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VIA EMAIL (BOS@PLACER.CA.GOV), FACSIMILE ((530) 889-4009) AND MAIL

Chairman Bruce Kranz
and Members of the Board of Supervisors
Placer County
175 Fulweiler Avenue
Auburn, CA 95603

Re: Penryn Townhomes Planned Development (PSUB T20060767)

Dear Honorable Chairman Kranz and Members of the Board of Supervisors:

This office represents a number of concerned citizens in Placer County in connection with the Penryn Townhomes Planned Development (the "Project"). On behalf of our clients, we have reviewed and analyzed the staff report and proposed findings prepared by Planning Director Michael Johnson in connection with the pending appeal of the Project. We have also reviewed and analyzed the environmental review conducted in connection with the Project. Our substantive analysis reveals significant legal problems with the proposed approval of the requested entitlements for the Project. To briefly summarize, the environmental review conducted by the County is fatally flawed, and the proposed "findings" are not supported by substantial evidence as required by law.

As an initial matter, in light of the developer's December 21, 2007 written request for a continuance of tomorrow's scheduled hearing, it would be patently unfair for the Board of Supervisors to proceed to consider the appeal prior to January 22, 2008. While we understand that the developer withdrew the request for a continuance last Wednesday – *less than one week before the scheduled hearing* – apparently on the grounds that the development team was able to "clear schedule conflicts," the request for a continuance is part of the public record for this matter, and residents of Penryn who relied upon the developer's representation that it wished to have the matter continued may not now be able to rearrange their schedules to participate in the hearing. We understand from documents in the public record that the community was alerted of the original request for a continuance, and that staff will recommend that the hearing be continued. Accordingly, we respectfully request the Board to defer consideration of the pending appeal until an appropriate time so that *all* interested parties may fully, fairly, and effectively participate in the appeal hearing.

In the event the Board determines to consider the pending appeal at tomorrow's meeting, for the reasons set forth in detail below, we urge you to grant the appeal of the Planning Commission's October 11, 2007 decision approving the Project. While some type of residential project may technically be permitted in the Penryn Parkway area, the Project (and the Planning Commission's decision) fundamentally ignores the clear mandate of the Horseshoe Bar/Penryn Community Plan ("HBPCP") that such such development "**shall** be of a relatively **low density**, low profile type..." This plan inconsistency, in addition to the numerous other legal problems identified below, require that the appeal be granted and the entitlement requests denied.

I. RELEVANT FACTUAL BACKGROUND.

The 23-unit Project is proposed on a 3.2 acre parcel that is designated Penryn Parkway (PP) in the HBPCP and is zoned Neighborhood Commercial/Combining Use Permit/Combining Design Review (C1-UP-DC). While it is never expressly stated in the staff report, **the Project's proposed residential density is 7.2 units per acre**,[1] in stark contrast to the rural residential character of Penryn, where many single-family homes are located on multiple acres. In fact, the Rural Estate land use designation, where the applicable residential density ranges from 1 dwelling unit per 4.6 acres to 1 dwelling unit per 20 acres, nearly surrounds the area designated Penryn Parkway.

Also missing from the staff report is a complete description of the entitlements required to allow the out-of-character Project to be developed in Penryn.[2] At the County level, the Project requires, at a minimum, approval of the following entitlements: (1) conditional use permit; (2) tentative subdivision map; (3) approval of additional requirements for a planned development; (4) design review approval; and (5) proper environmental review. In addition to these basic County entitlements, in order to be developed the Project requires permits or approvals from the Regional Water Quality Control Board, California Department of Fish and Game, and the Department of Toxic Substances Control.

II. LEGAL ANALYSIS.

A. The Findings Required For Approval Of A Conditional Use Permit Are Not Supported By Substantial Evidence.

Under the applicable zoning regulations, before a project may be approved in the C1-UP-DC district a use permit must be approved and issued. (P.C.C., §

[1] If proposed private open space, roads, and other non-buildable areas are deducted, the actual net residential density on the buildable area of the site is 13.5 units per acre.

[2] Page 1 of the staff report seems to indicate that only a tentative subdivision map and conditional use permit are required for the Project to proceed.

17.52.050; see also Gov. Code, § 65901 [providing that the appropriate County body "shall hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters..."].) In the instant case, the applicable regulations provide that no use permit may lawfully be issued unless all of the following findings are made and supported by substantial evidence in the record:

- The proposed use is consistent with all applicable provisions of this chapter and any applicable provisions of other chapters of this code (P.C.C., § 17.58.140A.1.);

- The proposed use is consistent with applicable policies and requirements of the Placer County general plan, and any applicable community plan or specific plan, and that any specific findings required by any of these plans are made (P.C.C., § 17.58.140A.2.);

- The establishment, maintenance or operation of the proposed use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, comfort and general welfare of people residing or working in the neighborhood of the proposed use, or be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the county; except that a proposed use may be approved contrary to this finding where the granting authority determines that extenuating circumstances justify approval and enable the making of specific overriding findings (P.C.C., § 17.58.140A.3.);

- The proposed project or use will be consistent with the character of the immediate neighborhood and will not be contrary to its orderly development (P.C.C., § 17.58.140A.4.);

- The proposed project will not generate a volume of traffic beyond the design capacity of all roads providing access to the project, either those existing or those to be improved with the project unless a specific design deficiency is acknowledged and approved in conjunction with the adoption of a general plan or community plan applicable to the area in question (P.C.C., § 17.58.140A.5.);

- As required by Section 18.16.040 of this code (Environmental Review) when a proposed negative declaration has been prepared for the project that, on the basis of the initial study and any comments received, there is no substantial evidence that the project will have a significant effect on the environment (P.C.C., § 17.58.140A.9.).

If these findings cannot be made, "[t]he permit shall be denied..." (P.C.C., § 17.58.130.)

Boilerplate or conclusory findings which simply restate the above-referenced Placer County Code requirements are not legally sufficient. (*Village Laguna, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1033-34.) Any findings made must be supported by **substantial evidence** in the record, and must "bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) "Substantial evidence" has been defined as "relevant evidence that a reasonable mind might accept as adequate support for a conclusion." (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1340.)

Here, the Planning Commission included no evidence whatsoever in support of its findings that allows the decisionmakers, the public, or a reviewing court, to discern the reasons for the findings. While it appears that the findings identified in the staff report as "Recommended Findings" appear to at least in part attempt to comply with the requirements of Placer County Code section 17.58.140, the complete lack of evidence provided in support of the findings – all of which simply restate certain boilerplate Placer County Code requirements – make it impossible to determine the basis for the Commission's decision. Should the Board of Supervisors adopt these invalid conclusory findings, it is very unlikely the approval of the Project would be upheld by a reviewing court.

Approval and issuance of a conditional use permit is a matter that must be carefully and properly considered by the County in accordance with the above legal principles. **"The decision to allow a conditional use permit is an issue of vital public interest. It affects the quality of life of everyone in the area of the proposed use."** (*Penn-Co v. Board of Supervisors* (1984) 158 Cal.App.3d 1072, 1084.) Even if the proposed findings were supported by some evidence in the record (which they are not), as set forth in more detail below, the required *substantial evidence* does not support five of the above-referenced necessary findings as required by law.

1. The Project Is Not Consistent With All Applicable Provisions Of The Placer County Code.

As a proposed "Planned Development" ("PD"), the Project requires conditional use permit approval, approval of a tentative subdivision map, **and** compliance with numerous additional requirements set forth in sections 17.54.090 *et seq.* of the Placer County Code. In addition to the findings required to be made in connection with approval and issuance of a conditional use permit (see P.C.C., § 17.58.140),

Placer County Code section 17.54.090B requires at least 10 additional findings be made on the following matters: [3]

1. The consistency or inconsistency of the PD proposal with any applicable community plan, the extent to which the PD proposal is or is not consistent with the general land use district and characteristics of the area, and the degree to which the PD proposal is or is not compatible with adjacent properties and their existing or allowed land uses, including minimum lot sizes proposed.

2. In what respects the PD is or is not consistent with the purposes of a planned residential development as specified in Section 17.54.080.

3. The extent to which the PD varies from otherwise applicable zoning and subdivision regulations, including, but not limited to, density (as defined in section 17.54.100(A)), bulk and use, and the reasons why such departures are or are not deemed to be in the public interest.

4. The purpose, location and amount of the common open space in the PD, the proposals for maintenance and conservation of the common open space, and the adequacy or inadequacy of the amount and purpose of the common open space as related to the proposed density and type of residential development.

5. The physical design of the PD and the manner in which the design does or does not make adequate provision for public services, control over vehicular traffic, and the amenities of light and air, recreation and visual enjoyment.

6. The relationship, beneficial or adverse, of the proposed PD to the neighborhood wherein it will be located.

7. In the case of a phased PD project, the sufficiency of the terms and conditions intended to protect the interests of the public and of the residents of the PD throughout the phased project's construction period.

[3] The County's "findings" do not appear to attempt to comply with both section 17.54.090 and section 17.58.140 of the Placer County Code. As set forth in section 17.54.090B, the findings required for the proposed PD are "*in addition to* the findings required for approval of a conditional use permit by section 17.58.130." (Emph. added.) Accordingly, the findings adopted by the Planning Commission appear to be legally insufficient.

8. The extent to which the PD proposal does or does not identify and protect the environmental, cultural, or historical features of the site.

9. A summary of the benefits or adverse impacts to the community as a result of density increases realized by the PD project by using this process, and a conclusion regarding the appropriateness of any increased density in the project based upon specific features of the PD proposal.

10. A comparison of the benefits or adverse impacts of the PD proposal versus traditional lot and block development of the property, and a conclusion that the PD proposal is or is not the superior method of development for the site in question.

As is the case with the required conditional use permit findings, the required PD findings must be supported by substantial evidence in the record. More fundamentally, however, as proposed in the staff report, the "hybrid" findings for a "Conditional Use Permit for a Planned Residential Development" do not incorporate all of the findings required to be made by Placer County Code section 17.54.080. Specifically, the proposed findings fail to explain (1) the relationship of the proposed PD to the neighborhood wherein it will be located, (2) the extent to which the PD proposal does or does not identify and protect the environmental, cultural, or historical features of the site, and (3) the benefits or adverse impacts of the PD proposal versus traditional lot and block development of the property, and a conclusion that the PD proposal is or is not the superior method of development of the site in question. (P.C.C., §§ 17.54.090B.6, 8, 10.) Absent these findings, the Project approval fails to comply with mandatory requirements of the County Code.

With respect to the other required findings, as is the case regarding the required conditional use permit findings, the Planning Commission included no evidence whatsoever in support of its findings which allows the public, or a reviewing court, to discern the reasons for the findings. The findings simply restate portions of the Placer County Code. Should the Board of Supervisors adopt these invalid conclusory findings, it is very unlikely the approval of the Project would be upheld by a reviewing court.

Not only have required findings and other findings are not supported by the required substantial evidence, but the Project also fails to comply with the design and development standards set forth in section 17.54.100 of the Placer County Code. The staff report states, without any citation to any applicable County Code sections, that "[t]he maximum number of units allowed in a Planned Development on this site is approximately 55, based on the maximum number of allowable units within the base zone district." (Staff Report, p. 2.) While we are unable to determine how County staff arrived at this number, we note that the calculation is inherently flawed

and inconsistent with applicable provisions of the County Code because it relies only on the base zoning district for purposes of calculating density. As set forth in Placer County Code section 17.54.100A., the maximum residential density in a PD "shall be governed by the base zoning and the maximum residential intensity factor that is applied to the property by the planned residential development combining district (Section 17.52.120)." Further, "[t]he maximum number of dwelling units per acre permitted within a PD is determined by the maximum residential intensity number shown on the zoning map that applies to the site (e.g., 3.0 du/ac) multiplied by the net buildable area of the site." (P.C.C., § 17.54.100A.1.)

As set forth in section 17.30.010.D of the Placer County Code, in the neighborhood commercial zone, "[a]llowed density for multi-family residential development shall be one unit for each two thousand (2,000) square feet of site area..." Accordingly, *assuming that the PD requirements did not apply*, the maximum allowed density would be approximately 69 units. Under the PD regulations, however, the maximum allowed density is much less.

Under the PD regulations, the maximum density is determined by multiplying the maximum residential intensity number (in this case, one unit for each two thousand (2,000) square feet) by the "net buildable area." Because the developer is not proposing to dedicate the open space lands for public use, the 1.5 acres to be owned as common lots must be deducted from the site area before the maximum residential intensity number can be applied. (See P.C.C., § 17.54.100A.1.a.) Thus, 1.7 acres of the site is "net buildable area" and the maximum number of units allowed on the site is 37.

While the Project would hypothetically fall within that allowed density, the density calculation has not been completed under Placer County Code section 17.54.100. Section 17.54.100A.1.d further expressly provides that:

> Although a maximum residential density is identified by the numerical factor shown on the zoning map, the appropriate residential density for each parcel with such a designation must be established **and justified** by considering other factors such as: geologic, hydrologic, and topographic features; trees and other vegetation; natural, cultural, or historic resources; compatibility with surrounding land use districts and existing neighborhood uses; **requirements of the applicable community plan** and the county general plan; and the significance of the definitive benefit to the community.

As explained in Table 6 of the HBPCP, a proposed project is consistent with the HBPCP where the "density does not exceed that permitted in the Community Plan

text." For projects proposed on parcels designated Penryn Parkway (PP) (such as the Project), in order to determine consistency, it is necessary to reference the Penryn Parkway Development Policies to determine the applicable density. With respect to density, Policy C provides, in pertinent part, that "[d]evelopment shall be of a relatively **low density**, low profile type, and the signing and lighting shall reflect such a policy..." (Emph. added.)

Notwithstanding the clear direction of the HBPCP, the Planning Commission approved the Project, which would allow construction of 23 townhomes on a 3.2 acre parcel – a density of *over* 7 dwelling units per acre. According to American Planning Association representatives, such a project is generally understood to be of a "medium density." (See, e.g., "Dense, Denser, Denser Still," *Planning*, August 2002.) Notably, under the HBPCP's own density definitions, the Project would qualify as "High Density" because it is over 4 units per acre.[4]

Because the proposed Project density fails to comply with mandatory provisions of the Placer County Code, the conditional use permit may not be issued.

2. <u>The Project Is Not Consistent With All Applicable Provisions of The Placer County General Plan And The Horseshoe Bar/Penryn Community Plan.</u>

In addition to the density inconsistency identified immediately above, the Project also conflicts with and is inconsistent with various HBPCP "Community Goals." For example, one Community Goal is to "[p]rovide for residential development which creates functional, attractive, cohesive neighborhoods which are reasonably integrated with adjoining neighborhoods rather than physically isolated from their surroundings." The Project fails to further this goal in any respect. The project is physically isolated from other residential neighborhoods, and will create a walled neighborhood in the middle of a commercial zone.

Further, the use of PD's in the Penryn Parkway area was authorized for purposes of "provid[ing] a transition between future commercial uses within the Parkway and adjoining rural residential uses." This Project does not provide for such a transition. Further, even assuming the Project did provide for such a transition, the Project's clear disregard for other provisions of the HBPCP would not be permitted. Section 17.54.080B.3. of the Placer County Code clearly provides that: "All PDs shall be consistent with the goals and policies of the Placer County general plan, or any

[4] As indicated in the HBPCP, "The [High Density Residential] designation is provided in only one location within the Plan area. It represents the smallest land use designation and comprises 12 acres, or .07% of the Plan area. This designation is located immediately adjacent to Auburn-Folsom Road at the far southwest portion of the Plan area, and recognizes an existing older mobile home park." The high density Project certainly conflicts with the direction in the HBPCP that only "relatively low density" projects be permitted in areas designated PP.

applicable specific or community plan." The County may not ignore its own regulations.

Additionally, the Project is clearly inconsistent with the Development Standards set forth in the Placer County General Plan. (See General Plan, Table I-2, p. 24.) As set forth in the General Plan, the minimum lot size allowed for any type of residential development is 3,500 square feet. The Project proposes minimum lot sizes of 1,200 square feet – 2,300 square feet less than the lot size allowed under the General Plan. Accordingly, the Project is inconsistent with the General Plan, and the required conditional use permit may not be approved.

3. **The Project Will Be Detrimental To The Health, Safety, Peace, Comfort, And General Welfare Of People Residing In The Neighborhood And To Property Or Improvements In The Neighborhood.**

By separate correspondence and through testimony to the Penryn Municipal Advisory Committee and Planning Commission our clients and other area residents have provided evidence to the County that the Project will be detrimental to their health, safety, peace, comfort, and general welfare. As an example of the evidence previously submitted, the Municipal Advisory Committee was advised on two separate occasions that the project will be detrimental to the general welfare of many residents of the Penryn community. We hereby incorporate by this reference all comments on this issue previously made.

4. **The Project Is Inconsistent With The Character Of The Immediate Neighborhood And Contrary To The Neighborhood's Orderly Development.**

As evidenced by the comments referenced above, the project is inconsistent with the character of the immediate neighborhood and contrary to the neighborhood's orderly development. The Penryn Parkway area is identified in the HBPCP as a "commercial area." While limited residential uses are allowed in the vicinity, the Penryn Parkway area is intended to be a "highway commercial area." The HBPCP's purpose is identifying this area was to create and "encourage a compact, commercial core to serve the overall Penryn area, thereby eliminating the need for scattered commercial sites within the outlying rural areas of Penryn." This project fails to achieve and is inconsistent with that plan goal.

5. **Substantial Evidence In The Record Supports A Fair Argument That The Project Will Have A Significant Effect On The Environment.**

The County purports to satisfy the requirements of the California Environmental Quality Act ("CEQA"; Pub. Resources Code, §§ 21000 et seq.) by preparing a

Mitigated Negative Declaration ("MND") that is apparently tiered from two previous environmental documents – the County-wide General Plan EIR and HBPCP EIR. However, the initial study and MND are flawed, and substantial evidence in the record supports a fair argument that unmitigated significant impacts will result from the Project. In light of the Project's potentially significant impacts, a complete environmental impact report ("EIR") must be prepared *if* the Project is to move forward.[5]

CEQA contains a strong presumption in favor of preparing an EIR. That presumption is reflected in the "fair argument" standard which requires an agency to prepare an EIR whenever there is substantial evidence in the record supporting a fair argument that a project may have a significant effect on the environment. (*Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) 6 Cal.4th 1112; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68; *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988.) If the Project may cause a significant effect on the environment, the County must prepare and certify an EIR.

The requirement to prepare an EIR may be dispensed with only if the County finds no substantial evidence in the Initial Study or elsewhere in the record that the Project, including mitigation measures, may significantly impact the environment. A mitigated negative declaration is appropriate only where mitigation measures are incorporated into a project to mitigate significant project impacts into insignificance. (14 Cal. Code Regs., § 15064(f)(2).) Further, because a negative declaration is appropriate only where there is no substantial evidence that a project will have significant environmental effects, a tiered negative declaration should be used only when the County determines that (1) an impact was not addressed in the prior EIR, and (2) the new impact is less than significant.[6] (14 Cal. Code Regs., § 15152(f) ["A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR."].)

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[5] The County's filing of a Notice of Determination while this appeal was pending is improper is null and void, and consequently did not trigger any statute of limitations. Section 15075(a) of the CEQA Guidelines provides that a Notice of Determination shall be filed within five working days after a decision to carry out or approve a project. (14 Cal. Code Regs., § 15075(a).) With a private project, "approval" occurs upon commitment to issue a permit or other entitlement for use of the project. (14 Cal. Code Regs., § 15352(b).) As set forth in Placer County Code section 17.60.110C.3., "In the event of an appeal, the decision being appealed shall be set aside and of no effect until final action by the appeal body pursuant to this section." Accordingly, the Planning Commission's "approval" has been set aside and is no effect until final action by the Board of Supervisors. The filing of a Notice of Determination was therefore improper, as the Project has not been approved.

[6] While the MND expressly indicates that is a "tiered" document, we find no reference to the EIRs identified in support of any conclusions reached in the MND. Accordingly, we assume the MND does not rely on any environmental analysis contained in those documents.

We have identified the following substantial evidence that the Project may have potentially significant environmental effects. Because no adequate mitigation measures have been proposed to mitigate these potentially significant impacts, the proposed MND is inadequate.

- The County's environmental review of the impacts to oak woodlands is fundamentally flawed because the tree survey is not required to include all oak trees that are 5 inches or more in diameter at breast height. (See Staff Report, Attachment D, p. 12, Condition 51.) Contrary to the requirements of Public Resources Code section 21083.4, the County only proposes to require a survey be conducted to determine the location of all trees six inches or more in diameter at breast height. The County's CEQA review of the impacts to oak woodland is therefore fundamentally flawed.

  Additionally, the mitigation proposed to mitigate the Project's removal of 36 protected native oak trees, and disturbance of 13 additional native oak trees fails to comply with section 21083.4 of the Public Resources Code and is insufficient to mitigate the Project's significant impact to oak woodlands. Section 21083.4 provides, in pertinent part, as follows:

  > ...If a county determines that there may be a significant effect to oak woodlands, the county shall require one or more of the following oak woodlands mitigation alternatives to mitigate the significant effect of the conversion of oak woodlands:
  >
  > (1) Conserve oak woodlands, through the use of conservation easements.
  >
  > (2)(A) Plant an appropriate number of trees, including maintaining plantings and replacing dead or diseased trees.
  >
  > (B) The requirement to maintain trees pursuant to this paragraph terminates seven years after the trees are planted.
  >
  > (C) Mitigation pursuant to this paragraph shall not fulfill more than one-half of the mitigation requirement for the project.
  >
  > (D) The requirements imposed pursuant to this paragraph also may be used to restore former oak woodlands.
  >
  > (3) Contribute funds to the Oak Woodlands Conservation Fund, as established under subdivision (a) of Section 1363 of the Fish and Game Code, for the purpose of purchasing oak woodlands conservation easements, as specified under paragraph (1) of subdivision (d) of that section and the guidelines and criteria of the

Wildlife Conservation Board. A project applicant that contributes funds under this paragraph shall not receive a grant from the Oak Woodlands Conservation Fund as part of the mitigation for the project.

(4) Other mitigation measures developed by the County.

The MND proposes to replace trees on-site on an "inch-by-inch" basis. This mitigation is insufficient to mitigate the significant impacts to oak woodlands. Sections 21083.4(b)(2)(A) and (B) require an "appropriate" number of trees to be planted as mitigation for significant impacts to oak woodlands. The planting ratio proposed by the County is not "an appropriate number of trees" for replacement. Because replacement plantings are rarely 100 percent successful, a higher ratio is necessary to guarantee the success of the plantings.

- Page 4 of the MND identifies that the project may result in development of incompatible uses or the creation of land use conflicts, both of which may result in potentially significant environmental impacts that were not analyzed in the MND. The conclusions on page 18 (related to Land Use & Planning) of the MND are therefore not supported by any evidence. Specifically, the MND notes that the currently-vacant site is bound on the south and east with a parcel that is developed with commercial retail uses and on the north by an existing plant nursery. If approved, the Project would place a residential development in between an agricultural use and a commercial use, resulting in clear land use conflicts. The MND's conclusory statement that the project is "compatible" with existing and proposed land uses in the area is false, and unsupported by any data or evidence whatsoever. At a minimum, the existing conflict must be identified, analyzed, and mitigated in an EIR.

- The MND's conclusion that the Project does not conflict with any applicable General Plan/Community Plan/Specific Plan designations or zoning, or plan policies is patently false. The Project clearly conflicts with the policies discussed above. Additionally, the Project conflicts with Policy 1.B.9 of the General Plan, which provides that "[t]he County shall discourage the development of isolated, remote, and/or walled residential projects that do not contribute to the sense of community desired for the area." This Project is an isolated residential project that does not contribute to the sense of community desired by the residents of Penryn.

  Additionally, the Project includes soundwalls to insulate the development from significant noise impacts that would occur as a result of the Project's proximity to I-80. Unfortunately, while potentially mitigating for one significant effect, the soundwalls create a conflict with the General Plan that must be identified, analyzed, and mitigated.

- The MND contains no discussion or identification of the Project's potentially significant cumulative effects. We understand that the current project list for the Penryn area includes over 350 planned units, with an expected occupancy rate of almost 3 persons per unit. This will bring nearly 1,000 new residents into an area that now includes approximately 2,000. Notwithstanding this significant information, the MND contains only a bare conclusion that the project does not have any cumulatively considerable effects – and this conclusion is not supported with any data, text, or evidence whatsoever. As previously indicated to the Planning Commission, when considering the Project, in connection with other planned projects – such as the Orchard at Penryn – it is clear there will be numerous significant impacts on the community that must be identified, analyzed, and mitigated. These significant impacts include, but are not limited to, noise, public services and facilities, growth-inducing effects, traffic, air quality, and climate change.

III. CONCLUSION.

In light of the substantial evidence presented above, the Board of Supervisors must grant the appeal and thereby overturn the Planning Commission's decision to approve the Project. Until such time as the Project is modified to fully conform to the applicable rules, regulations and policies, and until such time as complete and proper environmental review is conducted, the Project may not proceed. We very much appreciate your consideration of our comments. Should you have any questions, please do not hesitate to contact the undersigned.

Additionally, so that we may remain apprised of the status of the Project, we hereby request notice of any future hearings or actions by the County regarding the Project (or the site on which the Project is located).

Very truly yours,

MILLER STARR REGALIA

Kristina D. Lawson

KDL:kdl
cc: Clients
Michael E. DiGeronimo, Esq.