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Harrington

Board of Supervisors
County of El Dorado
330 Fairlane
Placerville, CA 95667

Re Comments on Mitigated Negative Declaration (MND) for the Harrington Business Park Project (Project),
Rezoning Z06-0020/Parcel Map, P05-0004 Harrington Business Park

Dear Board,

This comment letter is written on behalf of Concerned Citizens of Diamond Springs concerning the Mitigated Negative Declaration (MND) for the Project. Concerned Citizens of Diamond Springs is composed of a diverse group of residential property owners in the area of the proposed project. For many of us the project would directly and, as planned, adversely affect our residential properties and land values.

Our specific comments are set out below, and we are focusing only on those aspects of the Project MND that are most dramatically flawed and out of compliance with the California Environmental Quality Act (CEQA) and the regulations promulgated by the State to establish the requirements for CEQA compliance (the Guidelines).

The Project Description is Misleading and Inaccurate:

At the heart of CEQA is the statutory requirement that a "project description" being both complete and completely accurate, and that the project description not be changed over the course of or in different parts of the environmental analysis represented by the MND. Guideline 15124 requires, among other requirements, that a project description needs to set forth project objectives, which in the present case, are wholly lacking insofar as there is no description of the physical development, and its environmental results, that will occur at projected build-out.

The present project description woefully understates what is really involved in the improvements to Highway 49/Pleasant Valley Road, proposed road "A"/Commerce Way and the installation of a traffic signal, which is the provision of road improvements, largely at the expense of the general taxpayer, to benefit a particular group of developers, as well as several other publicly funded infrastructure improvements whose property interests will be directly benefited by the Project.

Conflicting statements within the report:

1/27/11 Staff Report, Page 3, Site Description: *"This site is covered with grasses, bush, and trees with slope up to 30 percent."* The slope study shows that 2% of the property is over 30 percent.

The Environmental Checklist regarding Agricultural Resources states, *"It has been determined that the project would not result in any impacts to agricultural lands or properties subject to a Williamson Act Contract....For this Agriculture and Forest Resources" category, the identified thresholds of significance have not been exceeded and no significant adverse environmental effect would result from the project."* Yet the site description states that, *"The existing improvements within the property consist of a single-family residence, barn, reservoirs, cross-fencing, small orchard,and pastures. Most of the property has been grazed for many years."* Since the County has not completed mapping of Agricultural Properties that could be of local significance, and since apparently this property contained elements related to agriculture, "No impact to Agriculture Resources is inadequate."

The Environmental Checklist regarding Mining Resources states, *"No known mineral resources are located on or within the vicinity of the project. There would be no impact to this Mineral Resources category."* Yet the site description states that, *"The existing improvements within the property consist of old placer tailings..."* More research should be explored, due to the evidence of existing tailings and the fact that this area is historically rich in mining resources, in order to determine true significance to loss of a mining resource.

The Environmental Checklist regarding Hydrology and Water Quality Resources states, *"No significant hydrological impacts would result from development of the project. For the Hydrology and Water Quality section, it has been determined the project would not exceed the identified thresholds of significance and no significant adverse environmental effects would result from the project."* The new road is being placed directly against and above the wetlands which are fed by natural springs, which is adjacent and tributary to Deadman Creek, which flows into Patterson Lake below. It is common for this area surrounding Highway 49 and below to flood in the winter. With the road system required and the new industrial and commercial development there will be an enormous amount of increased impermeable surfaces collecting pollutants related to industrial and road uses which runoff will greatly alter the quantity and quality of the surrounding groundwater. How culvert systems and v-ditches will adequately handle this increased amount of drainage in a flood area which is upstream from a natural water system has not been addressed. Putting mitigation and drainage design off until build-out of each parcel is inadequate in addressing the cumulative effect to hydrology and water quality. Not addressing lot development is a potentially significant impact to the Hydrology and Water Quality in the area above ground to existing residents, structures and properties downstream and surrounding this development.

The Administrative Finding 4.1.3 states, *"The business park layout has been designed in a manner which avoids impacts to specific wetlands and significant grading on slopes in excess of 30 percent."* Reviewing the map for the slope study, the wetlands have not been avoided by the layout, (no setback shown), nor have the over 30% slopes been avoided. Developing these individual lots will literally butcher these hill sites. Ignoring these issues until "after" the final map approval will cause a potentially significant impact to the environment and wetlands. Design waiver 4.2.2 states that *"strict application of standard sidewalk width would result in additional disturbance resulting from site grading and construction of the roadway infrastructure. Specifically, approval of*

the modified sidewalk width would result in lesser impacts to identified wetland features adjacent the anticipated roadway.” Therefore, admitting that the roadway will create an impact to the wetlands.

The consultant and applicant have completely ignored the requests of Development Services to provide needed information to prepare the environmental document and staff report in the September 5, 2006 letter from Jason Hade, Project Planner. The letter stated that the applicant was deferring General Plan compliance to later project review stages, such as time of Design Review submittal, will result in the project not moving forward because the environmental document and staff report may not be completed [without the needed information]. This information requested, Items 1-6, in the letter attached, have yet to be completed. It is interesting to note that this planner is no longer on the project and the review was completed without the required information. Thus this plan does not meet General Plan guidelines nor has the potentially significant impact of this project justify being reduced to a Mitigated Negative Declaration due to insignificant and unenforceable mitigation.

Growth Inducing Impact Analysis is Lacking

CEQA requires that the “growth inducing” impacts of any project be thoroughly analyzed in the DEIR (Public Resource Code section 21100(b)(5) and Guideline 15126.) Growth inducing impact analysis is completely absent from the present MND. The requirement for the road to be widened and the easement increased to 120 feet is a growth inducing impact. Simply stating that the project is consistent with the General Plan is insufficient and is never an excuse to avoid analyzing the growth inducing or other environmental impacts of a project. The impacts that must be analyzed are those that will occur on the ground or as a result of activities on the ground, not those considered in some theoretical General Plan. See court case Environmental Planning and Information Council v. County of El Dorado (1982) 131 Cal. App. 3d.

CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan; it concerns itself with the impacts of the project on the environment, defined as existing physical condition in the affected area. Therefore this project cannot be tiered off of an existing General Plan Environmental Report.

The growth inducing impacts of commercial and industrial development in the area impacted by the Project are never even discussed in the MND. Yet the very heart and soul of why the Project is being developed is to encourage that development, and in fact, according to the MC&FP there will not be enough revenue to fund the project improvements completely unless properties currently undeveloped or perhaps marginally developed, are encouraged to develop in the near future.

Mitigation Measures neither Adequate nor Related to the Impact

The MND is fatally flawed for not analyzing the growth that must occur in the area served by the Project. “Determining Important Mitigations Strategies” sometime in the future does not comply with CEQA. As part of the CEQA process, CEQA allows a lead agency, such as the County in this case, to make a determination that even though a Project will engender adverse environmental consequences, the lead agency can still determine that consequences are “less than significant” if the lead agency imposes conditions on the project that will reduce those impacts to a nonexistent or miniscule status. Such conditions are referred to as “mitigations”.

However, a lead agency may not determine that a particular environmental impact—for example, the Project’s impact on water quality—has been reduced to a level of insignificance -- by imposing a condition that itself has yet to be developed, is not a simple cut and dried formula that everyone can look at and determine that the mitigation will work, and where the mitigation itself involves discretionary judgments as to how it will be developed or constructed. These types of “mitigations” are “future mitigations” and are not permitted under CEQA. *Sundstrom v. County of Mendocino* (1988), 202 Cal. App. 3d 296.

They are not permitted for two reasons. First, the environmental review process is hidden from the public and CEQA is a public participation process first and foremost. Secondly, a future mitigation to be imposed later in the Project’s processing, unless it refers to an exact standard—such as for example a pipe size for a domestic leach field contained in a publicly available manual covering such matters—represents a development of a discretionarily approved mitigation which may or may not be adequate. Since it is developed in private neither the public nor the scientific or technical consultants who might review the mitigation on behalf of the public, ever get to see the proposed mitigation or challenge its adequacy.

The MND is replete with these “mitigations” that are to be developed in the future, out of the purview of public review, and involve a great deal of discretion in the development of the particular procedure, plan or activity, that are purported to mitigate various environmental concerns. Some examples (not a complete listing) are:

- Working out the road issues with Caltrans
- Detailed performance standards for an Oak Woodland Mitigation Plan are to be developed off-record and in the future and not, of course, subject to review by arborists involved on behalf of the public or Oak Woodland preservation groups
- To the extent feasible, the tentative parcel map would be subject to consistency with applicable General Plan policies involving wetland preservation through incorporation of development buffers, to be determined later
- The Storm Water Prevention Plan, which is highly individualized for each project, is to be developed in the future
- An unclear design review process to determine compatibility issues between residential and industrial or commercial parcels will be used to assess lighting, odor, noise, grading and visual impacts on an individual basis.

These and other “mitigations” cannot be found to qualify as CEQA sanctioned mitigations when they in fact do not exist, involve a great deal of discretion and professional judgment in their development and/or implementation, and are developed outside of the public review process as part of the public’s review of the DEIR.

Public Comments Not Adequately Addressed

Zoning/General Plan

Simply stating that it has been assumed that the resident parcel would be converted to industrial since 1960 does not justify the zoning change. General Plan Policy 2.2.5.7 states, "Where a zoning district applied to given land is consistent with the General Plan land use designation, the County reserves the right to deny development plans providing for permitted uses where adequate findings for approval (including adequate public facilities and services) cannot be made." The County has the right to deny this zone change based upon the following issues:

- Slopes over 30%
- Wetlands without the required 50 foot setbacks
- No buffers between the existing residential and new industrial parcels
- Inadequate infrastructure for the size of development
- Over surplus of existing industrial parcels and buildings in the county at this time.

Policy 2.2.5.7 states, "Where approval of this General Plan has created inconsistencies with existing zoning, lower intensity zoning, in accordance with Table 2-4, may remain in effect until such time as adequate infrastructure is available to accommodate a higher density/intensity land use."

The following measures were to be completed one to three years after the adoption of the General Plan and have yet to have been completed in this area:

Measure LU-D: Revise the Zoning Ordinance to ensure that all uses permitted by right in a zoning district are compatible. Allow potentially incompatible uses subject to a discretionary review process with performance standards designed to ensure appropriate separation of incompatible uses. Include in the Zoning Ordinance a requirement that any project located adjacent to an existing sensitive land use shall be required to avoid impacts on the existing use. (Policy 2.2.5.21)

Measure LU-F: Create and adopt Community Design Review standards and guidelines and identify new Community Design Review Districts. This would include working with community groups to develop standards. (Policies 2.4.2.2, 2.4.1.2, and 2.4.1.4)

Measure LU-G: Amend the County Code to establish a Historic Design Review Combining Zone District. Identify suitable areas for application of the district and develop design standards or guidelines for such districts. (Policies 2.4.1.3 and 7.5.2.1 through 7.5.2.4) Identifying potential historic districts was to be done immediately after the adoption of the General Plan. This project straddles a historic/scenic Highway and is between two historic town sites.

Measure LU-H: Develop and implement a program that addresses preservation of community separation, as outlined in Policy 2.5.1.3. The program shall address provisions for a parcel analysis and parcel consolidation/transfer of development rights.

Measure LU-J: If segments of State Route 49 are identified as appropriate for State Scenic Highway status during preparation of the Scenic Corridor Ordinance (Measure LU-I), prepare documentation in support of having those segments of State Route 49 identified as a State Scenic Highway (Policy 2.6.1.8).

Open Space

Stating that *“open space will provide a buffer to nearby residences”* does not address the fact that there is only a 5 foot setback between the residential and industrial parcels. This is not an adequate buffer to mitigate the incompatibilities between the two types of zoning. Avoiding dealing with land use incompatibility issues such as lighting, odor, noise, grading, and visual impacts until after these parcels are created is insufficient and fragmented mitigation. The open space on the property does not provide a buffer between the residential and industrial parcels.

Stating that, *“Design Control overlay will require review of all projects and this step is just creating the lots,”* does not answer the issues that are being created by incompatibilities of creating industrial parcels adjacent to residential parcels. Once these lots are created, there will be no opportunity to change or correct the newly created lots if inconsistencies are later found with the General Plan. These inconsistencies must be addressed now, not neglected until after the lots are created.

Loss of Oak Tree Coverage/Topography slope/Insufficient Lot Sizes

When the lots are built out the majority of the oak trees will be eliminated; 2% of the property has over 30% slopes, and 20% of the property is between 21% and 30% slopes. It appears that many of the parcels lack the size to accommodate required standards for industrial parcels such as loading docks and parking. With these possible limitations it appears that some of these lots could have the potential of not being buildable. Simply stating that *“All sites are buildable”* and *“each lot will have its own tree removal plan”* is not a suitable assurance of standard buildable lots being created for industrial purposes, nor does it mitigate the loss of a substantial amount of oak woodlands.

Drainage

In regards to the drainage, simply stating that *“Current drainage problems were due to buildings being placed in drainage areas and project is being required to ensure area does not overflow”* does not explain how the drainage problem will be mitigated.

Traffic Congestion/Historic Resources

The cumulative effects of this project and other projects in the area have not been addressed as to the anticipated affect on traffic circulation. With the proposed projects the traffic will significantly impact the community which will require 4 lanes in order to accommodate the necessary circulation. The project manager claims that the *“widening of Highway 49 will occur with or without this project.”*

Four lanes of traffic going through the small towns of Diamond Springs and El Dorado will impact existing homes, businesses and historic buildings on this historic highway and the towns’ Main Streets. El Dorado County has not addressed this circulation issue. It has not been adequately explained how the impact on the historic

town of El Dorado and Diamond Springs will be dealt with. The Highway 49 corridor qualifies as a possible historic route; see Measure LU-J above.

The Commissioners' and County Counsel, Paula Franz's, compliance statements below are inadequate:

"The rezone request is to match the current General Plan land use designation. "

When the current General Plan was adopted it was known that not all land designation created would be compatible with the zoning. This parcel is presently zoned residential. The existing zoning is more compatible with the nature of the land and with adjacent residential zoning. It also creates a natural buffer and transition between the existing industrial and residential zoning. General Plan Policy 2.2.5.7 allows the County to determine compatibility on parcels that are discretionary such as this one.

"The parcels would be subject to design review by the Diamond Springs-El Dorado Community Advisory Committee (CAC)."

The CAC has not developed design standards, historical overlays or standards upon which to determine compatibility with community vision or values.

"Wetlands setback is addressed in the conditions."

GP Policy 7.3.3.4 requires a 50 foot setback from intermittent streams and wetlands. The map does not show the 50 foot setbacks. If the wetland setbacks were applied it would change the design of the road and the lots. This policy has been completely ignored on the map and in the design of the lots.

California planning law requires this Project to conform to the enumerated County General Plan policies, and clearly this project as drafted does not.

I would ask that this Mitigated Negative Declaration be rejected and the project be rejected until a properly written environmental impact document can be composed that will comply with CEQA and the El Dorado County General Plan.

Respectfully,

Concerned Citizens of Diamond Springs
Eric Johnson

DEVELOPMENT SERVICES DEPARTMENT

County of
EL DORADO

<http://www.co.el-dorado.ca.us/devservices>

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September 5, 2006

Gene Thorne
Gene E. Thorne & Associates, Inc.
3025 Alhambra Drive, Suite A
Cameron Park, CA 95682-7999

RE: Z06-0020/P05-0004 (Harrington Business Park)
APN: 329-280-15 & 16

Dear Mr. Thorne:

In response to your question regarding additional information needed to prepare the environmental document and staff report, the following must be addressed:

1. Traffic Impact Study (TIS) as requested by Caltrans in their project comments (enclosed) dated August 16, 2006. Please provide a copy of the TIS to Planning Services after review and approval by Caltrans so that any proposed mitigation measures may be included in the environmental document;
2. As the project will worsen traffic as defined by Policy TC-xf of the General Plan, further details are needed to verify that all required improvements necessary to maintain or attain Level of Service standards detailed in the Transportation and Circulation Element will be constructed by the developer or adequate funding is identified and available for the necessary road improvements and those projects are programmed;
3. Comprehensive grading plan for the full project at projected build-out. The submitted preliminary grading and drainage plan is inadequate for project review purposes as it does not address lot development. Building envelopes to address General Plan consistency with policies regarding tree canopy removal, wetland setbacks and development on slopes exceeding 30 percent. The "development constraints map", dated March 15, 2006, indicates that many proposed parcels are unbuildable because of General Plan inconsistencies. Therefore, the comprehensive grading plan is needed to verify that each proposed parcel is buildable while avoiding the site constraints;
4. A general acoustical analysis pursuant to General Plan Policy 6.5.1.2 to analyze potential project impacts on adjacent residential land uses is required to complete the draft initial study for the parcel map and zone change applications. The noise analysis should be focused on reviewing potential impacts to adjacent residential land uses in the portion of the site northwest

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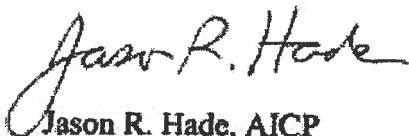
of Pleasant Valley Road as a result of the proposed industrial uses and developing performance measures for future mitigation measures including sound walls, setbacks and berms;

5. The proposed phasing plan is unacceptable as it defers the resolution of critical General Plan compliance issues to a later unknown date rather than addressing them as part of the project review process. If compliance with all General Plan development policies regarding slopes, wetlands and tree canopy removal cannot be demonstrated, an option may be to not map the severely constrained phases of the project at this time, such as phase 3, and instead include such phases as a remainder parcel. However, the preferred option would be to submit the full project for review. An additional parcel map shall be submitted should the property owner wish to further subdivide the remainder parcel in the future; and
6. As previously requested on June 12, 2006, further information is needed regarding tree canopy removal at the subject site as a result of the proposed development. Please submit an estimate of tree canopy removal for the proposed road improvements and lot development, as well as any off-site road improvements required to implement the project. The response received from Roger Evans on July 12, 2006 did not sufficiently address this issue.

The continued approach of deferring General Plan compliance to later project review stages, such as time of Design Review submittal, will result in the project not moving forward because the environmental document and staff report may not be completed. Please submit the information outlined above as soon as it becomes available.

You may contact me at (530) 621-5355 or jason.hade@co.el-dorado.ca.us if you have any questions.

Sincerely,



Jason R. Hade, AICP
Project Planner

cc: Greg Fuz, Development Services Director
Peter Maurer, Principal Planner
Chuck Collins, DOT

Patricia Harrington & Michael Quigley
1484 Jessica Lane #B
Gardnerville, NV 89410

Enclosure