P: (626) 381-9248
F: (626) 389-5414
E: info@mitchtsailaw.com

Mitchell M. Tsai
Attorney At Law

139 South Hudson Avenue
Suite 200
Pasadena, California 91101

VIA E-MAIL

July 10, 2023

Pasadena City Council
100 North Garfield Avenue
Pasadena, CA 91101
(626) 744-4124
Em: correspondence@cityofpasadena.net

Mark Jomsky, City Clerk
City of Pasadena
100 North Garfield Avenue
Pasadena, CA 91101
(626) 744-4124
Em: mjomsky@cityofpasadena.net

RE: City of Pasadena City Council July 10, 2023, Public Meeting Regarding the Brookside Golf Course Improvements Project (Agenda Item No. 15).

Dear Mr. Jomsky and Councilmembers:

On behalf of the Linda Vista-Annandale Association (**LVAA**), my Office is submitting these comments addressing the Mitigated Negative Declaration (**MND**) prepared for the City of Pasadena's ("**City**") Brookside Golf Course Improvements Project ahead of the July 10, 2023, City Council public meeting.

According to the City's description, including in the MND, April 27, 2023, Staff Report ("**Staff Report**"), the Rose Bowl Operating Company (**RBOC** or "**Applicant**") proposes plans to triple the size of the existing driving range from 20 to 60 bays; reorient the direction of the driving range; install technology that would presumably electronically track golf balls and automatically score drives at 30 of the bays; install two 18-hole miniature golf courses adjacent to the west of the proposed

driving range; and associated plans and infrastructure including the removal of 44 poles, installation of 36 new lighting poles, and removal of a minimum of 47 and possibly 81 public, protected trees and the potential encroachment upon 16 additional trees ("**Project**"). In conjunction with the Project, RBOC commissioned the preparation of an Initial Study that concluded that there would be less than significant environmental impacts with incorporation of certain mitigation measures. Consequently, an MND was prepared and circulated in January 2023.

The Project is located at the Brookside Golf Course's existing driving range at 1133 Rosemont Avenue, north of the intersection with Rose Bowl Drive, in Pasadena, California 91103 ("**Site**"). The Project Site comprises approximately 16 acres within the existing driving range, Hole 10 of the C.W. Koiner Course, and Holes 6 and 7 of the E.O. Nay Course.

In light of the following concerns, LVAA respectfully requests that the City: (1) deny adoption of the MND; (2) order the preparation and circulation of a Project-specific Environmental Impact Report (**EIR**) prior to any approvals for the Project; (3) order that Applicant further develop and revise the Project to ensure its consistency with all applicable plans and regulations especially those addressing the Project's potential impacts on human and environmental health; and, (4) require that the environmental review consider the whole of an action and all discretionary actions, including but not limited to those for the CUP, design review, and tree removals.

I. THE MND WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

A. Background Concerning Environmental Impacts Reports.

The California Environmental Quality Act (**CEQA**) is a California statute designed to inform decision-makers and the public about the potential significant environmental effects of a project. 14 California Code of Regulations ("**CCR**" or "**CEQA Guidelines**"), § 15002, subd. (a)(1).[1] At its core, its purpose is to "inform the public and its responsible officials of the environmental consequences of their decisions

[1] The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 et seq., are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. Pub. Res. Code, § 21083. The CEQA Guidelines are given "great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous." *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.

before they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

CEQA also directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002, subds. (a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners of the City of Oakland* (2001) 91 Cal.App.4th 1344, 1354 (hereafter, "*Berkeley Keep Jets*"); *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 400 (hereafter, "*Laurel Heights*"). The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines, § 15002, subd. (a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in Public Resources Code section 21081. See CEQA Guidelines, §§ 15092, subds. (b)(2)(A)-(B).

While the courts review an EIR using an 'abuse of discretion' standard, the reviewing court is not to *uncritically* rely on every study or analysis presented by a project proponent in support of its position. *Berkeley Keep Jets*, *supra*, 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights, supra,* 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Ibid.* Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. *Sierra Club v. Cnty. of Fresno* (2018) 6 Cal.5th 502, 515; *Madera Oversight Coalition, Inc. v. Cnty. of Madera* (2011) 199 Cal.App.4th 48, 102, 131. As the First District Court of Appeal has previously stated, prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. *Berkeley Keep Jets, supra*, 91 Cal.App.4th at p. 1355 (internal quotations omitted).

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. *Communities for a Better Environment v. Richmond* (2010) 184 Cal.App.4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc.*

v. City of Rancho Cordova (2007) 40 Cal.4th 412, 449-450). The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. *Ibid.* For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Ibid.*

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the "fair argument" standard under which an EIR must be prepared whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of "B" St. v. City of Hayward* (1980) 106 Cal.3d 988, 1002.

The fair argument test stems from the statutory mandate that an EIR be prepared for any project that "may have a significant effect on the environment." Pub. Res. Code, § 21151; see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.App.3d 68, 75 (hereafter, "*No Oil*"); accord *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 884 (hereafter, "*Jensen*"). Under this test, if a proposed project is not exempt and may cause a significant effect on the environment, the lead agency must prepare an EIR. Pub. Res. Code, §§ 21100, subd. (a), 21151; CEQA Guidelines, §§ 15064, subds. (a)(1), (f)(1). An EIR may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project may have a significant effect on the environment. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785. In such a situation, the lead agency *must* adopt a negative declaration. Pub. Res. Code, § 21080, subd. (c)(1); CEQA Guidelines, §§ 15063, subd. (b)(2), 15064, subd. (f)(3).

"Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code, § 21068; CEQA Guidelines, § 15382. A project may have a significant effect on the environment if there is a reasonable probability that it will result in a significant impact. *No Oil, supra,* 13 Cal.App.3d at p. 83 fn. 16; see *Sundstrom v. Cnty. of Mendocino* (1988) 202 Cal.App.3d 296, 309 (hereafter, "*Sundstrom*"). If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall

effect of the project is beneficial. CEQA Guidelines, § 15063, subd. (b)(1); see *Cnty. Sanitation Dist. No. 2 v. Cnty. of Kern* (2005) 127 Cal.App.4th 1544, 1580 (hereafter, "*Cnty. Sanitation*").

This standard sets a "low threshold" for preparation of an EIR. *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v. Cnty. of Kern* (2010) 190 Cal.App.4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754; *Sundstrom, supra,* 202 Cal.App.3d at 310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen, supra*, 23 Cal.App.5th at p. 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 183; *Stanislaus Audubon Society, Inc. v. Cnty. of Stanislaus* (1995) 33 Cal.App.4th 144, 150; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of "B" St.*, 106 Cal.App.3d 988; CEQA Guidelines, § 15064, subd. (f)(1).

B. Background Concerning Initial Studies, Negative Declarations, and Mitigated Negative Declarations.

CEQA and CEQA Guidelines are strict and unambiguous about when an MND may be used. A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment." Pub. Res. Code, §§ 21100, 21151; CEQA Guidelines, §§ 15002, subds. (f)(1)-(2), 15063; see *No Oil, supra,* 13 Cal.App.3d at p. 75; see also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112; accord *Inyo Citizens for Better Planning v. Inyo Cnty. Bd. of Supervisors* (2009) 180 Cal.App.4th 1, 7. Essentially, should a lead agency be 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. CEQA Guidelines, §§ 15064(f)(1)-(2); see *No Oil, supra,* 13 Cal.App.3d at p. 75 (internal citations and quotations omitted); accord *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399-1400 (hereafter, "*Gentry*"). Substantial evidence includes "enough relevant information and reasonable inferences from this information that a fair argument can be made to

support a conclusion, even though other conclusions might also be reached." CEQA Guidelines, § 15384, subd. (a).

The fair argument standard is a "low threshold" test for requiring the preparation of an EIR. *No Oil, supra,* 13 Cal.App.3d at p. 84; *Cnty. Sanitation, supra,* 127 Cal.App.4th at p. 1579. It "requires the preparation of an EIR where there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial[.]" *Cnty. Sanitation, supra,* 127 Cal.App.4th at p. 1580 (quoting CEQA Guidelines, § 15063, subd. (b)(1)). A lead agency may adopt an MND only if "there is no substantial evidence that the project will have a significant effect on the environment." CEQA Guidelines, § 15074, subd. (b).

Evidence supporting a fair argument of a significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence. *League for Protection of Oakland's Architectural and Historical Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905 (hereafter, "*League for Protection*"). "Where the question is the sufficiency of the evidence to support a fair argument, deference to the agency's determination is not appropriate[.]" *Cnty. Sanitation, supra,* 127 Cal.App.4th at p. 1579 (quoting *Sierra Club v. Cnty. of Sonoma* (1992) 6 Cal.App.4th 1307, 1317-1318).

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. "The agency should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom, supra,* 202 Cal.App.3d at 311. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Ibid*; see also *Gentry, supra,* 36 Cal.App.4th at 1378-1379, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

Thus, refusal to complete recommended studies lowers the already low threshold to establish a fair argument. The court may not exercise its independent judgment on the omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed. *Environmental Protection Information Center v. Cal. Dept. of Forestry* (2008) 44 Cal.4th 459, 486 (internal citations and quotations omitted). The remedy for this deficiency would be for the trial court to issue a writ of mandate. *Ibid.*

Both the review for failure to follow CEQA's procedures and the fair argument test are questions of law, thus, the de novo standard of review applies. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435. "Whether the agency's record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated as a question of law. *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207; Kostka and Zischke, Practice Under the Environmental Quality Act (2017, 2d ed.) at § 6.76. If the reviewing court finds that the fair argument test had been met yet the lead agency failed to prepare an EIR, "the court must set aside the agency's decision to adopt a negative declaration [or a mitigated negative declaration] as an abuse of discretion in failing to proceed in a manner as required by law." *City of Redlands v. Cnty. of San Bernardino* (2002) 96 Cal.App.4th 398, 405.

In an MND context, courts give no deference to the agency. Additionally, the agency or the court should not weigh expert testimony or decide on the credibility of such evidence—this is one of the EIR's functions. As stated in *Pocket Protectors v. City of Sacramento* (2004):

> Unlike the situation where an EIR has been prepared, neither the lead agency nor a court may "weigh" conflicting substantial evidence to determine whether an EIR must be prepared in the first instance. Guidelines section 15064, subdivision (f)(1) provides in pertinent part: 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. Thus, as *Claremont* itself recognized, [c]onsideration is not to be given contrary evidence supporting the preparation of a negative declaration.

124 Cal.App.4th 903, 935 (internal citations and quotations omitted).

In cases where it is unclear whether there exists substantial evidence of significant environmental impacts, CEQA requires erring on the side of a "preference for resolving doubts in favor of environmental review." *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332. "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest

possible protection to the environment within the reasonable scope of the statutory language. *Friends of Mammoth v. Bd. of Supervisors* (1972) 8 Cal.3d 247, 259.

II. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT ENVIRONMENTAL IMPACTS.

As detailed further below, the MND is riddled with conflicts and legal and technical deficiencies that mandate the preparation and circulation of a thorough, Project-specific EIR.

First, the MND fails as an informational document as it does not provide sufficient stable, accurate, and finite information, including design details, for decision-makers and the public to meaningfully assess the Project's environmental impacts and mitigation measures.

Second, the MND fails to disclose and thoroughly analyze the Project's potential significant environmental impacts—neither can it do so, in light of the incomplete project description.

Third, the MND fails to impose all feasible mitigation measures to reduce the significance of the Project's impacts. Fourth, the Project is inconsistent with applicable laws, regulations, and plans. Additionally, where the Project does not directly oppose the law, the MND automatically and therefore erroneously concludes that regulatory compliance effectively establishes less-than-significant impacts.

Fifth, the MND improperly defers mitigation of the Project's impacts to a later date in violation of CEQA. See CEQA Guidelines, § 15126.4.

A. <u>There Is a Fair Argument that the Project May Have Significant Impacts Since the Project Description Is Not Stable, Finite, and Accurate.</u>

The City's April 27, 2023, Staff Report praises the Applicant's effort to prepare an MND at the earliest possible time, stating:

> The RBOC has completed a Mitigated Negative Declaration ("MND") for the Project pursuant to the California Environmental Quality Act ("CEQA"), which **analyzes**, **discloses**, and **mitigates** all **potentially significant effects** of the Project. The RBOC has **authority** to adopt

> CEQA documents pursuant to **Pasadena Municipal Code Section 2.175.110.G**.[2] The MND is discussed in more detail below.
>
> The RBOC prepared the MND at this time, as opposed to waiting until seeking **approval** of a **conditional use permit** for the Project from the City at a later, undetermined date, because now is the time for the RBOC to **commit itself** to a **definite course** of **action** toward the Project. The authority requested of the Board herein constitutes a substantial allocation of public funds to further the Project. Such **funds** would be **spent** on **actions** that create momentum behind the Project, such as **additional design** and engineering drawings, and any necessary retention of architectural and financial consultants. Most importantly, the allocation of funds goes toward the need to seek out additional funding sources for construction of the Project, such as directed donations from Legacy and applications for grant funding if possible. **Many** of those funding sources will require the type of **commitment** toward the Project shown herein, and **some may** even require **submission** of the **certified MND**.

Staff Report, p. 3 (emph. added).

While it is commendable that RBOC began its environmental process at an early date, nonetheless CEQA does not allow the bifurcation of a project's approval from its environmental review, as RBOC attempts to do here; or—what is worse—to approve the environmental document while the Project description is far from complete. Further, CEQA does not allow lead agencies to prepare an MND (i.e., dispense with an EIR) for a half-designed project, only to then approve that MND and trigger the

[2] LVAA further challenges the legality of the Pasadena Municipal Code, section 2.175.110., subsection G allowing for RBOC to approve the MND given that the MND or any environmental document must be approved by the public agency approving the Project. Here, manifestly, the Project approval is sought from—and will also be further sought through the Conditional Use Permit (**CUP**) from—the City. Hence, at least on application, the City is the lead agency that must review and approve this MND. See CEQA Guidelines, §§ 15367 (lead agency), 15381 (responsible agency). This is also confirmed by CEQA Guidelines, section 15051, which provides the criteria to identify the lead agency and specifically states: "(b) If the project is to be carried out by a nongovernmental person or entity, the Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole." Here, RBOC is a corporation and not a governmental entity; on the other hand, it is the City that is the public agency and has the greatest responsibility to approve the Project as a whole, including to provide funding and approve the CUP. Hence, it is the City that must prepare and ultimately approve the MND, contrary to the Pasadena Municipal Code provision.

statute of limitations, thereby insulating the Project from future CEQA challenges—the consequence of which would give the applicant free reign to design the Project how it deems fit and approve it immune to challenge and without any oversight or accountability. See *Cf., Vedanta Soc. of Southern California v. California Quartet, Ltd.* (2000) 84 Cal.App.4th 517, 533-534 ("We need only point out in that regard that if such a procedure were valid under CEQA, it would allow decision-making bodies to circumvent the political scrutiny built into the CEQA process, because one decisionmaker could use an abstention as a de facto 'yes' vote, and then later hide behind a subsequent overt 'yes,' vote on the theory that the second vote only involved a technical or housekeeping matter on a project that was already inevitable. ('Who? Me take responsibility for approving this project?')").

In fact, reasoning on an analogous case of pre-commitment, our Supreme Court has noted this delicate balance that CEQA requires, and the City violates:

> This court has on several occasions addressed the timing of environmental review under CEQA, emphasizing in each case the same **policy balance** outlined in CEQA Guidelines section 15004, subdivision (b). In *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 118 Cal.Rptr. 34, 529 P.2d 66 (*No Oil, Inc.*), discussing whether the proper scope of an **EIR** included possible related future actions, we quoted this observation from a federal decision: " 'Statements must be written **late enough** in the development process to contain **meaningful information**, but they must be written **early enough** so that whatever information is contained can **practically** serve as an **input** into the **decision-making process**.' " (*Id.* at p. 77, fn. 5, 118 Cal.Rptr. 34, 529 P.2d 66.) We again quoted this formulation of the general issue in *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 187 Cal.Rptr. 398, 654 P.2d 168 (*Fullerton*), which considered whether a particular action was a "project" for CEQA purposes, adding, with what has turned out to be an understatement, that "[t]he timing of an environmental study can present a delicate problem.

Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116, 129-130 (emph. added).

The City and Applicant here have ignored the above-quoted *delicate balance* and CEQA timing issues and mandate to present the MND *late enough* to contain meaningful information and instead have misused and mischaracterized the CEQA requirement to *conduct* environmental review as early as possible to shape the Project, to suggest

that such environmental review may be *approved* when the Project's design is yet unknown. Yet, *conducting* or *commencing* environmental review to allow more flexibility to shape the project and the *completion* and *approval* of the environmental document to *approve* the Project are two distinct actions and should not be conflated, as is being done here.

That the timing of the MND's approval—and hence determination of whether an EIR may be dispensed with—is not yet ripe here is also confirmed by numerous cases which have held that to ensure meaningful decision-making processes and public participation, CEQA requires that a project description be stable, accurate, and finite:

> Public notification serves the public's right "to be informed in such a way that it can intelligently weigh the environmental consequences of any contemplated action and have an appropriate voice in the formulation of any decision." (*Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 804 [161 Cal.Rptr. 260].) This public participation assists the agency in weighing mitigation measures and alternatives to a proposed project. (§§ 21100, 21151.) As the court stated in *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193 [139 Cal.Rptr. 396], "[o]nly through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal . . . and weigh other alternatives in the balance. An **accurate**, **stable** and **finite project description** is the *sine qua non* of an **informative** and **legally sufficient EIR**." Thus, "[t]he **defined project** and not **some different project** must be the EIRs **bona fide subject**." (*Id.* at p. 199).

Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn. (1986) 42 Cal.3d 929, 937-938 (emph. added).

The above-quoted requirement for an accurate, stable, and finite project-description for EIRs is equally applicable to MNDs, as the latter attempts to dispose of the former.

Further, in light of the above-noted principles and delicate balance, the MND here is premature since, as the MND concedes, the Project is not yet completely formulated:

> It is important to note that **not all** the Project **design features**, or **operational characteristics** are **determined yet**, **nor** is such **required**

> prior to **completion** of the CEQA process. The MND was prepared as **early as feasible** in the planning process to enable **environmental considerations** to **influence Project** programming and design, yet **late enough** in the development process to contain meaningful information so that this information can practically serve as an input into the analysis and decision-making process. The Project's **physical** or **operational** characteristics **may be modified** as it moves forward, **so long** as they do not go **beyond** the **parameters** studied in the MND (or so long as they are studied in **further environmental** review as **may** be **necessary**).
>
> Accordingly, the discretionary actions requested of the Board **at this time**, namely seeking City Council **financial assistance** of **$1 million** toward further development of the Project, **inclusion** of Family Golf in the upcoming Request for Proposal for golf course management, and **authority** to **apply** to the City for a **conditional use permit** and **design review** at the appropriate time, constitute commitment toward the Project."

Staff Report, pp. 3-4 (emph. added).

For all the above-noted reasons, the above-quoted passage on what CEQA allows is a blatant mischaracterization. Tellingly, RBOC fails to cite to any legal authority to support its above-quoted claims to allow an approval of the MND at this point in time and to allow for determination(s) and modification(s) of the Project design in the future.

RBOC's position that the MND is proper at this time—when the Project is far from completely defined or designed—is also legally unsupported given that RBOC is not proposing a tiered EIR. While a tiered EIR would allow for future environmental reviews, with an MND, according to CEQA's definition, the lead agency must make findings that the Project—as already revised—will "clearly" have no significant impacts. CEQA Guidelines, § 15369.5. RBOC is wholly prohibited from legally making these findings.

As stated by our Supreme Court in *Friends of College of San Mateo Gardens v. San Mateo Cnty. Community College Dist.* (2016):

> Unlike the program EIR at issue in *Sierra Club*, the 2006 initial study and MND were not a tiered EIR. The District's 2006 initial study and MND

> did not purport 'to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval.' (*Vineyard Area Citizens, supra*, 40 Cal.4th at p. 431, 53 Cal.Rptr.3d 821, 150 P.3d 709.) The District's initial environmental review documents instead **expressly concluded** that 'all potential impacts' of the entire project—including every building on the campus—had 'been mitigated to a point where no significant impacts would occur, and there is no substantial evidence the project would have a significant effect on the environment.

1 Cal.5th 937, 960 (emph. added).

Lastly, the Project's MND—or, conversely, the determination that an EIR is not required—is premature given that there is a fair argument, due to the lack of information or study of the Project's final design, that the Project may have impacts. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Sundstrom, supra,* 202 Cal.App.3d at 311; *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197 (fact that initial study checklist was incomplete and marked every impact "no" supported fair argument that project would have significant environmental effects) (hereafter, "*Christward*"); *Gentry, supra,* 36 Cal.App.4th at 1378-1379, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

For all the reasons listed above, the MND is untimely and premature, and the RBOC's determination that the Project will not have any significant impacts is unsupported.

B. <u>There Is a Fair Argument that the Project May Have Significant Aesthetics and Lighting Impacts.</u>

The Project proposes massive changes to and on approximately 16 acres of land, including but not limited to removal of trees and lighting poles, construction of new and in some cases taller poles for safety netting and lighting, installation of two new miniature golf courses, and tripling the size of the existing driving range from 20 to 60 bays. It is therefore reasonably foreseeable that the contemplated physical expansion, as well as expansion and intensification of uses of the Project Site, as well as the operation of the area upon Project completion, will require additional lighting and cause new sources of lighting and glare, as well as aesthetic impacts.

CEQA requires agencies to evaluate not only a project's direct impacts, but also its "reasonably foreseeable indirect" impacts. See *Aptos Council v. Cnty. of Santa Cruz* (2017) 10 Cal.App.5th 266, 288 (citing CEQA Guidelines, § 15064, subd. (d)) ("In evaluating the significance of the environmental effect of a project, the lead agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.").

A "reasonably foreseeable" indirect physical change is one in which the activity or project is capable, at least in theory, of causing. See CEQA Guidelines, § 15064, subd. (d)(3). Further, the term 'significant' "covers a spectrum ranging from not trivial through appreciable to important and even momentous." *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83 & fn. 16 (hereafter "*No Oil*") (citing *Hanly v. Kleindienst* (1972) 471 F.2d 823, 837 (dissenting opinion of Friendly, Chief Judge) (internal quotations omitted)).

The court in *No Oil* addressed the term 'reasonable possibility' and stated that:

> CEQA does not speak of projects which [w]ill have a significant effect, but those which [m]ay have such effect. Although we agree with the trial court that the word 'may' connotes a 'reasonable possibility,' that phrase again encompasses a **range of meaning extending from the most unlikely possibility which might influence the views of a reasonable man to events which fall but a hair short of certainty**.

No Oil, supra, 13 Cal.3d at fn. 16 (emph. added).

There is no dispute that the Project's proposed changes to the Brookside Golf Complex and the lighting needed to accommodate the Project's operation upon completion will fit the spectrum of 'changes' as stated in *No Oil* such that direct *and indirect* impacts are reasonably foreseeable.

Furthermore, the Project may have significant lighting and aesthetic impacts also considering that the Project description is not complete, accurate, or stable in the MND. Specifically, a number of aesthetic and lighting impacts will depend on the very design of the Project, which, as conceded by the Staff Report, is not yet final. This lack of information by itself enlarges the scope of the fair argument that the Project may have aesthetic and light/glare impacts. *Sundstrom, supra,* 202 Cal.App.3d at 311. As previously noted and quoted, "[d]eficiencies in the record may actually enlarge the

scope of fair argument by lending a logical plausibility to a wider range of inferences." *Ibid.*; *Christward, supra,* 184 Cal.App.3d at 197 (fact that initial study checklist was incomplete and marked every impact "no" supported fair argument that project would have significant environmental effects); accord *Gentry, supra,* 36 Cal.App.4th at 1378-1379, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

The Project would add "directionally focused" LED lighting on 14 of the netting poles at 60 feet in height and surrounding the perimeter of the driving range. See MND, pp. 9, 26. The lights would remain on for driving range patrons until 10:00 p.m., seven days per week, and even later for cleaning staff and related needs after 10:00 p.m. See MND, p. 9. The MND acknowledge that "lighting technology would include spill and glare control, high definition, and precise light targeting capabilities." MND, p. 27. The MND warns though, that "the Project would have a significant impact on neighboring areas if the site lighting produces an illuminance of greater than 1.0 foot-candle on any residential property." MND, p. 26. Yet according to the lighting assessments of a conceptual lighting layout, the light loss spill factor would be 0.95. MND, p. 27. Given that the MND fails to provide the lighting assessment from which it derives the 0.95 figure, decision-makers and the public are unable to determine which any degree of confidence whether the MND's figures are accurate.

The MND claims that the lighting would be "screened from offsite residential receptors by existing topography, mature vegetation, and the Brookside Clubhouse" and "would be individually adjustable to ensure proper direction and avoidance of light spill into surrounding neighborhoods." MND, 27. No lighting analysis or topography assessment has been provided to support the MND's conclusions in this regard.

The "nearest offsite sensitive receptors are the residences along Wotkyns Drive to the east of the Project Site" roughly 200 feet from the existing driving range. No analysis of the lighting impacts on these sensitive receptors has been conducted or provided for review. The glow, spillage, and loss of the Arroyo night sky resulting from the new lighting requires that a thorough impacts analysis be conducted and mitigation measures developed in a project-specific EIR.

Lastly, the Project may have significant impacts, as opined by the expert opinion of Dr. Travis Longcore, an Adjunct Professor at the UCLA Institute of the Environmental and Sustainability; environmental scientist; and advocate of ecological

management, stewardship, and design ("**Expert Letter**"). See **Exhibit A** (Expert Letter prepared by Dr. Travis Longcore entitled "Biological Impacts from Lighting from Brookside Golf Course Improvements Project").

In sum, the Project may have significant aesthetic and light/glare impacts, precluding the use of an MND and mandating the production of an EIR.

C. There Is a Fair Argument that the Project May Have Significant Air Quality and GHG Emissions Impacts.

There is an acknowledged direct correlation between a Project's potential impacts on traffic and transportation and an increase in their associated air quality, GHG, and noise impacts. See *City of Redlands v. Cnty. of San Bernardino* (2002) 96 Cal.App.4th 398, 413 (it is reasonable to assume that a project enabling physical development would have reasonably foreseeable indirect air and other impacts).

As stated in the Office of Planning Research's (**OPR**) technical advisory in 2018:

> VMT and Greenhouse Gas Emissions Reduction. Senate Bill 32 (Pavley, 2016) requires California to reduce greenhouse gas (GHG) emissions 40 percent below 1990 levels by 2030, and Executive Order B-16-12 provides a target of 80 percent below 1990 emissions levels for the transportation sector by 2050. The transportation sector has three major means of reducing GHG emissions: increasing vehicle efficiency, reducing fuel carbon content, and reducing the amount of vehicle travel.[3]

Similarly, there is an acknowledged nexus between an increase in traffic and an increase in related air quality, GHG impacts, noise, and water/flooding impacts and impacts on human health and the natural environment, including on wildlife and waterways. As described in the 2018 OPR Technical advisory:

> VMT and Other Impacts to Health and Environment. VMT mitigation also creates substantial benefits (sometimes characterized as "co-benefits" to GHG reduction) in both in the near-term and the long-term. Beyond GHG emissions, increases in VMT also impact human health and the natural environment. Human health is impacted as increases in vehicle travel lead to more vehicle crashes, poorer air quality, increases in chronic

[3] Office of Planning and Research, *2018 Technical Advisory on Evaluating Transportation Impacts in CEQA* (Dec. 2018) at 2*, available at* https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf.

> diseases associated with reduced physical activity, and worse mental health. Increases in vehicle travel also negatively affect other road users, including pedestrians, cyclists, other motorists, and many transit users. The natural environment is impacted as higher VMT leads to more collisions with wildlife and fragments habitat. Additionally, development that leads to more vehicle travel also tends to consume more energy, water, and open space (including farmland and sensitive habitat). This increase in impermeable surfaces raises the flood risk and pollutant transport into waterways.[4]

CEQA requires the study of impacts at all phases of the project. "All phases of the project must be considered. CEQA Guidelines, § 15126. The CEQA-compliant environmental analysis must describe the project's direct and reasonably foreseeable indirect environmental effects and analyze them in both the short-term and the long-term. CEQA Guidelines, §§ 15126.2, subd. (a), 15064, subd. (d). The analysis should also emphasize the specific effects in proportion to their severity and their probability of occurrence. CEQA Guidelines, § 15143. *League to Save Lake Tahoe Mountain etc. v. Cnty. of Placer* (2022) 75 Cal.App.5th 63, 92 (quotations omitted).

The MND ultimately concludes that the Project will have a less than significant impact with regard to GHG emissions based on the Project's: (1) relatively small cumulative contribution to GHG emissions in relation to the South Coast Air Quality Management District's (**South Coast AQMD**) threshold of carbon dioxide equivalent (**$MTCO_2e$**); (2) use of leading-edge light-emitting diodes (**LED**); (3) consistency with the California Air Resources Board (**CARB**) 2022 Scoping Plan; (4) consistency with the Southern California Association of Governments (**SCAG**) 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy ("**Connect SoCal Plan**"); and, (5) consistency with the City's Climate Action Plan (**CAP**). MND, pp. 68-72.

However, the Project's mere implementation of GHG reduction strategies and reliance on plans and regulations are insufficient to definitively conclude that the Project will have a less than significant GHG emissions impact, especially considering that these measures are not specific to the Project. Further, the Project's contribution to GHG emissions cannot be ascertained given that the Project's design features are not yet fully formulated and determined. For the same reasons, the Project's

[4] *Id.* at 3.

consistency with the CARB and SCAG or other plans is not supported by any factual evidence.

The Project clearly contemplates to increase the Project Site intensity, activity areas, and uses in furtherance of its primary goal to "return the use and net revenue of the Brookside Golf Complex back to historical levels while broadening user-ship beyond individual golfers to families." MND, p. 6; accord MND, pp. 15, 40, 60, 69, 71, 97, 105 ("The purpose of the Project is to realize the existing capacity of the Brookside Golf Complex by increasing memberships and returning to historically higher levels of patronage use through the expansion of services to a broader range of visitors including families."). In order to effectuate the "primary objective of the Project[,]" RBOC must increase the number of visitors and golfers to the Site. To this aim, the Project must seek a CUP at some indefinite time.

Currently, it cannot be determined to what extent the proposed Project will increase patronage of the Brookside Golf Complex, what the hours and days of operation will ultimately be, or what kind of services and amenities will be added to the final design (e.g., will the Project later also provide eating areas, alcohol permits, more bays, higher nets, additional lighting, etc.). As such, it is impossible to ascertain the increased amount of traffic or traffic-related GHG emissions, as well as the amount of GHG emissions that could be generated by the added amenities or services.

RBOC's statements and claims as to GHG impacts and consistency also ignore the concept of *additionality*—found in the Health and Safety Code and recently emphasized by the court. Health & Safety Code, § 38562, subd. (d)(2) ("the reduction is in addition to any greenhouse gas emission reduction otherwise required by law or regulation, and any other greenhouse gas emission reduction that otherwise would occur"); see *Golden Door Properties, LLC v. Cnty. of San Diego* (2020) 50 Cal.App.5th 467, 514-515 ("Additionality is an important requirement because if non-additional (i.e., 'business-as-usual') projects are eligible for carbon [offset] . . . then the net amount of greenhouse gas emissions will continue to increase and the environmental integrity of carbon reduction projects will be called into question.").

In addition, CEQA wholly prohibits RBOC's baseless contention that compliance with plans and regulations will necessarily and automatically reduce impacts to the requisite level of insignificance, especially for purposes of the fair argument standard of an MND, as is the case presently. See CEQA Guidelines, § 15064, subd. (b)(2) ("Compliance with the threshold does not relieve a lead agency of the obligation to

consider substantial evidence indicating that the project's environmental effects may still be significant."). In fact, RBOC's logic and dependence on thresholds and regulatory compliance has been rejected at least since 2002:

> In the wake of our decision in *Communities for a Better Environment*, however, **such thresholds cannot** be used to determine **automatically** whether a given effect will or will not be significant. . . . notwithstanding compliance with a pertinent threshold of significance, the agency **must still** consider **any fair** argument that a certain environmental effect **may** be significant."

Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal.App.4th 1099, 1108-1109 (referencing *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-114 (invalidating the proposed CEQA Guidelines, § 15064, subd. (h) for fair argument) (emphasis added).

As just one example of many claims the City makes in regard to the Project's air quality and GHG impacts, it contends:

> Buildout of the Project would adhere to the programs and regulations identified by the 2022 Scoping Plan and implemented by state, regional, and local agencies to achieve the statewide GHG reduction goals of AB 32, SB 32, and AB 1279. For example, the increase in capacity of the driving range and new miniature golf course would serve the local population and could contribute to reducing VMT by providing the local community with closer options . . . . Therefore, the Project would be consistent with State efforts to reduce motor vehicle emissions and generate GHG emissions consistent with the reduction goals of AB 32, SB 32, and AB 1279. The Project would not obstruct implementation of the 2022 Scoping Plan, and a less than significant impact would occur.

MND, pp. 70-71.

The MND acknowledges the Project's potential traffic-related and operational or cumulative impacts in the context of air quality and GHG emissions, yet rests on CAP compliance or energy efficiency standards to conclude that such impacts would be less than significant. Yet the MND does not explain how CAP compliance or energy efficiency standards will help reduce impacts.

Additionally, the MND's contention that the Project would "serve the local population and [thereby] contribute to reducing VMT by providing the local

community with closer options" is a shallow attempt at deflecting attention away from the Project's environmental impacts and onto a contrived need for more driving bays and miniature golf. See MND, pp. 60-62, 70-71. That there is sometimes a waiting time for golfers hoping to use the driving range does not support the need for a 200% increase in driving bays nor the need for 36 holes of miniature golf on an acre of land. In fact, the MND illuminates its folly in this regard and contradicts itself by listing eight other golf courses and clubs within six miles of the Project Site, including the Annandale Golf Club, Scholl Canyon Golf Course, and Chevy Chase County Club—each of which is two miles or less away from the Project Site. MND, p. 103. Neither does the MND have factual support for such statements since it is unknown whether the Project visitors will derive from the local community; the Project may, in fact, attract plenty of non-local visitors.

For all the reasons noted, including but not limited to the understated and unstudied air quality and GHG emissions impacts and the City's baseless and flawed reliance on regulatory compliance or conformity with certain plans adopted for the purpose of reducing GHG emissions, the Project may have significant impacts on air quality and GHG emissions. To the extent the Project may increase traffic and VMTs, it may also have traffic impacts, as well as traffic-related impacts such as traffic noise. Hence, the City must prepare an EIR to properly and timely study, analyze, and mitigate these potentially significant impacts.

D. There Is a Fair Argument that the Project May Have Significant Biological Resources Impacts.

The MND and its November 2020 Tree Report ("**Tree Report**") indicates that up to 47 of the Site's 81 protected, specimen, native, and public trees may be removed during the Project's construction, though that number may change depending on the ultimate design of the reoriented driving range. MND, p. 54; Tree Report, pp. 7, 12 ("All 81 of the trees . . . are considered protected")[5]. The MND further acknowledges that the Project's construction activities "could" encroach upon 16 protected trees

[5] "All 81 of the trees that were surveyed are considered protected trees in accordance with the City's ordinance. Based on the current project description which is subject to change, forty-seven (47) of the protected trees are could [sic] require removal to accommodate project construction, sixteen (16) could be encroached upon to accommodate project construction, and eighteen (18) protected trees within the survey area could be avoided. In addition, trees qualifying as specimen or native also exist within the grading limits of the project and are included in the aforementioned trees that could be removed, encroached and avoided." Tree Report, p. 12.

"resulting in indirect impacts" and that such activities "may negatively affect the root system of trees in the vicinity." MND, p. 54. The MND and Tree Report fail to acknowledge that the encroachment could result in the death of those 16 trees, resulting in an effective removal of 63 trees. Additionally, the Tree Report warns that Project-related activities such as "excavation, trenching, soil compaction, change of grade, drainage, pruning, mechanical damage from construction equipment, landscaping, and irrigation" may "have the potential to negatively affect not only the encroached trees, but also other trees present in the vicinity of construction activities." Tree Report, p. 12. Surprisingly, despite the potential impact on all 81 of the protected and public trees on the Site, RBOC fails to include any mitigation measure which would reduce the environmental impacts of the tree removals or encroachments, and instead states that all "tree removals as well as construction activities in proximity to trees that would be retained would be required to follow the City's Tree Protection Guidelines[.]" MND, p. 48.

Even if some of the removed trees are replaced with "approved native species," there are several issues associated with planting new trees. MND, p. 75. For example, there is the possibility that many of the newly planted trees will not survive. As noted by U.S. Forest Service research ecologist and tree mortality expert Dr. Lara Roman, "planting a massive number of trees is not necessarily a positive investment if not enough of them survive to become mature plants."[6] Further, "there's also a carbon cost to tree-planting, meaning that trees have to survive years before they offset that cost. The largest environmental gain comes when trees mature, sometimes decades after they're planted."[7] Thus, the new trees will not immediately, or maybe ever, mitigate the impacts associated with removing the already mature trees which may have existed at the Site for several decades or more.

Therefore, should the tree removal take place, it may very well result in significant air quality impacts and biological resources impacts and the proposed new trees cannot properly mitigate the impacts on air quality of removing the existing trees.

Furthermore, the MND is fatally flawed and incomplete given that it neglects to show that the Project will indeed have a less than significant impact on biological resources.

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[6] Bloomberg, *The Darker Side of Tree-Planting Pledges* (June 30, 2021), *available at* https://www.bloomberg.com/news/features/2021-07-30/what-happens-after-pledges-to-plant-millions-of-trees?srnd=citylab.

[7] *Ibid.*

Instead, without adequately identifying and disclosing the impacts, the MND effectively concludes that any biological resources impacts from the (unknown number of) tree removals will be reduced to the requisite level of significance since, presumably, the Project will comply with the City's 2019 Tree Protection Guidelines:

> Regarding Tree Removals:
>
> - For tree removals, the City Manager will notify the abutting property owners and applicant ten days prior to the removal. For three or more public trees the City Manager will also notify the City Council, Design Commission, and any known neighborhood association.
> - Requests for the removal of a landmark, native and specimen tree will be denied unless one of the following findings is made:
>   - There is a public benefit, or a public health, safety, or welfare benefit, to the injury or removal that outweighs the protection of the specific tree (public benefit means a public purpose, service, or use which affects residents as a community and not merely as particular individuals); or
>   - The present condition of the tree is such that it is not reasonably likely to survive; or
>   - There is an objective feature of the tree that makes the tree not suitable for protection; or
>   - There would be a substantial hardship to a private property owner in the enjoyment and use of real property if the injury or removal is not permitted; or
>   - To not permit the injury or removal would constitute a taking of the underlying real property; or
>   - The project includes a landscape design plan that will result in a tree canopy coverage of greater significance than the tree canopy coverage being removed, within a reasonable time after completion of the project.
> - In addition, a request for the removal of a landmark tree will be denied unless the procedures specified for the removal of landmarks and the

> granting of a certificate of appropriateness is first followed. Relocation of a specimen or native tree will be treated as a removal.
>
> - Tree removal requests with a discretionary action will be reviewed by the applicable decision-maker. Decisions on tree removal are subject to standard appeal and call-for-review procedures. Specimen and native tree removal requests, not associated with any discretionary action, will be reviewed by the City Manager or designated staff, with a decision rendered 15 days after the application has been deemed complete. In this case, the appeal process is the same as for a planning director decision.

MND, pp. 48-49.

Nothing in the above-quoted City's 2019 Tree-Protection Guidelines *actually mitigates* the impacts of removal of mature and protected trees, as required by CEQA. "*Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.* The EIR must . . . permit the significant effects of the project to be considered in the full environmental context." CEQA Guidelines, §15125, subd. (c) (emph. added). Further, it is questionable whether the 2019 Tree-Protection Guidelines was adopted for the purposes of mitigating CEQA impacts of removal of trees. There is no indication or factual support to show that it was adopted for such mitigation purposes – the Guidelines merely provide a procedure to follow for the applicant and the City upon receipt of a tree removal permit request. As such, the MND's conclusion that the biological resources impacts of tree removal will be mitigated is wholly unsupported. Indeed, the mature trees provide for shading for both people and wildlife and their removal will impact the environment and increase the heat, resulting in more GHG impacts and necessitating additional methods (e.g., A/C) to cool the area which, in turn, will cause additional significant impacts, including GHG emissions and noise impacts. As described in a report published by the Congressional Budget Office:

> Mature forests, having absorbed CO_2 from the atmosphere while growing, store carbon in wood, leaves, and soil. That carbon is released when people clear forested land and destroy the wood. From 2000 to 2005, the loss of forests, primarily in tropical developing countries, accounted for approximately 12 percent of global GHG emissions.

> Slowing or halting deforestation in developing countries is a potentially low-cost way to help reduce global GHG emissions. For that potential to be realized, however, substantial challenges would need to be addressed—by providing technical and financial assistance to governments, by creating demand from private markets, or both."[8]

RBOC's wanton attempt at glossing over the Project's biological resources impacts mandates that a more thorough environmental analysis be conducted through an EIR. The above-noted measure to comply with the Tree Protection Guidelines and RBOC's inability to state with specificity how many trees will be removed, encroached upon, or replaced evinces that (1) the Project is insufficiently developed to warrant adoption of an MND, and (2) RBOC attempts to show no significant or less than significant impacts by way of meeting some threshold requirements or regulations. This is wholly insufficient for an MND.

Specifically, the lack of an adequate Project design prior to preparation of the MND enlarges the scope of the fair argument that the Project may have significant impacts on biological resources. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Sundstrom, supra*, 202 Cal.App.3d at 311; *Christward Ministry, supra,* 184 Cal.App.3d at 197 (fact that initial study checklist was incomplete and marked every impact "no" supported fair argument that project would have significant environmental effects); *Gentry, supra,* 36 Cal.App.4th at 1378-1379, 1382.

Further, CEQA prohibits RBOC blanket inference that regulatory compliance will necessarily and automatically reduce impacts to the level of insignificance, especially for purposes of fair argument in MNDs, as here. "Compliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant." CEQA Guidelines, § 15064, subd. (b)(2).

Last, while the Project Site's mature and specimen trees to be removed may not be protected themselves—an issue not resolved in the MND—they are valuable habitat for protected species, birds, and wildlife of Pasadena. See MND, p. 46 ("Arroyo Seco channel . . . is a suitable corridor for native resident wildlife"). Tree saplings,

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[8] Congress of the United States Congressional Budget Office, *Deforestation and Greenhouse Gases* (January 6, 2012), *available at* https://www.cbo.gov/publication/42686; *also available at* https://www.cbo.gov/sites/default/files/112th-congress-2011-2012/reports/1-6-12-forest.pdf.

regardless of their number, cannot provide the protective cover or mitigate impacts on biological resources due to their typically small canopy size. The MND acknowledges the value of the trees to the local wildlife:

> The mature trees that occur on and adjacent to the Project Site, including within the surrounding area, provide foraging and breeding opportunities for common wildlife, such as California ground squirrels (Otospermophilus beecheyi), and Botta's pocket gopher (Thomomys bottae). In addition, the landscaping and mature trees located on and surrounding the Project Site could provide suitable nesting habitat for avian species protected under the Migratory Bird Treaty Act (MBTA), including Anna's hummingbird (Calypte anna), house finch (Carpodacus mexicanus), American kestrel (Falco sparverius), California towhee (Melozone crissalis), Northern mockingbird (Mimus polyglottos), spotted towhee (Pipilo maculatus), bushtit (Psaltriparus minimus), lesser goldfinch (Spinus psaltria), Bewick's wren (Thryomanes bewickii), mourning dove (Zenaida macroura), particularly during the nesting season that generally occurs from February through August.

Ibid.

The MND offers a regurgitated and often insufficient boilerplate mitigation measure and therefore concludes that any impacts will be reduced to less than significant:

> MM-BIO-1. If construction activities occur within the bird nesting season (generally defined as February 15 through September 15), a qualified biologist shall conduct a nesting bird survey within 3 days prior to the proposed start date, to identify any active nests (including Cooper's hawk) within 500 feet of the project site. If an active nest is found, the nest shall be avoided, and a suitable buffer zone shall be delineated in the field such that no impacts shall occur until the chicks have fledged the nest as determined by a qualified biologist. Construction buffers shall be 300 feet for passerines and up to 500 feet for any raptor species; however, avoidance buffers may be reduced at the discretion of the biologist, depending on the location of the nest and species tolerance to human presence and construction-related noises and vibrations.

MND, p. 45.

The Project must include enforceable mitigation measures which would, at a minimum, replace the removed trees at a rate of 3:1 to ensure that the new trees survive at a rate sufficient to replace the lost canopy in the near future. The MND's incorporation of the empty assurance that "[a]ll tree removals as well as construction activities in proximity to trees that would be retained would be required to follow the City's Tree Protection Guidelines" is a blatant example of RBOC's refusal to incorporate sufficient measures to mitigate the Project's impacts and "[r]ecognize the uniqueness of the Central Arroyo as an irreplaceable natural resource[.]" See Central Arroyo Master Plan, p. 3-5. Further, incorporation of Mitigation Measure BIO-1 further illuminates RBOC's rushed attempts at moving the MND into adoption and the Project into fruition at the expense of the Arroyo Seco's unique biological characteristics, local wildlife, and the environment more broadly. As such, the Project may have significant biological impacts. Consequently, an EIR must be prepared to adequately study, disclose, and mitigate such impacts, including by providing alternative sites and configurations.

E. The MND Lacks Evidence to Show the Project Comports With All Applicable Land Use and Planning Designations.

Each California city and county must adopt a comprehensive, long-term general plan governing development. *Napa Citizens for Honest Gov. v. Napa Cnty. Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 352 (hereafter, "*Napa Citizens*") (citing Gov. Code, §§ 65030, 65300). The general plan sits at the top of the land use planning hierarchy, and serves as a "constitution" or "charter" for all future development. *DeVita v. Cnty. of Napa* (1995) 9 Cal.4th 763, 773; *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540 (hereafter, "*Lesher*").

General plan consistency is "the linchpin of California's land use and development laws; it is the principle which infused the concept of planned growth with the force of law." *Debottari v. Norco City Council* (1985) 171 Cal.App.3d 1204, 1213.

State law mandates two levels of consistency. First, a general plan must be internally or "horizontally" consistent: its elements must "comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." Gov. Code, § 65300.5; *Sierra Club v. Bd. of Supervisors* (1981) 126 Cal.App.3d 698, 704. A general plan amendment thus may not be internally inconsistent, nor may it cause the general plan as a whole to become internally inconsistent. See *DeVita v. Cnty. of Napa* (1995) 9 Cal.4th 763, 796, fn. 12.

Second, state law requires "vertical" consistency, meaning that zoning ordinances and other land use decisions also must be consistent with the general plan. See Gov. Code § 65860, subd. (a)(2) (land uses authorized by zoning ordinance must be "compatible with the objectives, policies, general land uses, and programs specified in the [general] plan."]; see also *Neighborhood Action Group v. Cnty. of Calaveras* (1984) 156 Cal.App.3d 1176, 1184. A zoning ordinance that conflicts with the general plan or impedes achievement of its policies is invalid and cannot be given effect. *See Lesher, supra*, 52 Cal.3d at 544.

State law requires that all subordinate land use decisions, including conditional use permits as is required here (see MND, p. 19), be consistent with the general plan. See Gov. Code, § 65860, subd. (a)(2); *Neighborhood Action Group*, 156 Cal.App.3d at 1184.

A project cannot be found consistent with a general plan if it conflicts with a general plan policy that is "fundamental, mandatory, and clear," regardless of whether it is consistent with other general plan policies. See *Endangered Habitats League v. Cnty. of Orange* (2005) 131 Cal.App.4th 777, 782-83; *Families Unafraid to Uphold Rural El Dorado Cnty. v. Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1341-42. Moreover, even in the absence of such a direct conflict, an ordinance or development project may not be approved if it interferes with or frustrates the general plan's policies and objectives. See *Napa Citizens, supra*, 91 Cal.App.4th at 378-79; see also *Lesher, supra*, 52 Cal.3d at 544 (zoning ordinance restricting development conflicted with growth-oriented policies of general plan).

Here, the Project is inconsistent with the City's General Plan and fails to establish the Project's consistency with several General Plan goals. The Project fails to discuss in detail its conformity with each of the Goals, Policies, and Programs laid out in the General Plan, despite that the Project will have reasonably foreseeable impacts on land use, traffic, vehicle trip generation, air quality, open space, noise, and GHG emissions. This discussion is relevant not only to the Project's compliance with land use and zoning law, but also with the contemplation of the Project's consistency with land use plans, policies, and regulations adopted for the purpose of avoiding or mitigating environmental impacts.

One example of the MND's lack of clarity regarding the Project's consistency with all applicable plans involves the City of Pasadena's Climate Action Plan (**CAP**). The MND erroneously concludes that the Project need not comply with the CAP's mandate that any non-residential projects which exceed 75,000 square feet submit a

T-3.1 Transportation Demand Management (**TDM**) plan for review. MND, p. 72. The MND states:

> Based on the nature of the Project in that it would reorient and expand the existing driving range and develop a new miniature golf course, [the TDM] measure would not be applicable. The uses would serve existing visitors to the Brookside Golf Course and no new development is proposed.

Ibid.

RBOC fails to grasp that the TDM mandate applies to the Project regardless of whether RBOC constitutes the Project as a "new development" or a "reorientation" of one of its existing aspects. *Ibid.* The fact of the matter is that the Project would occur on 16 acres within the existing driving range, Hole 10 of the C.W. Koiner Course, and Holes 6 and 7 of the E.O. Nay Course. MND, p. 1. The Project size exceeds the CAP threshold for non-residential projects and thus, a TDM was required to be produced for review. In this context, RBOC also fails to include the two 18-hole miniature golf courses along with the 40 additional bays of the driving range in its calculation and determination that the TDM is inapplicable.

The MND fails to offer sufficient evidence to support the Project's consistency with the CAP in several other areas as well, including: 1-4.1 Renewable Energy (whether or not the Project involves the construction of a "building" has no bearing on how much of the Project's energy will derive from carbon-neutral sources); T-3.1 decrease annual commuter miles traveled by single occupancy vehicles (the MND concludes without evidence that "existing and future patrons regularly carpool and are not typically single-occupancy vehicle trips, which reduces VMT"); T-4.1 expansion of the availability and use of alternative fuel vehicles and fueling infrastructure (whether or not the Project involves the construction of additional parking or changes to the existing parking areas has no bearing on whether the Project will promote the CAP's Sustainable Mobility goals especially considering that the primary goal of the Project is to "realize the existing capacity of the Brookside Golf Complex by increasing memberships); UG-2.1 Urban Greening (the Project is projected to involve the removal of up to 47 of the Site's protected, specimen, and native trees, yet the MND claims consistency with the CAP on this element, which seeks for new developments to "improve and ensure viability of Pasadena's urban forest" and asks whether the Project results in a "net gain of trees"). MND, pp. 72-73, 75, 97.

The MND makes no mention of the Project's compliance with the Arroyo Seco Public Lands Ordinance ("**Ordinance**"). See Pasadena Code of Ordinances, title 3, chapter 3.32. The Ordinance:

> [E]stablish[es] regulations for preservation, enhancement and enjoyment of the Arroyo Seco as a unique environmental, recreational and cultural resource of the city surrounded by residential neighborhoods. Such resource and the neighborhoods must be preserved, protected and properly maintained. These regulations are designed to identify uses, activities, facilities and structures as well as their limitations.

Ordinance, § 3.32.010.

According to section 3.32.460 of the Ordinance, "[a]ny new permanent structure or alteration of existing structure shall be subject to the hearing procedures of Section 3.32.180." Section 3.32.180 requires:

A. A public hearing shall be held for any new construction, substantial alteration or addition to existing building or significant changes to existing park uses in the Brookside Park area.

B. The hearing shall be held before the parks and recreation commission with a recommendation forwarded to the board of directors. Proposed building or landscaping plans shall be reviewed by the city design committee.

C. A notice of public hearing shall be published in the local newspaper and posted at Brookside Park facilities.

Here, no hearing has been held before the parks and recreation commission with a recommendation forward to the board of directors, nor has any plan been reviewed by the city design committee. The MND has failed to address the Project and it's approval process in line with the Arroyo Seco Public Lands Ordinance. Consequently, there exists a fair argument that the Project may have significant land use impacts.

Additionally, only once does the MND mention the Central Arroyo Master Plan ("**Master Plan**"). See MND, p. 86. In this setting, the MND merely states that:

> Section 4.9 of the Central Arroyo Master Plan identifies the four entities that maintain the Central Arroyo (City of Pasadena Parks and Natural Resources Division, RBOC, Rose Bowl Aquatics Center, and the County

> of Los Angeles) and recommends coordination of activities and intensity of activities to ensure the facilities are not damaged by overuse. The Project would be consistent with these recommendations.

Ibid.

To propose that the project "would be consistent with these recommendations" wholly fails the CEQA mandate that all proposed projects comport with local planning and zoning laws and master plans. The Master Plan is separate and distinct from its Design Guidelines, so ensuring that the Project complies with the Design Review processes or the Design Guidelines does little to afford decision-makers and the public with the confidence to know that the Project does not violate local regulations and plans or CEQA. Given that the MND now appears before the City Council, it must include a full and thorough analysis of the Project's design and details and its compliance with the Master Plan. Decision-makers and the public should not be left guessing what the Project will eventually become and how it will comport with the law.

As it stands currently, the Project violates the State Planning and Zoning law by creating inconsistencies within the Arroyo Seco Public Lands Ordinance, the applicable Master Plan, and General Plan Elements, as well as an inconsistency with the General Plan itself, including as to the open space and GHG. Such inconsistencies further increase the fair argument that the Project may have significant land use impacts, especially where, as noted earlier, the Project's design and full scope—along with components required for the Conditional Use Permit and tree removals—are far from being fully formulated and determined.

F. <u>There Is a Fair Argument that the Project May Have Significant Traffic and Transportation Impacts.</u>

The MND fails to show that the Project's traffic and transportation impacts will be less than significant or will be mitigated. Given that the Project may have significant traffic impacts that are not accurately disclosed in the MND, its traffic-related impacts are also derivatively understated and may be significant—therefore requiring an EIR.

Given the nature and scope of the Project with its substantial proposed construction of 40 new bays and associated infrastructure and technology, reorientation of the driving range, and two miniature golf courses on 16 acres within the existing driving range, Hole 10 of the C.W. Koiner Course, and Holes 6 and 7 of the E.O. Nay

Course, there exists the possibility that it may have significant and severe impacts on traffic in and around the Central Arroyo Seco. Consequently, an EIR must be prepared. This is further supported by the fact that the Project will generate an estimated 949 daily trips as opposed to the previous 273 daily trips. Transportation Impact Analysis, appen. F, p. 9.

Additionally, the MND acknowledges that the Project's vehicle miles traveled (**VMT**) during its construction would be 71,416 miles for construction worker commutes and 367 miles for construction vendor trips. MND, p. 59.

In the context of its operation, the Project would generate 4,346 VMT daily or 1,588,536 VMT annually. MND, p. 60. According to the City's Transportation Impact Analysis Current Practice and Guidelines (**TIA Guidelines**), the Project—comprising more than 50,000 square feet of non-residential uses characterized by the reoriented driving range, 40 additional bays, and 18-hole miniature golf facility—falls within Category 2 and is classified as having community-wide significance. See TIA Guidelines, appen. F, p. 5.

Consequently, a Local Mobility Analysis and a CEQA analysis are required with specific performance measures, including VMT and VT figures. See City of Pasadena Transportation Impact Analysis Guidelines, p. 5. According to the TIA Guidelines, the CEQA impact thresholds are 22.6 VMT/capita for VMT and 2.8 VMT/capita for vehicle trips (**VT**). TIA Guidelines, p. 1.10. Unfortunately, the Transportation Impact Analysis attached to the MND as Appendix F fails to include certain metrics mandated by the City's Transportation Impact Analysis Guidelines, including VMT per capita and VT per capita. MND, pp. 24-25. For these reasons, the City Council, other decision-makers, and the public are unable to meaningfully and adequately assess the Project's transportation impacts and make an informed determination of the Project's compliance with CEQA. Consequently, an EIR must be prepared.

Furthermore, the MND contends that the City of Pasadena's Department of Transportation (**DOT**) reviewed the Project and found that a "traffic study is not required pursuant to the City's Transportation Impact Analysis Current Practice and Guidelines" given that the "Project would not have a significant impact on the surrounding circulation system nor would it conflict with Mobility Element policies addressing the circulation system." MND, p. 105. Fatally, the MND's Transportation Impact Analysis bases this erroneous conclusion on the fact that because "[n]o segments or intersections exceed the adopted caps and the Pedestrian Environmental

Quality Index and Bicycle Environmental Quality Index are average or low[,]" (Transportation Impact Analysis, appen. F, p. 13) and given that "there is no increase in service population, there will be no significant impact to any of the City's five CEQA transportation thresholds" (June 3, 2021, Memorandum attached to Transportation Impact Analysis, appen. F, p. 45). Yet, the baseline assumptions and reasoning of the DOT is unsupported—the whole point and goal of the Project *is to increase* the service population of the Project. As such, to dispose with preparation of an EIR, the MND relies on this circular, factually unsupported, and actually controverted logic. The Transportation Impact Analysis fails to thoroughly analyze the Project's potential traffic impacts especially as related to VMT and VT.

The DOT recommends that RBOC undertake certain measures as conditions for the Project, including submission of a "Construction Staging & Traffic Management Plan to the Department of Public Works" which will "show the impact of the various stages on the public right-of-way including street occupations, closures, detours, staging areas, and routes of construction vehicles entering and exiting the construction site. *Id.*, p. 46. Manifestly, the noted mitigation measures and conditions of approval are to mitigate, if at all, the Project's traffic impacts during the *construction* phase. Such measures and conditions fail to address the Project's *operation* phase, especially where DOT erroneously assumed that the service population will be the same and not increase in line with the stated main objective of the Project.

In addition, to ignore the Project's potential traffic impacts at this stage and to condition approval of the Project on RBOC's future compliance and traffic analysis frustrates the very purpose of CEQA and the public review process, and improperly defers mitigation of potentially significant impacts. Even under CEQA Guidelines, § 15126.4, subd (a)(1)(B), this is improper given that, *inter alia,* RBOC does not commit to a thorough traffic impact analysis and mitigation, but rather relies on itself to study and mitigate such impacts *in the future and when no public comment may impact the Project's CEQA-compliance*. This measure is improperly deferred and vague as it defers a more thorough traffic impact analysis and the potential formulation of mitigation measures or final design thereof to a later time and shifts that burden to the applicant. CEQA forbids deferred mitigation even for an EIR. CEQA Guidelines, § 15126.4, subd. (a)(1)(B).

RBOC does not explain why it is impracticable or infeasible to adequately assess the traffic impacts or to formulate mitigation measures. RBOC does not commit to

specific mitigation nor does it offer in the MND any specific performance criteria to ensure traffic impacts will be mitigated—including during the construction and operation phases, and both individual and cumulative, along with any related projects. RBOC's general *goal to mitigate* excludes the requisite specific performance criteria.

Last, given that construction of the Project itself may result in "street occupations, road closures, detours, [and] staging areas[,]" there is a fair argument that the Project may have significant traffic impacts which should be assessed in an EIR pursuant to CEQA—despite the conflict in evidence presented in the MND. See June 3, 2021, Memorandum attached to the Transportation Impact Analysis, appen. F, p. 46; MND, pp. 16, 106-107 ("the Project will not require road or sidewalk closures during construction").

Considering the above-mentioned issues—coupled with the primary fact that the MND omits the final Project design/description, the required figures, and analyses which could show that the Project's generated VMT (and VT) would exceed the significance threshold for construction workers and visitors and therefore result in significant transportation impacts—the City Council should mandate that an EIR be prepared.

III. THE MND FAILS AS AN INFORMATIONAL DOCUMENT AS IT IS IMPERMISSIBLY VAGUE, DEFERS MITIGATION, AND IMPROPERLY PIECEMEALS AND BIFURCATES PROJECT APPROVALS.

A. The MND Fails as an Informational Document.

A project description fails for not including sufficient detail when there is not enough information provided to accurately evaluate the project's environmental impacts. See *Dry Creek Citizens Coalition v. Cnty. of Tulare* (1999) 70 Cal.App.4th 20, 26 (the environmental determination "must be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences"); accord *Citizens for a Sustainable Treasure Island v. City & Cnty. of San Francisco* (2014) 227 Cal.App.4th 1036, 1053.

The MND functions as an informational or evidentiary document that supports conclusions that a project will "clearly" not have significant environmental impacts or that such impacts can or will be "clearly" mitigated to a level less than significant. To

this aim, the MND must provide information about measures taken to mitigate a project's significant environmental impacts, thereby allowing decision-makers and the public the opportunity to assess and comment upon the project's impacts and compliance with CEQA, and whether the proposed mitigation measures are sufficient.

Here, the MND offers a cursory and undeveloped depiction of the Project, frequently omitting critical information about its design characteristics, technical details, environmental impacts analyses, and mitigation measures necessary to constitute the MND as an informational document and CEQA-compliant.

Among the many examples of this occurs where the MND discusses the Project's mini golf design and contends that the design, once acquired, will, at some future point, comply with applicable rules and plans—in this case, the Arroyo Seco Design Guidelines:

> Though **ultimate design of the miniature golf course is not available at this time**, once funding is secured and design is available, the Project **would be required** to go through the City of Pasadena's Design Review process as required by the Pasadena Municipal Code, prior to approval to ensure that the **ultimate design is consistent with the Arroyo Seco Design Guidelines**, reflects the values of the community, enhances the surrounding environment, and visually harmonizes with surroundings. The proposed miniature golf course **would be designed** to minimize impacts to the remainder of the Brookside Golf Course and **would include** low-level design (structures or features between 6 and 8-feet in height) and low-level lighting consistent with the existing golf uses at the Brookside Golf Course. The proposed miniature golf course would be located within the interior of the Brookside Golf Course, adjacent to the proposed driving range, and in proximity to the Brookside Clubhouse and parking areas.

MND, p. 24 (emph. added).

The MND concedes to the Project's missing details, and yet attempts to provide impacts analyses and deferred mitigation[9] throughout, often concluding that the Project's impacts would be less than significant because of future regulatory

[9] Discussed further in subsection B of this section.

compliance or mitigation. See MND, pp. 25 ("because the ultimate Project design would go through a design review process to ensure compatibility, the Project would not result in a substantial adverse effect to scenic vistas from the Project Site"); 26 ("the Project would go through the City of Pasadena's Design Review process as required by the Pasadena Municipal Code, prior to approval, which would ensure that Citywide design principles are considered, that the policies and objectives of the Arroyo Seco Design Guidelines are reflected, and that the overall design reflects to values of the community"); 26 ("Project would not conflict with applicable zoning and other regulations governing scenic quality. Therefore, impacts would be less than significant."); 27 ("RBOC [will] retain a qualified historic preservation professional to ensure that alterations to the driving range, design of the miniature golf course, and overall modifications to the Golf Course are compatible with the . . . landscape and the Pasadena Arroyo Park and Recreational District. This would ensure consistency with lighting requirements set forth in the Arroyo Seco Design Guidelines"); 49 ("any landscaping installed . . . would be consistent with . . . the Arroyo Seco Design Guidelines and would preserve the historical heritage of the City of Pasadena").

In the context of the Project's biological impacts, the MND concludes that:

> **When the Project goes through the design development, RBOC would ensure** that tree removals are limited and that as many trees are retained as part of the design to the extent that public safety and feasibility regarding golf course design allows. Additionally, the **Project would be required** to go through the City's Design Review process, which would promote the protection and retention of landmark, native, and specimen trees and other significant landscaping of aesthetic and environmental value. Furthermore, vegetation, including trees, **would be included as part of the final design**. As such, tree removals would be minimized to the extent possible and consistent with ongoing regular tree maintenance and safety requirements.

MND, p. 48 (emphases added).

Given that the MND is presently appearing before the City Council for approval, it is imperative that the public and decision-makers be afforded the informed and meaningful opportunity to analyze the Project with a reasonable amount and depth of information to understand the Project's potential environmental impacts without deferred mitigation measures. In fact, courts have actually set aside MNDs where the

MND attempted to defer mitigation pending further study or failed to gather sufficient data regarding a possible environmental impact—as is the case here. In *Gentry, supra*, for example, the court considered whether the lead agency had complied with the procedural and substantive requirements of CEQA, *including the information disclosure provisions*, and held that noncompliance with such provisions may constitute a prejudicial abuse of discretion. 36 Cal.App.4th 1359, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record); accord *Sundstrom, supra,* 202 Cal.App.3d at 311 ("Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.").

Without more information and a greater level of detail concerning some of the Project's design features, it cannot be known whether and to what degree of significance the Project will impact the environment and human health. See MND, p. 55 ("there is no final design available at this time . . . there could be a potentially significant indirect impact"). As it stands now, RBOC has failed to gather and disclose a sufficient amount of relevant data such that meaningful analysis of impacts may occur. See *Laurel Heights Improvement Assn., supra,* 47 Cal.3d at p. 404 ("Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process.) Therefore, the MND is impermissibly vague and wholly deficient and cannot be adopted.

An EIR must be prepared given that even a revised MND would fail to afford for the environment and local residents the protections conferred by CEQA. In *Christward*, *supra*, the Christward Ministry organization, which owned land utilized as a religious retreat, challenged the City of San Marcos' adoption of a general plan amendment which applied a waste management facilities designation to a landfill without an EIR. 184 Cal.App.3d 180. The city adopted an ND which concluded in terse and conclusory language that the project would not have a significant environmental impact. *Id.* at 197. The Superior Court denied the petition and organization appealed. The Fourth District Court of Appeal reversed the trial court's judgment and ordered the preparation of an EIR, reasoning that the City's assertion it could find no 'fair argument' there would be any potentially significant environment impacts rests, in part, in its *failure to undertake an adequate environmental analysis*." *Ibid.* (emph. added). Such is the case here.

RBOC concludes that the Project will not have significant environmental impacts (with or without mitigation) based on an MND which analyzes an undeveloped and incomplete project, incorporates deficient impacts analyses and conflicts of evidence, and makes unsupported assertions. See MND, pp. 24 ("ultimate design of the miniature golf course is not available at this time"), 27 ("design of lighting features is conceptual and not known with certainty at this time"), 64 (despite being subject to liquefaction and landslides, because the Project does not include "new housing or commercial uses" and because "the potential for large, deep-seated landslides" was considered low in 2002, that the Project will not have significant geologic impacts), 64 (contends without analysis or evidence that because the "[p]otential for lateral spreading impacts in within [sic] the Project Site would be considered low[,]" geologic impacts would be less than significant); 104 (claims less than significant recreational impacts where "Project would not increase the use of any existing parks or recreational facilities located near or adjacent to the Project Site" despite substantially increasing patronage of the Brookside Golf Course by golfers attending the range and families attending the miniature golf course).

The type and depth of information offered in the MND falls drastically short of CEQA's disclosure mandate. See *In re Bay-Delta etc.* (2008) 43 Cal.4th 1143 ("courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure"); see also *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935 (in the context of an EIR, the court expressed that in order to "facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions."); see also *People v. County of Kern, supra,* 39 Cal.App.3d 830, 841-842 (conclusory statements fail to crystallize issues); accord *Citizens for Quality Growth v. City of Mount Shasta, supra,* 198 Cal.App.3d 433, 441 (lead agency's findings under § 21081 as to mitigation must be sufficiently detailed).

Consequently, the MND is entirely unwarranted, and an EIR instead must be prepared to adequately disclose the Project's full scope and design, and to study and mitigate the fully formulated Project's impacts.

B. CEQA Bars the Deferred Development of Environmental Mitigation Measures.

The MND improperly defers critical details of mitigation measures. Feasible mitigation measures for significant environmental effects must be set forth in an

MND for consideration by the lead agency's decision-makers and the public before certification of the MND and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the MND and approval of a project. See CEQA Guidelines, § 15126.4, subd. (a)(1)(B) (formulation of mitigation measures should not be deferred until some future time).

At the outset, deferral of mitigation measures is inherently improper in an MND—especially considering that an MND is warranted *only if* impacts are "clearly" reduced to the level of insignificance and mitigation measures have already been formulated and "incorporated." Pub. Res. Code, § 21064.5. An agency may not both claim impacts are "clearly" reduced to insignificant levels and yet defer their studies and mitigation. *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-114 (acknowledging the EIR/MND distinction, rejecting reliance on regulatory compliance in MNDs.)

Further, even in an EIR context, the Project's deferred MMs are improper since they fail to meet the prerequisites and conditions for allowing deferred mitigation. Thus, under CEQA Guidelines, section 15126.4, subsection (a)(1)(B), the "specific details of a mitigation measure, however, may be developed after project approval when it is **impractical** or **infeasible** to include those details during the project's environmental review." (Emph. added). Indeed, cases where deferred mitigation was upheld involved a legal impediment, which was duly disclosed to the public, along with the financial feasibility of mitigation. *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 412 (hereafter "*Maywood*") (deferred mitigation measures were proper in an EIR, where the agency could not legally access lots to make studies and disclosed this issue, along with the feasibility of mitigation). RBOC did not show such infeasibility or impracticality here; neither can they. RBOC has full access to the 16 acres of land of the Project site. Absent any legal impediment, RBOC and the City is required to "defer approval of the Project until proposed mitigation measures were fully developed, clearly defined, and made available to the public and interested agencies for review and comment." *Communities for a Better Environment v. City of Richmond (*2010) 184 Cal.App.4th 70, 95. It did not, improperly "placing the onus of mitigation to the future plan and leaving the public 'in the dark about what land management steps will be taken, or what specific criteria or performance standard will be met[.]" *Id.* at 93 (internal citation and quotation omitted).

Further, the MND fails to meet the conditions warranting deferred mitigation under the CEQA Guidelines that the agency:

> (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will [be] considered, analyzed, and potentially incorporated in the mitigation measure.

CEQA Guidelines, § 15126.4, subd. (a)(1)(B).

Here, RBOC failed all three elements. It did not commit to mitigation; neither did it provide any specific performance criteria that would show impacts would be mitigated. And neither could it theoretically do so given that the Project's design is not yet complete. As in *King & Gardiner Farms, LLC v. Cnty. of Kern* (2020), here, RBOC provided no verifiable specific performance standards. 45 Cal.App.5th 814. RBOC "addresses whether a measure would be employed, but does not address the performance of the measure." *Id.* at 858.

Deferring critical details of a project's mitigation measures (and design) undermines CEQA's purpose as a public information and decision-making statute. See *Laurel Heights, supra,* 47 Cal.3d at pp. 391, 404 (one of "CEQA's fundamental goal[s] that the public be fully informed as to the environmental consequences of action by their public officials"). "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision-making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92. As the Court noted in *Sundstrom, supra*, a "study conducted after approval of a project will inevitably have a diminished influence on decision-making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." 202 Cal.App.3d at 307.

A lead agency's adoption of an MND's proposed mitigation measure for a significant environmental effect that merely states a "generalized goal" to mitigate a significant effect without committing to any specific criteria or standard of performance violates CEQA by improperly deferring the formulation and adoption of enforceable

mitigation measures. See *San Joaquin Raptor Rescue Center v. Cnty. of Merced* (2007) 149 Cal.App.4th 645, 670; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal. App. 4th 70, 93 (in the context of the adoption of an EIR, the lead agency merely proposed a generalized goal of no net increase in GHG emissions and then set out a handful of cursorily described mitigation measures for future consideration that might serve to mitigate the project's significant environmental effects); *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1029 (court upheld an EIR that set forth a range of mitigation measures to offset significant traffic impacts where performance criteria would have to be met, even though further study was needed and the EIR did not specify which measures had to be adopted by city).

Those CEQA mitigation measures which are proposed and adopted into an MND are required to describe the specific actions to be taken to reduce or avoid an impact. See CEQA Guidelines, § 15126.4, subd. (a)(1)(B) (providing formulation of mitigation measures should not be deferred until some future time). While CEQA Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, such exception is narrowly proscribed to instances where "measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." *Ibid.* Courts have also recognized a similar exception to the general rule against deferral of mitigation measures where the performance criteria for each measure is identified and described in the environmental analysis. *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011.

Improper deferral may occur where an MND calls for mitigation measures to be created based on future studies or where the MND describes mitigation measures in general terms while the lead agency fails to dedicate itself to specific performance standards. *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 (lead agency improperly deferred mitigation to butterfly habitat by failing to provide standards or guidelines for its management in its EIR); *San Joaquin Raptor Rescue Center v. Cnty. of Merced* (2007) 149 Cal.App.4th 645, 671 (lead agency failed to provide and commit to specific criteria or standards of performance for mitigating impacts to biological habitats); *Cleveland Natl. Forest Found. v. San Diego Assn. of Govts.* (2017) 17 Cal.App.5th 413, 442 (generalized air quality measures in the EIR failed to set performance standards); *Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 195 (lead agency could not rely on a future report on urban decay

with no standards for determining whether mitigation was required); *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 740 (agency could not rely on future rulemaking to establish specifications to ensure emissions of nitrogen oxide would not increase because it did not establish objective performance criteria for measuring whether that goal would be achieved); *Gray v. Cnty. of Madera* (2008) 167 Cal.App.4th 1099, 1119 (rejecting mitigation measure requiring replacement water to be provided to landowners because it identified a general goal for mitigation rather than specific performance standard); *Endangered Habitats League, Inc. v. Cnty. of Orange* (2005) 131 Cal.App.4th 777, 794 (requiring report without established standards is impermissible delay).

When imposing mitigation, lead agencies must ensure there is a "nexus" and "rough proportionality" between the measure and the significant impacts of the project. CEQA Guidelines, § 15126.4, subd. (a)(4)(A); see *Nollan v. Cal. Coastal Commission* (1987) 483 U.S. 825; *Dolan v. City of Tigard* (1994) 512 U.S. 374. All mitigation must be feasible and fully enforceable, and all feasible mitigation must be imposed by lead agencies. CEQA Guidelines, § 15041. Formulation of mitigation measures shall not be deferred until some future time. CEQA Guidelines, § 15126.4, subd. (a)(B).

The CEQA Guidelines allow an MND only where:

> (b) The initial study identifies potentially significant effects, but:
>
> (1) **Revisions** in the project plans or proposals made by, or agreed to by the applicant **before** a proposed **mitigated negative declaration** and initial study **are released** for public review would avoid the effects or mitigate the effects to a point where **clearly** no significant effects would occur, **and**
>
> (2) There is no substantial evidence, in light of the whole record before the agency, that the project **as revised** may have a significant effect on the environment.

CEQA Guidelines, § 15070, subd. (b) (emph. added).

As such, the MND is not warranted here, where the mitigation measures are not yet formulated, let alone where the Project's full scope and design is yet unclear.

For all of the reasons stated previously as to various impacts, the MND features several mitigation measures which are impermissibly vague and improperly defer

critical details. Several examples of the MND's deficiencies in this regard have been addressed in subsection B of this section. RBOC must comply with CEQA and provide clear mitigation measures *before* circulating the MND.

C. RBOC and the MND Improperly Piecemeal the Project.

The MND and the Staff Report openly disclose that the Applicant will still be coming for *future discretionary* approvals from the City, including but not limited to the CUP. Staff Report, pp. 3 (conditional use permit), 4 (design review approval); MND, p. 49 (tree removal permit). In fact, per the Staff Report, the only discretionary approvals sought by RBOC "at this time" are its:

> [S]eeking City Council financial assistance of $1 million toward further development of the Project, inclusion of Family Golf in the upcoming Request for Proposal for golf course management, and authority to apply to the City for a conditional use permit and design review at the appropriate time[.]

Staff Report, p. 4.

This constitutes as classic piecemealing, expressly prohibited by CEQA and extensive case law.

CEQA mandates that "the lead agency must consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect." CEQA Guidelines, § 15003, subd. (h). As a corollary, CEQA forbids "piecemealing." *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1208. ("The prohibition against piecemeal review is the flip side of the requirement that the whole of a project be reviewed under CEQA."); accord CEQA Guidelines, § 15378, subd. (a). Piecemealing is reviewed *de novo. Paulek v. Dept. of Water Resources* (2014) 231 Cal.App.4th 35, 46.

CEQA's piecemealing prohibition stems from two sources—a public agency's duty to define the "project" being evaluated by "the whole of an action" (CEQA Guidelines, § 15378, subds. (a), (c)), and its duty to "consider the effects, both individual and collective, of all activities involved in [the] project" (Pub. Res. Code, § 21002.1, subd. (d)). Moreover, CEQA's piecemealing prohibition stems from its requirement to consider the cumulative impacts of all phased or multiple projects which are part of the same general undertaking. CEQA Guidelines, § 15165. For purposes of the cumulative impacts analysis, CEQA mandates the consideration of the impacts of the

past, present, and reasonably foreseeable future projects. CEQA Guidelines, §§ 15063, subd. (b)(1) (prepare an EIR "if he agency determines that there is substantial evidence that *any* aspect of the project, either *individually* or *cumulatively, may* cause a significant effect on the environment, *regardless* of whether the overall effect of the project is adverse or beneficial"); 15064, subd. (h) (need to consider cumulative impacts of past, other current and "probable future" projects). Even if the Project's impacts may not be significant, its incremental effects, when added to other past, present, and probable future projects, can be cumulatively significant. CEQA Guidelines, §§ 15065, subd. (a)(3), 15130, subd. (b)(1)(A), 15355, subd. (b).

Our Supreme Court has defined piecemealing as "chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences." *Bozung v. Local Agency Formation Comm.* (1975) 13 Cal.3d 263, 283-284; see CEQA Guidelines, § 15069. Thus, identifying and studying the "whole of the project" is crucial to attainment of CEQA's goals of properly disclosing and mitigating environmental impacts. "'Project' is given a broad interpretation in order to maximize protection of the environment." *San Joaquin Raptor/Wildlife Rescue Center v. Cnty. of Stanislaus* (1994) 27 Cal.App.4th 713, 730.

Even when a developer obtains a right to construct or has completed one or more pieces of a larger project that has so far evaded full environmental review, the City and this Court have the right—indeed the duty—to remedy the wrong. This includes stopping the challenged incomplete parts and ordering a comprehensive environmental review of the entire project using a corrected project description and baseline. *Arviv Enterprises, Inc. v. South Valley Area Planning Comm.* (2002) is on point. 101 Cal.App.4th 1333 (hereafter "*Ariv*"). There, a Los Angeles developer had an overall plan to build 21 homes in the Mulholland community along Woodstock Road. *Id.* at 1336. Rather than present the "whole" of its action as part of an EIR or other comprehensive review, the developer chopped the larger project into pieces—one of 5 homes, another of 2 homes, and another of 14 homes. *Id.* at 1338, 1343. The developer then separately processed each portion via CEQA exemptions or an MND. *Id.*

Eventually, the City discovered the developer's attempted circumvention of CEQA and required it "to obtain an EIR for a 21-house development," rather than proceed in a piecemeal manner. *Id.* The developer sued the City, arguing it should not have to prepare an EIR. *Id.* at 1343. The trial court rejected the developer's position, and our Court of Appeal affirmed, holding that "[t]he significance of an accurate project

description is manifest, where, as here, cumulative *environmental impacts may be disguised or minimized by filing numerous, serial applications*." *Id.* at 1346 (emph. added).

"One way to evaluate which acts are part of a project is to examine how closely related the acts are to the overall objective of the project." *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1226. "Another way to phrase the question of whether a particular act is a step taken towards the achievement of the proponent's objective is to ask 'whether the act is part of a coordinated endeavor.'" *POET, LLC v. State Air Resources Bd.* (2017) 12 Cal.App.5th 52, 75, fn. 15 (internal citation and quotation omitted).

The failure to analyze the whole of the project, and thereby allow the true impacts, including cumulative impacts of the various parts added together, to escape review, is potentially "disastrous," and should not be allowed. *Bozung*, *supra*, 13 Cal.3d at 283-284. Consistent with *Arviv, supra*, an EIR is also required on piecemealing grounds to properly analyze regulatory threshold exceedances caused by the Project Applicant's "coordinated endeavor." For example, pursuant to CEQA Guidelines, section 15206, subsection (b)(2)(D), a proposed hotel with more than 500 rooms shall be deemed regionally/area wide significant. This determination may not be possible where a project is piecemealed. Similarly, under Public Resources Code, section 21155.1, there are numerous limitations and requirements a project must meet, including a cap of 200 units, which cannot be properly assessed where a project is piecemealed.

CEQA's piecemealing prohibition—especially for later phases or last act project components—is also critical as it results in an improperly inflated and inaccurate baseline and/or fundamentally inaccurate "no project" alternatives, which, in turn, taints the entire CEQA review. *POET, LLC v. State Air Resources Bd* (2017) 12 Cal.App.5th 52, 83 (use of an inflated baseline had the effect of understating the increase of impacts, requiring reversal); see also CEQA Guidelines, §§ 15126.6, subd. (e)(2), 15125, subd. (a)(1) (both the "no project" alternative and the baseline consider the existing environmental conditions). It is well-settled that, without an adequate baseline, the "analysis of impacts, mitigation measures and project alternatives becomes impossible." *Cnty. of Amador v. El Dorado Cnty. Water Agency* (1999) 76 Cal.App.4th 931, 953.

Alternatively, even if various parts of the project are sufficiently separate and do not constitute a whole of an action, CEQA requires that the environmental review of the project include impacts of the past, present, and reasonably foreseeable future

projects. See CEQA Guidelines, §§15065, subd. (a)(3), 15130, subd. (b)(1)(A), 15355, subd. (b). In fact, courts treat piecemealing and failure to study cumulative impacts of related approvals as alternative theories. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 733 (hereafter "*San Joaquin*") ("even assuming the sewer expansion was severable from the development project, the FEIR still did not comply with CEQA" for failure to consider cumulative impacts). Thus, in analyzing the Project's cumulative impacts here, it is critical to analyze not only the impacts of the Project itself, but those impacts from all other related projects as well.

Here, there is no dispute that the Project is being piecemealed. As a result of such piecemealed project approvals—funding now, and CUP, design review, and tree removal permits later—the MND fails to account for the cumulative impacts for the "whole" of an action. Needless to say that, by the time the noted (and potentially other) discretionary actions come before the City, such actions will proceed by-right and will not provide the City nor the public any meaningful chance to review and request changes or mitigation. The MND by then may be immune to challenge.

The noted piecemealing is also fatal given that the MND does not, and cannot, consider the Project's cumulative impacts along with *other* related projects.

Another potential CEQA problem that will arise due to the MND's piecemealing of the whole of the action is that the baseline of the Project for purposes of CEQA review will be inflated and, as such, the Project's impacts will be artificially decreased to avoid significance thresholds. For example, if the CUP approvals occur after the design review and potentially in 2024-2025, then arguably, there may be other related projects that would have been approved before then and would have increased the baseline traffic or GHG impacts. As such, the Project's own increase of impacts, along with its own prior parts that were approved, may seem insignificant as compared if the same design review and CUP review occurred now in 2023. See *POET, LLC v. State Air Resources Bd* (2017) 12 Cal.App.5th 52, 83 (use of an inflated baseline had the effect of understating the increase of impacts, requiring reversal); *Cnty. of Amador v. El Dorado Cnty. Water Agency* (1999) 76 Cal.App.4th 931, 953 (without an accurate baseline, the "analysis of impacts, mitigation measures and project alternatives becomes impossible").

As a result of piecemealing or alternatively failure to review the cumulative impacts of the project's related parts or components, there is informational deficiency and overall impossibility to meaningfully assess the Project's impacts and to determine whether

the MND is indeed proper. On this additional ground as well, the MND should not be approved and RBOC must be required to disclose the full scope of the Project, its final design, and evaluate the impacts of the whole of such action in compliance with CEQA's environmental protection mandates.

IV. CONCLUSION

In light of the aforementioned concerns, LVAA respectfully requests that the City: (1) deny adoption of the MND; (2) order the preparation and circulation of a Project-specific EIR prior to any approvals for the Project; (3) order that Applicant further develop and revise the Project to ensure its consistency with all applicable plans and regulations especially those addressing the Project's potential impacts on human and environmental health; and, (4) require that the environmental review consider the whole of an action and all discretionary actions, including but not limited to those for the CUP, design review, and tree removals.

As stated in *San Franciscans for Reasonable Growth v. City & City. of San Francisco* (1984):

> The only reason we can infer for the Commission's failure to consider and analyze this group of projects was that it was more expedient to ignore them. However, expediency should play no part in an agency's efforts to comply with CEQA.

151 Cal.App.3d 61, 74.

LVAA is comprised of individuals and taxpayers who live, work, and recreate in Pasadena and would be directly affected by the Project's social and environmental impacts. LVAA is also interested in enforcing the State's environmental and planning and zoning mandates under CEQA and Planning and Zoning Law.

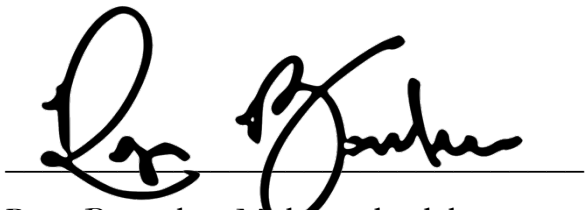
LVAA expressly reserves the right to supplement these comments at or prior to hearings on the Project, at any later hearing and proceeding related to this Project, and during review of any version of the MND or future EIR. Gov. Code, § 65009, subd. (b); Pub. Res. Code, § 21177, subd. (a); see *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; accord *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1121.

LVAA incorporates by reference all comments raising issues regarding the Project, its environmental review, and associated documents and reports. See *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 191 (citing *Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 875) (finding that any party who has objected to a project's environmental documentation may assert any issue timely raised by other parties); see also *Santa Teresa Citizen Action Group v. City of San Jose* (2003) 114 Cal.App.4th 689, 701 (citing Pub. Res. Code, § 21177, subds. (a)-(b)) (to attack a decision that is subject to the CEQA, the alleged grounds for noncompliance must have been presented to the public agency, and the person attacking the decision must have raised some objection during the administrative proceedings).

Moreover, LVAA requests that the City provide notice for any and all notices referring or related to the Project issued under CEQA (Pub. Res. Code, § 21000 et seq.) and the California Planning and Zoning Law (Gov. Code, §§ 65000–65010). California Public Resources Code, sections 21092.2 and 21167(f) and California Government Code, section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

Should the City have any questions or concerns, it should feel free to contact my Office.

Sincerely,



Reza Bonachea Mohamadzadeh
Attorney for LVAA

Attached:

July 7, 2023, Biological Impacts from Lighting from Brookside Golf Course Improvements Project Letter to Mitchell M. Tsai (Exhibit A)

EXHIBIT A

Land Protection Partners

P.O. Box 24020, Los Angeles, CA 90024-0020
Telephone: (310) 247-9719

Biological Impacts of Night Lighting from Brookside Golf Course Improvements Project

Travis Longcore, Ph.D.
Catherine Rich, J.D., M.A.

July 7, 2023

The Rose Bowl Operating Company (RBOC) is proposing to make changes to the Brookside Golf Course, located in the Arroyo Seco just north of the Rose Bowl itself, consisting of the reorientation, expansion, and lighting of the driving range, and the addition and lighting of a miniature golf course. RBOC issued an Initial Study/Mitigated Declaration (MND) in January 2023, followed by revisions and responses to received comments in May 2023. We were engaged by Mitchell M. Tsai, Attorney at Law, to review these documents relative to the potential adverse impacts of light pollution from the proposal project because of our extensive and specific expertise on artificial light at night and its effects on wildlife and humans (see list of publications, Section 7). In this review, we present substantial evidence that the proposed project will have significant adverse impacts from light pollution and that the MND fails as an informational document by perpetuating the absurdity that "the Project would not result in a permanent glow in the Arroyo Seco" and that "the proposed lighting at the driving range would not substantially differ from the current (or historical) conditions on the Project Site" (MND Response to Comments, p. 2-7). As discussed in detail below, these patently false assertions fail to meet the standards necessary to inform the public or to support a final decision by the City of Pasadena.

1 No Matter How Well Shielded, Sports Lighting Causes Light Pollution

The proposed project will cause significant light pollution, notwithstanding the commitment to follow the generic code for the City of Pasadena (Zoning Code Section 17.40.080(a)). Some understanding of how light is measured, and what the Zoning Code measures, is required comprehend why the analysis in the MND is so inadequate.

The code requires that "no lighting on private property shall produce an illumination level greater than one foot-candle on any property within a residential zoning district except on the site

of the light source." The code also has an admonition to direct light "downward" and away from adjoining properties.

The way lighting engineers typically measure light for compliance with an ordinance like this is to calculate the illumination from the proposed light on a horizontal plane at ground level surrounding the lights. Because the ordinance does not specify where or how the illumination is to be measured, the engineer will assume that it means horizontal illumination at the ground, which will always be less than if one measured the illumination on a vertical plane at the height that a person or animal might encounter the light. The measurement is just the amount of light falling per unit area on the ground, as if the sensitive receptor were looking straight up, lying on the ground. This measurement typically does not include any analysis of the scattering and reflecting of light, but rather is just the sum of the direct light from each of the lamps. The Pasadena Zoning Code is insufficient to achieve the mitigating effects attributed to it in the MND for several reasons.

First, horizontal illuminance only deals with illuminance (light falling on a surface) at the location of a sensitive receptor, not the visual apparency (glare and glow) of the lighted area itself. This is the difference between luminance (the glare and glow), which is measured in units that reference the brightness of the surface of the lamp and other items from which light is reflecting, and illuminance, which is the amount of light falling on a surface. Illuminance can be quite low, while luminance of the light source is still high. Consider looking at a bright LED flashlight across the length of a football field. The glare will be blinding (high luminance) but you probably would not be able to read a newspaper from the light (low illuminance). The ordinance regulates whether you can read a paper by the light, not whether it appears as a glowing area, or if the individual lamps are bright point sources visible to the observer. This bears repeating; as it is written, the code can be met while still exposing people and wildlife to high levels of light and glare.

Second, the threshold of 1 foot-candle is itself very high. For comparison the full moon in Los Angeles produces about 0.02 foot-candles of illumination and often is only 0.01 foot-candles. This means that the standard adopted for impacts in the MND allows light to be 50–100 times greater than the brightest natural conditions. Natural conditions, and the conditions through most of the month, are orders of magnitude lower still. This is a problem for the analysis in the MND because 1 foot-candle is bright enough to impact human and wildlife health through suppression of melatonin (Grubisic et al. 2019) and far exceeds all thresholds for impacting wildlife behavior (Prugh and Golden 2014, Schirmer et al. 2019, Simons et al. 2022, Longcore 2023).

Third, the measurement unit foot-candle is based on the sensitivity of human eyes to different colors of light and does not consider how bright the light appears to other species. The spectral composition of the lights will make them appear even brighter to some species, which will not show up in the analysis. For example, insects tend to be quite sensitive to light that is blue and violet and so lights that contain high levels of blue and violet will appear brighter to them than is captured by their measurement in foot-candles, which incorporates human sensitivity during the daytime and has low sensitivity to violet and shorter blue wavelengths.

Having reviewed the Zoning Code and the lighting plan for the proposed project (MND, Appendix A), anyone knowledgeable about light would understand that the claims in the MND

do not have a factual basis. In particular, the claims that the project would not cause permanent glow in the Arroyo Seco and that the project would not change the condition from current conditions are unsupported, and we turn to this issue next.

The proposed lighting system for the driving range includes 33 LED lights with a correlated color temperature (CCT) of 5700 K and an output of 85,000 lumens each. This information is not stated in the MND but is found in Appendix A, where the model of the lamps (CLIR 630 EV) is listed. Then, by consulting the specifications sheet from Phoenix Lighting for that model of light,[1] one learns the lumen output and CCT of the lamps. By multiplying 85,000 lumens by 33 it is seen that the total amount of light from the driving range alone (leaving aside any other lighting for pathways or the miniature golf course) will be 2.8 million lumens.

As a comparison with the light from the driving range, a 60-Watt incandescent bulb produces about 800 lumens, which means that the proposed lighting will be as bright as 3,506 60-Watt incandescent bulbs installed in the middle of the Arroyo Seco. Put another way, it would be as bright as 561 typical streetlights (at 5,000 lumens each) installed around the driving range. This amount of light will be noticeable and "glow" no matter how low the measured illumination is at the property boundary because all that light must go somewhere, and it will be reflected and scattered by aerosols and the air.

The angle at which light shines on a surface affects the amount of light that is reflected by that surface. When light shines straight down on turf, roughly 55% of the light is reflected upward. When the light is at a 60º angle, as little as 12% of the light is reflected upward. The average amount of light reflected upward from light shining on turf at angles of 60–90º is 20–25% (from figures produced by Dr. C. Baddiley, scientific advisor to the British Astronomical Association Campaign for Dark Skies). Taking this conservative estimate of 20–25% reflected light from turf (and it will be more in reality), the proposed driving range lights would result in 561,000–701,250 lumens of light emanating outward from the site (and unregulated by the code section relied upon as a mitigation). This would be the equivalent of 112–140 streetlights' worth of light directed upward into the sky and toward off-site receptors.

Light is also scattered by aerosols in the air. These can be dust, pollen, or droplets of water. The MND fails to account for the scattering of light from fog and clouds or other aerosols that will take place between the lamps and the ground, or the exacerbating effect of fog and clouds on the light that is reflected from the turf itself. Fog is extremely efficient at reflecting light and recent research has shown that foggy conditions result in a sixfold increase in night sky brightness (a measure of light pollution) (Ściężor et al. 2012). Furthermore, clouds reflect light downward, so even if it were only cloudy (and not also foggy), the light reflected downward would be substantially greater than that under a clear sky (Kyba et al. 2011, Ściężor et al. 2012). The MND does not account for either scattering of light by fog or reflection by clouds.

An assessment of light pollution from the proposed lighting should also consider scattering in the air, which is known as Rayleigh scattering. This type of scattering increases with shorter wavelengths of light, so the light from proposed full-spectrum lamps will be scattered. High

[1] https://www.phoenixlighting.com/sites/default/files/products/specification-sheets/n5400146f_clir_series_spec_sheet.pdf

CCT lamps, which are proposed for the project cause 10–20% more light pollution than high-pressure sodium lamps of the same luminous output (Bierman 2012). The proposed lighting will both exceed the illumination from streetlights in the Rose Bowl area, its CCT will result in even more light pollution. The preparers of the MND appear not to have any expertise in lighting or physics, because none of this is discussed and they made easily falsifiable claims that the driving range will not glow at night.

To the contrary, over half a million lumens of scattered light will create a glow that is always visible from off-site when the lights are illuminated, will contribute significantly to sky glow, and will adversely impact wildlife as discussed more in the following sections. Sports facilities are the second biggest contributor to light pollution in US cities, after commercial districts, and contribute far more to light pollution relative to their area than any other feature (Luginbuhl et al. 2009). This project is no different.

2 Biological Effects of Light Pollution

The analysis of impacts on biological resources, and aesthetic resources for that matter, depends on understanding and describing the difference between illuminance and luminance (also known as irradiance and radiance when measured in units not weighted to human vision). Although broadly related, it is possible for a project to cause significant new radiance sources in the nighttime visual environment (including through reflected light) even as irradiance around the property may or may not be elevated substantially.

To review, *illuminance* refers to the amount of light falling on a surface where something of interest is going on. It influences the visibility of items in the environment as well as the circadian (daily) rhythms of species. So, for example, small mammals respond to illumination in their foraging activities (Clarke 1983, Brillhart and Kaufman 1991, Vasquez 1994, Falkenberg and Clarke 1998, Kramer and Birney 2001, Prugh and Brashares 2010). It generally influences predator-prey relationships, including at levels of <0.01 foot-candle, far below the threshold of 1 foot-candle used in the MND (Kotler 1984, Simons et al. 2022).

Birds would be affected by increased ambient illumination at levels described in the MND. Species can forage at artificial lights (Goertz et al. 1980, Sick and Teixeira 1981, Frey 1993, Rohweder and Baverstock 1996) and experience significant changes in their morning singing times, especially since the lights will be turned on at 6 A.M. (Derrickson 1988, Miller 2006, Kempenaers et al. 2010, Longcore 2010). Those birds that sing earliest are responding to increases in illumination so faint that they are undetectable by humans (Thomas et al. 2002), and well below the resolution of the illumination diagram in the MND, which ignore reflected and scattered light. Such species would be affected at distances far beyond the 100-foot buffer used for biological resource analysis because of this sensitivity and the quantity of light that would reach beyond the lower resolution of precision for the lighting diagram.

Luminance refers to the brightness of the lights themselves, even as visible from a distance and even if they only negligibly increase *illuminance*. Merely seeing lights at a distance can influence the wayfinding and habitat use of an animal (Beier 1995). It is the overall luminance created by the project that will attract insects and migratory birds to their detriment, while

simultaneously reducing the value of the golf course and surroundings as a wildlife movement corridor by bats as well as terrestrial mammal species, contrary to the assertions in the MND.

2.1 Attraction of insects to light

Insects are attracted to light because they perceive the luminance of the light and adjust their behavior in response. Many families of insects are attracted to lights, including moths, lacewings, beetles, bugs, caddisflies, crane flies, midges, hoverflies, wasps, and bush crickets (Sustek 1999, Kolligs 2000, Eisenbeis 2006, Longcore et al. 2015, Owens et al. 2020, Deichmann et al. 2021). Insects attracted to lights are subject to increased predation from a variety of predators including bats, birds, skunks, toads, and spiders (Blake et al. 1994, Frank 2006). The lights proposed for use on the driving range would have a high CCT (5700 K) and therefore can be expected to be far more attractive to insects than lower CCT lights (Eisenbeis and Eick 2011, Hauptfleisch and Dalton 2015, Longcore et al. 2015, Donners et al. 2018, Longcore et al. 2018, Deichmann et al. 2021). Some studies have shown inconclusive results with respect to CCT (Pawson and Bader 2014, Haddock et al. 2019), but mechanistic assessments (Donners et al. 2018), studies in light-naïve environments with high insect diversity (Deichmann et al. 2021), and assessments of invertebrate visual systems (Longcore 2023) strongly suggest that the high CCT lamps proposed for the driving range lighting will exacerbate the attraction of insects.

2.2 Attraction of migratory birds

During a 2022 playoff game at Dodger Stadium between the San Diego Padres and the Los Angeles Dodgers, a Lesser White-fronted Goose entered the stadium and attempted a landing on the field. To light pollution experts, this was easily recognized as a case of a nocturnally migrating species being attracted to and disoriented by lights at night (Longcore 2022). The phenomenon of migratory birds being attracted to lights at night is well known and studied, in contexts ranging from communication towers to ceilometers to tall buildings and cruise ships (Gauthreaux and Belser 2006, Longcore et al. 2008, Bocetti 2011, Longcore et al. 2012, 2013, Van Doren et al. 2017, Horton et al. 2019, Van Doren et al. 2021, Burt et al. 2023). The MND does not consider the interference with movement of native migratory species represented by the introduction of a large, highly visible light source in an area traversed by millions of birds each year. Recently developed tools using weather radar estimate that 22 million birds traversed Los Angeles County during the spring 2023 migration, with close to 200,000 at peak times (see https://dashboard.birdcast.info/region/US-CA-037?night=2023-05-17).

Shielding the lights would not eliminate attraction of birds, because the proposed lights will be so bright, and the light will be reflected and scatter. Remote sensing studies already show that sports fields (even when lights are shielded) are the most significant contributors to light pollution in cities, and those same measures of light pollution (upward radiance) directly influence the distribution of migratory birds, as documented in many recent studies (La Sorte et al. 2017, Van Doren et al. 2017, McLaren et al. 2018, Burt et al. 2023). Light is reflected, scattered by fog, and reflected by low clouds. One of the higher bird mortality events at a wind turbine installation occurred at a location with lights that were at ground level and created a light attraction in conjunction with fog (Kerlinger et al. 2010, Kerlinger et al. 2011). Reflected light is more than adequate to attract migratory birds. Lebbin et al. (2007) documented an interspecific flock of migratory songbirds that gathered under stadium lighting consisting of 156 1500-Watt

metal halide lights illuminating a stadium at a university. Nothing about the design of the lights at Brookside Golf Course would make them proportionally any less attractive to migratory birds than other existing examples of birds being attracted to lights at sports fields.

Unless mitigated, the described lighting on its own would constitute a significant adverse impact on movement of native wildlife species through its impacts on migratory birds.

2.3 Disruption of movement of native terrestrial wildlife

The project site and immediate surroundings are well within the range of and can expected to be used by native mammals. Species observed on the property include coyotes and mule deer, while bobcat has been observed near the project site and mountain lion approximately 1 km away within the Arroyo Seco. Each of these can be easily verified with photographs on the iNaturalist website. The irradiance and radiance produced by the project would affect the distribution of these species. We know this from extensive camera trap studies of coyotes (Schirmer et al. 2019), habitat use studies of mule deer, mountain lion, and bobcat (Rockhill et al. 2013, Ditmer et al. 2020), and radiotelemetry of mountain lions (Beier 1995). We can add to the published research a study currently in review for publication and already presented at a scientific conference that evaluated mountain lion habitat preference in Orange and San Diego counties using GPS data from 102 individuals (Barrientos et al. 2023). After accounting for other factors, the analysis found that light escaping upward from the landscape and visible by a satellite from overhead was highly negatively associated with habitat use by mountain lions at the scale of about 500 m. That is, the lighting of the driving range, which would dramatically increase the brightness of the area (through reflected light), would dramatically reduce the probability that its surrounding part of the Arroyo Seco would be used as a movement corridor by mountain lions. This, too, would represent a significant adverse impact on biological resources that is not disclosed in the MND.

The MND erroneously states the following, in the Biological Resources appendix: "Nighttime light spillage associated with the operation of the driving range and proposed miniature golf course is not expected to significantly disrupt wildlife movement when considering existing conditions" (Appendix C, p. 17). The preparers do not reference any of the peer-reviewed literature and base their conclusion on the proposed limits on horizontal illumination, when those levels of illumination are known to impact space use of relevant species (Schirmer et al. 2019). Furthermore, luminance (radiance) is equally important in determining habitat use for species moving across the landscape. The conclusion in the MND that the lighting would not affect wildlife movement therefore is not supported by substantial evidence.

2.4 Spectrum of lights proposed increases biological impacts

As already discussed, the environmental analysis for the project does not incorporate any of the voluminous research that shows the differential effects of different wavelengths of light on biological systems (Longcore 2023). Neither the aesthetics analysis nor the biological resources analysis takes into account the wavelengths of light that would be produced by the proposed project.

The conclusion from a number of studies on humans and wildlife is that whiter light (that is, full-spectrum light with blue and violet light included) has more adverse impacts (Pauley 2004, Rich

and Longcore 2006, van Langevelde et al. 2011, Gaston et al. 2012, Stone et al. 2012, Longcore et al. 2015, Longcore 2018, Longcore et al. 2018, Gaston and Sánchez de Miguel 2022). The MND does not even discuss this important feature of the project design and one even has to track down the specification sheet for the lights to be used to ascertain that 5700 K LEDs will be used. Although the sheer quantity of light to be used makes it impossible to fully mitigate the impacts of the project, the inevitable adverse impacts could be reduced slightly by reducing the CCT of the lights to be used so that they will cause less scattering in the atmosphere (Kinzey et al. 2017), have a reduced effect on circadian rhythms, and reduce wildlife impacts for the groups of species that are highly sensitive to blue light.

3 Mitigation Measures

The MND relies on two mitigation measures to argue that impacts from light at night will be reduced to a less than significant level. In the biological section, the following mitigation measure is proposed:

MM-MIO-2. *To minimize potential indirect impact to nesting birds that may utilize ornamental/landscape vegetation on site and/or wildlife movement along the Arroyo Seco, nighttime lighting associated with the driving range and miniature golf course shall be shielded downward to limit spillage onto these sensitive receptors.*

As discussed at length above, shielding lights is insufficient as a mitigation measure when so much light is going to be used that the reflected light itself will be the brightness of 112–140 streetlights. The reflection and scattering are unavoidable physical processes. Furthermore, the mitigation measure does not address impacts to migratory birds for the same reason.

In the aesthetics section of the MND a separate mitigation measure is proposed:

MM-AES-1. *Upon design of the Project, including both miniature golf and driving range lighting fixtures, RBOC shall prepare a quantified lighting study to confirm that final lighting configurations will not exceed 1.0 foot candle from the property line. Prior to installation of final lighting features, RBOC shall conduct a directional lighting test to further determine no exceedance of 1.0 foot candle of light spill.*

As already noted, this "mitigation measure" simply confirms that the project will conform with the existing Zoning Code for the City of Pasadena and offers no additional mitigation that is specific to biological setting or the sensitive resources that are acknowledged to be present. Mitigation measures must reduce impacts beyond the status quo and yet this measure applies the same lighting standard as would be acceptable in the most active commercial zone in the City to a location that is both historically significant and biologically sensitive. The threshold his comically high — 50–100 times brighter than the light of a full moon, allowing illumination that would meet street lighting standards to be experienced at the property boundary. It does not seem like anyone writing the MND understands that this limit would be far too bright to be effective at reducing the impacts from the light to a less than significant level.

4 Conclusion

Based on the analysis above, we conclude that *the project goal of a lighted driving range cannot be achieved without significant adverse impacts on biological resources*. The analysis in the MND is missing key information such as the cumulative light emissions and does not do the modeling necessary to fully visualize and quantify the impacts to the nighttime environment that result from the introduction of 2.8 million lumens of light. Impacts to migratory birds are not addressed at all, and conclusions of mitigated impacts on movement of terrestrial wildlife and nesting birds are not supported by any evidence. Comparison of the proposed project lighting with conditions known to affect wildlife behavior and physiology support our conclusion that the project will have a significant adverse impact. Make no mistake about it, the Arroyo Seco will glow while the proposed lights are on, and this impact will be amplified by the presence of low clouds and fog such that it is foreseeable that neighbors will be able to read a newspaper by the reflected and scattered light, just as one can next to the Rancho Park Golf Course driving range in Los Angeles.

5 About the Authors

Travis Longcore and Catherine Rich are principals of Land Protection Partners. Dr. Longcore is Adjunct Professor in the Institute of the Environment and Sustainability at UCLA. He has taught, among other courses, Bioresource Management, Environmental Impact Analysis, Field Ecology, and Ecological Factors in Design. He was graduated *summa cum laude* from the University of Delaware with an Honors B.A. in Geography, holds an M.A. and a Ph.D. in Geography from UCLA, and is professionally certified as a Senior Ecologist by the Ecological Society of America and as a GIS Professional by the Geographic Information System Certification Institute. He is a 24-year member of the Los Angeles County Environmental Review Board and recently received the Galileo Award for outstanding academic work on light pollution over a multi-year period. Catherine Rich is Executive Officer of The Urban Wildlands Group. She holds an A.B. with honors from the University of California, Berkeley, a J.D. from the UCLA School of Law, and an M.A. in Geography from UCLA. She is lead editor of *Ecological Consequences of Artificial Night Lighting* (Island Press, 2006) with Dr. Longcore. In 2001, she was presented with the International Dark-Sky Association Executive Director's Award for outstanding service in protecting the nighttime environment. Longcore and Rich have authored or co-authored over 65 scientific papers in top peer-reviewed journals such as *Auk, Biological Conservation*, *Conservation Biology*, *Environmental Management*, *Frontiers in Ecology and the Environment*, *Trends in Evolution and Ecology*, and *Urban Forestry and Urban Greening*. Longcore and Rich have provided scientific review of environmental compliance documents and analysis of complex environmental issues for local, regional, and national clients for 25 years.

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