May 25, 2017

(*Sent via electronic mail*)

Hon. Mayor Sampayan, Vallejo City Council
Bob.Sampayan@cityofvallejo.net
Robert.McConnell@cityofvallejo.net
Pippen.Dew-Costa@cityofvallejo.net
Jesus.Malgapo@cityofvallejo.net
Katy.Miessner@cityofvallejo.net
Hermie.Sunga@cityofvallejo.net
Rozzana.Verder-Aliga@cityofvallejo.net

Claudia Quintana, Vallejo City Attorney
Claudia.Quintana@cityofvallejo.net

Dan Keen, City Vallejo Manager
City.Manager@cityofvallejo.net

Andrea Ouse, Community and Economic Development Director
Andrea.Ouse@cityofvallejo.net

Dina Tasini, Planning Manager
Dina.Tasini@cityofvallejo.net

Leslie Trybull, Executive Secretary
Leslie.Trybull@cityofvallejo.net

Dawn Abrahamson, City Clerk
Dawn.Abrahamson@cityofvallejo.net

Re: Opposition and Objections to Orcem/VMT Project Appeal

Dear Honorable Vallejo Officials and Staff:

Our law firm represents Fresh Air Vallejo ("FAV") concerning the above-referenced Project. I have reviewed the March 15, 2017 "Appeal of Planning Commission Action Adopting Resolution No. PC 17-03" submitted by VMT/Orcem ("Appeal"). For the reasons set forth, below, the Appeal is legally and factually erroneous, and should be rejected. The substantive deficiencies in Applicants' Appeal are addressed in sections 1-10, below.

In addition, and as will be addressed further in written and oral comments by FAV and its members, the proposed Project would be of significant detriment to the City of Vallejo and its residents:

- The project would harm local health by violating Bay Area Air Quality Management District air quality standards.
- The project would exceed greenhouse gas emission standards, where sea level rise is a serious threat to Vallejo's shoreline communities and infrastructure.
- Traffic and emergency response impacts would be significant, unsafe, unhealthy, and are inconsistent with General Plan goals and policies.
- The project, as proposed, could be a Trojan Horse for coal and petroleum coke, as the conditions of approval as drafted are ambiguous and equivocal on this point.
- The proposed heavy industrial activity would be unsafely close to Grace Patterson Elementary, where the parcel in question is less than ¼ mile away from the school.
- Demolition of the historic Flour Mill has not been properly reviewed and permitted.

- VMT does not properly have title to the property it claims, its lease with the City has been called into question, and the project would violate the Public Trust.
- Prior to any approval, the EIR must be re-drafted and recirculated for public and agency review and comment, because, at a minimum:

    - The revised project leaves in question the ultimate and foreseeable uses of the majority of the project site;
    - The proposed VMT/Orcem Project here is a necessary component of the MISEDC's dredging project proposal, but the EIR failed to consider the reasonably foreseeable indirect effects of the MISEDC dredging project at all; and,
    - The EIR critically failed to assess environmental justice impacts as required by guidance from the California Attorney General's Office.

These are serious threats to community well-being, public health, and fairness, and strongly support leaving untouched the sound discretion of the Planning Commission to reject the Project. Further, as discussed, below, the Planning Commission acted fully within its legal rights in denying the Project.

1. **There is No Requirement to Certify an EIR before Denying a Project Application.**

The Applicants allege the Planning Commission had no authority to take any action on the Project without first correcting and certifying the draft final EIR. Simply, not true. The statute clearly states that "[t]his division [CEQA] does not apply to . . . [p]rojects which a public agency rejects or disapproves." (Pub. Resources Code 21080, subd. (b)(5).) The California Court of Appeal has expressly rejected the exact same arguments advanced by the Applicants here:

> **CEQA** applies only to projects that a public agency proposes to carry out or approve, and **does not apply to projects that the agency rejects or disapproves.** (Pub. Resources Code, § 21080, subds. (a), (b)(5).) . . . **A public agency need not prepare an EIR for a project that it rejects.**
>
> To require a public agency to prepare and circulate a draft EIR, and prepare a final EIR including responses to comments, before rejecting a project would impose a substantial burden on the agency, other agencies, organizations, and individuals commenting on the proposal, and the project applicant. Such a requirement would not produce any discernible environmental benefit and would not further the goal of environmental protection.
> . . .
> **Neither Guidelines section 15270 nor the discussion expressly states that a public agency that has initiated environmental review of a proposed project must complete and certify an EIR before rejecting the project.** . . . **To the contrary, we conclude that *if an agency at any time decides not to proceed with a project, CEQA is inapplicable from that time forward*.**

(*Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal. App. 4th 837, 848-49, 852 ("*Las Lomas*")[emphasis added].) The Applicants' letter of February 16, 2017, attempts to muddy this clear statement of the law by citing *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4th 215, 222, where the Court recognized a ministerial duty to "complete an EIR when a Project requires one." Applicants fail to note that ***Sunset Drive*** **was expressly distinguished by the *Las Lomas* court itself, as**

***Sunset* did not consider a lead agency formally denying a project, while *Las Lomas* did.** (*Las Lomas*, supra, at 837, 851-2.) Rather, the lead agency in *Sunset Drive* refused to move forward with completion of an EIR, yet also failed to formally deny the project, or to even advise of the manner in which the agency deemed the draft proposal to be inadequate. Such administrative purgatory has no relation to the Planning Commission's sound determination, here, to deny the Project application and undertake no further CEQA proceeding or expense from that point forward. The Applicants' willingness to blatantly and doggedly misapply the law on this point should only engender distrust, and further reinforce the sound judgment of the Planning Commission to reject the proposed Project.

2. There is no Violation of Contractual Reimbursement Agreements.

The Reimbursement Agreements do not obligate the City to have their consultants prepare a Final EIR. As noted in our letter of February 23, 2017, the Applicants mount their entire contract argument upon one excerpted passage from the contract:

> The proposed [Orcem/VMT] Project will be subject to a comprehensive planning and environmental review process, which will include completion of a single combined Initial Study and Environmental Impact Report (collectively, the "EIR") which will be prepared to concurrently evaluate both the [Orcem/VMT] Project and the adjoining [VMT/Orcem] Project.

Nothing in this passage expressly mandates that a Final EIR be certified, and nothing should be interpreted to exceed or abrogate the City's normal CEQA duties and functions, as affirmed by *Las Lomas*, which settled that an agency may cease all work on an EIR as soon as it determines that a project is denied. There is no reason to believe that a reviewing court would interpret this contract language to require anything other than compliance with CEQA. Moreover, the City's "substantial compliance" defense would be exceedingly strong, given the lengthy environmental review process here, culminating in a draft final EIR that helped to inform the detailed reasons for rejecting the Project. Applicants' unwarranted legal threats towards the City simply recapitulate the unwarranted threats to community character, and public health and safety, that would be wrought by the proposed Project.

3. There is no Violation of City of Vallejo Guidelines.

Applicants cite the City of Vallejo's *"Environmental Review, Planning Handout No. PH-13*", claiming that it requires certification of an EIR before the City can take action on a project. But this "Planning Handout" is not a binding, comprehensive regulatory regime, designed to cover every nuanced situation such as this. As such, the City's interpretation and implementation of its own guidelines, in a manner that is fully consistent with CEQA, would be afforded substantial deference by any reviewing court.

4. Applicants' Appeal of the Planning Staff *Recommendation* was a Legal Nullity.

Applicants' purported February 8, 2017, appeal of the decision of the Community and Economic Development Director, Ms. Andrea Ouse, to refuse to complete and certify the Final EIR was procedurally and substantively defective, for the reasons set out in our letters of February 23, 2017 and March 6, 2017 (see **Attachments A and B**). In short, Ms. Ouse's decision was not an "administrative

decision" for the purposes of MCS 16.102.030. Rather, the staff report rendered a *recommendation* to the Planning Commission. The staff report and recommendation clearly stated:

> In accordance with VMC §16.90.050(D) which "*allows that whenever the Development Services Director finds that the decision on any application [for a site development plan/permit]is beyond his or her purview of authority, the application shall be forwarded to the Planning Commission for its determination"* Development Services Director (Planning Manager) has found the site development plan/permit application for the proposed project to be beyond her purview and has elected to transfer her authority to the Planning Commission to render a determination on the application.

It is ordinary and expected that planning staff would provide a planning commission with a staff report and *recommendation* prior to the commission rendering a determination. Treating any such report or recommendation as an "administrative decision" subject to appeal would impose a significant burden on agency staff and impair the efficiency of the permitting process. Here, there was simply no administrative decision amenable to review under MCS 16.102.030, and the Planning Commission was not required to hold a hearing on the improper appeal. Applicants' bizarre contention to the contrary only further erodes their credibility.

5. There is no Violation of Additional CEQA Guidelines for Declining to Certify the EIR Prior to Denying the Project.

In grounds 5-8 of their appeal letter, Applicants cite a bevy of additional CEQA Guidelines provisions related to projects that a public agency proposes to carry out or approve. None are germane to the present appeal, since by statute, "[t]his division [CEQA] does not apply to . . . [p]rojects which a public agency rejects or disapproves." (Pub. Resources Code § 21080, subd. (b)(5).) Applicants simply ignore this statute, and defy binding precedent from the Court of Appeal in *Las Lomas* applying this statute and holding that an agency has no duty to complete an EIR prior to rejecting a project. CEQA only applies to projects "proposed to be carried out or approved by public agencies." (Pub. Resources Code § 21080, subd. (a).) However, the Planning Commission hearing appealed from did not propose to carry out or approve the project, rendering CEQA inapplicable.

6. The Planning Commission Determination was Not Based on False Assumptions about Environmental Impacts or Errors in the Draft EIR (Appeal Ground 9).

The Planning Commission is responsible for the long-term physical development of the City, which necessarily involves some subjective judgments based on community aspirations and values, not always susceptible to exacting calculations from voluminous expert reports. While the Planning Commission is provided authority to consider CEQA-related factors, the Vallejo Municipal code also requires the Planning Commission to make certain value determinations before approving a Site Development Permit or Major Use Permit. For example:

- A Conditional Use Permit shall be granted only if the Planning Commission finds that "the location, size, design and operating characteristics of the proposed conditional use will be compatible with adjacent uses, building or structures, with consideration given to . . . the

harmful effect, if any, upon desirable neighborhood character; to the generation of traffic and the capacity and physical character of surrounding streets. . .” (MSC 16.82.050(A); MSC 16.34.040.)

- A Site Development Plan may only be approved after determining “the proposed development shall be of a quality and character which harmonizes with, and serves to protect the value of, private and public investments in the area.” (MSC 16.90.050(F).)

The direct social and economic impacts of a project, such as effects on neighborhood character, are generally not subject to CEQA review because they do not relate to changes to the physical environment (14 Cal. Code Regs. § 15358(b).) The California Court of Appeal has observed that whether a project should be approved is ultimately “a political and policy decision entrusted to . . . elected officials. It is not an environmental issue for courts under CEQA.” (*Preserve Poway v. City of Poway* (2016) 245 Cal.4th 560.)

Applicants’ arguments that the Commission’s decision was based on factual misunderstanding, while untrue, also miss the point. Here, the Commission properly determined that the level of industrial activity proposed by the applicants no longer fits with existing surrounding development in south Vallejo, nor the long-term goals and aspirations of the community.

a. Air Quality Impacts Would Harm Vallejo.

On the Applicants’ own evidence, the Project would discharge more than 10 tons of nitrogen oxides into the air at the site each year and have local impacts, yet Applicants also maintain these discharges would not affect local neighborhoods. According to the Applicants’ analysis, the impacts would apparently only be regional, and remedied by buying regional offsets. Applicants also discount the air quality impacts of having at least four hundred heavy diesel trucks run through residential neighborhoods daily, in an area whose residents already suffer elevated rates of respiratory disease.

The Appeal letter repeatedly conflates the technical definition of ‘significance’ in a CEQA analysis with the broader usage of the word by members of the Planning Commission - meaning something important and worthy of attention. These are distinct concepts. The technical analysis in the draft final EIR can help to inform the decision-makers, but it is not the role of science to determine neighborhood character and land use compatibility or direct future development. Those are planning decisions, and there is more than enough information in the record to support denial of the applications.

Finally, the Applicants attribute a supposed factual misunderstanding to the mention of a high temperature kiln in the staff report and Draft EIR, which describes only how clinker is made. The Staff Report did not say that clinker would be fired onsite.

b. Noise and Vibration

Here, any factual corrections would only show the Project to have a greater and worse impact from noise and vibration than the Draft Final EIR presents. For instance, it does not account for the 110 decibel warning horn associated with train activity, on the basis it is in the interest of public safety. Attachment J to the appeal wrongly claims that noise will be reduced to a less than significant impact,

when significant impacts are still identified for 2 – 13 residences. The further facts relied upon by the Planning Commission in determining that noise and vibration would be too great to retain the existing and aspired community character are reasonably within the Commission's purview pursuant to local code.

c. Traffic

The Planning Commission rightly determined that the traffic impacts of the project could not be lessened to an acceptable level. The interruption of traffic and emergency vehicle services will remain an unavoidable significant impact. Applicants acknowledge that there will be up to 495 truck trips a day associated with the project. All of the loaded trucks will use Lemon Street, which the Planning Commission noted is not a City designated truck route. Moreover, the truck traffic will occur on a 24-hour basis in low density, single family residential neighborhoods. In these circumstances, it was a reasonable exercise of the Planning Commission's discretion to find that the traffic impacts would "not be compatible with adjacent residential uses, and result in harmful effects upon desirable neighborhood character." (Resolution No. PC 17-03, Part III(A)(7).)

d. Roadway Damage

The Applicants do not explain how the certified final EIR they demand would provide further information, scientific or otherwise, about how Lemon Street would be re-engineered to remove conflicts with neighborhood pedestrian and vehicle traffic. There is no plan for review, only aspirational statements with no details about the substance or feasibility of potential mitigation measures.
Lemon Street would not be the only local road suffering excessive wear and maintenance costs due to the project. According to a Government Accounting Office study, one heavy truck trip is equivalent to 9,600 passenger car trips in terms of road damage. Given that the only significant revenue stream to the City would be from utility taxes, the project would likely become a net drain on the City's finances. The Commissioners didn't misunderstand or need an exhaustive certified EIR traffic study to conclude that more than four hundred daily heavy truck trips would entail significant cost to the City for road maintenance.

e. Commuters

There is no reason to believe that this project would noticeably improve the jobs/housing imbalance in south Vallejo or do anything to reduce congestion. Adding 495 heavy truck trips and blocking arterial intersections with fifty-car trains is not a rational way to improve the commute for local residents or help them take their children to Grace Patterson school.

f. Land Use Compatibility

Here, the Applicants again seek to conflate 'significant' as it relates to a narrow technical CEQA definition with its broader sense, as in important and worth considering in making a decision. The Planning Commission decision was not made within the context of the CEQA process and is not subject to its specific narrow definition of significant impacts. There is no scientific definition for neighborhood compatibility or concrete metrics to direct future development, nor should there be. Community values

sit alongside technical analysis in planning decisions. It is not arbitrary to understand that property with heavy trucks and freight trains running through the neighborhood on a regular basis will not be as desirable as the same property where the rail line has been converted to a bike/walking trail.
The Applicants are responsible for perpetuating the blighted condition of the site by insisting on dragging out an environmental review process long after their proposed port project was abandoned. The site has development potential far beyond the proposed legacy industrial uses for which local demand has largely evaporated.

g. San Francisco Bay Plan Consistency

Here the Applicants obscure the fact that the project described in the permit application and in the draft EIR circulated for public comment differs significantly from the revised alternative. The international shipping port described in the application and draft EIR circulated for public comment proved to be inconsistent with the Bay Plan, as detailed in the correspondence with the BCDC staff. The public has had no opportunity to comment on the newly- staged project, which is radically different from the two-component project the draft EIR described. And a careful review of BCDC correspondence the Applicants reference shows that final compliance with BCDC policies is anything but certain. (E.g., "VMT has not secured contracts or tenants for any Phase I cargo users;" BCDC may consider interim uses.)

The Vallejo General Plan Waterfront Development Policy states that "BCDC's Public Access Design Guidelines should be used in reviewing all development proposals." In turn, section 66602 of the McAteer-Petris Act states, in part: "existing public access to the shoreline and waters of the ... [Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." This project would exclude the public entirely and fails to provide adequate mitigation for the loss of access.

Finally, Applicants' claims about protecting sensitive marine species appear highly dubious in light of the nature of the material the Applicants propose to import and mill on the site. The Material Safety Data Sheet for granulated blast furnace slag from the US Steel Corporation warns that slag is "very toxic to aquatic life." The notion that a slag mill could operate at this scale in this location and not even minimally increase waterborne pollution is simply not credible.

h. Degradation of Waterfront

In attempting to minimize the project's impact to the view at the entrance to the Napa River, Applicants fail to mention the piles of aggregate cargo the VMT component intends to create on the site. The laydown area is in full view over a wide angle, and pilings and Orcem operations would be visible from certain areas, such as Sandy Beach residences. (Draft EIR, section 3.1.4.) The legacy industrial zoning still attached to the site is not germane to this issue, particularly given the General Plan update process, which would change the zoning to Light Industrial.

i. Factual Arguments Raised in Appeal are Inaccurate or Irrelevant.

1) Applicants claim that certain project modifications were ignored by staff. Given that the Appeal letter does not identify which changes were apparently ignored, or explain the significance of

such changes, Fresh Air Vallejo cannot comment on this aspect of the appeal. However, the Planning Staff recommendation, and hearing testimony, ably responded to each VMT/Orcem concern raised.

2) The City is not required to certify an EIR prior to denying a project.

3) The Commissioners made it clear that the traffic figures given by the Applicants are incompatible with south Vallejo neighborhoods.

4) There is very little separation between the proposed project and many residential lots, which would be nuisance by this project, including additional noise and air pollution by rail.

5) The Commission fairly exercised its discretion and duty in rendering its independent judgment in denying the project. Substantial evidence including expert fact and local observation equally support that community character and nearby residents would be adversely affected. This determination is for the Planning Commission, not the Applicant, to render.

6) In terms of Lemon Street, the Commissioners did not suggest that the project is "barred" from using this road due to it no longer being an official truck route. However, this was a relevant factor to consider in assessing whether heavy truck use of this route is consistent with the character of the neighborhood, among other things.

7) Again, the Applicants attempt to create a false 'scientific' standard for characteristics that fall outside the purview of technical analysis and instead must rely on community values and aspirations. The decision was certainly not based on any false representation of truck volumes.

8) There is no evidence to suggest that staff and Commissioners failed to consider any reduced down time at rail crossings or the "attempt" to minimize use of peak hours or other factors cited here. The Commissioners simply failed to agree that those are acceptable costs for the minimal return this project would offer the City.

9) Applicants' contention that a Final EIR can determine the character of a neighborhood is absurd. Again, the Commission properly considered concrete evidence supporting this determination, and no certified EIR is required.

7. <u>The Commission's Determination was Properly Made (Appeal Ground 10).</u>

Under point 10 of their appeal, the Applicants *again* allege the Commission's determination was made without a certified EIR, and relied on false information to conclude the Project benefits would not outweigh impacts. In reality, the Commission did not violate the CEQA Guidelines cited by Applicants, because they were operating outside the CEQA process and were under no obligation, legal or otherwise, to use only CEQA technical analysis in making their decision.

Further, Applicants continue to overstate the purported benefits of the Project, and suggest that members of the Commission disputed Applicants' Fiscal and Economic Impact Study solely on the basis

of a comment letter prepared on behalf of project opponents. However, the Commission was entitled to consider Fresh Air Vallejo's comments and independently assess the Fiscal and Economic Impact Study. As the Staff Report noted, the Applicants' study was not peer-reviewed by an independent third party (at p. 32).

Fresh Air Vallejo commissioned an independent review from Fodor & Associates, in order to assess the figures advanced by Applicants in their study (*Review of Fiscal and Economic Impacts of Orcem/VMT Proposal*, February 2, 2017.). This report is attached as Attachment C, and was submitted to the Commission on March 6, 2017. Significantly, the Fodor Report found that the Applicants' study was fundamentally flawed, because it did "not provide any information about the costs to local government to provide the public facilities and services required by the proposal" (at p. 2.) The Fodor Report also casts doubt on the specific projections contained in the Applicants' study and appeal letter. In particular:

a. Jobs: Applicants' projection of 192 permanent jobs and 120 union construction jobs across the projects is "overly optimistic" (Fodor Report, p. 10.) Applicants did not provide information about the types of jobs that would be created, so it is not possible to verify their estimates. Moreover, the scaling back of the VMT component of the project will substantially reduce the construction and operational jobs associated with it. The Fodor Report suggests that up to 54 jobs is a more reasonable estimate of the jobs that will be created by this project (at p. 11.)

b. Annual Gross Revenues: Applicants claim the proposed project will generate "approximately $9.09 million in receipts to state and local governments over the first six years of operation through direct, indirect, and induced impacts. Thereafter, the projects are expected to generate over $2 million per year in tax revenue to state and local governments (see Attachments I and J)." No standard, government approved metrics were used to validate these figures, and the evidence cited in the appeal letter does not support this projection.

   In Attachment I the city staff does not address revenue. In Attachment J, the Loewke letter, the question of direct revenues to the City of Vallejo is also not addressed. Rather it states, "as noted above the City of Vallejo is expected to receive a substantial tax and fee revenues from the combined project," (page 2) However, in the Loewke document there is nothing "noted above" about revenue to the City of Vallejo.

   Moreover, the figures provided by Orcem do not break down what taxes actually come to the City of Vallejo and what goes to the State. They state that state and local governments will receive $1,515,000 annually. However, the Fodor report, which considers property values and tax rates provided by Solano County to calculate revenue, suggests that the actual property tax revenue to the City of Vallejo will be approximately $48,000 by the 10th year.

c. Annual City of Vallejo Revenue: The speculated revenue of $2.64 million over six years in Applicants' letter is not broken down or substantiated by any reliable government agency metrics, including the Solano County's Assessor's Office. The Fodor Report found

that the AppellantsApplicants' study "greatly overstated the total potential revenues to the City of Vallejo" (at p. 6), such as by including fees paid to the City as net revenue, which should be considered revenue neutral because they are fees for services rendered by the City.

.

d. Economic Development Benefits: Again, in relation to Economic Development Benefits the appellant mistakenly referred to Attachment I, the Planning Commission Resolution, which does not address economic factors. As the Fodor report points notes, this project will cost the City of Vallejo money in both road infrastructure repairs and lost revenue from property taxes. The Applicants' study does not consider any of the costs the City would incur as a result of the Project. Such costs would be significant; the "transportation system impacts alone could easily offset the modest fiscal revenues anticipated for this project and generate a large fiscal deficit" (Fodor Report at p. 7.)

In light of the deficiencies in Applicants' fiscal study, the Commissioners had an ample basis to discount its overly optimistic assessment of the benefits the project would accrue.

8. <u>The Planning Commission did not Improperly Rely on False Conjecture About Effects on Community Character (Appeal Ground 11).</u>

Applicants again evince their disregard for the community by seeking to impose some supposedly legally-required determination regarding community character. Here, the Commission's qualitative decision was amply supported by concrete facts. Applicants do not and cannot dispute that the proposed project presented the Commission with a proposed discretionary permit, which the Commission must be fully within its rights to deny, deciding that the purported benefits of the project simply do not outweigh the costs.

9. <u>Substantial Evidence (Appeal Ground 12).</u>

Applicants attack the Commission's decision by asserting it was based on arbitrary assumptions and unsupported claims, rather than "substantial evidence." Applicants again egregiously misapply the law to their desired ends, and wrongly devalue and delegitimize the valued input of community members.

It is wrong for Applicants to suggest, as they do at multiple points, that a certified Final EIR is the only sufficient document for the Commission to consider. The CEQA Guidelines explicitly state that a planning commission may "consider the EIR or negative declaration in *draft or final form*." (Cal. Code Regs., tit. 14, § 15025, subd. (c) [emphasis added].) Similarly, for projects challenged in court, the administrative record must include documents an agency relies upon, including "any drafts of any environmental document . . . ." (Pub. Resources Code, § 21167.6, subd. (e)(10).)

Further, "substantial evidence" is not confined to expert evidence. Substantial evidence includes "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (Pub. Resources Code, § 21080, subd. (e)(1).) Citizen evidence, such as that advanced by Fresh Air Vallejo, is an important type of evidence that may be considered, particularly in light of CEQA's fundamental purpose of public participation as a necessary component to informed environmental decision-making. (See Cal. Code

Regs., tit. 14, § 15201 ["[p]ublic participation is an essential part of the CEQA process"]; *Schoen v. Cal. Dept. of Forestry and Fire Protection* (1997) 58 Cal.App.4th 556, 574 "public review provides the dual purpose of bolstering the public's confidence in the agency's decision and providing the agency with information from a variety of experts and sources."])

Finally, Applicants' reliance on CEQA as the genesis of all useful information again misapprehends the simple fact that CEQA does not apply to a Project denial.

10. <u>Thresholds of Significance (Appeal Grounds 13 and 14).</u>

Both points 13 and 14 erroneously rely on CEQA principles, which, for the reasons set out above, do not apply where a project has been rejected.

Thank you, again, for your continuing and earnest consideration of these issues.

Jason Flanders
ATA Law Group
Counsel for Fresh Air Vallejo