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September 19, 2017

Via Electronic Mail

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Allan Calder, Director
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Re: Crystal Geyser Bottling Plant
Final Environmental Impact Report (SCH#2016062056)

Dear Planning Commissioners and Mr. Calder:

This office represents the Gateway Neighborhood Association ("Association") with respect to the above-referenced Crystal Geyser Bottling Plant ("Project") and the Final Environmental Impact Report ("FEIR"). The Association and others have submitted comments on the DEIR and the FEIR, and these comments are meant to supplement, not replace, the comments of other members of the public, or of other experts or agencies.

After carefully reviewing the FEIR, we have concluded that it falls short of compliance with the California Environmental Quality Act ("CEQA") ").[1] The concerns raised in comments submitted regarding the Draft EIR ("DEIR") have not be adequately responded to, and the environmental review simply fails to meet the requirements of CEQA. Further, the proposed Statement of Overriding Considerations ("SOC") is not supported by substantial evidence, nor are the proposed CEQA Findings. Finally, the Planning Commission does not have authority to consider and approve the Project.

The flaws in the DEIR have not been remedied. One of the most glaring flaws pointed out in previous comments was the manipulation of the standard

[1] Public Resources Code § 21000 *et seq*.

modeling and input methods in ways that result in a certain underestimation of the Project's true impacts to air quality, GHG emissions, noise and traffic. These modeling and input errors have been compounded by further manipulation and confusion in the FEIR.

The attempts to avoid revealing the full levels of impact in these areas prevents the public or the decision makers from fully understanding the Project's impacts to aesthetics, traffic, air quality, climate change, noise, biological resources, chemical hazards, water supply and water quality, among others, and to generally understand the impacts of the Project at all.

The pervasive flaws in the document demand that the EIR be substantially modified and recirculated for review and comment by the public and other public agencies.

Finally, in addition to violation of CEQA, the Project is inconsistent with the Siskiyou County General Plan, and its approval completely ignores impacts to the City of Shasta (and its General Plan) and disregards the impacts to roadways and other City infrastructure in a way that will harm the citizens of the City and the County. The Project's inconsistency with the applicable general plans reveals a significant environmental impact, and is also a violation of the State Planning laws.

The remainder of this letter explains how the FEIR perpetuates the failings of the DEIR. We will not reiterate our comments in full. Instead, we detail below some of the FEIR's more egregious shortcomings.

A. The Planning Commission does not have authority to certify an EIR

As an initial matter, the Siskiyou County Planning Commission does not have authority to consider and certify an EIR, nor does it have the authority to approve a conditional use permit. Under CEQA, a "decision-making body" is "any person or group of people within a public agency permitted by law to approve or disapprove the project at issue." (CEQA Guidelines § 15356.) The lead agency may delegate EIR certification to an appointed body, but that has not been done in Siskiyou County. According to County Ordinance 10-4.202.5, the Planning Commission shall be responsible for the approval or denial of maps, review and recommendation of involuntary mergers, processing and approval of time extensions and review and recommendations on reversions to acreage. Review and certification of environmental documents and approval of conditional use permits are duties that have not been delegated to the Planning Commission.

The matter should be removed from the Planning Commission's agenda as an item for review and approval, and a new notice consistent with the law should be issued.

B. Any approval by the County must include conditions making mitigation measures enforceable

Throughout the EIR, the County perpetuates the fiction that the only portion of the Project being approved by the County is the caretaker's residence, and yet the "Project" is identified in the Project description as including the bottling facility. In fact, the first sentence of Chapter 3 states that the applicant "is proposing the Crystal Geyser Bottling Plant Project." (DEIR, p. 3-1.) "The Proposed Project consists of operation of a bottling facility and ancillary uses…" (*Id.*)

The bottling facility will require approvals, and it is more than just the caretaker's residence that will be receiving permits or other authorizations from the County. One of the conditions of the permit requires County inspection for hazardous material/waste at the project location. (*Id.* ¶ 10.) Will this inspection occur just at the caretaker's residence? That does not appear to be the case.

The proposed conditions also incorporate the 1998 Mitigation Agreement, which relates to operation of the bottling plant. (*Id.* ¶13.) It is obvious that many of these conditions will apply to the bottling facility. How will these conditions be enforceable against the bottling facility? What will occur if the caretaker's residence is not constructed and the applicant simply wishes to operate the bottling facility? The permit issued by the County must include all aspects of the Project. If it does not, then the mitigation measures will not be enforceable as required under CEQA Guidelines section 15126.4(a)(2). The mitigation measures for the Project "must be fully enforceable through permit conditions, agreements, or other legally binding instruments." (*Id.*) The County insists throughout its responses to comments that the mitigation measures will be enforceable simply because they are a condition of approval and will be included in the Mitigation Monitoring and Reporting Plan ("MMRP"). (See FEIR 3-4.)

This is inaccurate. The MMRP is not an enforcement mechanism, it is a plan for monitoring compliance. Further, if the conditions of approval for the permit issued by the County are the enforcement mechanism the County relies upon here, the conditional use permit must be issued for the whole of the Project in order for the mitigation measures to comply with CEQA.

C. The County has failed to complete consultation with the Winnemem Wintu Tribe under AB 52

The Staff Report states that the consultation process required upon request under AB 52 has been completed. This is incorrect, and the County unilaterally terminated the consultation process on September 6, 2017. There is no substantial evidence to support the claim that the County is in compliance with AB 52.

The proposed CEQA Findings state that no known tribal cultural resources were identified in the Study Area. (CEQA Findings, p. 21.) This is simply inaccurate. There is no substantial evidence to support this statement, the consultation with the Tribe was abruptly and improperly terminated by the County and the "fact" contained in the proposed CEQA Findings is incorrect.

D. The DEIR fails to correct the DEIR's errors in Project Description and Project Objectives

1. The FEIR continues to include an insufficient Project Description

In response to comments, the County argues that assuming the plant will operate at 90 percent capacity is appropriate because of the experience of the applicant at other bottling facilities. (FEIR, p. 3-318.) At the same time, the Project objectives express urgency in getting the bottling facility up and running as quickly as possible in order to meet increasing market demand. (See September 20, 2017 Staff Report ["Staff Report"], Exhibit C-1 ["EIR Findings"], p. 44.) According to the FEIR and the Staff Report, the applicant wishes to begin producing as much bottled water product as possible. Despite the claim that previous experience allows for impacts analysis of something less than full production, the lead agency must evaluate the full level of activity that is being approved by the agency.

In our comments on the DEIR, we pointed out that the Project description omits essential information regarding the types of chemical constituents that will be discharged from the Project. The Project description includes just one reference to the chemicals, and it is cryptic at best, stating that wastewater will contain "cleaning agents." (DEIR, p. 3-13.) In response to this comment, the County referred to Master Response 18 – groundwater quality. (FEIR, p. 3-36.) That Master Response refers to chemical information that has been added to the FEIR, Volume II, Section 3.5.8.1. That section does not include any specific information and refers to Appendix D. (FEIR, p. 3-13.) There does not appear to be any difference between Appendix D in the FEIR and Appendix D in the DEIR, and so no clarity or specific information has been provided.

The County asserts that specific information regarding constituents is not necessary to analyze impacts. (FEIR, p. 3-36.) Even if this is the case (and it is hard to imagine that the impacts of unknown chemicals contained in Project effluent can be analyzed), the public and the decision makers are entitled to know what will be discharged into the environment. CEQA requires impacts analysis but it is also an informational statute, and requires the County to disclose the details of the Project. Here, it has failed to do so.

2. The DEIR includes impermissibly narrow Project objectives

In response to our comment that the Project objectives were too narrowly drawn, the County confirms the point being made by noting that the range of alternatives was severely limited. (FEIR, p. 3-319.)

"The purpose of an EIR is not to identify alleged alternatives that meet a few if any of the project's objectives so that these alleged alternatives may be readily eliminated." (*Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1089.) The question is not whether a mitigation measure or alternative is *acceptable* to the applicant, but whether or not it is truly infeasible. (See *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 597-598.) The way that the "objectives" of the Project are described in the DIER gives the applicant veto power over every mitigation measure and alternative proposed.

In response to comments the County provides some very general market information regarding the growing demand for bottled water products. (FEIR, 3-319.) There is no information provided regarding Crystal Geyser's other facilities or its ability to meet current demands, and no evidence to support a conclusion that without this particular bottling plant Crystal Geyser will somehow become uncompetitive in the market. The fact that there is a general increased demand for bottled water products is not substantial evidence to support the County's assertion that without this Project Crystal Geyser will be unable to compete.

The vague "objective" to assist Crystal Geyser in raising its bottom line is not an appropriate basis for dismissing feasible alternatives that would reduce the Project's impacts.

E. The DEIR's analysis of environmental impacts is deficient

1. Impacts to Aesthetics

The error in the DEIR analysis of the Project's aesthetic impacts begins with an unsupported assumption that the plant is not a "dominant" visual feature. County's response to this assertion is that the plant may be visible from long-range, but this does not mean it is a dominant visual feature, with an odd acknowledgement that it may be one of the most prominent non-natural features. (FEIR, p. 3-30.)

The remainder of the response is equally confusing. According to the County, the existing visibility of the plant will not be addressed because it is an exiting condition, despite the fact that the "existing" situation is in violation of the 1998 Mitigation Agreement; the same Mitigation Agreement the County claims will be incorporated into the mitigation measures for the Project.

The FEIR continues the error of the DEIR in simply giving credit to the applicant for all of the mitigation measures identified in the 1998 Agreement and discussed in the Project Description chapter. And yet, the DEIR goes on to accept that "[t]he existing warehouse is a reflective white surface that can produce local glare during daytime hours." (DEIR, p. 4.1-6.) In Response to comments, the County indicates that it will not be enforcing the mitigation measures required in the 1998 Agreement for "existing" structures on the site. There is no explanation as to why this is the case, except for the statement that enforcement of the 1998 Agreement is "beyond the scope of the project." (FEIR, p. 3-8.)

The 1998 Agreement is a separate, ongoing, enforceable agreement, and the County's choice to forego enforcement is just that, a choice. The failure to enforce is not an existing baseline condition, the ongoing obligations under the Agreement may be, and should be, enforced by the County.

Finally, the applicant's unwillingness to comply with the 1998 Agreement should be considered by the decision-makers in assessing whether or not the applicant will abdicate its responsibilities for implementing mitigation measures associated with the Project.

2. Air Quality Impacts

In response to comments, the FEIR includes substantial emissions input-related changes, but the changes do not remedy the errors of the DEIR. Emissions remain underestimated for CAP and GHG pollutants, and the screening-level Health Risk Assessment ("HRA") conducted for the DEIR and carried through unrevised to the FEIR now reflects substantially underestimated health risks. (See comment on FEIR submitted by Autumn Winds Associates ["AWA Letter"], p. 1.)

In the FEIR, the County also has abandoned any threshold of significance for CAP emissions from mobile sources. The County admits that the revised modeling reveals significantly increased emissions from mobile sources, but declines to use the threshold of significance that was applied to these emissions in the DEIR, claiming "Siskiyou County is in attainment for all CAP's, [and] numerical thresholds have not been established for mobile emissions." (FEIR, p. 3-24.) In other words, the County applied the Rule 6.1 threshold to *all* Project CAP emissions in the DEIR, but when the revised modeling revealed that the mobile emissions would exceed this threshold, the County abandoned it and now claims that there is no applicable threshold.

A lead agency may not analyze an impact without using a threshold of significance, and the fact that another agency has not established a threshold does not excuse the County from this requirement. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 655-656.)

The revised modeling included in the FEIR is as deeply flawed as the original effort prepared for the DEIR. The County continues to manipulate the carefully developed fleet mix, and provides little in the way of explanation. (See AWA Letter, pp. 2-3.) No substantial evidence is cited by the County to explain the changes in the fleet mix, particularly the decision to remove heavy-heavy-duty trucks from the General Light Industry category under which the Project is covered.

The omissions from the fleet mix are significant, particularly since some of the omitted vehicles are diesel powered and will produce diesel particulate matter, a toxic air contaminant and the greatest source of health risk evaluated in the Project's HRA. (See AWA Letter, p. 4.) The Project's mobile source emissions continue to be underestimated.

The most alarming deficiency that continues in the FEIR is the inaccuracy of the HRA. The revised modeling in the FEIR shows increased truck trips and an increased proportion of heavy-heavy trucks (that, relatively, emit the most diesel particulate matter in the fleet mix), with increasing mobile source emissions (except for CO, which decreased slightly). While the FEIR recognizes the increase in criteria air pollutants that will result, it does not include a correlative increase in diesel particulate matter, relevant to health risks, into the original HRA's findings. Those findings were based on 100 "heavy duty" trucks. The FEIR analysis shows 103, but with a higher fraction of the heavy-heavy's, and PM2.5 emissions have increased.

Simple math shows that the PM2.5 has increased approximately 30% over what was shown in the DEIR, and that increase should have then been included in a revised HRA screening process. The maximum cancer risk acknowledged in the DEIR is 8.7/million, but increasing PM2.5 by 30% results in a correlative increase in diesel particulate matter that would move the cancer risk over the threshold of significance: 10/million.

The County failed to run the screening level HRA with the new mobile source information, and as a result, the HRA is inaccurate. Emissions estimated in the FEIR's revised Air Quality element have increased substantially over what was used in the DEIR to model the project's health risks. We expect the increase in DPM-containing PM2.5 will cause the project's maximum cancer risk for the most at-risk residents to substantially exceed the 10/million increased cancer risk threshold of significance, rendering the FEIR's determination of a less-than-significant risk invalid. (See AWA Letter, pp. 5-6.)

The FEIR states that modeling input and output files are available for review on CD-ROM. (FEIR, Air Quality Appendix M, p. 159.) On September 18, 2017, I requested access to these electronic files during a telephone conversation and through a confirming email to County Planning staff. I was told that the

department is short-handed and that I may or may not receive a response. I have not yet received a response and we have been unable to review the data files.

The FEIR failed to remedy other problems with the air quality analysis. For example, the use of "urban" trip lengths in the CalEEMod modeling remains inappropriate. (See AWA Letter, pp. 6-7.) And, as stated above, the abandonment of any threshold of significance for mobile sources of CAP emissions is not consistent with the law. (See also, AWA Letter, pp. 6-14.)

3. The Project's noise impacts

Rather than correcting the errors contained in the DEIR's analysis, the FEIR includes additional errors in methodology as well as considerable misinformation. The County's conclusions regarding the noise impacts of the Project are still not supported by substantial evidence.

Continuing the pattern that appears throughout the EIR, the noise analysis includes picking and choosing data from the DEIR study and the revised study prepared for the FEIR, choosing to use outdated and superseded noise thresholds, all with the apparent aim of coming to the false but convenient conclusion that the noise impacts of the Project will be insignificant.

The FICON thresholds used in the EIR to determine incremental significance for all project noise sources are out-of-date and inappropriate for industrial noise sources. They have been superseded by incremental thresholds developed by the Federal Transit Administration ("FTA") for transportation noise sources, which are more stringent than the FICON thresholds at noise exposure levels common in most environmental circumstances. (See comment on FEIR submitted by Geoff Hornek ["Hornek Letter"], pp. 2-3.)

Further, neither the FTA nor the FICON thresholds are applicable to industrial noise sources. Noise from industrial sources is *not* "broadband in nature." It has a completely different frequency spectrum than background levels that in most cases are dominated by transportation sources. To be less than significant for CEQA purposes, project machinery noise levels must be low enough, or made low enough, on average and in each octave band, to be inaudible to its residential neighbors throughout the day, especially during nighttime hours. (*Id.*)

In a convenient twist in the revised study for the FEIR, the County chose to use a residence located approximately 80 feet from the railroad tracks to develop a "new" noise baseline. (See FEIR, p. 3-44.) Site 4 is used by the County to justify an increase in the baseline noise level in order to mask the noise impacts of the Project. (See comment on FEIR submitted by Kristen C. Jones, p. 2.)

In response to comments on the DEIR, the County apparently charged its noise experts to figure out a way to get out from under the burden of significant noise impacts and the required mitigation. In addition to the "new " baseline developed by selecting a residence 80 feet from the railroad tracks, the County arbitrarily omitted analysis of vibrational noise and decided not to analyze the combined impact of traffic and industrial noise from plant operations. "The Revised Noise Analysis picks and chooses between the noise levels predicted by the FHWA Model and the ambient noise measurements in order to eliminate the significant and unavoidable traffic noise impacts that were contained in the Draft EIR." (Jones letter, p. 3.)

The revised noise study also missed a "sensitive receptor" site at the residence of 333 Raspberry Way. This site is directly across the street from the Crystal Geyser Plant, between Erickson Trucking to the west and a light industrial complex to the east along Ski Village Drive. It is parcel # 037-070-230 in Siskiyou County. This is the nearest sensitive receptor to the HVAC equipment and boiler vents in the front of the bottling plant.

The responses to comments dismiss concerns about exceedance of noise standards, claiming that a 1-4 dB exceedance is minor. Even a 1 dB increase in 24-hour levels represents a potentially significant impact to local sensitive receptors that may require mitigation. (See Hornek Letter, p. 10.) The evidence in the record does not support the FEIR's conclusions regarding noise impacts.

With respect to noise mitigation, the County allows for a choice between requiring quieter equipment or shielding. The use of both measures would provide the greatest mitigation, and unless there is substantial evidence to support the conclusion that employing both measures would be infeasible, then both must be required of the applicant. (See Jones letter, p. 4.)

The errors in the DEIR analysis of potential sleep disruption for nearby residents persist, and the County simply refuses to use the appropriate methodology and assumptions. (See Hornek letter.)

In response to comments, the County clings to the claim that the noise impacts would be "in compliance with City and County ambient noise standards." As noted in our comments on the DEIR, the Third District Court of appeal recently held that simply because a project meets the general plan standard does not mean that the impact is automatically less than significant. (*East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 302.) The court in that case cited to *Berkeley Jets*, noting that a land use noise threshold is *not* determinative for CEQA. (*Ibid.*) The County commits the same error as that of the Port of Oakland in the *Berkeley Jets* case.

The Hornek Letter provides detailed explanation of how the thresholds of significance are in error, and how the FEIR failed to remedy the problems in the

DEIR. Despite the revised analysis, the County may not avoid that fact that the Project is surrounded by sensitive receptors.

4. Project impacts to transportation and circulation

The FEIR continues to contain errors in the traffic impacts analysis. For example, the FEIR fails to consider winter traffic impacts. (See comment on FEIR submitted by Tom Brohard and Associates ["Brohard Letter"], p. 1.) Other errors in geometry and use of data were also not addressed despite comments submitted on the DEIR regarding these errors. (See Brohard Letter.)

5. Hazards and Hazardous Materials

The FEIR states as follows: "A Phase I ESA is generally considered the first step in the process of environmental due diligence and does not include the actual sampling of soil, air, groundwater, and/or building materials. If the Phase I ESA determines that a site may be contaminated, a Phase II ESA may be conducted." (FEIR, p. 4.7-2.)

In response to comments, the County acknowledges that some of the contaminated portions of the Project site required soil removal and there is some question about the records supporting the conclusion that the removal actually occurred. (FEIR, p. 3-196.) The fact that there are not conclusive records regarding the removal of the contaminants indicates that a Phase II ESA is required, at the very least. The vague support for the County's conclusion that the material was removed does not constitute substantial evidence.

F. The Project is inconsistent with the County and the City General Plan

In response to comments regarding General Plan consistency, the County provided a Master Response so vague that it does not address any of the concerns raised. (FEIR, p. 3-42.) As discussed in detail above and in letters submitted by others, including Mr. Mooney and local citizens, the Project will not be consistent with the surrounding land uses and will be harmful to the citizens of both the County and the City, in violation of their respective General Plans.

The FEIR did not even attempt to remedy the shortcomings of the DEIR with respect to General Plan consistency. For example, at page 2 of the proposed Findings, it is noted that Policy 41.3(c) applies, providing that "[a]ll heavy commercial and heavy industrial uses should be located away from areas clearly committed to residential uses." The Findings do not even address this Policy, but merely conclude that there is no woodland potential where the proposed caretaker's residence will be located. (Findings, p. 2.)

Employing the continued fiction regarding the Project merely consisting of a caretaker's residence, the proposed Findings go on to apply Policy 41.3(e), concluding that the caretaker's residence is compatible with surrounding residential uses, ignoring the remainder of the Project and its industrial activities. (Findings, p. 2.) Policy 41.6 is applied in a similar manner. (Findings, p. 3.) The Findings contain a series of unsupported conclusions regarding consistency with General Plan Policies.

"The consistency doctrine [is] the linchpin of California's land use and development laws; it is the principle which infuses the concept of planned growth with the force of law." (*Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.) The Project is inconsistent with the Siskiyou County General Plan and approval would violate the State Planning and Zoning Law.

D. Conclusion

The FEIR should be considered not by the Planning Commission, but by the Board of Supervisors. Further, because of the issues raised above, we believe that the FEIR fails to meet the requirements of the California Environmental Quality Act and that the Project is inconsistent with applicable planning documents. For these reasons, we believe the proposal should be denied, pending appropriate environmental review and a revised Project and EIR.

Sincerely,

// Marsha A. Burch //

Marsha A. Burch
Attorney

cc: Gateway Neighborhood Association