18th day of December 2019.

FINNEY ARNOLD LLP

R. BRUCE TEPPER, ALC

Tal C. Finney, Esq.
Attorneys for Petitioner
Residents for Orcutt Sensible Growth

EXHIBIT B

NOTICE OF REQUEST FOR ADMINISTRATIVE RECORD

(See Next Page)

VERIFIED PETITION FOR WRIT OF MANDATE CCP § 1094.5 (§ 1085); PUBLIC RESOURCES CODE § 21000 ET SEQ. (CALIFORNIA ENVIRONMENTAL QUALITY ACT)

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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF SANTA BARBARA**

14 **RESIDENTS FOR ORCUTT SENSIBLE**
15 **GROWTH, GINA LORD-GARLAND**

16 Petitioner,
17 vs.

18 **THE SANTA BARBARA COUNTY BOARD**
19 **OF SUPERVISORS, THE SANTA**
20 **BARBARA COUNTY PLANNING**
21 **COMMISSION,**

22 Respondents.

23 **THE MINSON COMPANY,**

24 Real Party in Interest.

Case No.:

NOTICE OF REQUEST FOR
ADMINISTRATIVE RECORD
PUBLIC RESOURCES CODE § 21167.6,
SUBD. (A)

25 1. **PLEASE TAKE NOTICE that**, pursuant to Public Resources Code section
26 21167.6, Petitioner hereby requests that the County of Santa Barbara, the Santa Barbara County
27 Board of Supervisors, the and the Santa Barbara County Planning Commission (collectively, the
28 “Respondents”) each prepare their respective portions of the record of proceedings in the above-
captioned proceeding and that Respondents pursue an alternative method of record preparation
pursuant to Public Resources Code § 21167.6(b)(2). In addition to the foregoing, Petitioner

NOTICE OF REQUEST FOR ADMINISTRATIVE RECORD PUBLIC RESOURCES CODE § 21167.6, SUBD.
(A)

1 specifically requests reporters' transcripts for the Santa Barbara County Board of Supervisors
2 meeting held on Tuesday, November 19, 2019 as well as the Planning Commission meeting held
3 on August 14, 2019.

4 Respectfully, submitted this 18th day of December 2019.

FINNEY ARNOLD LLP
R. BRUCE TEPPER, ALC



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