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Via Electronic Mail

Ryan Sawyer, AICP
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Re: Crystal Geyser Bottling Plant
Draft Environmental Impact Report (SCH#2016062056)

Dear Mr. Sawyer:

This office represents the Gateway Neighborhood Association ("Association") with respect to the above-referenced Crystal Geyser Bottling Plant ("Project") and the Draft Environmental Impact Report ("DEIR"). The Association and others have submitted comments on the DEIR, including comments made by Donald B. Mooney, the attorney for WATER, and these comments are meant to supplement, not replace, the comments of other members of the public, or of other experts or agencies.

For a variety of reasons, the DEIR falls short of compliance with the California Environmental Quality Act ("CEQA") ").[1] For example, the DEIR fails to provide a Project description adequate to allow for sufficient analysis of potential Project impacts. The description is so deficient that the public and the decision makers will not have an opportunity for meaningful consideration.

The DEIR inadequately describes the Project, inadequately analyzes the impacts of the water bottling and beverage production operation, omits or inadequately specifies feasible mitigation for those impacts, and fails to evaluate a reasonable range of feasible alternatives that would reduce the severity of impacts. The EIR's analysis of impacts to water supply and hydrology is also

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

wholly inadequate and addressed in detail in the comments submitted by various experts and by Mr. Mooney.

Further, the global warming and air quality sections of the DEIR should be amended to address adequately *all* sources of greenhouse gas ("GHG") and other emissions resulting from the Project and to include a valid air impacts study based upon sound methodology and inputs. The DEIR must also be revised to mitigate for these emissions through concrete, enforceable and feasible mitigation measures.

Unfortunately, the analysis in the DEIR includes manipulation of standard 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. The Project description also serves to disrupt the ability of the public or the decision makers to fully understand 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.

A. The Project Description and Project Objectives Violate CEQA

Reviewing the DEIR, it is not entirely clear what the Project will ultimately include, and it is even less clear what is actually being analyzed. For example, the Project Description states that "[a]nalyses of the Proposed Project's potential impacts are based on this level of production, which conservatively assumes continuous operation of the Plant at 90 percent capacity of the installed bottling equipment (Weklych, 2016a)." Then goes on to say that "full production" is something else entirely. (DEIR, p. 3-9.) It may well be convenient and result in an illusion of fewer impacts, but CEQA does not allow a lead agency to review 90 percent of what is being approved. Particularly when this error is the direct result of nothing more than a personal communication with the Project applicant.

This error is compounded by the fact that the County, somewhat shockingly, describes this shortcut as "conservative." (DEIR, p. 3-9.)

1. The EIR fails to adequately describe the project

The description in the DEIR includes the above-referenced error defining the "project" as 90 percent of production. Further, there are many omissions regarding the timing of when certain types of products would be produced, and the level of production that would occur over time. The hours of operation are also unclear from the document.

The DEIR Project description includes a host of speculative "scenarios," and leaves the public and the decision makers wondering what the Project will actual entail. The volume of wastewater varies, depending upon "market demand." Either one or two bottling lines will operate, depending on "market conditions," and the plant may operate "up to 24 hours per day (depending on demand)." (DEIR, p. 3-9.) CEQA requires that the full level of activity allowed under the approval be analyzed in the EIR. Period. A loosely defined operation does not excuse a limited review, and even the "90 percent" capacity the DEIR claims to consider is insufficient. (*Ibid.*)

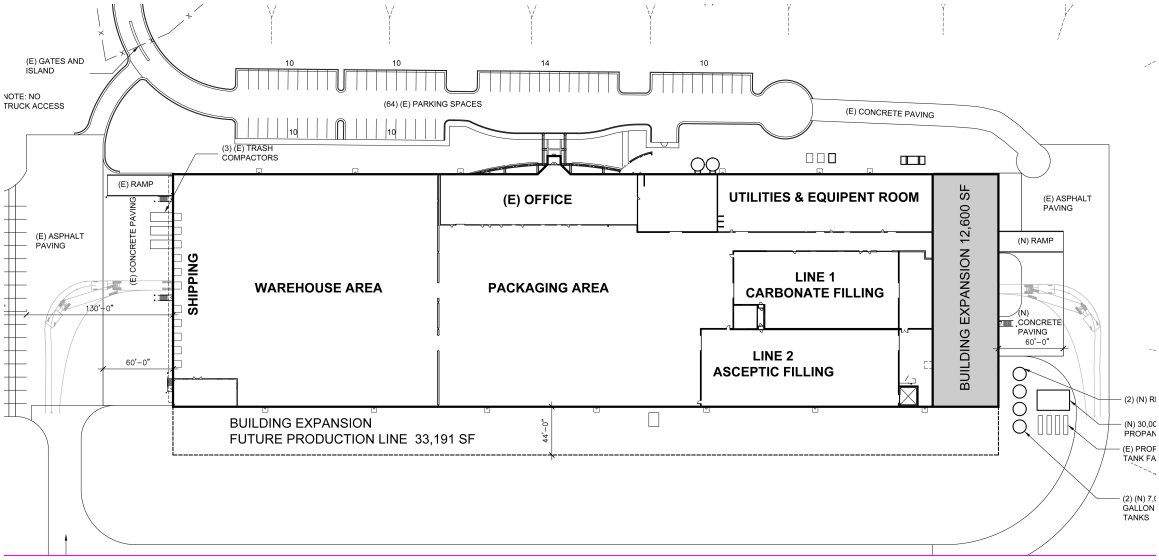
As pointed out in a comment letter submitted by Daniel Axelrod, Ph.D. and Geneva M. Omann. Ph.D, the Project description also omits essential information regarding the types of chemical constituents that will be discharged into the City wastewater treatment system, or discharged to land via the use of wastewater for "irrigation." The Project description includes just one reference to the chemicals that Drs. Axelrod and Omann describe in their letter, and it is cryptic at best, stating that wastewater will contain "cleaning agents." (DEIR, p. 3-13.)

Under CEQA, the inclusion in the EIR of a clear and comprehensive description of the proposed project is critical to accurate analysis of impacts and meaningful public review. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193 ("*Inyo II*"). The court in Inyo II explained why a thorough project description is necessary:

> A curtailed or distorted project description may stultify the objections of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. (71 Cal.App.3d at 192-193.) "A curtailed, enigmatic or unstable project description draws a red herring across the path of public input." (Id. at 197-198; see also San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th at 655-657 [invalidating an EIR for misleading project description].)

The Project description in this case is unclear, and beyond that, it avoids analyzing the "whole of the project." The CEQA Guidelines state the "project" means the whole of an action, including aspects that are reasonably foreseeable. (Guidelines § 15378(a); and Public Res. Code § 21159.27.)

The DEIR states that "[a] third bottling line is not proposed or foreseeable and could not be accommodated within the existing building." (DEIR, p. 3-9.) The Project plans, however, reveal that a third bottling line is foreseeable. In fact, the portion of the plans is identified as "Building Expansion, Future Production Line." (See below.) It is possible that this is why the timing and scope of the Project is so loosely defined in the Project description. There are already plans for expansion in place, plans that would make the devastating impacts of the Project even greater.



It is improper for the County to overlook this planned expansion of the Project operations by stating that it is not part of the existing building. The term "project" means the whole of an action, and not just to the governmental approval process. The environmental considerations may not be submerged by chopping a larger project into two smaller projects. (*Bozung v. Local Agency Formation Commission* (1975) 13 Cal.3d 263, 274; and see *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1297.)

As described above, the DEIR's project description falls short of this standard by failing to identify with any precision the timing and intensity of production at the Project plant.

2. The DEIR includes impermissibly narrow Project objectives

Many of the presumptions throughout the DEIR are based upon the notion that there is some urgency in "meeting market demand," although it is never disclosed in the DEIR what factual basis there may be for the urgent need

for Project approval in order to meet this purported demand. The way that the objectives of a project are drafted impact the CEQA analysis, particularly consideration of alternatives and mitigation measures.

The DEIR states that it "considered" an alternative of delaying operation of the Project until the Lassen Substation power project is completed. This alternative would avoid the use of propane generators and reduce GHG and CAP emissions. (DEIR, p. 6-5.) The alternative was dismissed from full consideration because it would "not accomplish any of the project objectives in the short term." (*Ibid.*) The objective identified was that of initiating plant operation "as soon as possible to meet increasing demand for Crystal Geyser beverage products." It bears noting that all of the Project objectives are driven by the purported "need" for Crystal Geyser to meet immediate demand for its products. (DEIR, p. 3-8.)

The narrowly drawn Project objectives are based largely on the assumption that the Project applicant is under tremendous market pressure and that there is no other way for the applicant to respond to the demand absent this Project. This "objective" is not supported by any evidence, substantial or otherwise, and it improperly restricts the entire environmental analysis, including the range of alternatives. When agencies have excluded consideration of, or dismissed a project alternative on the basis of such a narrow project description, the courts have found such a position untenable. (See *Kings County Farm Bureau v. City of Hanford, supra,* 221 Cal.App.3rd at 735-737.) The County has erred by narrowly defining the Project objectives to include the "necessity" of meeting a market demand that has not be defined or described in any way.

"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.

What are the "market" forces and demands that are at play, and what are the feasible timeframes and constraints that would allow the applicant to reasonably meet those demands? The entire DEIR is based upon the notion that the basis for these Project objectives need not be disclosed to the public and the decision makers. That is not the case, and the Project objectives must be revised, or at the very least supported by substantial evidence.

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

Generally, the DEIR fails to adequately analyze the direct and indirect impacts to the environment, the comment letters submitted in response to the

DEIR identify tremendous impacts to aesthetics, air quality and climate change, traffic, water supply and water quality, land use and others. Many of the conclusions in the DEIR are not supported by substantial evidence in the record.

The County must ensure adequate environmental information is gathered and that the environmental impacts of a proposed project are fully identified and analyzed before it is approved. "To conclude otherwise would place the burden of producing relevant environmental data on the public rather than the agency and would allow the agency to avoid an attack on the adequacy of the information contained in the report simply by excluding such information." *(Kings County Farm Bureau v. City of Hanford* (1990) 22 1 Cal.App. 3d 692, 724.)

> Environmental review documentation is more than a set of technical hurdles for agencies and developers to overcome. "[Its] function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account." *(Laurel Heights I, supra,* 47 Cal.3d at pp. 391-392.) For the [environmental review documentation] to serve these goals it must present information in such a manner that the foreseeable impacts of pursuing the project can actually be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made.

(Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 449-450.) In the DEIR, while some discussion includes citation to the facts, the County repeatedly makes conclusory statements, with no evidentiary support or citation. This does not comply with CEQA's requirement that the environmental review must be based upon facts and analysis.

Because the EIR is deficient as an informational document the County has failed to comply with CEQA. *(Kings County Farm Bureau v. City of Hanford* (1990) 22 1 Cal.App.3d 692, 717-718 [holding that a misleading impact analysis based on erroneous information rendered an EIR insufficient as an informational document].)

Additionally, the County must look at reasonable mitigation measures to avoid impacts, but failed to do so here with respect to several areas of impact. Where all available feasible mitigation measures have been proposed but are inadequate to reduce an environmental impact to a less-than-significant level, an EIR may conclude that the impact is significant and unavoidable, and if supported by substantial evidence, the lead agency may make findings of overriding considerations and approve the project anyway. (See CEQA Guidelines §§ 15091, 15093 and 15126.2.) Crucially, however, the lead agency may not simply throw up its hands, conclude that an impact is significant and unavoidable and move on. A conclusion of residual significance does not excuse

the agency from (1) performing a thorough evaluation and description of the impact and its severity before and after mitigation, and (2) proposing *all* feasible mitigation to "substantially lessen the significant environmental effect." (CEQA Guidelines § 15091(a)(1); see also § 15126.2(b) [requiring an EIR to discuss "any significant impacts, *including those which can be mitigated but not reduced to a level of insignificance"*], emphasis added.) "A mitigation measure may reduce or minimize a significant impact without avoiding the impact entirely." (Stephen Kostka & Michael Zischke, *Practice Under the California Environmental Quality Act*, § 14.6 (2d ed. 2008).)

Even in those cases where the extent of impacts may be somewhat uncertain due to the complexity of the issues, the County is not relieved of its responsibility under CEQA to discuss mitigation of reasonably likely impacts at the outset. The DEIR has not adequately assessed or incorporated readily available and achievable measures to reduce significant, unavoidable impacts to less than significant levels.

Some general deficiencies in the EIR for the Project include a failure to evaluate a reasonable range of alternatives and a failure to adequately account for existing and future projects in the cumulative impacts analyses. Several comment letters include discussion of the DEIR's failure to adequately take into account cumulative impacts to traffic, air quality and noise.

Specific examples of shortcomings in the DEIR are set forth in many of the comment letters submitted by members of the public, other agencies and by Mr. Mooney. Several specific areas of impact are also addressed below.

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. "The project site can be viewed from various recreational areas at higher elevation points along the southwestern slopes of Mt. Shasta and thus can be seen within certain long-range scenic vistas of the valley, although not a dominant visual feature. " (DEIR, p. 4.1-2.) There is no evidence to support this claim in the DEIR. In fact, the community members experience the plant as being the dominant feature when looking over at Mt. Shasta from the Eddies, Black Butte or along the Pacific Crest Trail. These lay observations based upon personal observation constitute substantial evidence. (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927-928.)

The entire Aesthetics section is further flawed because it ignores the fact that the Project applicant has failed to comply with the 1998 mitigation agreement with Siskiyou County ("1998 Agreement") by ensuring that the buildings on the site are "non-reflective" and that the property owners and the County would determine a "mutually acceptable theme" for color and materials. (DEIR, pp. 3-29 to 3-31.) The DEIR states that the Project proponent is bound by

the 1998 Agreement and that "[a]s the successor in interest to CCDA Waters, CGWC has committed to implementing measures within the 1998 Mitigation Agreement that are applicable to the Proposed Project." (DEIR, p. 3-29.)

The DEIR appears to simply give 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 simply accept that "[t]he existing warehouse is a reflective white surface that can produce local glare during daytime hours." (DEIR, p. 4.1-6.) The applicant appears to be in breach of the 1998 Agreement, and the DEIR must disclose to the public and the decision makers whether or not the applicant will come into compliance by painting the warehouse building so that it is non-reflective and consistent with the color and material theme agreed upon, or if the County will not be enforcing the terms of the 1998 Agreement. This is an extremely significant fact that is being reported in conflicting ways throughout the DEIR.

If the County has chosen not to enforce the measures required in the 1998 Agreement, that fact must be disclosed, and the DEIR may not rely upon any of the commitments outlined in the 1998 Agreement.

The DEIR also fails to adequately analyze the potential aesthetic impacts of one of the proposed Mitigation Measures. The DEIR includes a summary of *significant unavoidable* adverse impacts related to recommended mitigation measures as described in Section 5.1.3. (DEIR, p. 5-4.) Should a solar array be designed and installed to reduce GHG emissions in accordance with Mitigation Measure 4.6-1, the County has simply concluded that significant and unavoidable impacts associated with aesthetics and glare would occur due to the necessary scale and size of the solar array that would be required. (DEIR, p. 5-5.)

If a proposed mitigation measure will have potentially significant impacts, CEQA requires that those impacts be evaluated and mitigated to the extent feasible. The DEIR fails to even discuss mitigation of the impacts that would result if Mitigation Measure 4.6-1 is adopted.

2. Air Quality Impacts

a. Project air emissions

The entire air quality analysis, including greenhouse gas emissions, is so deeply flawed that it is difficult to present discussion in these comments. Autumn Wind Associates provided an expert analysis of the air quality sections in the DEIR, and found that the basic inputs and assumptions have been heavily manipulated to "reduce" the apparent level of impact. (The analysis provided by Greg Gilbert, Autumn Winds Associates, is referred to herein as "AWA Letter.")

At first glance, the Project appears to have a minimal impact on air quality, as the Executive Summary in the DEIR concludes that all air quality

impacts are less than significant, except for the increased cancer risk for the people living in the caretaker's residence. (DEIR, p. 2-5.) This seems surprising in light of the tremendous number of truck trips that will result from operation of the Project.

Rather than use the methodology and inputs that are the standard of the industry for air quality analysis, and rather than including *all* of the truck traffic that the Project will generate, the County manipulated the inputs, misstating the types of truck traffic as well as the modifying the standard assumptions for General Heavy Industrial analyses in such a way that the conclusions fall below thresholds of significance.

The County acknowledges that the Project use is General Heavy Industrial. (DIER, Appendix M, pp. 8-11.) Appendix M identifies a trip rate applied to the General Industrial land use type, but at numerous locations, the "General Light Industry" land use has been substituted without explanation. (See AWA Letter, p. 3.) Further, standard trip rate values have been overridden for the DEIR analysis, also without explanation. The arbitrary deviation from standard, industry-accepted methodology must be supported by substantial evidence, and the DEIR sites to none. If the County has simply accepted the estimates provided by the applicant, there must be evidence beyond self-serving statements to support the modified inputs.

These manipulations of the inputs and land use type must also be considered in the context of the DEIR's conclusions regarding the significance of the air quality impacts of the Project. The "reduction" in impacts resulting from the faulty calculations undermines the conclusions regarding air quality and greenhouse gas emission impacts, many of which are just barely below the threshold of significance.

Further, the Project will generate many more trips than those considered in the DEIR. The following categories of truck trip were completely ignored in the air quality analysis: deliveries of raw materials for products (tea, fruit extracts, etc.)[2], forklifts on site and propane deliveries (to supply the amount identified in the DEIR would require 350 transport loads per year at a one-way distance of 250 miles). (See AWA Letter, pp. 4-5.) Adding the necessary transport of propane alone to the calculations would very likely cause the NOx threshold of significance to be exceeded. (*Id.* at 5.) The DEIR's current conclusion that the Project's emissions of NOx are less than significant are based

[2] In fact, Appendix M fails to take into account a myriad of truck trips that will result from operating the plant, including deliveries of liquid CO_2 and liquid Nitrogen, propane and diesel fuel for the boilers and generators, the acid and base solutions used for the pH neutralization system, supplies to run the onsite wastewater treatment system, the many supplies that will be used to clean and sanitize the bottling machinery (many of which are hazardous substances--peroxyacetic acid, hydrogen peroxide, nitric acid, etc.), the fruit flavor extracts, fruit juices, and tea that will be utilized to make products; and things transported away from the plant, such as recyclable solid waste, hazardous waste, and garbage.

upon a finding that the emissions are approximately one-tenth of a pound per day below the NOx significance threshold. One wonders if the appropriate land use category and number of vehicle types and trips were used to analyze the Project's impacts, how far beyond the NOx threshold the Project impacts would go, not to mention the potential for exceeding other thresholds.

The fleet mix has also been manipulated to leave out the heaviest vehicles, thereby allowing the air quality model to support a finding of less than significant impact. The County's air quality modeling included an intentional reduction (or even zeroing out) of heavier vehicles. (AWA Letter, pp. 5-6.) In the face of this manipulation of the fleet mix, the County's consultant inexplicably claims that the analysis is taking a "more conservative" approach. (DEIR, Appendix M, Table 5, note.) There is not a conservative mix of heavy-duty trucks, the heaviest vehicles have been *left out*. This goes beyond a failure to disclose information in the DIER, and into the realm of intentionally misleading the public, the decision makers and other agencies.

The majority of the air quality impacts from the Project will result from heavy-duty truck trips, and the fleet mix used in the DEIR intentionally re-assigned the truck trips for the Project to lighter-duty trucks; trucks that do not meet the description of those identified in the DEIR as "50 semi-trailer trucks (100 truck trips) entering and exiting the site at full production…." (DEIR, p. 4.2-18.) The manipulated model does not reflect these trips. (See AWA Letter, pp. 8-9.)

The air quality analysis in the DEIR also makes the unexplained assumption that the employee trips to and from the plant will occur in an "urban" setting. (See AWA Letter, pp. 10-11.) As discussed in the AWA Letter, there is simply no basis in reality to use employee trip calculations that assume that Project is set in an urban environment.

Finally, Appendix M relies upon assumptions regarding the "success" of mitigation measures that are not supported by any evidence in the record. The County takes a 75% CO_2 credit for "Recycling and Composting Services" (mitigation measure 4.12-2), but there are no details about this mitigation measure anywhere in the DEIR. (See AWA Letter, p. 11.) Who will implement this measure? Is a 75% reduction of waste even possible? There is no evidence in the record to support the feasibility or enforceability of this purported mitigation measure, nor is there evidence to support the CO_2 credit taken by the County in the air quality analysis.

Further, mitigation measure 4.6-1's "possibility" of installing solar arrays, and a plan to establish carpooling for employees are perfect examples of unenforceable mitigation measures providing no basis to claim any impact reduction. (DEIR, p. 4.6-18; and see AWA Letter, pp. 11-13.)

The unexplained manipulation of land use type and fleet mix, as well as the omission of significant delivery trips and the faulty assumption that employees will be traveling to work in an "urban" setting, result in a complete lack of accuracy and credibility in the air quality analysis relied upon in the DEIR. An EIR must identify *all* of the environmental impacts, direct and indirect, associated with a proposed project. (CEQA Guidelines §§ 15123 and 15126.2.) "The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context." (CEQA Guidelines § 15125(c).) Here, the DEIR does not include an analysis of the air quality impacts that will actually be associated with the Project. The DEIR contains an analysis based upon a fictional "project" that involves fewer trips, different types of vehicles and a different type of "land use" in an "urban" environment. It fails to even come close to complying with CEQA.

b. Project greenhouse gas emissions

The greenhouse gas and climate change impacts sections of the DEIR rely upon Appendix M, discussed in detail above, and that analysis is so woefully inaccurate that it is of very little use in terms of providing support for any conclusion made in the DEIR.

Also omitted from the emissions analysis is any consideration of CO_2 emissions that will occur as a direct result of the Project's consumption of materials used for making bottles. The Project will produce single-use polyethylene terephthalate ("PET") bottles for its products. (DEIR, p. 3-9.) The bottles will be molded on site using "preforms." (*Id.*) There is no discussion of how many bottles will be produced, nor any consideration of the GHG emissions associated with making the preforms. The manufacture of one ton of PET produces 3 tons of CO_2 (Pacific Institute, Bottled Water and Energy: A Fact Sheet. http://pacinst.org/publication/bottled-water-and-energy-a-fact-sheet/). This contribution to total GHG emissions must be included.

The GHG analysis also includes HVAC use in such a way that is not supported by any evidence. (DEIR, p. 4.6-13.) "The HVAC system was assumed to run two hours a day, 160 days annually, with four heating units." There is no discussion of why the heating units would be used for only two hours per day, particularly in light of local cold winter conditions. There is also no mention of how much the air conditioning units will be used. Since teas will be brewed and boilers will be used, it is likely some cooling of the building will be required in the summer. GHG emissions from the AC system must be evaluated.

The DEIR properly determined that the Project's greenhouse gas ("GHG") emissions would be a significant and unavoidable impact. (DEIR, p. 4.6-17.) Under CEQA, this determination gives rise to a legal obligation to impose all feasible measures to mitigate the impact. (CEQA Guidelines § 15126.4.) The DEIR fails to provide an adequate discussion of potential mitigation measures.

Discussion of the inadequate mitigation measures proposed must begin by recognizing that the "Scenario 1" and "Scenario 2" format followed by the County in the EIR is contrary to the requirements of CEQA. As noted above, the full operation of what is being permitted and approved is the "project" to be evaluated in the CEQA document. Assurances from the Project applicant that it will be something less than what is allowed is not a proper basis for including a second "scenario."

Accordingly, for purposes of CEQA analysis, the GHG emissions resulting from the Project will not be 25,486 metric tons ("MT") of CO_2 per year, it will be 29,277. (See DEIR, p. 4.6-16, table 4.6-2.) (This is assumed for purposes of this comment and discussion, but as set forth in detail above, the air emissions study is so deeply flawed that none of the conclusions are reliable at this point.)

The DEIR lists a menu of mitigation measures that could be used "to achieve a net reduction of 25,486 MT of CO_2 annually." (DEIR, p. 4.6-18.) Possibly some solar arrays, encourage employees to carpool, and then buy some offset credits from the carbon registry. (*Ibid*.) This menu of items is also proposed in the context of the faulty air emissions study contained in Appendix M, not to mention the fact that it assumes a credit for the Project recycling 75% of its waste stream, without any explanation of how that will occur.

Finally, the DEIR errs in jumping to the conclusion that the Project's impacts related to climate change are significant and unavoidable, without conducting the analysis of *why* this is the case. (*Keep Berkeley Jets Over the Bay Com. V. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371.) The DEIR states that the Project is necessary to allow Crystal Geyser to meet the vaguely described "increasing market demand." But there is no information in the DEIR about whether or not this objective could be achieved with a plant that operates only during the day (thereby avoiding a significant amount of GHG emissions, not to mention noise impacts and light pollution). It is simply not plausible that a no-nighttime operation is financially infeasible for the applicant, and there is certainly not evidence of this in the record. This also undermines the alternatives analysis, discussed in other comment letters, including one from Mr. Mooney.

The County must provide an accurate estimate of the GHG emissions that will result from the whole of the Project, and then adopt enforceable, effective mitigation measures, and consider feasible alternatives that will reduce the Project's impacts.

c. Air Quality-related Health Risks

As noted above, the Project description does not discuss the fact that the closest residence is the caretaker's residence on site. The DEIR concludes that the cancer risk at the caretaker's residence exceeds the threshold of significance, and so recommends Mitigation Measure 4.2-1. There is no explanation regarding

how "temporary" residence (which is undefined) and an HVAC system with filtration will reduce this risk. The conclusion is simply reached, with no citation to any evidence. What happens if the caretaker lives there "temporarily" for a year? What if the caretaker has young children, or an elderly parent living with them? Will those individuals be more greatly impacted by the risk? There is no information whatsoever regarding the performance standard of the HVAC system, nor is there citation to any evidence that "temporary" residence in a high cancer risk location reduces one's risk to a level of insignificance.

3. The Project's noise impacts

Similar to the study used to support the DEIR's conclusions regarding air emissions, the study used to support the DEIR's analysis of noise impacts is based upon improper methodologies and adoption of a favorable threshold of significance that skewed the results, and therefore the conclusions in the DIER are not supported by substantial evidence. (See February 27, 2017 letter from Geoffrey H. Hornek ["Hornek Letter"].)

Despite the fact that the Bollard Report (Appendix T to the DEIR) acknowledges that single-event, such as a *truck passage*, has the potential for annoyance or sleep disturbance, and that this potential "can be masked by representing the data as an average" (DEIR, p. 4.10-3, and Appendix T, p. 6), the Bollard Report goes right ahead and dismisses the possibility of meaningful single-event noise standards and adopts the County and City long-term *average* noise impact standards as the only applicable thresholds of significance, finding that the Project will generally not violate those thresholds.

The DEIR takes pains to acknowledge that the courts require consideration of single-event noise effects (citing *Keep Berkeley Jets Over the Bay Com. V. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371), and then goes on to discuss the unfortunate fact that the court in *Berkeley Jets* did not recommend a noise level standard. (DEIR, pp. 4.10-3 to 4.10-4.) The DEIR goes on to claim that this is just such an unsettled area of scientific measurement and analysis, that it is impossible to know where the purported "ongoing discussions" will lead with respect to how to measure single-noise events and sleep disturbance. (DEIR, pp. 4.10-4 to 4.10-5.)

The DEIR attempts to excuse the County's decision to evaluate single-noise events and sleep disturbance with bizarre assumptions that the residents will all sleep with their windows closed year round, and that there will be a "low number of nighttime heavy truck passbys and [the] low percentage of awakening during such passbys." (DEIR, p. 4.10-27.) The DEIR acknowledges that 20 of the 100 daily truck trips will occur at night. (DEIR, Appendix T, p. 26.) The conclusion in the impact analysis, taking into account 20 truck trips per night, would mean that there will be a one in four chance of awakening per resident. This is absolutely a significant impact under any reasonable standard.

In fact, the DIER failed to include a threshold of significance for single-event noises, and there is no mention of sleep disruption. (DEIR, p. 4.10-17 to 4.10-18.) The sleep disturbance question is addressed in the DEIR under "Traffic Noise," and that section appears to be analyzed under the significance thresholds taken from the City and County General Plans. (DEIR, p. 4.10-24.) Those are numerical standards measure by increases in noise over a certain level. The nighttime sleep disturbance cannot be measured under this standard.

In fact, the County and City General Plans both contain goals and policies that are violated by disregarding the actual impacts of the Project and hiding behind numeric values and faulty assumptions.

The City has Noise Goal NZ-1 as follows: "Protect City residents from the harmful and annoying effects of exposure to excessive noise" (DEIR, p. 4.10-11), and the County General Plan sets forth its project evaluation procedure and states as follows: "In the evaluation of a potential noise effects associated with proposed projects, the technique would be to determine the project noise effect (characteristics, intensity) and compatibility within the existing land use environment. It is important to determine the relationship between the project's noise production capability and the noise tolerance of the environment." (Siskiyou County General Plan Noise Element, p. 57.)

Under the General Plan standards, City and County residents waking up at a rate of one in four every night indicates that the potential noise effects of the Project are not compatible with the existing land uses. Blind application of only the numeric standards is inappropriate. In fact, 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 all of the errors favor findings of lower significance. It is possible that the reason the DEIR for the Project attempts to avoid applying a reasonable set of assumptions and thresholds of significance is because of the fact that so many sensitive receptors are located nearby, and the applicant wants very much to operate 24 hours per day. There is not even consideration of an alternative that would precluded nighttime operations, and it would be impossible to defend the alternatives analysis in the DEIR if the noise study for the Project showed significant impacts to nearby residents, particularly at night.

The noise analysis is skewed and inadequate, and must be revised entirely in order to meet the barest requirements of disclosure and analysis under CEQA.

4. Project impacts to transportation and circulation

The DEIR's treatment of traffic impacts falls short of the requirements of CEQA. The DEIR makes conclusions that are inconsistent with the traffic report contained in Appendix U, and relies upon unsupported assumptions regarding truck and other vehicle trips, and fails to consider appropriate mitigation measures.

The entire traffic analysis relies upon the assumption that the Project will generate 100 daily truck trips. (DEIR, p. 4.11-10, table 4.11-4.) There is nothing in the record to support this assumption. Also, as set forth in detail above, this figure fails to take into account a myriad of truck trips that will result from delivery of supplies and propane. Compounding the problem of the apparently arbitrary figure of 100 truck trips, the DEIR relies upon a faulty conversion of these trips into passenger car equivalents. (See February 16, 2017 letter from Tom Brohard and Associations ["Brohard Letter"], p. 2.) In fact, the DEIR states that the conversion rate was taken from the *Trip Generation Manual, 9th Edition* (table 4.11-4.), but that manual does not even contain equivalent factors. (Brohard, p. 2.)

If the County wishes to use a factor of 1.5 passenger car equivalency ("PCE"), this would be appropriate for two-axle trucks. For the types of trucks that will be necessary for many (if not all) of the deliveries to and from the Project, the PCE factor would be somewhere between 2 and 3. Other parts of the DEIR state that the truck trips will be made by "heavy duty" trucks. (DEIR, p. 4.10-26.) Pictures of trucks at the loading docks at the existing Crystal Geyser plant in Olancha reveal five-axle trucks with a PCE of at least 3 passenger cars. (Brohard, p. 2.)

Similar to the air quality study, the traffic study appears to have been manipulated to reduce apparent impact. By using the unfounded 1.5 PCE, the passenger car equivalent volumes have been underestimate by at least 100 percent. (Brohard, p. 2.)

The DEIR goes on to err by assuming that placing signs on designated routes will prevent trucks from using streets (intentionally or accidentally) in residential areas. This assumption appears within a traffic study that does not follow even the most basic requirements for data and analyses set forth in the Caltrans *Guide to the Preparation of Traffic Impact Studies*. There are no figures demonstrating and documenting volumes of traffic on road segments or at intersections.

The traffic study fails to consider winter conditions, and contains conclusions regarding safety at the plant driveway intersection, but without any discussion of evidence to support this conclusion. Critical information, including stopping sight distance for vehicles entering and exiting the driveway has not been provided. (Brohard, p. 2.) The traffic study is rife with errors and fails to

include information on sight and stopping distances, does not include warrant sheets, and contains many conclusions without basis. (*Id*. pp. 3-6.)

Because the traffic study is so deeply flawed, it is impossible to know what the full range of impacts will be with respect to traffic and circulation. Accordingly, mitigation may well be required for traffic impacts, but will have to be developed after a revised traffic study is prepared for the Project.

The DEIR also fails completely to address the future intersection improvements identified in the Circulation Element of the City of Mt. Shasta General Plan (City General Plan, p. 4-10), as well as failing to give any consideration to the damage that will be caused to the roadways by the heavy truck traffic the Project will generate. (See Brohard, p. 7.)

Is it the intent of the County to approve the Project without requiring the applicant to pay its fair share for the needed intersection improvements? The Project will certainly contribute to traffic and will benefit from the improvements. Is it also the intent of the County to allow the Project applicant to foist off the cost of road repairs onto the taxpayers as the heavy trucks roll through without any obligation to pay mitigation fees for the damage? The City of Mt. Shasta, as well as its citizens, and the citizens of the County, may not wish to subsidize a private company in this way, and it is certainly questionable whether this is the proper or legal use of taxpayer money.

5. Project impacts to biological resources

The biological resources chapter of the DEIR is notable for what it does not include. The chapter relies upon discussion in the chapter itself, and Appendices N and O, a *Biological Database Queries and List of Species Observed* and a *Special Status Species Table*, respectively. Appendix O indicates that of 58 plant species potentially in the areas of the project sites, (based on the DEIR's evaluation of habitat), 23 (36%) have suitable habitat in the project site. A survey was performed on August 24, 2016, to look for these species, none of which were observed on that day. One species, the thread-leaved beard tongue, is deemed still potentially present since its bloom period does not include August, and it is the only plant species for which mitigations are proposed for its protection. (DEIR, p. 4.3-10 and Exhibit N.)

The DEIR treats another special status species, the wooly balsamroot, which also has a bloom period of April-June and for which there is suitable habitat. (Exhibit O.) This plant species must also be covered in the mitigation measures.

Again, the data collection and analysis falls well short of what is required under CEQA and would fulfill the County's disclosure requirements regarding Project impacts. *One day* of observation is inadequate to look for these special status species. The California Department of Fish and Wildlife ("CDFW")

Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities, states that multiple visits for flowering plants is the proper protocol. Citing to the guidelines of the Federal Fish and Wildlife Service ("USFWS"), the CDFW protocols state as follows:

> **TIMING AND NUMBER OF VISITS**
> Conduct surveys in the field at the time of year when species are both evident and identifiable. Usually this is during flowering or fruiting. Space visits throughout the growing season to accurately determine what plants exist on site. Many times this may involve multiple visits to the same site (e.g. in early, mid, and late-season for flowering plants) to capture the floristic diversity at a level necessary to determine if special status plants are present. The timing and number of visits are determined by geographic location, the natural communities present, and the weather patterns of the year(s) in which the surveys are conducted. (https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline.)

Ten of the plant species eliminated from further evaluation have bloom periods ending in August, and a survey in the last week of August is inadequate to ensure these species are not present, particularly in light of the fluctuations that have been observed in the beginning and ending of seasons in the past few years. Additional observation days earlier in the summer are required, or alternatively all these species should be included in mitigation measures. (The ten species are, giving common names: marbled wild ginger, Greene's mariposa lily, pink-margined monkeyflower, subalpine aster, Aleppo avens, alkali hymenoxys, woodnymph, Cooke's phacelia, Gasquet rose, little-leaved huckleberry).

The DEIR also failed to respond to comments submitted in response to the Notice of Preparation, identifying other special status species that may appear on the site. Local wildlife biologist, Francis Mangels, sites additional species of special concern that are not included in Appendix O and must also be evaluated in the DEIR: Pallid birds beak, California yellow leg frog, Cascade frog, goshawk, rubber boa snake, California mountain king snake, fisher, gray fox, and marten, and several species of mollusks. Mr. Mangels is retired from a 35-year career with the USDA as a GS-11 scientist with extensive wildlife and environmental sciences background and experience. He has lived in the area since 1981. He has provided this information in his comments, but it has not been addressed in the DEIR.

The DEIR must include an adequate study to determine whether state and/or federally listed species are present on the Project site. Only then will it be possible to determine what mitigation is necessary. Consultation with both the CDFW and the USFWS should be undertaken, and a mitigation plan developed. Because the Project will require FDA approval of the bottling process (DEIR, p. 3-40), the applicant must consult with the USFWS regarding the potential impacts to federally listed species.

With respect to impacts to off-site biological resources, the DEIR fails to acknowledge that the proposed sewer pipes that are to be replaced along S. Old Stage Road will pass over an unnamed perennial creek that is part of the Cold Creek complex that flows into Lake Siskiyou and the Sacramento River (Waters of the U.S. designation).

The DEIR does acknowledge that significant impacts to the stream could occur, and then relies upon other regulatory agencies and permits to conclude that the impact would be less than significant. (DEIR, p. 4.3-21 and 4.3-28, mitigation measure S-4.3-3.) There is no analysis of impacts of the creek bed disturbance to Biological Resources. This is essential since sensitive mollusk species as well as others are known to occur in the Cold Creek drainage area.

The biological resources chapter further omits analysis of several other Project impacts. Option 4 for disposal of wastewater proposes to use treated effluent to irrigate up to 12 acres of land surrounding the bottling plant. (DEIR, pp. 3-18 to 3-22.) The DEIR falls short by analyzing only the impacts of construction of the irrigation system, ignoring the impacts of operating the system. Biological resource impacts from *operation* of the irrigation system are likely to be significant. The water put on these areas (equivalent to about 50 inches of rain during what is otherwise the dry period) could potentially lead to long-term alteration of the vegetation and habitat. The DEIR ignores this tremendous increase in water throughout the entire year, stating that after construction of the irrigation system, the affected habitats "would be allowed to return to their pre-project conditions following construction." (DEIR, p. 4.3-24.) This is simply wrong. The area to be irrigated will not go back to its pre-project condition until after the plant closes or another method of wastewater disposal is employed. The biological resources impacts of the alteration of habitat, impact to sensitive species, etc. must be evaluated.

Similarly, the DEIR fails to consider long-term operational impacts to biological resources. There is no mention in the DEIR of potential impacts to plants or fish and wildlife from the ongoing noise, air emissions or traffic.

Finally, mitigation measure 4.6-1a proposes the installation of solar arrays to mitigate energy use and GHG emissions. There is no biological resource evaluation of the impacts of installation and operation of these solar panels. As stated above with respect to the aesthetic impacts of the solar arrays, the impacts of a proposed mitigation measure must be analyzed and mitigation measures proposed to alleviate the impacts of the measure.

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

All counties and cities must adopt a general plan for the physical development of their land. (Gov. Code § 65300.) The general plan functions as a "constitution for all future developments" and land use decisions must be

consistent with the general plan and its elements. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570.) A "project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. [Citation.]" (*Corona–Norco Unified School Dist. v. City of Corona, supra,* 17 Cal.App.4th at p. 994.) Perfect conformity is not required, but a project must be compatible with the objectives and policies of the general plan. (*Families Unafraid to Uphold Rural Etc. County v. Board of Supervisors* (2005) 62 Cal.App.4th 777, 1336.) A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear. (*Id.* at pp. 1341–1342; and *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.)

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.

CEQA requires that the County take into consideration this inconsistency with applicable general plans, and this is a significant impact under CEQA and must be mitigated, and alternatives to the Project as proposed must be considered in order to reduce the impacts.

As noted above, the DEIR fails to take into consideration the future intersection improvements identified in the Circulation Element of the City of Mt. Shasta General Plan (City General Plan, p. 4-10), as well as failing to give any consideration to the damage that will be caused to the roadways by the heavy truck traffic the Project will generate. The County may not simply ignore this direct conflict with the City General Plan.

The DEIR also finds that the Project will result in noise impacts to at least one residence that conflicts with the General Plan noise standards and that mitigation of this impact is "infeasible" and so it would remain significant and unavoidable. (DEIR, pp. 4.10-24 to 4.10-25.) There are, of course, mitigation measures that could be considered, including a reduction in the size of the plant in order to reduce traffic and its associated noise, as well as the option of operating only during daytime hours. Failing to disclose this land use conflict is a violation of CEQA on its own, and it is also a violation of the State Planning Laws. The County may not approve a project that violates a general plan policy that is fundamental, mandatory, and clear. (*Endangered Habitats League, Inc. v. County of Orange, supra,* 131 Cal.App.4th at 782.) The Project violates a clear, mandatory noise standard.

The County may not simply note the "unavoidable" impact and move on. The Project is inconsistent with the surrounding community and this must be disclosed and modification of the Project proposal must be undertaken in order to become consistent with the applicable General Plans.

D. Conclusion

Because of the issues raised above, we believe that the DEIR 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 DEIR.

Sincerely,

// Marsha A. Burch //

Marsha A. Burch
Attorney

cc: Gateway Neighborhood Association