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Via Electronic Mail and Hand Delivery

Colleen Setzer, County Clerk
Siskiyou County Board of Supervisors
510 North Main St.
Yreka, CA 96097

Re: Appeal Submittal
Crystal Geyser Bottling Plant
Draft Environmental Impact Report (SCH#2016062056)

Dear Ms. Setzer and Members of the Board of Supervisors:

The following submittal is provided as additional support for the appeal of the Planning Commission's approval of the above-referenced Crystal Geyser project. The appeal was filed by Gateway Neighborhood Association, We Advocate Through Environmental Review (W.A.T.E.R.) and the Winnemem Wintu Tribe, challenging the September 27, 2017, Siskiyou County Planning Commission approval of Crystal Geyser Use Permit (UP-17-03) and certification of the associated Final Environmental Impact Report ("FEIR").

In addition to the issues discussed below, Appellants concur with many of the significant issues raised during the administrative process by the City of Mt. Shasta. Some of the City's comments and concerns have not been adequately addressed. The City's February 24, 2017 comment letter on the Draft EIR ("DEIR") is attached. Also attached is a September 15, 2017 comment letter from ENPLAN, submitted on the City's behalf regarding the continued shortcomings in the FEIR.

Each of the issues discussed below has been the subject of previous comment letters submitted to the County in response to the DEIR and the FEIR, and serves to supplement the previous comments as well as expanding upon the appeal letter (and attachments) submitted by this office on October 5, 2017.

A. Violation of CEQA

The Board of Supervisors should grant the appeal and require revisions to the EIR for the Project before considering the application. The FEIR fails to comply with the requirements of CEQA. Many errors in the CEQA document and the process have been identified by the community and by other agencies.

Appellants highlight the following:

1. Mitigation Measures are not enforceable as required by CEQA

In the September 27, 2017, supplemental staff report to the Planning Commission ("Supp. Staff Report"), staff responded to the issue of enforceability that had been raised in comment letters. The community is concerned that the County claims to be approving one small piece of the overall project: the caretaker's residence. So, how will the County enforce conditions unrelated to that residence? The response was that the conditions of approval for the use permit for the caretaker's cottage would be enforceable through conditions. (Supp. Staff Report, p. 1.) This circular response begs the question raised in comments regarding how the County would enforce a condition on the bottling plant operations if Crystal Geyser simply decided that a caretaker's residence is unnecessary.

The use permit should be issued for the whole of the project and not just for the caretaker's residence. The County not only has the authority but the duty to issue a use permit for the entire operation, as the Woodland Overlay (see Section B(1), below) precludes heavy industrial uses on the Project site. The County and the applicant have long assumed that the heavy industrial use is an allowed us because of the zoning designation, but the Woodland Overlay takes precedence and governs the issue of allowed uses.

The County claims that the Mitigation Monitoring and Reporting Plan ("MMRP") includes all mitigation measures, but the use permit is improperly being issued only for the caretaker's residence. Accordingly, the mitigation measures are not enforceable as required by CEQA. (CEQA Guidelines § 15126.4(a)(2).) This situation is entirely avoidable, as the County must issue a use permit for any heavy industrial use on the Project site.

Violations of permit conditions ordinarily result in the potential for revocation of the permit. In this case, that would not be an effective enforcement mechanism. This shortcoming is highlighted by the fact that one of the conditions of approval indicates that the use permit will lapse two years following its effective date unless the use has been established. (Exhibit B-1 to Resolution PC-2017-004, Notations and Recommended Conditions of Approval, Notation 1.) That Notation goes on to provide that the permit will lapse if the

use is discontinued for a year or more, with provisions allowing for reinstatement of the permit, but only if the discontinuation of the use was not intentional. (*Id.*) This creates the untenable situation allowing the applicant to intentionally discontinue the use (caretaker's residence) in order to let the permit lapse, thereby unburdening itself of the conditions of approval. There is nothing that would prevent Crystal Geyser from operating the plant without any consideration of the permit conditions and/or the MMRP if the use permit lapsed. It would certainly not be surprising if the caretaker's residence is not established, or may be abandoned, in light of the fact that the time spent by any individual in that residence must be limited due to health risks. (See Mitigation Measure 4.2-1.)

In response to comments on this issue, the County simply refers to the MMRP but does not address the question of how the Mitigation Measures will be enforceable in light of the fact that the County claims to have approval authority over only the caretaker's residence. (FEIR, p. 3-4.) There is no explanation in the response to comments (Master Response 2), and the failure to address this issue and resolve it is a violation of CEQA as it results in unenforceable mitigation measures and misleads the public and the decision makers into believing that mitigation will occur.

The bottling plant operation is subject to the permitting authority of various agencies, and so an environmental document is necessary, and it must cover all of the plant operations in order for the responsible agencies to issue their permits. The County has taken on the task as the lead agency, but failed to consider the lack of ability to enforce conditions if the only aspect of the Project over which the County claims to have authority is the caretaker's residence.

The Project requires additional approvals for the handling of wastewater, air and water quality approvals, and approvals from the California Department of Fish and Wildlife and the U.S. Army Corps of Engineers. If Crystal Geyser simply insisted that the bottling facility was an allowed use under the current zoning designation, then there would be no environmental document to support the discretionary decisions of these responsible agencies.[1] It is not readily apparent what the reasons are for the County's preparation of an EIR covering the entire operation, despite the fact that County asserts it only has authority over the caretaker's residence. It may be to provide a basis for the future required approvals of Responsible Agencies. In order for the EIR to meet CEQA's requirements, however, the County must issue a permit that covers the entire operation. This is the only way that the document may be relied upon by the County or by responsible agencies, as the present situation is insufficient because the mitigation measures are enforceable only through a permit for a

[1] Although, as noted above, the County *does* have the authority and duty to issue a use permit for the entire operation as the zoning ordinance on the Project site was void at the time it was adopted.

caretaker's residence that may or may not ever be constructed, and is limited in its use because of the dangers to its inhabitants.

2. The County failed to complete consultation with the Winnemem Wintu Tribe under AB52

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

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

3. The EIR for the project contains an inaccurate project description

CEQA requires that the full level of development and use being authorized by an approval must be analyzed and its effects mitigated. The EIR for the project fails to meet this standard. Appellants raised this issue in comments on the DEIR.

The description in the DEIR defines the "project" as 90 percent of production. Further, there are many omissions regarding the timing of when certain types of products would be produced, and the level of production that would occur over time.

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

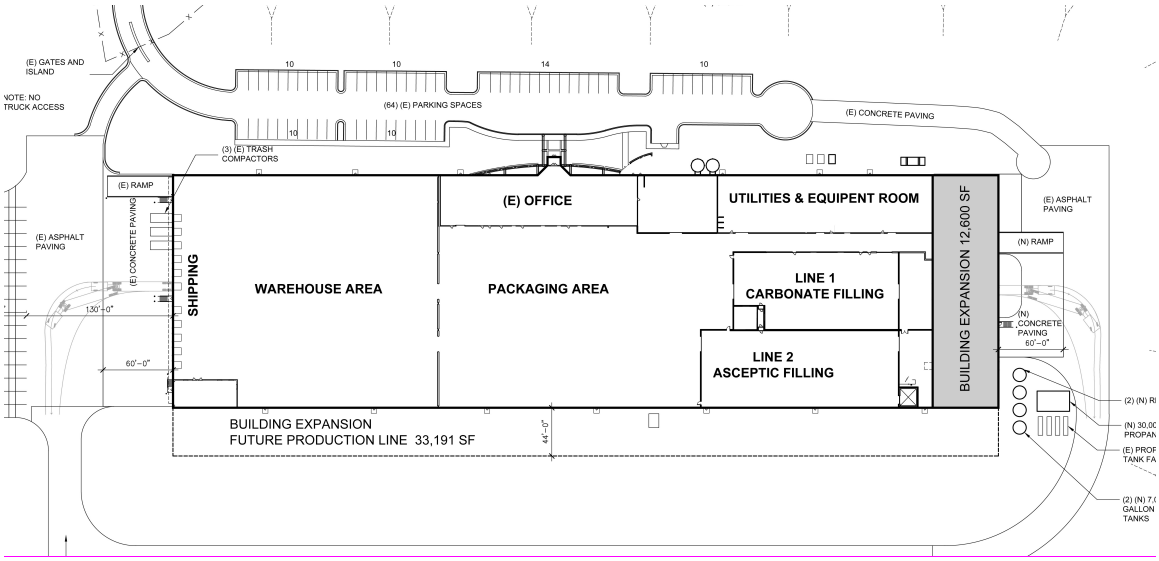
As pointed out in a comment letter submitted by Daniel Axelrod, Ph.D. and Geneva M. Omann. Ph.D, the Project description also omits essential information regarding the types of chemical constituents that will be discharged into the City wastewater treatment system, or discharged to land via the use of wastewater for "irrigation." The Project description includes just one reference

to the chemicals that Drs. Axelrod and Omann describe in their letter, and it is cryptic at best, stating that wastewater will contain "cleaning agents." (DEIR, p. 3-13.)

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

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

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



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

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

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

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

4. The EIR includes impermissibly narrow project objectives

Many of the presumptions throughout the DEIR are based upon the notion that there is some urgency in "meeting market demand," although it is never disclosed in the DEIR what factual basis there may be for the urgent need for Project approval in order to meet this purported demand. The way that the objectives of a project are drafted impact the CEQA analysis, particularly consideration of alternatives and mitigation measures.

The DEIR states that it "considered" an alternative of delaying operation of the Project until the Lassen Substation power project is completed. This alternative would avoid the use of propane generators and reduce GHG and CAP emissions. (DEIR, p. 6-5.) The alternative was dismissed from full

consideration because it would "not accomplish any of the project objectives in the short term." (*Ibid.*) The objective identified was that of initiating plant operation "as soon as possible to meet increasing demand for Crystal Geyser beverage products." It bears noting that all of the Project objectives are driven by the purported "need" for Crystal Geyser to meet immediate demand for its products. (DEIR, p. 3-8.)

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

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

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

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

No substantial evidence in the record supports the conclusion that the bottling facility is necessary in order for Crystal Geyser to remain competitive. In fact, there is evidence that demand has declined so significantly with respect to some of Crystal Geyser's products, that the company has stopped producing them.

For example, the company stopped producing its Metromint and Juice Squeeze products because of a lack of sufficient sales. At the planning commission hearing, Richard Weklyck said that the company had no plans to close the Calistoga plant or the Bakersfield plant, but did not mention that in the past two years the company has dropped two of their four product lines, Metromint and Juice Squeeze, retaining sparkling water and Tejava. "Our sales simply could not keep up with our costs..."[2]

So in addition to the failure to provide any financial evidence during the hearing to prove economic need, there is no evidence to show the necessity of the Project in order to meet market demand.

If the County wishes to dismiss Project alternatives on the ground that the Project must meet the objective of allowing Crystal Geyser to "meet demand" for its products, then there must be substantial evidence in the record to support this conclusion. Vague references to general market trends is not sufficient.

5. The EIR's impacts analysis is deficient

a. Impacts to aesthetics

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

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

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

[2] http://www.juicesqueeze.com; and http://www.metromint.com/

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

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

b. Air quality impacts

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

This discussion begins with a description of the flaws in the DEIR, and it should be noted that in response to comments on the DEIR, the County prepared a revised emissions analysis. That is also discussed here in the context of the FEIR, as the revised analysis did not remedy the errors and created additional issues that remain unresolved.

In the DEIR, the Project appears to have a minimal impact on air quality, as the Executive Summary in the DEIR concludes that all air quality impacts are less than significant, except for the increased cancer risk for the people living in the caretaker's residence. (DEIR, p. 2-5.) This seems surprising in light of the tremendous number of truck trips that will result from operation of the Project.

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

The County acknowledged that the Project use is General Heavy Industrial. (DIER, Appendix M, pp. 8-11.) Appendix M identified a trip rate applied to the General Industrial land use type, but at numerous locations, the "General Light Industry" land use had been substituted without explanation. (See AWA Letter, p. 3.) Further, standard trip rate values had been overridden for the DEIR analysis, also without explanation. The arbitrary deviation from standard, industry-accepted methodology must be supported by substantial

evidence, and the DEIR sited to none. If the County simply accepted the estimates provided by the applicant, there must be evidence beyond self-serving statements to support the modified inputs.

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

Comments on the DEIR questioned the unexplained manipulation of land use type and fleet mix, as well as the omission of significant delivery trips and the faulty assumption that employees will be traveling to work in an "urban" setting, result in a complete lack of accuracy and credibility in the air quality analysis relied upon in the DEIR. An EIR must identify *all* of the environmental impacts, direct and indirect, associated with a proposed project. (CEQA Guidelines §§ 15123 and 15126.2.) "The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered in the full environmental context." (CEQA Guidelines § 15125(c).) In this case, it was pointed out that the DEIR did not include an analysis of the air quality impacts that will actually be associated with the Project.

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

In the FEIR, the County also has abandoned any threshold of significance for CAP emissions from mobile sources. The County admits that the revised modeling reveals significantly increased emissions from mobile sources, but declines to use the threshold of significance that was applied to these emissions in the DEIR, claiming "Siskiyou County is in attainment for all CAP's, [and] numerical thresholds have not been established for mobile emissions." (FEIR, p. 3-24.) In other words, the County applied the Rule 6.1 threshold to *all* Project CAP emissions in the DEIR, but when the revised modeling revealed that the

mobile emissions would exceed this threshold, the County abandoned it and now claims that there is no applicable threshold.

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

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

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

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

The County failed to run the screening level HRA with the new mobile source information, and as a result, the HRA is inaccurate. Emissions estimated in the FEIR's revised Air Quality element have increased substantially over what was used in the DEIR to model the project's health risks.

In fact, using the revised emissions data included in the FEIR, modeling has been conducted by Dr. Andrew Gray of Gray Sky Solutions, and the increase in DPM-containing PM2.5 *will* cause the project's maximum cancer risk for the most at-risk residents to exceed the 10/million increased cancer risk threshold of significance, rendering the FEIR's determination of a less-than-significant risk invalid. (See attached October 5, 2017, memorandum from Andrew Gray to Greg Gilbert and Roslyn McCoy.) This is not a question of a disagreement among experts. The County revised the emissions data, and then simply failed to re-run

the HRA modeling to determine whether or not the health risk impacts are significant. Dr. Gray has performed the modeling, and the results reveal that the Project will, in fact, have a significant impact.

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

In summary, the FEIR includes substantial emissions input-related changes, but the changes do not remedy the errors of the DEIR. Emissions remain underestimated for CAP and GHG pollutants, and the screening-level HRA conducted for the DEIR and carried through unrevised to the FEIR now reflects substantially underestimated health risks.

c. Greenhouse Gas Emissions

The greenhouse gas and climate change impacts sections of the EIR rely upon Appendix M, discussed in detail above, as well as the revised emissions data included in the FEIR, and that analysis is so woefully inaccurate that it is of very little use in terms of providing support for any conclusions regarding GHG emissions.

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

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

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

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

The DEIR errs in jumping to the conclusion that the Project's impacts related to climate change are significant and unavoidable, without conducting the analysis of *why* this is the case. (*Keep Berkeley Jets Over the Bay Com. V. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371.) The DEIR states that the Project is necessary to allow Crystal Geyser to meet the vaguely described "increasing market demand."

In response to comments, the County continued on the path of simply making the finding that it is a significant and unavoidable impact, and does not consider additional, feasible mitigation measures, but simply relies upon an increase in the carbon off-set mitigation. (FEIR, p. 3-24.) "As shown in Table 4.6-2 of the Final EIR, the estimates of GHG emissions with the changes to the revised project assumptions increased from 35,486 metric tons (MT) of carbon dioxide equivalent (CO2e) per year to 61,281 MT of CO2e per year. As a result, Mitigation Measure 4.6-1 within the Final EIR has been revised to require an equal increase in the amount of off-set mitigation required; thus after mitigation, the severity of the environmental effect does not change between the Draft EIR and the Final EIR." (*Id.*) Thus, the revised analysis in the FEIR shows that the Project will have nearly twice the level of GHG emissions as stated in the DEIR, and yet the County continues to avoid the consideration and adoption of additional mitigation measures. (See FEIR, pp. 3-12 and 3-17.)

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

d. Noise impacts

The noise chapter of the FEIR is riddled with errors. The analysis picks and chooses from data in the DEIR and from the revised noise study presented with the FEIR. The EIR uses noise thresholds that have been superseded and are

not the standard for the industry. The County intentionally used a residence 80 feet from the railroad track to develop a "baseline" and compounded the errors in the noise analysis for leaving out a sensitive receptor.

The residence at 333 Raspberry Way was left out of the study, despite the fact that it is directly across the street from the project and the nearest sensitive receptor to the HVAC equipment and boiler vents in the front of the bottling plant. (See Exhibit 3 to October 5, 2017 appeal letter, site marked "receptor X.") The County did not even respond to the comment submitted describing this error in the noise study.

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

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

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

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

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

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

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

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

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

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

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

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

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

e. Traffic impacts

The FEIR continues to contain errors in the traffic impacts analysis. For example, the FEIR fails to consider winter traffic impacts. The issues that remain are describe in detail by Tom Brohard in his comments regarding the FEIR. (See comment on FEIR submitted by Tom Brohard and Associates ["Brohard Letter"], p. 1.) The attached letter from the City of Mt. Shasta and ENPLAN also describe the continued shortcomings in the traffic analysis and mitigation measures.

f. Hazards and hazardous materials

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

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

g. Impacts to hydrology

The project's impacts to groundwater have not been adequately disclosed and analyzed in the EIR. (See letter from Donald B. Mooney to the Planning Commission, dated September 19, 2017.) The EIR fails to adequately address potential impacts to nearby wells. The analysis falls short with respect to analyzing impacts to groundwater levels as well as groundwater quality.

i. Groundwater Supply

In response to comments, the County claims that the evidence submitted by commenters is "anecdotal." (FEIR, p. 3-35, 3-107, 3-204 and 3-251.) Personal observations may qualify as substantial evidence, and in this case, the observations are based upon facts and the County may not dismiss the commenters' concerns on the ground that some of the evidence submitted is based upon non-expert observations.

"Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence." (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.) "For example, an adjacent property owner may testify to traffic conditions based upon personal knowledge." (*Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 173.) Because substantial evidence includes "reasonable assumptions predicated upon facts" (Guidelines, § 15384(b)) and "reasonable inferences" (*id.*, subd. (a)) from the facts, factual testimony about existing environmental conditions can form the basis for substantial evidence. (Guidelines, § 15384; *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274 ["local residents may testify to their *observations* regarding existing traffic conditions"].)

Where, as here, lay testimony is based upon personal observation of facts, the evidence may not be dismissed by the agency. (*Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 735.)

In addition to the failure to take into account substantial evidence of potentially significant impacts to groundwater, the County also failed to conduct an adequate investigation into potential impacts. The FEIR gives no adequate response to the suggestion that water flow patterns may well be far more complicated than the simple model relied upon and that direct testing needs to be done. (See FEIR, pp. 3-362 to 3-364.) Furthermore, there is no mitigation concerning what to do if neighboring wells are impacted by the project.

In response to comments regarding the failure to adequately analyze impacts to nearby wells, the County stated that pump tests performed in 2017 analyzed potential impacts to adjacent users. (FEIR, p. 3-36.) This response is not accurate. Neighboring domestic wells were not tested, and the County only used a theoretical model to estimate drawdown. Because of the real consequences experienced during the previous operations period of the bottling facility, more is required.

The supplemental "pump tests" run on the "domestic well" did not include any monitoring of neighboring domestic wells surrounding the plant. There has been ample opportunity to monitor neighboring wells and the County was made aware through comments submitted by Tim Parker, among others, that existing studies are available (i.e., Big Springs Groundwater Elevation Study.)

A straightforward and feasible study would have included real time pump test on the DEX-6 well while monitoring neighboring domestic wells. (Tim Parker's comment on the FEIR outlines in detail the shortcomings of the County's analysis of potential groundwater supply impacts.)

Specific deficiencies include the following:

- The studies were focused solely on the connection between the Crystal Geyser bottling plant production well (DEX-6) and Big Springs, and theoretical models were used instead of monitoring water levels in neighboring domestic wells to measure possible third-party impacts and are therefore inadequate to determine a "no significant impact finding."
- The hydrogeology is particularly complex leading to significant uncertainty and raising concern that neighboring domestic wells will be impacted, and there are no mitigations provided for if and when these impacts occur.
- Testing of the interconnection between the lower aquifer system (fractured volcanic rock) from which the production wells pump, and the upper aquifer system (alluvial sand and clay) that dominantly supplies domestic wells was never evaluated. And only theoretical calculations have been used to predict the potential impact of renewed plant operations.

As demonstrated by the results of the Aquifer Test and the comments submitted by Tim Parker, the evidence in the record underscores how little is known about the upper and lower aquifer systems. The Aquifer Test confirms the lack of understanding and acknowledges the complexity of the aquifer system, yet the Crystal Geyser and County are satisfied sufficient water exists to supply the project and ignore the possibility of third party impacts by not collecting the data necessary to demonstrate otherwise. While the County's experts may opine that sufficient water exists, such opinion must be based upon substantial evidence. (CEQA Guidelines, § 15384.) In the present matter, the lack of knowledge about the upper and lower aquifer results in a lack substantial evidence to support the FEIR's conclusions.

In summary, the County has simply refused to require the tests that will actually answer the question whether or not the pumping that will be done for the Project will impact neighboring wells. This is a feasible study and why it has not been performed in order to answer this essential question has not been adequately explained.

ii. Groundwater Water Quality Impacts

The failure to fully disclose and analyze the chemicals that will be used during Project operations is discussed in Section A(3), above.

With respect to potential water quality impacts resulting from the handling of wastewater, the Planning Commission failed to discuss which wastewater treatment option it was approving when it approved the Project.

The Findings contain no mention of which option was approved. The FEIR and Response to Comments (Number 16, page 3-17; Comment P25-3, page 3-116; Comment P35-14, page 3-143; Comment P36-66, page 3-160, Comment P36-235, page 202; Comment P139-2, page 3-376) state: "The initial wastewater treatment option will be selected prior to project approval." The Planning Commission failed to deliver on this commitment relied upon by the County in its responses to comments.

According to City comments, the only wastewater treatment option that is acceptable to the City is Option 1, with all flows going the City WWTP. This responsible agency is faced now with a Project approval that fails to identify which wastewater treatment option has been approved, despite the fact that the City is the agency that will be providing wastewater treatment services. (February 24, 2017, letter from City of Mt. Shasta to Ryan Sawyer.)

In addition to the City's request that Option 1 be included in Project approval, the California Regional Water Quality Control Board submitted a letter to the County regarding the Project on September 18, 2017, stating that it strongly encouraged the County to recommend that Crystal Geyser's wastewater be sent to the City's wastewater treatment plan to the extent capacity is available, rather than to the onsite leach field. The Planning Commission ignored this issue and failed to select the wastewater treatment option before project approval as was promised in the County's response to comments.

h. Lighting Impacts

Lighting of loading areas on the East side of the plant is never described in the EIR. The entire outdoor lighting plan must be supplied in order to ascertain the significance of nighttime lighting. The lighting plan described in Appendix F or in Section 3.5.5 is totally inadequate, showing nothing of lighting locations and light distribution.

Comments were submitted stating that the nighttime illumination of all eight loading docks in itself constitutes a significant lighting increase over current conditions, but the report mentions the improvements of the amount of light cast off site would be minimized and not substantially increased over 2013 conditions (security lighting only). This must be quantified and methods used to determine this assertion must be specified. The surrounding area of the plant is currently very dark at night and local residences very much appreciate the dark skies and lack of nighttime light pollution. People come to Mt. Shasta specifically for the scenic natural beauty. Any light pollution in these inherently dark areas becomes a very significant impact. This increase of nighttime light is significant and must be mitigated. A mitigation to eliminate nighttime truck loading and reduce loading dock lighting during that time should be required

In response to these comments, the County acknowledges that a complete lighting plan has not been provided, but then goes on to conclude that it is a less than significant impact "based on the design and specifications of the proposed lighting plan and lighting improvements." (FEIR, p. 3-8.) Such a conclusion is not possible without obtaining and analyzing all of the relevant information.

6. The EIR fails to consider an off-site alternative

The EIR fails to consider a reasonable range of alternatives that would reduce or avoid the project's significant impacts. (Pub. Resources Code §§ 21002 and 21002(a); Guidelines § 15126.6(b).)

Crystal Geyser operates bottling plants in several locations and the County claims that one of the project objectives is to allow Crystal Geyser to capitalize on market demand. There is no evidence in the record to support a conclusion that without this project Crystal Geyser would not be competitive in the market. In fact, there is evidence contradicting the claim that Crystal Geyser must increase production in order to remain competitive, and must have this plant to do so. (See Section A(4), above.) Expansion of one of Crystal Geyer's other facilities would be a feasible, off-site alternative and should have been included in the EIR.

7. The findings are not supported by substantial evidence

The findings for the Statement of Overriding Considerations ("SOC") are not supported by substantial evidence. The findings of fact and the CEQA findings are similarly flawed, without substantial evidence to support the conclusions.

In each of the areas discussed above, and in areas identified in various comments submitted to the County on the EIR, there is not substantial evidence to support the conclusions in the document.

Further, below are examples of flaws in the findings:

- For impact areas where the EIR did not identify mitigation measures, the County simply did not make any findings. (See Findings and Facts in Support of Findings ["Findings"], p. 4 for Aesthetics; p. 28 for Hydrology and Water Quality; and p. 29 for Land Use.)
- The Air Quality Findings include all of the errors in the calculations, the improper abandonment of the threshold of significance, and the outdated HRA, and so are faulty. (Findings, pp. 4-6.) Further, Appellants' expert, Dr. Gray, used the updated emissions data from the FEIR and ran a new HRA, providing clear evidence that the health risk impacts of the Project *are* significant.

- The GHG analysis and findings are flawed for the same reasons. (Findings, pp. 24-27.)
- The Findings conclude that no contaminated soils exist on the project site, and as noted above, the evidence is uncertain and does not support this conclusion. (Findings, p. 28.)
- Particularly alarming, substantial evidence does not support the finding that there is sufficient water supply for the project. In fact, there is no finding at all on the question of water supply. (Findings, p. 28 ["None."])
- The Findings regarding noise impacts carry through the errors in the noise studies, the failure to include the nearest sensitive receptor and other flaws discussed above, and so they are not based upon substantial evidence. (Findings, pp. 29-35.)
- The Findings conclude that the No Project Alternative would not meet *any* of the project objectives, but fails to discuss whether or not Crystal Geyser could be competitive and meet market demand with the expansion of another of its facilities or with an off-site option. (Findings, p. 48.)
- The SOC inaccurately finds that the project will have overriding economic benefits simply because the project *may* create up to 60 jobs over a period of several years at the bottling plant. (Findings, p. 51.) There is no evidence cited, and the economic studies prepared for Crystal Geyser fail to take into account the context (whether 60 jobs is significant), and it also fails to take into account the large volume of groundwater that will strain the sewer treatment capacity and impact the public, the groundwater impacts associated with past plant operation, and the reduction in property values as a result of the noise, traffic, and aesthetic impacts. The Findings are a bare bones conclusion without citation or discussion of any substantial evidence.
- Finally, the SOC includes a statement that the project's impacts are mitigated and that is an overriding consideration. (Findings, p. 51.) This is not an overriding consideration, it is a requirement of CEQA. But for the proposed project, the mitigation measures would not be necessary. This SOC makes no sense.

The findings are inadequate, particularly the bare-bones findings in the SOC. The California Supreme Court has stated "the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and [the] ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1989) 11 Cal.3d 506, 515.) The County has not done so it its Findings.

8. The FEIR fails to include good faith responses to all comments

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

In response to comments regarding General Plan consistency, the County provided a Master Response so vague that it does not address any of the concerns raised. (FEIR, p. 3-42.)

In response to comments the County provides some very general market information regarding the growing demand for bottled water products. (FEIR, 3-319.) There is no information provided regarding Crystal Geyser's other facilities or its ability to meet current demands, and no evidence to support a conclusion that without this particular bottling plant Crystal Geyser will somehow become uncompetitive in the market. The fact that there is a general increased demand for bottled water products is not substantial evidence to support the County's assertion that without this Project Crystal Geyser will be unable to compete. (See Section A(4), above.)

Master Response 2 fails to address the questions raised in comments and fails to remedy the problem of a lack of enforceability of Mitigation Measures. (See Section A(1), above.)

B. The project is inconsistent with the County and City General Plans

1. Heavy Industrial Use is not an allowed use on the Project site

The Project site is mapped in the General Plan with the Woodland Productivity Overlay designation. Woodland Overlay's Policy 32 that pertains to the Project site states as follows: "Single-family residential, light industrial, light commercial, open space, non-profit and non-organizational in nature recreational uses, commercial/recreational uses, and public or quasi public uses *only* may be permitted." (Emphasis added.) Policy 41.1 provides that where there is conflict between land use elements in the general plan, the most restrictive use policy

will apply. The meaning of the General Plan is remarkably clear in not including or allowing heavy industrial uses in the Woodland Overlay area.

It is irrelevant that the zoning ordinance allows heavy industrial uses, as the adoption of the zoning ordinance was of no legal effect at the time it occurred. (*Lesher Communications v. City of Walnut Creek* (1990) 52 Cal.3d 531, 544.) The California Supreme Court has held that where there is an inconsistency between the general plan and the zoning ordinance, the general plan prevails and the zoning ordinance is nullified in that instance. The zoning ordinance relied upon by the County to justify the position that the Project is permitted "by-right" was actually "*void ab initio*." "A zoning ordinance that conflicts with a general plan is invalid at the time it is passed. [Citations.] The court does not invalidate the ordinance. It does no more than determine the existence of the conflict. It is the preemptive effect of the controlling state statute, the Planning and Zoning Law, which invalidates the ordinance." (*Id.*)

In its response to comments, the County asserts that the zoning it adopted after the Woodland Overlay was in place may not be questioned at this point because the statute of limitations for challenging the zoning ordinance has long passed. (FEIR, p. 3-42.) This is simply not true. According to the California Supreme Court, the heavy industrial zoning was void at the time it was adopted because it is in direct conflict with the General Plan.

There is no legal way for the County to avoid its obligation to consider and issue a permit for any heavy industrial use on the Project site, including the bottling facility.

2. Inconsistency with General Plan Policies

All counties and cities must adopt a general plan for the physical development of their land. (Gov. Code § 65300.) The general plan functions as a "constitution for all future developments" and land use decisions must be consistent with the general plan and its elements. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 570.) A "project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment. [Citation.]" (*Corona–Norco Unified School Dist. v. City of Corona, supra,* 17 Cal.App.4th at p. 994.) Perfect conformity is not required, but a project must be compatible with the objectives and policies of the general plan. (*Families Unafraid to Uphold Rural Etc. County v. Board of Supervisors* (2005) 62 Cal.App.4th 777, 1336.) A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear. (*Id.* at pp. 1341–1342; and *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782.)

As discussed in detail above and in letters submitted by others, including Mr. Mooney and local citizens, the Project will not be consistent with the

surrounding land uses and will be harmful to the citizens of both the County and the City, in violation of their respective General Plans. Additionally, it violates the Woodland Overlay (see Section immediately above).

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

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

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

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

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

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

Findings contain a series of unsupported conclusions regarding consistency with General Plan Policies.

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

C. Conclusion

Because of the issues raised above, we believe that the FEIR fails to meet the requirements of the California Environmental Quality Act and that the Project is inconsistent with applicable planning documents. For these reasons, we believe the Appeal should be granted pending appropriate environmental review and a revised Project and EIR.

Sincerely,

Marsha A. Burch
Attorney

cc: Gateway Neighborhood Association
WATER
Winnemem Wintu Tribe