

From: [Horace Lucido](#)
To: [Kira Noguera](#)
Subject: Application N. C-17-013
Date: Friday, May 19, 2017 6:16:36 PM

Dear Ms. Noguera,

We are Horace and Vincie Lucido. We live at 6064 N. Tracy Ave. South East of the proposed development (Application N. C-17-013) on the corner of Bullard and Figarden Loop. We have lived here for 14 years, so we are well aware of the traffic patterns and nearby businesses.

First, we do not need another gas station and convenience store that will do nothing but exacerbate traffic on that corner. There is a Shell gas station/convenience store across the street that well meets the needs of our local area-it is never overflowing with customers. We are in agreement with the director for denial of alcohol use as we have alcohol stores both across the street and kitty corner to the development...plenty of alcohol.

What we do need is a small/medium food store of the "Trader Joe" variety, urgent medical care center , coffee shops like Starbucks/Dutch Bros., small boutiques and the like.

We are glad that the property is being developed and that you are seeking public input in considering the good of the neighborhood.

Regards,

Horace and Vincie Lucido

--

Rog (Horace) Lucido, Physics Instructor, Ret.
Author of *Educational Genocide-A Plague on our Children*
and *Returning Sanity to the Classroom-Eliminating the Testing Mania*
Phone: 559-277-1312
Cell: 559-355-4215
email: roglucido@gmail.com

From: [Darrell Regensburg](#)
To: [Kira Noguera](#)
Cc: ["work2"](#)
Subject: notice of intent
Date: Monday, May 22, 2017 11:09:17 AM

I wanted to respond to the notice of intent to build on the corner of Bullard and Figarden Dr. I would be against the build because it would provide another outlet for beer and wine and so on. We don't need another corner selling alcohol. We already have issues with the homeless in the area drinking and then making a mess, but the greater need in our area is to provide for families in an effective way and this isn't it. There do need to be options for more family places for recreation and enjoyment, but a new minimart misses the mark. Alcohol just destroys the fabric of a community, and we already have four establishments within a stone's throw of our church that serve alcohol. The corner in question does need to be developed ,but this suggestion needs to be voted down! Alcohol gets into lives very quietly, and then it begin to eat away at the character of lives, finances, and relationships destroying everything it touches. We need to wait for a better option. Sincerely
Pastor Darrell Regensburg

May 25, 2017

City of Fresno
Development & Resource Management Department
2600 Fresno Street, Room 3043
Fresno, CA 93721

To Whom it May Concern,

In reference to Assessor's Parcel No. 509-290-07 dated May 17, 2017.

As a single female resident living within seventy five yards of the proposed commercial center store and gas station I have many concerns about both my personal safety and the impact it will have on my property and the properties of the residents immediately around this center.

Why should those residing around this center have to put up with twenty four hour noise, increased traffic and the real possibility of crime and unsightly development in our neighborhood. Wouldn't yet another store selling alcohol oversaturate our neighborhood since we already have four stores on three corners in very near proximity to our homes selling liquor now? I feel more availability of liquor would just increase the crime rate and eventually decrease our property value in this neighborhood. If this goes through, how will the city protect my property as well as my personal safety? Whats stopping criminals and vandals from jumping my fence and injuring themselves and or me? Will the city pay for their injuries and litigations against me? We need safety plans in place for these possibilities before this plan goes through. I implore you to please reconsider the location of this facility.

Thank you for your time and attention on this matter.

Sincerely,

A handwritten signature in cursive script that reads "Elaine B. Gross". The signature is written in dark ink and is positioned above the typed name and address.

Elaine Gross
4414 W. Morris Ave.
Fresno, CA 93722

Jagtar Singh (Deep Market)
5650 N. Figarden DR, Fresno, CA 93722
(559)-271-2456 prabgill1992@gmail.com



May 25, 2017

City of Fresno Development and Resource Management Department

Dear Jennifer Clark,

The purpose of this letter is to protest the possibility of approval of application No. C-17-013. First and foremost, we are a small local family business that has been operating in this community for almost 4 years. Additionally, we have been living in this community for the last 17 years (directly behind the property of concern). We understand that the City of Fresno emphasizes great importance on small businesses, and that is why we have decided to express our concerns.

The approval of this subject application will have negative consequences on our family business on a tremendous level. To start off, our family has invested a significant amount of capital (over \$420,000) to purchase this business. Secondly, this is the only business we own, and therefore, are heavily dependent on it for our family income.

Continuing, one of the most important factors considered when purchasing our business was the zoning contingencies of the property in question. It was in our understanding that the use of this property was specifically for development of offices, such as the properties adjacent to it. Due to this, the approval of the subject application will not only be a significant disappointment to us, but also to the numerous other business owners that might have considered the same factors when making their investments.

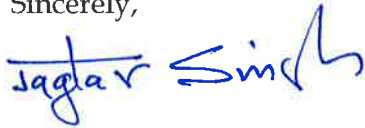


Expanding on this, the current market of gas stations and/or convenience stores is extremely saturated when analyzing our area. Currently, there are over 8 gas stations in a two-mile radius from our location. Additionally, this number easily doubles when considering convenience stores W/O fuel pumps. Furthermore, there is also a Walgreens located across from the subject property. When considering there is already an excess supply of businesses in our market which has led to extreme saturation, the approval of this project would be further detrimental.

As mentioned previously, we have owned a residence directly behind the concerning property for over 17 years. As a home owner, the operation of a 24-hour business this close to our neighborhood is very concerning. Besides the blatant noise pollution, the already present homelessness/loitering problem will only become worse. Couple that with increased levels of traffic congestion, it will eventually lead to a devaluation of the residential properties in our community.

We hope you take these statements into serious consideration, as the decision of this project will not only affect the surrounding businesses, but also the quality of life of the residential community right behind it.

Sincerely,



Jagtar Singh (Deep Market)



May 26, 2017

Jennifer Clark
Director, Fresno City Development and
Resource Management
2600 Fresno Street
Room 3065
Fresno, CA 93721

Re: Protest of Director's Approval of Conditional Use
Permit Application C-17-013

Dear Director Clark:

Our office represents Second Generation LP., the owners of real property located at 5650 N Figarden Dr, Fresno, CA 93722. Our client's property is directly across the street from the property at issue in the Conditional Use Permit ("CUP") # C-17-013, APN: 509-290-07, currently zoned CC/UGM, and located at 5647 North Figarden Drive, (the Project). For the following reasons, the Project should **not** be approved.

FAILURE TO COMPLY WITH CEQA REQUIREMENTS

1. *The Project is not appropriate for categorical exemption because there is a reasonable possibility that the proposed Project will likely result in significant negative effects to traffic, noise, and/or water quality.*

The public process to review and comment on the Project was significantly truncated by The City Development and Resource Management Department (the Department) issuing a "Categorical Exemption" that allowed the Project to be reviewed and approved by the Director without completing a standard California Environmental Quality Act (CEQA) review.

Categorical exemptions are not absolute; instead they are descriptions of types of projects which the Secretary of the Resources Agency has determined **do not usually** have a significant effect on the environment. (Code of Regulations, Title 14, Div. 1, Chapter 3, Article 19, §15300.2.) The regulations provide that "[a] categorical exemption **shall not** be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." (*Id.*) Section 15300.2 is a specific exception to a categorical exemption required to be considered by the lead agency under Code of Regulations, Title 14, Div. 1, Chapter 3, Article 5, §15061(b)(2). The findings in the small amount of environmental study that was done establish that this Project does not qualify for such a categorical exemption.

Daniel C Stein
Attorney at law
dstein@bakermanock.com

Fig Garden Financial Center
5260 North Palm Avenue
Fourth Floor
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The criteria for the In-fill project exemption used to approve the Project here states that a project cannot "result in any significant effects relating to traffic, noise, air quality, or water quality." (Code of Regulations, Title 14, Div. 1, Chapter 3, Article 19, §15332(d). If there are potential negative environmental impacts of a proposed project then the project must go through a more extensive public process to study and resolve those potential impacts

The department's review of the Traffic Impact Study ("TIS") notes that while the studied intersections "are currently above the TIZ III LOS D standard. With the addition of the project and approved/pending projects the study intersections are projected to continue to operate at or above the TIZ III LOS D standard. The intersections of Bullard and Dante Avenues and Figarden and Bullard Avenues are project to operate below the TIZ III LOS D standard in the cumulative year scenarios."

The traffic study shows that the Project will degrade the two intersections from their current compliance with the established standards to operating below the acceptable standards set by the City of Fresno. In addition to traffic, there are potential environmental impacts to groundwater with spilled gasoline and potentially leaky tanks and to noise due to the 24-hour operation of the Project. The negative impact on the environment, documented in the traffic study in and of itself, disqualifies the Project from receiving the categorical exemption. The traffic impacts, noise, and water quality impacts all require more study and appropriate mitigation through a public process.

Infill project requirements stated in Public Resources Code §§ 21094.5 and 21094.5.5, make clear that the in-fill development project exemption can only be used if there are no potential adverse environmental issues. It provides that categorical exemption guidelines should only apply to infill projects that **promote and provide environmental benefits**. Those performance standards require the particular project to promote, among other statewide objectives including, reduced regional automobile use, reductions in greenhouse gas emissions, increased energy and water efficiency, and public health. Other projects are not eligible for the streamlined process. If anything, a new 24 hour gas station convenience store will impair, rather than promote those statewide objectives that justify use of the categorical exemption.

The Project does not satisfy the statutory requirements nor those set forth in the Code of Regulations, Title 14, Div. 1, Chapter 3, Article 19, §15332. Therefore, the Department must revoke the exemption and prepare an Initial Study ("IS") to determine whether the Project may have a significant effect on the environment before this Project can be approved.

2. *CEQA requires an Initial Study for this Project.*

Both CEQA and the State CEQA guidelines provide that if the Project is not exempt from CEQA the Lead Agency must conduct an Initial Study. (See, Code of Regulations, Title 14, Div. 1,

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Chapter 3, Article 1, §15002(k).) Here, no Initial Study has been conducted that complies with the requirements of Code of Regulations, Title 14, Div. 1, Chapter 3, Article 5, §15063.

The statute that CEQA regulations are based in part on, Pub. Res. Code § 21083, which provides that “a project may have a “significant effect on the environment” if one or more of the following conditions exist:

(1) **A proposed project has the potential to degrade the quality of the environment**, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, “cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(3) **The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.**

(Emphasis added.)

The regulations similarly provide that “in evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.” (Code of Regulations, Title 14, Div. 1, Chapter 3, Article 5, §15064(d).) The regulations specifically state that “examples of direct physical changes in the environment are the dust, ***noise, and traffic*** . . .” (*Id.* (Emphasis added).)

Due to the likely increased noise from a 24-hour gas station/convenience store on the Project site and the traffic impacts as noted in the TIS, there is obvious potential for this Project to both degrade the quality of the environment and cause direct or indirect substantial adverse effects of the surrounding population. CEQA requires the impact of this Project to be evaluated under a proper Initial Study before there can be any approval by the Department.

ALCOHOL SALES

Your conclusion that alcohol sales are inappropriate for the Project the premises is sound. The reasons for denying an alcohol license also support denial of the proposed 24-hour gas station/convenience store operation. Specifically, a 24-hour gas station/convenience store in this location will be vastly different from the character of the neighborhood and the surrounding commercial uses. Contrary to the Department's finding the proposed use will be detrimental to the character of the long standing character of the immediate neighborhood.

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A number of studies have found that in and near neighborhoods where there is a high density of places that sell alcohol, there is a higher rate of violence.¹ Similarly, operation hours are by far the strongest factor contributing to convenience store robbery, particularly for stores open 24-hours a day.² Late evening to early morning hours carry a greater risk of being targeted, because fewer people are out, like other customers, police, or passersby, who might intervene. Indeed, at least one study of service stations conducted by Mobil found that most robberies occur between the hours of 10 p.m. and 4 a.m.³ While robberies do occur when businesses are closed, a closed business is much more secure and any robbery that might occur has much less risk of injury or death.

Further, the 24-hour operation of the gas station/convenience store will likely attract and promote vagrancy and noise late at night in an area where currently there are no 24-hour businesses attracting traffic noise, vagrancy and crime. The significant risk of the Project attracting this activity further underscores the arguments of why this Project is not eligible for a Categorical Exemption under CEQA and should proceed to an Initial Study before any approval is granted. Finally, introducing a 24-hour business that inherently consists of transactions outside will have noise impacts that must be studied to determine appropriate mitigation or whether those noise impacts can be sufficiently mitigated to meet the late night maximum allowable noise levels.

LACK OF NEED

Another gas station in this area is not needed to serve the public. There are already a substantial number of gas stations/convenience stores in the immediate area. At least eight (8) gas/service stations are within a two mile radius from the proposed Project. (See, **Exhibit A** attached hereto.) Permitting another gas station at this location will only serve to dilute the already saturated gas station/convenience store market and make it more difficult for those businesses to continue to be economically viable.

¹ See, Gorman, D., Speer, P., Gruenewald, P., and Labouvie, E. (2001) Journal of Studies on Alcohol, 62: 628-636; See also, Scribner, R. et al. (1995) The risk of assaultive violence and alcohol availability in LA County, American Journal of Public Health, 85:335-340; and see, Gruenewald, P.J. and Remer, L. Changes in outlet densities affect violence rates. In review, Alcoholism: Clinical and Experimental Research, 2004.

² Taylor, N. (2002). "Robbery Against Service Stations and Pharmacies: Recent Trends." Trends & Issues in Crime and Criminal Justice, No. 223. Canberra: Australian Institute of Criminology. http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi223.pdf

³ Hume, J. 1996. "Service stations: Training targets violence", Security Australia, vol. 16, no. 8, pp. 24-26.

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CONCLUSION

The proposed Project cannot legally move forward under a categorical CEQA exemption for in-fill development or any other exemption. Approval of this CUP requires a complete CEQA review process and a public hearing before the Planning Commission.

The scope of the proposed Project is not well suited for the circumstances of the location and it certainly should not be approved for 24-hour operations. At the very least, an Initial Study must be conducted and public hearings must be held before the Project can move forward.

For all the foregoing reasons, we ask that you reconsider your preliminary decision and order that the Project undergo an Initial Study and be referred to the Planning Commission for further consideration after the Initial Study is completed.

Very truly yours,



Daniel C Stein
BAKER MANOCK & JENSEN, PC

DCS:DCS
cc: Steve Brandau

EXHIBIT A

Stations within 2 miles of Shell 5650 N. Figarden Drive

1. Chevron, 3769 W Shaw Ave (1mi)
 - (559) 275-7479
2. 76, 4020 W Shaw Ave (1mi)
 - (559) 275-9851
3. Valero, 4514 W Shaw Ave (1.4mi)
 - (559) 275-7904
4. 7-Eleven, 6875 N Milburn Ave
 - (559) 447-8672
5. Shell, 5316 W Shaw Ave (1.7mi)
 - (559)-271-7000
6. Chevron, 5270 W Shaw Ave (1.7mi)
 - (559) 275-2008
7. Chevron, 5310 W Spruce Ave (2mi)
 - (559) 277-9666
8. 76, 5480 W Shaw Ave (2mi)
 - (559) 275-8623

RECEIVED

June 3, 2017

JUN 06 2017

Planning Division
Planning & Development Dept
CITY OF FRESNO

To Jennifer K. Clark, AICP, Director:

We regretfully misplaced your Notice of Intent to take action - conditional use permit application no. C-17-013.

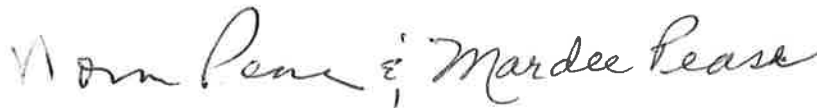
Even though we are late in responding, we decided to write and let you know how we feel about the complex being proposed for building on the corner of N. Figarden Dr. & W. Bullard Ave. in Fresno, CA. We own a home nearby, and know that an added complex will take down property value in the nearby residential area.

If alcoholic beverages are able to be sold at AM/PM, that can possibly bring undesirable patrons into the area, which would make it less safe for those who live nearby. It also may encourage drinking & driving. Please do all you can do to keep the sale of alcoholic beverages from being approved for this complex, if it is to be built.

Thank you for all of your efforts to help keep this a safe neighborhood.

Sincerely,

Norman & Mardee Pease

A handwritten signature in cursive script that reads "Norm Pease & Mardee Pease". The ink is dark and the signature is written in a fluid, connected style.

Ashley Bayless
4270 W. Regency Ave Apt #102
Fresno, Ca 93722

FRESNO CA 936

APT #102

JUN 2017 PM 11



Kira Noguera
City of Fresno Development & Resource
Management
City Hall
2600 Fresno Street, Room 3043
Fresno, CA 93721-1026

-362000



Public Comment Re: CUP Permit Application No. C-17-013

I am a resident in the surrounding neighborhood of the proposed project being considered for approval by the City. I am opposed to the City's approval of this project on the following grounds:

- ☒ The 24 hour nature of the proposed project is inconsistent with the character of the existing neighborhood and I have concerns that such a business will increase vagrancy, crime and noise, especially at night.
- ☒ I do not believe that another gas station is needed to service the needs of the surrounding residents.
- ☒ I am concerned about the additional traffic that will be generated by the proposed project.

Sincerely,

Moses Castillo

Concerned Citizen

July 3, 2017

Kira Noguera
Planner, Fresno City Development and
Resource Management
2600 Fresno Street
Room 3043
Fresno, CA 93721-1026

Daniel C Stein
Attorney at law
dstein@bakermanock.com

Fig Garden Financial Center
5260 North Palm Avenue
Fourth Floor
Fresno, California 93704
Tel: 559.432.5400
Fax: 559.432.5620
www.bakermanock.com

Re: Objections to City of Fresno Notice of Intent to Adopt
a Negative Declaration of Conditional Use Permit
Application C-17-013

Dear Ms. Noguera:

As you are aware, our office represents Second Generation LP., the owners of real property located at 5650 N. Figarden Dr, Fresno, CA 93722. Our client's property is directly across the street from the property at issue in the Conditional Use Permit ("CUP") # C-17-013, APN: 509-290-07, currently zoned CC/UGM, and located at 5647 North Figarden Drive, (the Project). For the following reasons, the City should **not** approve the Negative Declaration as proposed.

**APPROVAL OF THE NEGATIVE DECLARATION
DOES NOT COMPLY WITH CEQA**

1. *The City's use of the MEIR is not appropriate because there is a substantial evidence from the City's own studies that show a reasonable possibility that the proposed Project will likely result in significant negative effects to traffic, noise, and/or water quality.*

Overall, the findings in the Proposed Negative Declaration are not site specific and largely rely on the City's prior issued Master Environmental Impact Report (MEIR) to draw conclusions as to the Project's impact, or lack thereof, on the surrounding environment. As the City is aware, there have been concerns raised with the City about the multitude of zoning changes taken in 2016 as part of the City's General Plan and Development Code Update where the land use designation of approximately 9,500 parcels within the City's current Sphere of Influence was changed. The zoning for the subject parcel underlying the Project was changed as part of that update. We understood that the City would not simply use and rely on the broad conclusions in the MEIR to make site specific conclusions on parcels where the zoning changes resulted in an increase in permissible uses on the property that were inconsistent with the historical uses. Yet this seems to be exactly what the City is doing herein by proposing a negative declaration largely on the general conclusions made in the MEIR.

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The California Environmental Quality Act (CEQA) requires that “[a]ll phases of project planning, implementation, and operation must be considered in the Initial Study of the project.” (Code of Regulations, Title 14, Div. 1, Chapter 3, Article 19, §15063(a)(1). As stated in your own document, “[e]arlier analyses may be used where, pursuant to the tiering, program EIR or MEIR, or other CEQA process, *an effect has been adequately analyzed in an earlier EIR* or negative declaration. Section 15063(c)(3)(D)” (Emphasis added.)

As we previously pointed out, the findings in the small amount of site specific environmental study that was done establish that the use of the broad conclusions from the MEIR are inconsistent with the significant effects that the Project will have on noise, light and traffic.

Specifically, the department’s Traffic Impact Study (“TIS”) notes that while the studied intersections “are currently above the TIZ III LOS D standard. With the addition of the project and approved/pending projects the study intersections are projected to continue to operate at or above the TIZ III LOS D standard. *The intersections of Bullard and Dante Avenues and Figarden and Bullard Avenues are projected to operate below the TIZ III LOS D standard in the cumulative year scenarios.*” (Emphasis added.)

The TIS *is* substantial evidence that the Project will degrade the two intersections from their current compliance with the established standards to operating below the acceptable standards set by the City of Fresno. In addition, we have concerns about the Project’s environmental impacts to groundwater with spilled gasoline and potentially leaky tanks and to light and noise due to the 24-hour operation of the Project. The traffic impacts, light, noise, and water quality impacts all require more site specific study and appropriate mitigation through a public process rather than approval under broad non-site specific conclusions associated with the City’s MEIR as part of its General Plan and Development Code Update process. Here, no Initial Study has been conducted that complies with the requirements of Code of Regulations, Title 14, Div. 1, Chapter 3, Article 5, §15063.

CEQA guidelines and regulations provide that the Lead Agency can only prepare a Negative Declaration “if there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment.” At the very least, the City does not have sufficient information to conclude that there is no substantial evidence supporting the issuance of a negative declaration under the present circumstances.

The statute that CEQA regulations are based in part on, Pub. Res. Code § 21083, which provides that “a project may have a “significant effect on the environment” if one or more of the following conditions exist:

- (1) **A proposed project has the potential to degrade the quality of the environment**, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

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(2) The **possible effects of a project are individually limited but cumulatively considerable**. As used in this paragraph, “cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(3) **The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.**

(Emphasis added.)

The regulations similarly provide that “in evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.” (Code of Regulations, Title 14, Div. 1, Chapter 3, Article 5, §15064(d).) The regulations specifically state that “examples of direct physical changes in the environment are the dust, ***noise, and traffic*** . . .” (*Id.* (Emphasis added).)

Due to the likely increased noise from a 24-hour gas station/convenience store on the Project site and the traffic impacts as noted in the TIS, there is obvious potential for this Project to both degrade the quality of the environment and cause direct or indirect substantial adverse effects of the surrounding population. CEQA requires the impact of this Project to be evaluated under a proper Initial Study before there can be any approval by the Department.

The express stated purposes of an Initial Study are to: “(1) Provide the Lead Agency with information to use as the basis for deciding whether to prepare an EIR or a Negative Declaration; (2) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a Negative Declaration; (3) Assist in the preparation of an EIR, if one is required, by: (A) Focusing the EIR on the effects determined to be significant, (B) Identifying the effects determined not to be significant, (C) Explaining the reasons for determining that potentially significant effects would not be significant, and (D) Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects; (4) Facilitate environmental assessment early in the design of a project; (5) Provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment; (6) Eliminate unnecessary EIRs; (7) Determine whether a previously prepared EIR could be used with the project.”

CEQA requires a genuine evaluation on the particular project's impact on the surrounding environment, not just a conclusion that a project will have no impact based on previously issued MEIR that did not actually assess the impact that the specific project at issue would have on the environment.

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2. *The conclusions of the impacts of the Project on the environment are inaccurate and self-serving.*

On page 4 of the purported Initial Study, you state that “I find that the proposed project is a subsequent project identified in the MEIR and that it is fully within the scope of the MEIR because it would have no additional significant effects that were not examined in the MEIR such that no new additional mitigation measures or alternatives may be required. All applicable mitigation measures contained in the Mitigation Measure Monitoring Checklist shall be imposed upon the proposed project. A NEGATIVE DECLARATION will be prepared.”

On page 7, you indicate that there is less than a significant impact to substantially degrade the existing visual character or quality of the site and its surroundings. Your analysis concludes at page 8 that “[t]he proposed project would be consistent with the overall character of the area; therefore, the impact to the visual character of the area will be less than significant.” However, as we previously pointed out, there is not a 24-hour gas station/convenience store in this location and permitting such will be vastly different from the character of the neighborhood and the surrounding commercial uses. Contrary to the Department’s finding the proposed use will be detrimental to the character of the long standing character of the immediate neighborhood.

A number of studies have found that in and near neighborhoods where there is a high density of places that sell alcohol, there is a higher rate of violence.¹ Similarly, operation hours are by far the strongest factor contributing to convenience store robbery, particularly for stores open 24-hours a day.² Late evening to early morning hours carry a greater risk of being targeted, because fewer people are out, like other customers, police, or passersby, who might intervene. Indeed, at least one study of service stations conducted by Mobil found that most robberies occur between the hours of 10 p.m. and 4 a.m.³ While robberies do occur when businesses are closed, a closed business is much more secure and any robbery that might occur has much less risk of injury or death.

Further, the 24-hour operation of the gas station/convenience store will likely attract and promote vagrancy and noise late at night in an area where currently there are no 24-hour businesses

¹ See, Gorman, D., Speer, P., Gruenewald, P., and Labouvie, E. (2001) Journal of Studies on Alcohol, 62: 628-636; See also, Scribner, R. et al. (1995) The risk of assaultive violence and alcohol availability in LA County, American Journal of Public Health, 85:335-340; and see, Gruenewald, P.J. and Remer, L. Changes in outlet densities affect violence rates. In review, Alcoholism: Clinical and Experimental Research, 2004.

² Taylor, N. (2002). “Robbery Against Service Stations and Pharmacies: Recent Trends.” Trends & Issues in Crime and Criminal Justice, No. 223. Canberra: Australian Institute of Criminology. http://www.aic.gov.au/media_library/publications/tandi_pdf/tandi223.pdf

³ Hume, J. 1996. “Service stations: Training targets violence”, Security Australia, vol. 16, no. 8, pp. 24–26.

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attracting traffic noise, vagrancy and crime. The significant risk of the Project attracting this activity further underscores the arguments of why this Project is not eligible for a Categorical Exemption under CEQA and require an adequate, site specific Initial Study before any approval is granted. Finally, introducing a 24-hour business that inherently consists of transactions outside will have noise impacts that must also be studied to determine appropriate mitigation or whether those noise impacts can be sufficiently mitigated to meet the late night maximum allowable noise levels.

On page 7, you indicate that there is less than a significant impact with regard to creating a new source of substantial light or glare which would adversely affect day or nighttime views in the area. However, on page 8, you also conclude that “[t]he development of the site will not create a new source of substantial light or glare which would affect day or night time views in the project area, given that during the entitlement process, staff will ensure that lights are located in areas that will minimize light sources to the neighboring properties. Further, Mitigation Measures (MM) AES-1, and AES-3 require lighting systems for street and parking areas to be shielded to direct light to surfaces and orient light away from adjacent properties. As a result, the project will have a less than significant impact on aesthetics.” Thus, while the page 7 chart indicates there are less than significant impacts from the project, the analysis itself tends to suggest that the only way that the project would create less than a significant impact would be with mitigation measures. However, there is little to no analysis with respect to how the mitigation measures will actually achieve the stated objective.

More significantly, there is **no** analysis on the substantial light and/or glare that will result from the 24 hour nature of the Project on the surrounding residential properties. Just given the 24 hour nature of the project itself in this particular neighborhood, it is hard to imagine that the light pollution will not have a potentially significant impact on the surrounding environment. We have seen no evidence of any study nor explanation in the purported initial study of how the effects from the project were within the scope of and adequately analyzed in the City’s MEIR nor any statement of whether such effects were addressed by mitigation measures based on the earlier analysis as required in paragraph 7b of the purported Initial Study.

With respect to air quality, at pages 14-15, the purported Initial Study states that “[t]he proposed project is subject to District Rule 9510 (Indirect Source Review). District Rule 9510 is intended to mitigate a project’s impact on air quality **through project design elements or by payment of applicable off-site mitigation fees. The project developer will be required to obtain applicable permits from the SJVAPCD in order to comply with all applicable air quality plans.** (Emphasis added.) However, District Rule 9510, section 5.0 “Application Requirements” provides that “Any applicant subject to this rule shall submit an Air Impact Assessment (AIA) application **no later than applying for a final discretionary approval with the public agency.**” Here, it is insufficient to simply state that the project developer will be required to obtain the applicable permits from SJVAPCD when the actual rule itself required that the AIA must have

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already been filed. It is completely arbitrary to conclude in the purported Initial Study that “No violations of air quality standards will occur and no net increase of pollutants will occur” when the AIA has not even been completed or submitted to the SJVAPCD.

With respect to the analysis in the geology and soils, greenhouse gas, and hydrology and water quality sections, I would note that there is no site specific analysis nor explanation of how the effects from the project were within the scope of and adequately analyzed in the City’s MEIR, nor any statement of whether such effects were addressed by mitigation measures based on the earlier analysis as required in paragraph 7b of the purported Initial Study. Instead, there are simply unsubstantiated, bare conclusions that the proposed project would not result in any geology or soil or greenhouse gas emission, or any hydrology or water quality environmental impacts beyond those analyzed in MEIR. This is insufficient for CEQA compliance.

In regard to the section on Land Use and Planning, the purported Initial Study states that the “[o]bjectives and policies within the Fresno General Plan support economic development, efficient and equitable use of resources, and infill development.” As we previously noted, another gas station in this area is not needed to serve the public. There are already a substantial number of gas stations/convenience stores in the immediate area. At least eight (8) gas/service stations are within a two mile radius from the proposed Project. (See, **Exhibit A** attached hereto.) Permitting another gas station at this location will only serve to dilute the already saturated gas station/convenience store market and make it more difficult for those businesses to continue to be economically viable. The proposed Project is fundamentally not an efficient or equitable use of resources justifying the infill development at this site.

The Noise section of the purported Initial Study states that “Traffic to and from the project site is anticipated to be heavier during daytime, lessening during nighttime hours.” The Initial Study further concludes that “[t]he proposed project will not expose persons to excessive noise levels. Although the project will create additional activity in the area, the project will be required to comply with all noise policies from the Fresno General Plan and noise ordinance of the Fresno Municipal Code. Therefore, there will be no exposure to excessive noise and noise impacts would be less than significant.”

Significantly, the surrounding properties include residential areas, which limits decibel levels to 50 between the hours of 10:00 p.m. to 7:00 a.m. There is no information supporting the conclusion that a 24 hour gas station at this location will not result in noise levels above 50 decibels for this project site. Just given the 24 hour nature of the Project by itself, there is substantial evidence for a reasonable person to conclude that there will certainly be more traffic and noise generated that will result in noise levels exceeding those permitted by the “Noise Ordinance of the City of Fresno” (Fresno Municipal Code (FMC) Section 10-101, et seq.) The unsupported conclusions are insufficient for purposes of determining CEQA compliance under these circumstances.

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Finally, we take issue with the Mandatory Findings of Significance. Specifically, for all of the foregoing reasons, we strongly disagree with the conclusions that this Project “does not have the potential to degrade the quality of the environment,” that “there is no evidence in the record to indicate that incremental environmental impacts facilitated by this project would be cumulatively significant” and that “[t]here is no evidence in the record that the proposed project would have any adverse impacts directly, or indirectly, on human beings. Therefore there are no mandatory findings of significance.”

CONCLUSION

The proposed Project cannot legally move forward until the above issues are adequately studied and addressed and certainly no Negative Declaration can be issued under CEQA when the record contains information that the Project will have significant effects on the environment. The City’s reliance on the broad conclusions located within the MEIR do not adequately address nor examine the effects of this specific Project on the surrounding environment. Without an adequate explanation of how the MEIR does address the effects of the Project, the MEIR’s conclusions cannot satisfy the legal requirements for CEQA compliance.

For all the foregoing reasons, we would ask that the City deny the Project application unless and until the items identified in this letter are adequately studied and addressed as part of a complete CEQA review process, including an actual Initial Study, and a public hearing before the Planning Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Daniel C Stein', with a long horizontal flourish extending to the right.

Daniel C Stein
BAKER MANOCK & JENSEN, PC

DCS:DCS
cc: Steve Brandau

EXHIBIT A

Stations within 2 miles of Shell 5650 N. Figarden Drive

1. Chevron, 3769 W Shaw Ave (1mi)
 - (559) 275-7479
2. 76, 4020 W Shaw Ave (1mi)
 - (559) 275-9851
3. Valero, 4514 W Shaw Ave (1.4mi)
 - (559) 275-7904
4. 7-Eleven, 6875 N Milburn Ave
 - (559) 447-8672
5. Shell, 5316 W Shaw Ave (1.7mi)
 - (559)-271-7000
6. Chevron, 5270 W Shaw Ave (1.7mi)
 - (559) 275-2008
7. Chevron, 5310 W Spruce Ave (2mi)
 - (559) 277-9666
8. 76, 5480 W Shaw Ave (2mi)
 - (559) 275-8623