

Regular Council Meeting RECEIVED

October 19, 2023

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FRESNO CITY COUNCIL

CITY OF FRESNO
CITY CLERK'S OFFICE



Public Comment Packet

ITEM(S)

10:05 A.M. ID 23-1470

HEARING to consider Conditional Use Permit Application P22-03146 and related Environmental Assessment P22-03146 pertaining to ±1.38 acres of property located on the south side of West Bullard Avenue, between North Van Ness Boulevard and North Forkner Avenue (Council District 2) - Planning & Development Department.

1. DENY the appeal and ADOPT Environmental Assessment P22-03146, dated May 24, 2023, a determination of Categorical Exemption, Section 15332/Class 32 of the California Environmental Quality Act (CEQA) Guidelines; and,
2. DENY the appeals and UPHOLD the action of the Planning Commission and Planning and Development Department Director to approve Conditional Use Permit Application P22-03146, authorizing the adaptive reuse of an existing residence to be used as a new residential respiratory care facility (congregate living health facility), subject to compliance with the Conditions of Approval dated September 6, 2023.

Contents of Supplement: Public comment emails

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week

prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

Mary Quinn

From: Michael Durkee <[REDACTED]>
Sent: Tuesday, October 17, 2023 1:20 PM
To: Clerk; Jennifer Clark; Raj Badhesha
Cc: Richard Grassetti; Wanger, Andrew; Brent Smittcamp; Michael Durkee
Subject: Submission of Additional Materials Regarding Agenda Item #2, ID 23-1470, on the October 19, 2023, City Council Agenda
Attachments: Fresno - 2287 W. Bullard Appeal - Supplemental Submission (10.17.23).pdf
Follow Up Flag: Follow up
Flag Status: Flagged

External Email: Use caution with links and attachments

Dear City Clerk Stermer,

I hope you are well. Pursuant to Rule 11 (c) of the City of Fresno Rules of Procedure, and on behalf of neighboring property owners, including without limitation neighbor Brent Smittcamp and neighbor Andrew Wanger, we hereby respectfully submit the attached letter from Grassetti Environmental Consulting providing additional/supplemental comments and documents for inclusion in the City's administrative record for Agenda Item #2, ID 23-1470, on the October 19, 2023, City Council Agenda. That agenda item concerns the appeal of the determination by the City of Fresno Planning Commission that a proposed Congregate Living Health Facility to be constructed at 2287 West Bullard Avenue be granted a Conditional Use Permit; the Planning Commission further confirmed that the project was subject to an exemption from the California Environmental Quality Act. The pending appeal challenges both the Planning Commission's adoption of the exemption and its approval of the Conditional Use Permit.

Thank you

Respectfully submitted,

Michael Patrick Durkee, Esq.

Michael Patrick Durkee
Attorney at Law
[REDACTED]



Todd Stermer, CMC
City Clerk, City of Fresno
Via electronic mail to [REDACTED]

October 17, 2023

SUBJECT:
COMMENTS ON ENVIRONMENTAL ASSESSMENT AND PLANNING FINDINGS –
2287 WEST BULLARD AVENUE PROJECT (AGENDA DATE: OCTOBER 19, 2023
AGENDA ITEM #2, ID 23-1470)

Dear Mr. Stermer;

Grassetti Environmental Consulting (GECO) is submitting the following comments and documents on the appeal ("Appeal") of the determination by the City of Fresno Planning Commission that a proposed Congregate Living Health Facility to be constructed at 2287 West Bullard Avenue be granted a Conditional Use Permit; the Planning Commission further confirmed that the project was subject to an exemption from the California Environmental Quality Act (CEQA).¹

GECO is submitting this letter on behalf of the appellant neighboring property owners to the proposed project site. As GECO's Principal, I have reviewed the relevant documents summarized below with respect to 1) general conformance to requirements of the CEQA, and 2) appropriateness of Conditional Use Permit ("CUP") findings. I have over 40 years of experience preparing and reviewing CEQA documents and was previously the Zoning Administrator for the City of Richmond, CA. My qualifications are included as an attachment to this comment letter.

This letter is based on my review of all of the documents included in the links in the City of Fresno's legislative Information Center for File Number ID 23-1286, for the Planning Commission's Final Action of September 6, 2023, referred to as "Staff Report" for the balance of this letter. Where applicable, reference to an exhibit in this letter cites to exhibits attached to the Staff Report.

As detailed below, the Environmental Assessment is lacking critical information required to determine the significance of project impacts. In addition, the "Findings per Municipal Code Section 15-1306" fail to accurately and adequately address the project with respect to that code section.

¹ The CEQA statutes (Pub. Resources Code, § 21000 *et seq.*), and the Guidelines for the Implementation of CEQA (Cal. Code Regs., tit. 14, § 15000 *et seq.*) (Guidelines), detail the protocol by which state and local agencies comply with CEQA requirements. This letter refers to the statute and the Guidelines collectively as "CEQA."

[REDACTED]

[REDACTED]

CEQA Issues

Inadequate/Incomplete/Unstable Project Description

CEQA requires that the project itself must be consistently described, throughout the process of local agency consideration, in terms that are “accurate,” “stable” and “finite.” The Courts, in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, held “an accurate, stable and finite project description [is] the *sine qua non* of an informative and legally sufficient EIR.”

For this proposed project, there is no single ‘Project Description’ anywhere in the Staff Report and its related exhibits. The Operational Statement filed by the Applicant in June 2022 indicates that the project will consist of two phases. The first phase would be the remodeling and expansion of an existing residence to be operated as a Congregate Living Health Facility to provide “Complex Medical to Basic Medical Care and services.” (Exhibit C to Staff Report). The first phase would also include any necessary infrastructure necessary to support the project. However, this infrastructure is not specified beyond a brief discussion of providing ingress and egress to the project site. The second phase would include two additional structures (reduced by the Fresno Planning Commission to 2 structures) and “any leftover infrastructure that was not done during the first phase.” Again, the type of infrastructure, its location, and potential impacts are not disclosed in the Operational Statement.

Further illumination of the Project Description might be found in the Trip Generation Analysis from June 2023. In that document, the traffic engineer provided a description of the project as containing three buildings with over 13,000 combined square footage to accommodate 54 beds in a Congregate Living Health Facility. (Exhibit J to the Staff Report).

In July 2023, the Environmental Assessment included a one-paragraph summarized project description that is missing numerous critical components, as listed below. The files also include obsolete/non-final project plans and exhibits, as well as an operational statement. As discussed below, the lack of a single, stable project description conflicts with CEQA’s requirements

Further complicating the lack of a coherent, stable Project Description is the change in the project made by the Planning Commission when it reduced the number of structures from 3 to 2. That approval did not include any information about the number of beds per structure or how the different buildings would be operated—further frustrating the ability of persons reviewing the project documents to understand the project being proposed and its potential impacts.

In this case, the reader has to piece together sometimes conflicting information regarding the project description from the various documents mentioned above. Even if one were to piece those together, the following information is nowhere to be found:

- Number of beds/patients: There is no single disclosure of the number of beds –or the number of patients—to be served by the project. In addition, the various documents include a range. For example, the Environmental Assessment (Exhibit I to the Staff Report) project description summary identifies 9 bedrooms (it leaves unstated as to how many beds per bedroom) in the first building, and includes no discussion of the number of beds in each of the subsequent buildings. However, the

Trip Generation Analysis (Exhibit J to the Staff Report) assumes that with the three buildings originally proposed by the Applicant, the project would contain 54 beds (18 beds/building). At the Planning Commission, the project was reduced to two structures, but there is no mention of the number of beds that would result. The number of beds also impacts the appropriateness of the findings to support the issuance of a conditional use permit, as discussed below. .

- Types of Treatment: The Operational Statement says that the facility would provide “Impatient treatment.” While this might be a typographical error to “inpatient treatment,” it highlights the lack of specificity of whether other types of treatment, particularly outpatient, might be provided by the project.
- Number of employees – The Operational Statement lists some of the services provided and the types of team members (Exhibit C to the Staff Report). However, as with the number of beds proposed for the project, a firm, fixed count of the number of employees, both per building and in total, is not provided. It is also unclear as to whether the listed staff would per shift or include all three shifts. Moreover, there is no discussion of whether the staffing listed is for the first phase of the project, or whether all three buildings originally proposed in the Operational Statement will overlap and provide services between all of the buildings that make up the project in subsequent phases. Again, given the Planning Commission’s reduction in the number of structures does not illuminate how many staff are required and how they will be distributed, either over time or within the project site.
- Number of Patients: None of the project documents include information on the number of patients to be treated at the facilities described, the length of stay, or the anticipated number of patients to be served on a weekly, monthly, or annual basis. Furthermore, neither the method of patient transportation to the project site is disclosed nor the number of visitors is included.
- It is unclear what types and quantities of medical wastes would be generated at the facility and how would they be handled / disposed of.
- It is unclear what sorts of medical equipment would be installed at the facility.
- It is unclear if there would be any on-site laboratory facilities, and/or if there would be lab hoods and associated vents.
- While the Operational Statement provides a bullet list of services to be provided, there is no description of the equipment and supplies necessary to provide those services, the types of waste that may be generated by the facility, and the disposal of such waste. Nor is the number of patients who would receive those services provided.
- The Operational Statement notes that the project would include “pharmacy” treatment – does that include drug-addiction rehabilitation services?
- Subdivision of the Project Site. The Operational Statement indicates the project site will be subdivided as part of phase two, but does not provide any further information about that purpose and potential impacts of such a subdivision. Such a change may implicate parking, access, and operations.
- Would the project site need to be annexed to Community Facilities District (CFD) 9 to obtain public services?

Under CEQA, if there are minimal stated limitations on the use of a facilities, then the environmental analyses must assess the impacts of the full range of potential uses of that facility (see, for example Laurel Heights Improvement Ass. V. Board of Regents of the University of California (1988). As detailed later in this letter, the Environmental Assessment of the proposed project fails to do so.

Further, the project site plan includes numerous requests for alterations from City staff – it is unclear as to whether these have been incorporated into the final project. Even if these changes were made, the Planning Commission conditioned the project to include two buildings rather than three, which would require an entirely new site plan.

Impermissible Deferral of Studies to Project Conditions

CEQA requires that all studies and mitigation required to assure that project impacts are less than significant be included in the CEQA analysis prior to public review and project approval (see Sundstrom v. County of Mendocino 1988, which states, “The requirement that the applicant adopt mitigation measures recommended in a future study is in direct conflict with the guidelines implementing CEQA. California Administrative Code, title 14, section 15070, subdivision (b)(1) provides that if an applicant proposes measures that will mitigate environmental effects, the project plans must be revised to incorporate these mitigation measures “before the proposed negative declaration is released for public review....”

Yet both project description information and several of the studies needed to determine whether the project may have potentially significant environmental impacts that would preclude finding the proposed project exempt from CEQA under Class 32 are deferred to post-approval. Specifically, the Conditions of Approval for the proposed project include:

- Preparation of a revised site plan for the 2-building project revision. (Part A, Condition 3)
- Revisions to the Operational Statement “to include a description of measures taken to minimize potential noise and lighting impacts on surrounding land uses outside of normal business hours.” (Part A, Condition 9)
- “Air District: Comply with the requirements outlined in the attached air district letters [sic] dated November 21, 2022.” (Part B, Condition 1.) The Air District letter (pp 2-3) specifically requests that the City conduct a Health Risk Screening Assessment for the proposed project. Given the uncertain uses of the facilities discussed above, and the existence of an elementary school directly across the street from the proposed facility, such an assessment is essential to identifying impacts. Yet no such assessment has been performed as part of the project environmental assessment.
- The Fresno County Environmental Health comments include “the proposed project has the potential to expose nearby residents to elevated noise levels,” and “in the course of remodeling the existing structure, the contractor may encounter asbestos containing construction materials and materials coated with lead-based paints.” However, no quantification of the potential impacts is identified nor their mitigation required.

- Under “Miscellaneous” (Condition 35) the conditions state that “Noise levels shall not exceed...levels described in ...the Fresno Municipal Code” but provide no analysis as to whether this is feasible or how it would be assured. Noise studies should be conducted to identify whether the project could result in a significant impact, especially considering the proposed 24-hour operations.
- Similarly, Conditions 37 states that “Lights shall be placed to deflect light away from adjacent properties...to prevent interference...with enjoyment of surrounding properties.” However, there are no lighting plans or light or glare spillage studies that show what the impacts would be, whether this mitigation is feasible, or how it would be implemented. Lighting plans and studies are essential to identifying the impacts and determining any necessary mitigation.
- The conditions include conditions for potential archaeological impacts (Conditions 42 and 43). These appear to be mitigation measures. Note that the project Cultural Resources Report states only that no archaeological studies have been conducted within ¼ mile of the site, not that there are no potential resources or impacts on the site. (J&R Environmental Services, *Historic Property Survey for CLHF Project, 2287 W. Bullard Avenue*, February 2023, p. 12).

Given the combination of lack of studies and the deferral of studies to conditions that appear to be ‘mitigation’ under CEQA, the Environmental Assessment is not adequate to determine if significant impacts would occur with the project. Further, a project requiring mitigation measures does not qualify for a CEQA exemption (see *Salmon Protection and Watershed Network v. County of Marin* (2004) 125 Cal. App. 4th 1098, 23 Cal. Rptr. 3d 321. which states: “The determination of whether a project may impact a designated environmental resource must be made without reference to or reliance upon any proposed mitigation measures. (*Azusa Land Reclamation Co. v. San Gabriel Basin Watermaster* (1997) 52 Cal. App. 4th 1165, 61 Cal. Rptr. 2nd 447), Reliance upon mitigation measures (whether included in the application or later adopted) involves an evaluative process of assessing those mitigation measures and weighing them against potential environmental impacts, and that process must be conducted under established CEQA standards and procedures for EIRs or negative declarations.”)

Land Use and Planning Issues

Adequacy of Findings to Support the Issuance of a Conditional Use Permit

Approval of the project is premature because of the lack of specificity of the size and operating characteristics of the Project:

The Applicant “proposes to convert a 3,310 square foot residential home into an approximately 5,000 square foot CLHF (Congregate Life Health Facility)”. The Applicant further states that the proposed Congregate Life Health Facility “will provide Acute Care Services, Skilled Nursing Care and Complex Respiratory Care on a 24-hour a day basis” and will further offer a “large range of Medical Services includes: Complex Medical to Basic Medical Care and services.”). The Applicant further states its intention to have later phases to include additional structures and to subdivide the lot. (Operational Statement, Exhibit C.)

The state of California has adopted a comprehensive framework for providing health services, such as those proposed by the Applicant. A Congregate Living Health Facility is

defined in *Health and Safety Code section 1250* as a facility with a maximum of 25 beds when located in a county with a population greater than 500,000. (Health & Safety Code, § 1250(i)(1),(i)(4)(B).) Such facilities are described as providing care that “is generally less intense than that provided in general acute care hospitals but more intense than that provided in skilled nursing facilities.” (Health & Safety Code, § 1250(i)(1).)

Currently, the lack of specificity in the record about the number of beds and patients to be constructed as part of the project approvals does not allow for a conclusion whether the proposed project satisfies the State’s definition of a Congregate Living Health Facility. As detailed in this letter, the shifting project description and its lack of specificity and consistency make it impossible to determine the number of beds the project is seeking to provide. This lack of specificity, at a minimum, makes project approval premature until the project’s characteristics are known.

Findings Required for the CUP are Erroneous/Unsupported by Fact

Even if the above deficiencies were disregarded, the findings necessary to grant the conditional use permit cannot be made, as detailed below.

Finding a: The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code;

Even if the proposed project were to meet the Health and Safety Code definition of a Congregate Living Health Facility, the City cannot make the findings necessary to support the issuance of a Conditional Use Permit.

To support the issuance of the necessary Conditional Use Permit, staff argues that the Congregate Living Health Facility is within the definition of a “Residential Care Facility, General,” under Fresno Municipal Code section 15-6702. Section 15-6702 defines Residential Care Facilities as “facilities that are licensed by the State of California to provide permanent living accommodations and 24-hour **primarily non-medical care** and supervision for persons in need of personal services, supervision, protection, or assistance for sustaining the activities of daily living.... This classification includes facilities that are operated for profit as well as those operated by public or not-for-profit institutions, including hospices, nursing homes, convalescent facilities, and group homes for minors, persons with disabilities, and people in recovery from alcohol or drug addictions.”(emphasis added.) (Exhibit K)

As set forth in the Operational Statement, the proposed facility will “provide Acute Care Services, Skilled Nursing Care and Complex Respiratory Care on a 24-hour a day basis.” The Applicant further describes the project as providing a broad range of medical services, with an extensive medical staff. (Exhibit C.)

Staff’s reliance on this land use designation is misplaced, as it focuses on secondary services to be provided and not on the project objectives described by the Applicant: to provide skilled nursing and a broad range of medical services. Thus, City staff is incorrectly focusing on the additional supportive services to be provided when the primary care will be **medical**. Therefore, this facility is not within the ordinance definition of a Residential Care Facility, General. The project is therefore not eligible for a conditional use permit.

The clearly stated primary purpose of the facility is to provide “complex to basic medical care.” Staff’s reliance on Section 15-6702 is misplaced, as it focuses on secondary services to be provided and not on the project objectives described by the Applicant: to provide skilled nursing and a broad range of medical services. Again, City staff is incorrectly focusing on the additional supportive services to be provided when the primary care will be medical. Therefore, this facility is not within the ordinance definition of a Residential Care Facility, General. The project is therefore not eligible for a conditional use permit.

Finding b: The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;

The Findings’ analysis of the project’s conformance to this requirement states “The project represents an adaptive reuse and an infill opportunity of a partially developed semi vacant lot.” None of this is correct. First, the lot is not “semi-vacant,” but rather has been developed with a single-family house and surrounding yard areas. Second, the project is not primarily an adaptive reuse of an existing house- it proposes a nearly 50% expansion of that house, plus two additional buildings each of which is larger than the existing house (later reduced by the Planning Commission to a total of 2 buildings). Therefore, it is not consistent with the single-family residential land use designation in the City’s General Plan.

Finding c: The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;

The “Conditions” discussion above clearly indicates the potential for light, noise, and health risks that may occur from the project, which could be “detrimental to surrounding properties.” Yet this Finding relies on those Conditions to conclude that “the project will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements.” As detailed in the discussion above, the Environmental Assessment and impermissibly deferred studies fail to support this conclusion.

Conclusions

On the basis of the above analysis, the appeal should be granted as the Environmental Assessment prepared for this project is inadequate to meet basic CEQA requirements. In addition, the proposed Congregate Living Health Facility is not a “Residential Care Facility, General,” as defined in the Fresno Municipal Code. Accordingly, the project is impermissible under the site’s zoning so that the requisite findings for issuance of the Conditional Use Permit cannot be made.

Sincerely



Richard Grassetti
Principal
Grassetti Environmental Consulting

Attachments: Qualifications

cc: Ms. Jennifer Clark, Director, Planning and Development
Fresno City Attorney

Michael Patrick Durkee, Esq.

GECO QUALIFICATIONS

A. INTRODUCTION TO THE FIRM

Grassetti Environmental Consulting (GECO) is a specialty environmental planning firm with expertise in environmental assessment, CEQA/NEPA compliance analyses, third party review, CEQA project management, and preparation of geologic and water resource studies. The firm focuses on working with clients towards full disclosure of environmental impacts and development of practical mitigation measures for those impacts. Our working ethic is to efficiently ensure full compliance with CEQA/NEPA regulations and guidelines while minimizing duplicative studies and regulatory confusion. We are proficient in preparing responsive environmental documentation for technically complex projects, and can provide our clients with a working understanding of the appropriate level of effort needed to comply with applicable environmental regulations. We also have expertise in preparing peer reviews of CEQA and NEPA documents, and have earned the respect of project proponents and critics alike. We strive to provide our clients with a level of personal service not generally found in larger firms.

The firm's Principal, Mr. Richard Grassetti, has over 38 years of experience preparing and reviewing environmental documents throughout California. Mr. Grassetti has worked on over 350 environmental impact reports, initial studies, environmental assessments, exemptions, and environmental impact statements. He has substantial expertise reviewing environmental assessments for regulatory compliance and technical adequacy, has conducted over 50 peer reviews of NEPA and CEQA documents, and has testified as an expert witness regarding CEQA adequacy issues. He also has prepared various other environmental analyses including environmental constraint assessments and feasibility studies. Mr. Grassetti has experience in both technical analysis and project management for environmental impact assessments of many types of projects including industrial development, power generation projects, airports, waste management and pollution control projects, mixed use urban development, residential projects, recreation/resort developments, planning studies, transportation improvements, and other infrastructure development.

GECO works with a group of affiliated environmental professionals on a regular basis. This collaboration provides our clients with a broad range of expertise, without the overhead burden of a large consulting firm. Our goal is to provide our clients with personalized service tailored to their specific needs. Each individual included on a GECO project team is a highly experienced, senior-level professional with extensive experience working for both public- and private-sector clients. Our services range from initial project scoping through project implementation and monitoring. Our staff and affiliates are highly qualified to assist clients in negotiating the maze of environmental compliance regulations. Through these reciprocal working arrangements, we offer technical experts of the highest caliber at modest cost. Our combined skills and experience offer a complete range of environmental assessment services.

GECO QUALIFICATIONS

B. REPRESENTATIVE PROJECT EXPERIENCE

RECENT URBAN DEVELOPMENT EXPERIENCE

Hanna Court Wine Warehouse Project CEQA Initial Study/Mitigated Negative Declaration. GECO prepared the IS/MND for a large wine warehouse project in American Canyon. Major issues were seismic hazards, biological resources, and traffic. Client. Stravinski Development Group and City of American Canyon. Project was approved and constructed after redesign to avoid on-site earthquake fault.

Green Island Road Wine Warehouse Project CEQA Initial Study/Mitigated Negative Declaration. GECO prepared the IS/MND for a large wine warehouse project on Green Island Road in American Canyon. Major issues were wetlands, traffic, and air quality traffic. Client. ICG and City of American Canyon. Project was approved and constructed after redesign to add parking lot.

Commerce 330 Wine Warehouse Project CEQA Initial Study/Mitigated Negative Declaration. GECO prepared the IS/MND for a large wine warehouse project on Commerce Boulevard in American Canyon. Project involved subdividing a large parcel into three parcels for potential warehouse use, as well as constructing a road extension to serve the new parcels. Major issues were wetlands, traffic, and air quality traffic. Client. ICG and City of American Canyon. Project was approved and is under construction.

Gee Bridge Project IS/MND. GECO is preparing an IS/MND for a bridge on a private parcel in Northern Marin County. Client: Marin County Community Development Department.

Albion Monolith Development Plan Initial Study/Mitigated Negative Declaration. GECO prepared a detailed IS/MND for an eight-unit residential project on an open parcel in Marin County near the City of San Rafael. Major issues were biological resources and traffic hazards. Client: Marin County Community Development Department.

Hamilton Wetlands/Todds Road CEQA Review. GECO prepared the CEQA Initial Study for an alternative access road for truck traffic to the Hamilton Wetlands Restoration Project in Novato to reduce the project's potential noise impacts. Client: California State Coastal Conservancy.

SOLID WASTE MANAGEMENT PROJECTS

Forward Landfill Expansion Project EIRs. GECO prepared four EIRs and Supplemental EIRs for the Forward Landfill in San Joaquin County. Most recently, we prepared of a 17-acre addition to the landfill. Previously, we prepared an EIR and Supplemental EIR for a 170-acre expansion of the Landfill, an EIR for consolidation of the Forward and Austin Road Landfills, and another EIR for a minor addition to the Landfill. Major issues include air quality, health and safety, biological resources, and traffic. Client: San Joaquin County Community Development Department.

GECO QUALIFICATIONS

WETLANDS RESRTORATION CEQA EXPERIENCE

Cascade Canyon Bridges CEQA Initial Study/Mitigated Negative Declaration. GECO is preparing an IS/MND for construction of two bike/pedestrian bridges in the Cascade Canyon Preserve in Marin County. Major issues are biological resources, cultural resources, and noise., Client: Marin County Parks and Open Space District.

Rockville Trails Preserve Master Plan IS/MND. GECO prepared an IS/MND for a major open space preserve in Solano County. Project included new trails, a parking lot/staging area, and a new access road. Major issues were biological resources, cultural resources, and traffic safety. Client: Solano Land Trust.

Rush Ranch Preserve Master Plan IS/MND. GECO prepare and IS/MND for a master plan for the Rush Ranch preserve, which included both visitor center improvements, trails improvements, and habitat restoration elements. Major issues included biological resources, water quality, and recreation. Client: Solano Land Trust.

Bolinas Lagoon Open Space Preserve, Invasive Spartina Management Project Initial Study/MND. GECO prepared a CEQA Initial Study for a long-term management plan to control invasive Spartina species in Bolinas Lagoon. Client: Marin County Parks and Open Space District.

Kent Island Restoration at Bolinas Lagoon Joint Environmental Assessment (EA) and Initial Study (IS). GECO prepared a combined CEQA Initial Study and federal Environmental Assessment for a proposal to restore Kent Island's ecosystem. The EA was for the US Army Corps of Engineers permit, and the IS was prepared for the Marin County Open Space District. Client: Marin County Parks and Open Space District.

San Francisco Bay Water Trail Program EIR. GECO assisted in the preparation of the EIR for a "water trail" for small non-motorized boats throughout San Francisco Bay. The project involves designation of 115 access sites as well as policies for stewardship and education. Client: California State Coastal Conservancy.

Upper Putah Creek Restoration Project Program EIR. GECO prepared a Program Environmental Impact Report on restoration of approximately 25 linear miles of stream channel of Putah Creek, near Davis, CA. Major issues included biological resources and recreational access. Client: Wetlands and Water Resources, for the Putah Creek Conservancy.

Sonoma Creek Marsh Joint Environmental Assessment (EA) and Initial Study (IS). GECO prepared a joint IS/EA for the California Regional Water Quality Control Board (San Francisco Bay Region) and the US Fish and Wildlife Service for a plan to enhance tidal marshes and reduce mosquito production in a 300-acre marsh at the mouth of Sonoma Creek. Client: Wetlands and Water Resources and Audubon Society.

Upper Putah Creek Restoration Project Program EIR. GECO prepared a Program Environmental Impact Report on restoration of approximately 25 linear miles of stream channel of Putah Creek, near Davis, CA. Client: Wetlands and Water Resources, for the Putah Creek Conservancy.

GECO QUALIFICATIONS

Prospect Island Restoration Project. Mr. Grassetti provided CEQA guidance and prepared a number of technical analyses for an EIR on a proposed 1400-acre fisheries enhancement project in the northern Sacramento/San Joaquin River Delta. Client: Stillwater Sciences, for California Department of Water Resources.

Dutch Slough Restoration Project/Oakley Community Park EIR. GECO prepared the EIR for a 1400-acre wetland restoration and 80-acre community park on former diked lands in Oakley. Major issues include fisheries, water quality, historic architectural resources, and wetlands. Client: California State Coastal Conservancy.

Aramburu Island Shoreline Protection and Ecological Enhancement Project Initial Study. GECO managed preparation of an Initial Study for a proposal by the Audubon Society to stabilize the shoreline and improve bird and seal habitat on the 34-acre Aramburu Island site in Marin County. Client: Wetlands and Water Resources.

Salt River Ecosystem Restoration Project EIR. GECO prepared an Environmental Impact Report for the restoration of a large area of former marsh and open channel near Ferndale in Humboldt County. The project included creation of a new seven-mile-long river channel and a 400-acre wetland restoration. Client: Humboldt County Resource Conservation District.

Parsons Slough Project CEQA Review: GECO prepared an expanded Initial Study for a tidal sill (dam) project to reduce scour in Parsons Slough, an arm of the ecologically sensitive Elkhorn Slough. Client: Vinnedge Consulting/Elkhorn Slough National Estuary Reserve.

San Francisco Bay Estuary Invasive Spartina Control Project EIR/EIS and Addendum. GECO prepared the programmatic EIR/EIS on a plan to control invasive cordgrasses throughout the San Francisco Bay. Mr. Grassetti subsequently prepared an addendum for the addition of a new herbicide to the Spartina Control Program. Client: California State Coastal Conservancy.

SCHOOL DISTRICT CEQA DOCUMENTS

Distaff Thistle Control Project IS/ND. GECO prepared an IS/ND for the Marin County Office of Education (MCOE) on a project to remove invasive thistles from about 500 acres of rangeland at MCOE's Walker Creek Ranch. Client: MCOE.

Novato Unified School District CEQA Projects. GECO has prepared over 25 Notices of Exemption and IS/MNDs for the Novato Unified School District.

Allen Elementary School Replacement Project Initial Study/Mitigated Negative Declaration. GECO is currently preparing an IS/MND for the replacement of Decima Allen Elementary School in San Bruno. Client: San Bruno Park School District.

Mills High School Athletic Fields Modernization Project Initial Study/Mitigated Negative Declaration: GECO is currently preparing an IS/MND for lighting and relocating athletic fields on the Mills High School campus in Millbrae. Client: San Mateo Union High School District.

GECO QUALIFICATIONS

Capuchino High School Athletic Fields Modernization Project Initial Study/Mitigated Negative Declaration: GECO is currently preparing an IS/MND for lighting and relocating athletic fields on the Capuchino High School campus in Millbrae. It is possible that this document may become a focused EIR due to potential noise issues. Client: San Mateo Union High School District.

San Mateo Union High School District New Continuation High School Initial Study/Mitigated Negative Declaration. GECO prepared a detailed IS/MND for a new continuation high school at the site of an existing warehouse building in Burlingame. Client: San Mateo Union High School District.

Novato Unified School District GMO Building Initial Study/Mitigated Negative Declaration. GECO prepared the IS/MND for a new grounds, operations, and maintenance building in the Hamilton Air Base area of Novato. Client: Novato Unified School District.

Union School District M&O Building Initial Study/Mitigated Negative Declaration. GECO prepared the IS/MND for a new District maintenance and operations building on a vacant portion of the Cinnabar Elementary School grounds in San Jose. Client: Union School District.

San Marin High School STEM/PAC Initial Study/Mitigated Negative Declaration. GECO prepared an IS/MND for new science and performing arts buildings and relocation of certain athletic fields at San Marin High School in Novato. Client: Novato Unified School District.

Novato High School STEM/PAC Initial Study/Mitigated Negative Declaration. GECO prepared an IS/MND for new science and performing arts buildings and relocation of certain athletic fields at Novato High School in Novato. Client: Novato Unified School District.

Stevenson/Theuerkauf School Expansion Initial Study: GECO prepared a detailed IS/MND for expansion of two elementary schools, construction of a new preschool, and replacement of the District Office Building on a 15-acre site in Mountain View, CA. Client: Mountain View Whisman School District.

Crittenden Track and Field Project Initial Study/Mitigated Negative Declaration: GECO prepared a detailed IS/MND for a project to upgrade an existing track and field, including upgraded lighting, for the Mountain View Whisman School District (MVWSD). Major issues included light and glare and removal of a row of mature redwood trees (visual and biological impacts). Client: Mountain View Whisman School District.

New Slater Elementary School IS/MND. GECO is preparing an Initial Study/Mitigated negative declaration for a proposed new 450-student elementary school in the Mountain View Whisman School District. Major issues include traffic, noise, and construction impacts. Client: Mountain View Whisman School District.

San Mateo USD District Office Building Replacement Project Initial Study/Mitigated Negative Declaration. GECO prepared a detailed Initial Study/Mitigated Negative

GECO QUALIFICATIONS

Declaration for a new school district office building to replace two existing buildings in San Mateo. Key staff involved: Richard Grasse [REDACTED] [REDACTED] [REDACTED]
[REDACTED]

OTHER SELECTED CEQA AND NEPA DOCUMENTS

San Francisco PUC Water Supply Improvement Program CEQA. GECO assisted in the preparation of the San Francisco Public Utility Commission's Water Supply Improvement Project Program EIR, as well as two other CEQA documents for individual projects under that program. Major issues include hydrology, water supply, and fisheries. Client: Water Resources Engineering/Orion Associates.

State Water Board Water Supply Upgrade Projects CEQA Documentation. GECO prepared approximately 15 CEQA Exemptions and 5 IS/MNDs for small water supply system upgrades throughout California. Client: Northgate Environmental Management and State Water Resources Control Board.

Carmel Area Water District Calle La Cruz Pipeline Replacement Project. GECO prepared the IS/MND for replacement of two wastewater lines crossing the Carmel River Lagoon. Major issues included biological resources, cultural resources and water quality. Client: Johnson Marigot Consulting and Carmel Area Wastewater District.

Forward Landfill Expansion Project EIR. GECO prepared an EIR and Supplemental EIR for a 170-acre expansion of the Forward Landfill in San Joaquin County. This is the third EIR that GECO and its Principal, Richard Grassetti, has prepared for this landfill over a period of 20 years. Major issues include air quality, health and safety, biological resources, and traffic. Client: San Joaquin County Community Development Department.

SELECTED PEER REVIEW PROJECTS

John Smith Road Landfill Expansion EIR Peer Review. GECO is currently preparing a peer review of an applicant-prepared EIR on large and controversial landfill expansion in San Benito County. Major issues included air quality, noise, traffic, health risk, land use, and biological resources. Client: San Benito County Resource management Agency

Alameda County Solar Projects EIRs Peer Review. GECO prepared peer reviews and comment letters on EIRs on two solar energy projects in agricultural open space lands in eastern Alameda County. Major issues included biological resources, visual quality, and land use planning compliance. Client: Private party in advance of potential litigation.

Harris Quarry EIR Peer Reviews. GECO, in association with The RCH Group, conducted peer reviews of two CEQA EIRs for proposed expansions of the Harris Quarry in Mendocino County. The first EIR was rejected by the courts partially on the basis of our review. Client: Keep the Code (Citizens Group).

BLM Southern Nevada Water Project NEPA EIS Peer Review. GECO conducted a peer review of a Bureau of Land Management Environmental Impact Statement for a large-

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scale project to extract and transport water from rural areas throughout the state of Nevada for use in the Las Vegas area. Major issues were water supply, biological resources, dust/air quality, and loss of agriculture. Client: Confederated Tribes of the Goshute Indian Reservation

PG&E San Francisco Facilities Acquisition Project Peer Review. GECO conducted a peer review of a CEQA IS/MND on the City's proposed acquisition of PG&E facilities. Client: Cox, Castle, Nicholson.

Jackson State Forest CEQA Review. GECO prepared a detailed analysis of the CEQA adequacy of the California Department of Forestry's EIR on a new management plan for the 40,000-acre Jackson State Forest. Major issues included forestry practices, water quality, and biological resources. Client: Dharma Cloud Foundation

Lawson's Landing Master Plan EIR Peer Review. GECO conducted detailed per reviews of numerous CEQA documents for the proposed master plan for the Lawson's Landing mobile home park and campground in Marin County. Client: Environmental Action Committee of West Marin.

Fairfax/Artesa Vineyards Conversion EIR Peer Review. GECO conducted a peer review of an EIR von conversion of forest lands to vineyards in northern Sonoma County. Major issues were biological resources, hydrology/water supply, and land use compatibility. Client: Friends of the Gualala River.

Grist Creek Gravel Mining Project Initial Study Peer Review. GECO conducted a peer review of an Initial Study on a proposed gravel mine in Sonoma County. Major issues were fisheries, water supply, and cultural resources. Client: Round Valley Indian Tribes.

Morongo Mining Projects Environmental Reviews. GECO provided CEQA, NEPA, and technical consulting to the Morongo Band of Mission Indians regarding two aggregate mines adjacent to their reservation in Riverside County, CA. Client: Law Office of Alexander & Karshmer.

Headwaters Forest Project EIR/EIS Review. GECO conducted an expert review of the CEQA and NEPA adequacy and technical validity of EIR/EIS on the Headwaters Forest Habitat Conservation Plan, Sustained Yield Plan, and land purchase. Clients: Environmental Law Foundation; Environmental Protection and Information Center, and Sierra Club.

Metropolitan Oakland International Airport Development Plan Environmental Impact Report CEQA Review. GECO performed a critical review and assisted in the preparation of comments and ultimately successful litigation regarding the proposed expansion of Metropolitan Oakland International Airport. Major issues included noise, cumulative impacts, and alternatives selection/analyses. Client: Law Office of John Shordike.

San Francisco International Airport Environmental Liaison Office Consulting. GECO conducted various internal peer review tasks associated with environmental studies being prepared for SFIA's proposed runway expansion. Client: LSA Associates, Inc.

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Alamo Gate Permitting Review. GECO performed a critical review and prepared expert testimony and correspondence regarding the adequacy of CEQA and land use permitting and studies for a proposed gate on Las Trampas Road, which would preclude vehicular access to an EBRPD regional park staging area. Client: Las Trampas Trails Advocates.

Save Our Forests and Rangelands Expert Review and Witness Services. GECO provided expert review, consulting services, and expert witness testimony on CEQA issues for a successful legal challenge to an EIR and Area Plan for 200,000 acres in the Central Mountain Sub-region of San Diego County. Client: Law Offices of Milberg, Weiss, Bershad, Specthrie, & Lerach.

Gregory Canyon Landfill Environmental Processing Review. GECO was retained to review the environmental permitting and CEQA analyses for the proposed Gregory Canyon Landfill in northern San Diego County. Procedural issues include landfill siting requirements and CEQA process compliance. Technical issues include cultural resources, hydrology, endangered species, traffic, and health and safety. Client: Law Offices of Alexander & Karshmer and Pala Band of Mission Indians.

Richard Grassetti

PRINCIPAL

Expertise

- CEQA/NEPA Environmental Assessment
- Project Management
- Geologic and Hydrologic Analysis

Principal Professional Responsibilities

Mr. Grassetti is an environmental planner with 30 years of experience in environmental impact analysis, project management, and regulatory compliance. He is a recognized expert on California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) processes, and has served as an expert witness on CEQA and planning issues. Mr. Grassetti regularly conducts peer review and QC/QA for all types of environmental impact analyses, and works frequently with public agencies, citizens groups, and applicants. He has managed the preparation of over 50 CEQA and NEPA documents, as well as numerous local agency planning and permitting documents. Mr. Grassetti has prepared over 200 hydrologic, geologic, and other technical analyses for CEQA and NEPA documents. He has analyzed the environmental impacts of a wide range of projects including infrastructure improvements, ecological restoration projects, waste management projects, mixed-use development, energy development, residential projects, and recreational facilities throughout the western U.S. Mr. Grassetti also has prepared numerous peer reviews of CEQA and NEPA documents for agencies, applicants, Native American tribes, and citizens groups. In addition to his consulting practice, Mr. Grassetti regularly conducts professional training workshops on CEQA and NEPA compliance, and was a lecturer at California State University, East Bay, where he taught courses on environmental impact assessment for 15 years.

Professional Services

- Management and preparation of all types of environmental impact assessment and documentation for public agencies, applicants, citizens groups, and attorneys
- Peer review of environmental documents for technical adequacy and regulatory compliance
- Expert witness services

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- Assisting clients in CEQA and NEPA process compliance
- Preparation of hydrologic and geologic analyses for EIRs and EISs
- Preparation of project feasibility, opportunities, and constraints analyses, and mitigation monitoring and reporting plans

Education

University of Oregon, Eugene, Department of Geography, M.A., Geography (Emphasis on Fluvial Geomorphology and Water Resources Planning), 1981.

University of California, Berkeley, Department of Geography, B.A., Physical Geography, 1978.

Professional Experience

1992-Present	Principal, GECO Environmental Consulting, Berkeley, CA
1994-Present	Adjunct Professor, Department of Geography and Environmental Studies, California State University, Hayward, CA
1988-1992	Environmental Group Co-Manager / Senior Project Manager, LSA Associates, Inc. Richmond, CA
1987-1988	Independent Environmental Consultant, Berkeley, CA
1986-1987	Environmental/Urban Planner, City of Richmond, CA
1982-1986	Senior Technical Associate - Hydrology and Geology - Environmental Science Associates, Inc. San Francisco, CA
1979-1981	Graduate Teaching Fellow, Department of Geography, University of Oregon, Eugene, OR
1978	Intern, California Division of Mines and Geology, San Francisco, CA

Professional Affiliations and Certifications

Member and Past Chapter Director, Association of Environmental Professionals, San Francisco Bay Chapter

Member, International Association for Impact Assessment

GECO QUALIFICATIONS

Publications and Presentations

Grassetti, R. *Round Up The Usual Suspects: Common Deficiencies in US and California Environmental Impact assessments*. Paper Presented at International Association for Impact Assessment Conference, Vancouver, Canada. May 2004.

Grassetti, R. *Understanding Environmental Impact Assessment – A Layperson's Guide to Environmental Impact Documents and Processes*. (in press).

Grassetti, R. *Developing a Citizens Handbook for Impact Assessment*. Paper Presented at International Association for Impact Assessment Conference, Marrakech, Morocco. June 2003

Grassetti, R. *CEQA and Sustainability*. Paper Presented at Association of Environmental Professionals Conference, Palm Springs, California. April 2002.

Grassetti, R. and M. Kent. *Certifying Green Development, an Incentive-Based Application of Environmental Impact Assessment*. Paper Presented at International Association for Impact Assessment Conference, Cartagena, Colombia. May 2001

Grassetti, Richard. *Report from the Headwaters: Promises and Failures of Strategic Environmental Assessment in Preserving California's Ancient Redwoods*. Paper Presented at International Association for Impact Assessment Conference, Glasgow, Scotland. June 1999.

Grassetti, R. A., N. Dennis, and R. Odland. *An Analytical Framework for Sustainable Development in EIA in the USA*. Paper Presented at International Association for Impact Assessment Conference, Christchurch, New Zealand. April 1998.

Grassetti, R. A. *Ethics, Public Policy, and the Environmental Professional*. Presentation at the Association of Environmental Professionals Annual Conference, San Diego. May 1992.

Grassetti, R. A. *Regulation and Development of Urban Area Wetlands in the United States: The San Francisco Bay Area Case Study*. Water Quality Bulletin, United Nations/World Health Organization Collaborating Centre on Surface and Ground Water Quality. April 1989.

Grassetti, R. A. *Cumulative Impacts Analysis, An Overview*. Journal of Pesticide Reform. Fall 1986.

1986, 1987. Guest Lecturer, Environmental Studies Program, University of California, Berkeley.

GECO QUALIFICATIONS

Mary Quinn

From: Wanger, Andrew [REDACTED]
Sent: Tuesday, October 17, 2023 2:12 PM
To: Clerk
Cc: [REDACTED] Chris [REDACTED]
Subject: Mayor's Appeal of Action Granting CUP Application No. P22-03146 (Final 9_20)) (8002903.1)
Attachments: Mayor's Appeal of Action Granting CUP Application No. P22-03146 (Final 9_20)) (8002903.1).pdf
Follow Up Flag: Follow up
Flag Status: Flagged

External Email: Use caution with links and attachments

Dear City Clerk Stermer:

Please see attached letter for the Oct. 19, 2023 City Council meeting (ID 23-1470).

Thank you,

Andrew Wanger

Andrew Wanger
[REDACTED]

CLYDE&CO | [REDACTED]

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Clyde & Co US LLP

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[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]

October 17, 2023

FRESNO CITY COUNCIL
Attn: Todd Stermer, CMC
City Clerk, City of Fresno

Via email: [REDACTED]

Re: Appeal of Action Granting CUP Application No. P22-03146

Dear City Council:

Please accept this letter as Notice of Appeal pursuant to Fresno Municipal Code Section 15-5005 of the Planning Commission's decision to grant, with modifications, Conditional Use Permit Application No. P22-03146 and the Director's finding that the Project at issue at 2287 W. Bullard Avenue is exempt from environmental review under CEQA.

Very truly yours,

[REDACTED]

Andrew G. Wanger

APPEAL OF CITY STAFF AND PLANNING COMMISSION ACTIONS REGARDING CUP APPLICATION No. P22-03146 (the Project Proposal)

This document provides an overview and summary of the legal and factual grounds supporting our Appeal of the City Staff and Planning Commission actions relating to the Conditional Use Permit (CUP) Application No. P22-03146 and Related Environmental Assessment originally dated June 2, 2023, and subsequently acted on prematurely and without legal authority or compliance by the City Planning Commission on September 6, 2023, as further described below.

The proposed “Project” at issue involves the approval of CUP Application No. P22-03146 which involves the alteration of a single family home and residential lot located at 2287 W. Bullard Ave, Fresno, CA 93711 and zoned RS-2 (Very Low Density) to a two building, 9000 square foot commercial medical facility operating as a Congregate Living Health Facility.

Appellants Interest in / Relationship to the Subject Property

The Appellants are comprised of numerous residential neighbors to the subject property at 2287 W. Bullard Ave.

Grounds for Appeal

1. The CUP and the Project at issue fail to comply with CEQA.

All “projects” – either “programs” (general plan updates, redevelopment plans, etc.) plans, or particular development proposals – such as the proposal here - must comply with the California Environmental Quality Act (“CEQA”) before action on the plan or development proposal can occur. *Pub. Res. Code §§ 21000 et seq.; 14 Cal. Admin. Code §§ 15000 et seq.*

Our first CEQA concern on Appeal is that CEQA compliance must be concluded first, before a decision is reached, so that CEQA’s information “informs and forms” the substantive decision on the Project proposal itself. For example, CEQA compliance before Project approval can and does inform appropriate mitigation measures, avoidance measures, and/or alternatives to the original Project proposal that can reduce and/or alleviate the proposed Project’s environmental impacts. This information can then be made conditions to, or modifications of, the original Project proposal. However, in the instant case, that statutorily-required protocol has been turned on its head. The City Staff determination that the Project is “exempt” from CEQA constitutes a portion of the neighbors’ overall Appeal. Pursuant to Fresno Municipal Code, that “CEQA Appeal” must be heard by the City Council. That CEQA Appeal remains pending and has not yet been

decided. And yet, City Staff, and the Planning Commission ignored that City Council CEQA Appeal, and the City Planning Commission went forward and rendered its decision on the substance of the Project proposal (approving CUP Application No. P22-03146) **without** the City Council yet determining if CEQA compliance by the Project has been legally secured. That "cart before the horse" approach is the antithesis of CEQA compliance: it makes the CEQA Appeal to the City Council a foregone conclusion, and, in turn, it makes CEQA compliance by the City a "sham," as the City will now fit its CEQA determination to an already-approved-by-the-Planning Commission-Project instead of shaping the Project approval to the requirements of, and information generated by, CEQA. That is not the law. The Planning Commission cannot legally act on the substance of the Applicant's project proposal until CEQA compliance is determined by the City Council through the CEQA Appeal. Therefore, the Planning Commission decision on the Appeal of the merits of CUP Application No. P22-03146 must be reversed, the City Council must first hear and decide the CEQA Appeal, and then, with CEQA compliance determined, the Planning Commission can use that appropriate CEQA document and its information to determine the merits of CUP Application No. P22-03146. Study first, then decide; not decide first, then study.

Our second CEQA concern on Appeal is that adopting an "exemption" as the CEQA compliance for CUP Application No. P22-03146 is not appropriate. Instead, an Environmental Impact Report ("EIR") must be prepared for the Project proposal (CUP Application No. P22-03146), so that the environmental consequences of that proposal can be studied and understood so that such information can inform and help form the decision on that proposal. As the California Supreme Court has explained, even in "close and doubtful cases," an EIR *should always* be prepared to ensure "the Legislature's objective of ensuring that environmental protection serve as the guiding criterion in agency decisions." *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 84–85; *see also* Pub. Resources Code, § 21101, subd. (d).) Many courts have stated that the "EIR is the heart of CEQA. The report . . . may be viewed as an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes **before** they have reached ecological points of no return." (*Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 438 [quoting *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810] [emphasis added].)

The CEQA Guidelines set forth the "fair argument" test used to evaluate whether an EIR is required:

If the lead agency finds there is substantial evidence in the record that the project *may* have a significant effect on the environment, the lead agency *shall* prepare an EIR. Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency **shall prepare an EIR** even though it may also be presented with other substantial evidence that the project will not have

a significant effect. (emphasis added) (CEQA Guidelines, § 15064(f)(1); see also Pub. Resources Code, § 21080, subd. (d) [internal citations omitted].)

Moreover, an agency's failure to gather or analyze information on a project's impacts can expand the scope of the fair argument standard necessitating the preparation of an EIR. (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ["CEQA places the burden of environmental investigation on government rather than the public," and a lead agency "should not be allowed to hide behind its own failure to gather data."].)

Accordingly, if any commenting party makes a *fair* argument that the proposed project's environmental impacts "*may* have a significant effect on the environment," the City **must** prepare an EIR, even if other substantial evidence supports the argument that adverse environmental effects will **not** occur. (CEQA Guidelines, § 15064(g)(1); see also *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316 ["[i]f there is substantial evidence of such an impact, contrary evidence is not adequate to support a decision to dispense with an EIR."].)

Here, substantial evidence supports a fair argument that an EIR is necessary, as explained above. (See *supra*, § C.2-4) Because the Class 32 exemption does not apply, and a "fair argument" exists, an EIR must be prepared for CUP Application No. P22-03146.

City Staff determined that the Project (CUP Application No. P22-03146) falls within the Class 32 Exemption for In-Fill Development Projects. (CEQA Guidelines, § 15332.) With respect, Staff is incorrect. That exemption provides:

Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
 - (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
 - (c) The project site has no value, as habitat for endangered, rare or threatened species.
 - (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
 - (e) The site can be adequately served by all required utilities and public services.
- (*Id.*)

The substantial evidence test governs judicial review of an agency's factual determination of whether a project fits within a categorical exemption. (See, e.g., *Don't Cell Out Parks v. City of San Diego* (2018) 21 Cal.App.5th 338, 358; *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 817; *Meridian Ocean Sys. v. State Lands Common's* (1990) 222 Cal.3d 153, 169.) As noted above, the City's conclusion that the project would not result in any

significant effects relating to traffic, noise, air quality, or water quality is unsupported by the evidence, much less “substantial evidence”.

But even if the Class 32 exemption facially applied, Section 15300.2 of the CEQA Guidelines provides several exceptions to the use of categorical exemptions. (See generally *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086.) Section 15300.2 applies to all categorical exemptions. As provided in Section 15300.2 and elucidated in cases such as *Berkeley Hillside*, “unusual circumstances” prevent an agency from relying upon a categorical exemption when those circumstances present a “fair argument” that there will be a significant environmental effect.

Both “unusual circumstances” and a “fair argument” exist here. First, this Project seeks to construct a commercial medical facility in residential neighborhood that is zoned as such (RS-2). The placement of such a facility would be a first in the area and a radical alteration of the character of the neighborhood. Second, the proposed square footage of the development - 9,000 – far exceeds the vast majority of residences in the area and is disproportionately larger than the homes in the area. Third, there are no RS-2 zoned lots in the neighborhood wherein two commercial buildings have been shoehorned into a single lot. These all support the conclusion that Application raises “unusual circumstances” that are unprecedented in this very low density residential neighborhood. In addition, there is certainly a “fair argument”, as discussed above, that the Project would result in potentially significant environmental impacts.

As the discussion below regarding the proposed Project’s inconsistency with Fresno’s Planning and Zoning Law reveals (which factual and legal arguments are hereby incorporated by this reference as if set forth herein in full) approval of CUP Application No. P22-03146 will result in increased traffic, noise, and lighting impacts, and additional structures and parking lots crammed onto an individual residential lot without any attenuation, avoidance, and/or mitigation measures required to reduce those adverse environmental impacts.

Our third CEQA concern on Appeal is that the Project proponent has “piecemealed” or “chopped” the Project into separate phases (first phase construction, second phase construction, etc.) and discrete City land use approvals (current CUP, subsequent subdivision map, etc.), instead of presenting the ultimate “whole” of the Project and identifying, evaluating, and properly mitigating/avoiding its ultimate significant adverse environmental impacts, in violation of CEQA. Only an EIR will fully reveal all of the phases, land use approvals, and other aspects of the phased project. *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283-284. “This [segmenting] approach is inconsistent with the mandate of CEQA that a large project shall not be divided into little ones because such division can improperly submerge the aggregate environmental considerations of the total project.” *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 167.

In sum, an EIR for the proposed Project (CUP Application No. P22-03146) must be prepared, its significant adverse environmental impacts evaluated, its alternatives discussed (including the “No Project Alternative”), and its avoidance, attenuation, and mitigation measures considered so that the true environmental impacts of this proposal on the immediate neighborhood are fully understood before a decision is reached as to whether this high-density commercial medical use should be allowed in this low density residential neighborhood. Study first, then decide. That is the law.

2. The Proposed Project (CUP Application No. P22-03146) Does Not Comply With Fresno’s Planning and Zoning Regulations.

As discussed below, the proposed Project (CUP Application No. P22-03146) does not comply with Fresno’s Planning and Zoning Regulations, including without limitation, its General Plan, Zoning, and Conditional Use Permit requirements.

The Project proposal is inconsistent with the City General Plan. The General Plan clearly designates this area of the City as Low Density Residential. In contrast, the proposed Project proposes a very high density commercial medical use. Additionally, the City’s Zoning regulations (discussed herein) – which act to implement the General Plan – reveal the level of General Plan inconsistencies inherent in the Project proposal.

For example, the proposed Project (CUP Application No. P22-03146) does not comply with Fresno Municipal Code Section 15-5306. Section 15-5306 provides in pertinent part:

A Conditional Use Permit shall only be granted if the decision-maker determines that the project as submitted or as modified conforms to all of the following criteria. If the decision-maker determines that it is not possible to make all of the required findings, the application shall be denied.

- A. The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code;
- B. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;
- C. The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements;
- D. The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity; and
- E. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required; and
- F. The proposed use is consistent with the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County

Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5.
(Fresno Municipal Code, § 15-5306.)

The proposed Project's alteration of the single-family residence at 2287 W. Bullard into a two building, 900 square foot commercial medical operation is a drastic alteration of the property's use that violates 15-5306 (A-E).

Further, the proposed Project violates Fresno Municipal Code section 15-903 (Density and Massing), which Section contemplates a single dwelling per lot for RS-2 zoning.

There exists no justification for altering the Project site's current use given the RS-2 zoning. The unprecedented proposal to build two separate structures on the property and operate them as commercial enterprises with the proposed subdivision of the lot later (into two separate parcels) constitutes an unusual and unacceptable use of the lot. No such similar property use exists in the neighborhood.

This is a "single family very low density" zoned neighborhood. The proposed Project (CUP Application No. P22-03146) seeks to double the density of a single lot, alter it from a single family lot to a commercial property housing 36 residents plus staff, operating 24 hours a day, seven days a week and does so without any explanation as to why this lot and why this neighborhood.

Additionally, the proposed Project will cause the current zoning to be drastically altered and will result in unacceptable amount of increased traffic, noise, lighting, and additional structures and parking lots on an individual lot.

The proposed commercial medical facility with 36 residents will be completely at odds with any other residential lot in the neighborhood.

- a. Traffic – Bullard Avenue is a highly trafficked thoroughfare essential to the City's efficient movement of morning and evening commute traffic. CUP Application No. P22-03146 and the Department of Planning documents provide scant information as to how employee, delivery, emergency and waste removal vehicles will impact Bullard Ave with frequent entry into and exit from the commercial facility.
- b. Noise - The proposed commercial medical facility will generate unusual and never-before experienced noise that will necessarily impact nearby residences. There will be increased vehicle noise, emergency vehicle noise, delivery truck noise, and operational activity involved with the commercial facility. The facility proposes to operate 24 hours a day, seven days a week – offering no break in its noise production to the neighbors residences. There are normal "single family" noises that our neighborhood experiences – occasional dog barking, children playing, basketballs being dribbled. But, we have never had a daily flow of emergency vehicles, waste disposal vehicles, employee traffic that will never cease, break or disappear – it will

be omnipresent for as long as the facility operates with no limit on the hour of the day or night as to when the noise can be regulated. This is why cities create residential neighborhoods and commercial districts - to allow for the quiet enjoyment of one's property after one purchases a residential, very low density property. There are more appropriate sites in the City for the proposed commercial medical facility.

- c. Lighting – A commercial medical facility that operates 24 hours a day will necessarily require night-time lighting that far exceeds that of a single-family home. The additional light required for two buildings totaling 9000 square feet with at least ten employees and 36 residents will be unusual and excessive for the neighborhood.

Further, the Planning Department repeatedly characterized the project as a “residential care facility” when in fact it is not. It is a commercial medical facility more akin to a skilled nursing facility. The proposed residents, as described by the Applicant, likely could not survive without constant medical intervention, *e.g.*, the use of ventilators. Residential care facilities have been established for adult residents able to independently engage in daily living activities in a non-medical setting. Indeed, the Applicant characterized the facility as follows: “Our team of medical professionals will provide Acute Care Services, Skilled Nursing Care and Complex Respiratory Care on a 24-hours a day basis.” [See, June 13, 2022 Infinite Care Living letter describing project] This project cannot be likened to a Residential Care Facility.

Under California Code of Regulation, Title 22, Section 87891(a)(8), RCFEs under California law are prohibited from accepting residents who require life support systems such as ventilators. The pending CUP Application specifically states that the 3 building will offer “24/7 Sub Acute Nursing (For Vent and Trach Dependent Patients) and 24- Hour Skilled Nursing Care.”(emphasis added) There can be no dispute that a Congregate Living Health Facility is not an RCFE or even “like” an RCFE.

3. Violations of Appellants Procedural and Substantive Rights By The Planning Commission Render the Planning Commission Decision Legally Flawed.

Controlling law requires public officers act with “disinterested skill, zeal and diligence primarily for the benefit of the public.” *Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51. As a result, project proponents and opponents enjoy the right to a fair and unbiased decision-maker. (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 557. Accordingly, a decision-maker is disqualified from participating in a matter if that decisionmaker is biased in favor or against a party involved in that decision. (*Nasha v. City of Los Angeles* (2004) 125 Cal. App.4th 470, 486.

In the instant matter, one of the owners of the Applicant Project is Brian Whelan. Mr. Whelan presented to the Planning Commission on behalf of the Applicant. Mr. Whelan recently ran for elected office. During his campaign. Planning Commissioner Brad Hardie donated \$1900 to Mr. Whelan. Further, Mr Hardie appears, based on his disclosures

forms, to serve on multiple local Boards of Directors with Mr. Whelan. Mr. Hardie failed to recuse himself from the Planning Commission's consideration of the the proposed Project (CUP Application No. P22-03146) and actively participated in the hearing on the Appeal – only abstaining from the vote after this conflict of interest was raised at the hearing.

A fair process demands impartial proceedings. As California's Institute for Local Government provides in Chapter 5 ("Fair Process Laws and Merit-Based Decision-Making") of its treatise Understanding the Basics of Public Service Ethics (2013) ("ILG Guide"):

When an official sits in a quasi-judicial capacity, that official's personal interest or involvement, either in a decision's outcome or with any participants, can create a risk that the agency's decision will be set aside by a court . . . Decision-makers are also well advised to step aside on participation in a quasi-judicial matter when the decision-maker has pre-judged the matter. Attributes of having "pre-judged the matter" include having a closed mind or a preconceived and unalterable view of the proper outcome without regard to the evidence.

* * *

If the violation rises to the level of a denial of due process under constitutional law, the affected individual(s) may seek damages, costs and attorney's fees.

Id. at 73.

Some degree of bias in decision-making is unavoidable. But when bias against the Appellants and for the Applicant leads to denial decisions based solely on unreasonable and unsubstantiated conclusions, a "fair process" is the casualty. We respectfully submit that such is the case here.

California courts have shown a willingness to find the absence of a fair hearing when one sitting in a position of judgment has shown through words and conduct that he was "not a disinterested, unbiased decision maker." *See, Clark v. City of Hermosa Beach*, 48 Cal. App. 4th 1152, 1173 (1995). Likewise, in *Nasha v. City of Los Angeles*, 125 Cal. App. 4th 470 (2004), the court, in finding an unacceptable probability of actual bias (*Id.* at 482), focused on a planning commissioner who as president of a homeowners' association published an unsigned newsletter against the project. The court found that authorship of the article produced an unacceptable probability of actual bias.

We submit that the facts in *Nasha v. City of Los Angeles* are remarkably similar to the situation at hand. We believe, and upon that belief assert, that Commissioner Hardie was inextricably intertwined with the Applicant and a such allowed his obligations as a member of the Fresno Planning Commission to be clouded and impaired. As formal

discovery may reveal, we believe that Commissioner Hardie put considerable energy into his support of the Applicant, hoping to influence the Planning Commission's decisions. We submit that those are not the actions of an unbiased decision maker.

As the court in *Woody's Group, Inc. v. City of Newport Beach*, 233 Cal. App. 4th 1012, 1027 (2015), concluded, "a person cannot be a judge in his or her own cause." If Commissioner Hardie's "cause" was to support and approve this project, and in doing so, to ingratiate himself to the applicant, then he should have recused himself, and not sought to influence the remainder of the Planning Commission. He did not recuse himself. Possibly as a result, instead of focusing on the merits of the neighbors' appeal, the Planning Commission (as a whole) succumbed to the pressures caused by the indisputably vocal and Applicant-supportive Commissioner Hardie. In sum, we assert that the Planning Commission's denial of the appeal was wholly political in nature and was influenced entirely by the campaign contributions and undisclosed relationship between Applicant and Commissioner. The biased denial of the appeal by the Planning Commission should be reversed.

Likewise, the Planning Commission violated the Appellants substantive due process rights when the Planning Commission approved CUP Application No. P22-03146. Substantive due process rights "protect against arbitrary government action." (*County of Sacramento v. Lewis* (1998) 523 U.S. 833; *Ross v City of Yorba Linda* (1991) 1 Cal.App4th 954, 960. Conduct that violates Appellants' right to due process includes, but is not limited to, the failure to afford Appellants the right to be heard on the CUP and its detrimental impact on their neighborhood, the lack of notice to impacted parties, the presence of multiple procedural errors during the Planning Commission's assessment and approval process, the failure to require a CEQA analysis, and the failure to provide an unbiased and fair process.

Moreover, the Planning Commission failed to provide a fair process; liability will result if the Appeal is denied. Controlling law makes clear that local decision-makers must ensure that due process and equal protection safeguards are provided when neighboring property owner concerns - like those here - are presented for evaluation and decision. This body of law hinges on fair and impartial proceedings, with neutral arbiters basing their decisions on substantial evidence in the administrative record.

California law is consistent with this Constitutional mandate, with the elements of a fair hearing including the requirement that decision makers be unbiased, and that decisions be based on substantial evidence in the record. As California Code of Civil Procedure section 1094.5 provides in pertinent part:

(b) . . . The [judicial] inquiry in such a case shall extend to . . . whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner

required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

(c) . . . abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. (*Id.*)

As your City Attorney will confirm, Code of Civil Procedure section 1094.5(c) applies to the quasi-judicial project applications that are the subject of this appeal.

Such rules of “fairness” serve two basic goals: (i) providing more accurate, principled, and predictable decisions; and (ii) demonstrating to the public that their government will treat them in a just and even-handed manner.

The facts of this case support a reasonable conclusion that the Planning Commission was unfair and biased in their decision making, that their appeal denials were politically motivated and lacked any supporting substantial evidence, and that the only substantial evidence in the record supports the reversal of the Planning Commission’s denial of the neighbors' appeal.

Consistent with the foregoing, a fair process demands that decisions be based on substantial evidence in the administrative record. As Code of Civil Procedure section 1094.5(c) provides in pertinent part:

(c) . . . abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. (*Id.*)

Again, as your City Attorney will confirm, Code of Civil Procedure section 1094.5(c) applies to the quasi-judicial project applications that are the subject of this Appeal. Once more, we respectfully submit that the Planning Commission granted the CUP and denied the Appeal, without any substantial evidence in the record supporting their legally-required findings and conclusions.

Fairness must be restored: the unsupported denials of the appeal by the Planning Commission must be reversed.

The Planning Commission also violated the Equal Protection rights afforded to Appellants. “The federal equal protection clause (U.S. Const., 14th Amendment) and its California counterpart (Cal. Const., art I, section 7, subd (a)) provide that persons similarly situated with respect to legitimate purpose of law must be treated alike under the law. [Citations omitted] Equal protection challenges typically involve claims of discrimination against an identifiable class or group of persons. The U.S. Supreme Court in *Village of Willowbrook v. Loch* (200) 528 U.S. 562, 564 (*Olech*), however, held that a plaintiff who does not allege membership in a class or group may state a claim as a “class of one”. (*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal. App.4th 837, 857.)

The Planning Commission's unequal treatment of Appellants is clearly intentional, appears to be based on animus and/or the belief that Appellants are "NIMBYs" and is not based on any rational or legitimate basis.

Likewise, in its consideration of the proposed Project and the Appeal filed by Appellants, the Planning Commission violated 42 U.S.C Sections 1983 and 1985. When two or more persons conspire to deny a citizen or citizens the right to equal protection under the law or injure his or her property for lawfully enforcing the right of any person to the equal protection of the laws – 42 U.S.C. 1985 (2) is violated. The Planning Commission's arbitrary and capricious decision-making process constitutes such a violation. Further, the deprivation of the Appellants' rights and privileges as secured by the Constitution and laws by the Planning Commission affords Appellants a remedy under 42 U.S.C. section 1983.

The Planning Commission directly denied several neighbors of their federal and state Constitutional and statutory rights to address their government with their grievances.

The Planning Commission's denials were not the product of a fair process. Instead, they were the product of bias and political-insider pressure, possibly created by Commissioner Hardie, as a undisclosed colleague and supporter of the Applicant, and multiplied by the Planning Commission as a whole. Their actions violated the protections guaranteed the appellant under controlling local, state, and federal law. Such violations are actionable in litigation and will be acted upon if the City Council affirms the actions of the Planning Commission.

Embrace the rules of "fairness." Demand adherence to the law. In return, you will secure more accurate, principled, and predictable decisions, and you will remind your citizens and those who come before the City that they will be treated in a just, lawful, and even-handed manner.

The Planning Commission's project denials must be reversed. The only substantial evidence in the record demands the approval of the neighbors' Appeal

4. The Planning Commission violated the Brown Act (CA Government Code section 54950).

The Ralph M. Brown Act was enacted to ensure the public had fair and equal access to agency meetings and to protect against secret actions by public agencies. The Planning Commission is subject to the Brown Act and violated this important statute during the consideration and Appeal process. The violations include, but are not limited to, Appellant comments were limited and even prevented at the public meeting; Closed sessions occurred without notice or description; Materials used by the Planning Commission were not made available to Appellants.

For the legal and factual grounds presented, which grounds may be clarified, amplified, and/or amended by subsequent writings and related documentation, Appellants respectfully request

that the City Council overrule and nullify the Planning Director's approval of an exemption for the proposed Project and approval of CUP Application No. P22-03146, overrule and nullify the Planning Commission's approval of CUP Application No. P22-03146, and order the preparation of an EIR for the proposed Project, and/or outright deny CUP Application No. P22-03146 for the reasons presented.

APPELLANTS

1. Chelsey Juarez & Viktor Zaytsev
2. Leonore (LeeAnn) and Larry Kipp
3. Brent Smittcamp
4. Andrew & Christa Wanger
5. Frank & Lynn Glaser
6. Mark & Mary Schuh
7. Jim & Kitty Burden
8. William & Karen Podolsky
9. Fernando & Hopie Serna
10. Greg & Shari Rainwater
11. Art & Renae Estrada
12. Richard & Carol Yrulegui
13. Ann Wanger
14. Ryan & Lauren Peranick
15. Phil & Jamee Moltini
16. Carol & John Garry
17. Connie & Brad Homen
18. Jim & Kris Maxwell
19. Jennifer & Dr. Erich Lemker
20. Stephanie Krahne
21. Seth & Kara Merhten
22. Dave Kroeker
23. Monica & Steve Swanson