



AGENDA
May 18, 2022

CLOSED SESSION
4:30 p.m.
City Council Chambers
311 Vernon Street
Roseville, California
www.roseville.ca.us

- A. CLOSED SESSION CALL TO ORDER**
- B. CLOSED SESSION SILENT ROLL CALL**
- C. CLOSED SESSION PUBLIC COMMENTS**
- D. CLOSED SESSION**

D.1. Conference with Legal Counsel – Anticipated Litigation

Pursuant to Government Code Section 54956.9(d)(2)

Significant exposure to litigation – one case

CONTACT: M. Sheidenberger 916-774-5325 msheidenberger@roseville.ca.us

- E. CLOSED SESSION ADJOURNMENT**

Meeting Regarding Dry Creek Greenway East Bike Trail Project

Notes By Michelle Sheidenberger, City Attorney

November 3, 2021

On November 3, 2021, a meeting was held at the Roseville Civic Center in the City Manager's Office regarding the Dry Creek Greenway East Bike Trail Project. Attendees for the City of Roseville included City Manager Dom Casey, Assistant City Manager Ryan DeVore, and City Attorney Michelle Sheidenberger. Consultant Al Johnson with Al Johnson Consulting and attorney Chad Roberts from Hefner Law attended to represent their client Gordon Stevenson, owner of 730 Sunrise Avenue. Mr. Stevenson owns a building at that location (in the middle of two other buildings) that he leases to a dentist. The above identified bike trail project is planned to be constructed within 10 feet of his property and he and the two neighboring property owners want the City to move the trail to the other side of the creek.

Al and Chad advised that their client has retained a CEQA attorney (from the Soluri Meserve law firm), a geologist, an arborist and other experts to evaluate the EIR conducted for this project under CEQA. They have concluded that based on the 65% drawings, the impacts to the oak trees will exceed what the environmental documents have analyzed. Trees will die and have to be removed. They wanted a meeting to give us a heads up that the Soluri law firm will be sending the City a Notice of Intent to file a CEQA lawsuit against the City. The letter will not allege any NEPA violations. They hope that the City will evaluate the risks of defending a CEQA lawsuit and evaluate whether it might be preferable to move the trail to the other side of the creek. They offered to facilitate a Tolling Agreement to hold off the filing of a lawsuit to give us more time to evaluate the claims and possible relocation. It is possible that if a lawsuit proceeds, it will include NEPA allegations as well.

Overall, during the meeting, Al and Chad threatened litigation giving the City grounds to go into closed session pursuant to Government Code Section 54956.9.



2150 River Plaza Drive #450
Sacramento, CA 95833-4136
T 916.925.6620
F 916.925.1127
hefner-law.com

Chad E. Roberts
916.567.7312
croberts@hsmllaw.com

May 4, 2022

Mayor Krista Bernasconi
Vice Mayor Bruce Houdesheldt
Councilmember Scott Alvord
Councilmember Pauline Roccucci
Councilmember Tracy Mendonsa
City of Roseville
311 Vernon St.
Roseville, CA 95678

VIA EMAIL

RE: Alignment of Dry Creek Greenway East Trail Project at Sunrise Avenue

Dear Mayor Bernasconi, Vice Mayor Houdesheldt, and Councilmembers:

Our firm represents Gordon Stevenson and this letter explains why your Council must return to the originally proposed alignment for the segment of the Dry Creek Greenway East trail project ("Trail Project") at Sunrise Avenue. Mr. Stevenson served on the City of Roseville's ("City") Stakeholder Representative Group for the Trail Project that examined 2 alignment options at Sunrise Avenue. The alignments at issue are Alignment 5A along the south side of Linda Creek near Sunrise Avenue and Alignment 5B along the north side of Linda Creek at the same location. After 10 stakeholder meetings with your staff, the clear consensus of the Stakeholder Representative Group concluded that Alignment 5B was superior, and the City advanced Alignment 5B as the "Proposed Project" in the 2018 Environmental Impact Report ("EIR") and competitive grant application.

For reasons that remain unclear, however, City staff unilaterally departed from the "Proposed Project" Alignment 5B and recommended adoption of Alignment 5A without informing your Council that this recommendation was inconsistent with the consensus of the Stakeholder Representative Group. In making this significant change, City staff did not reconvene the Stakeholder Representative Group or even inform the stakeholders that staff were no longer recommending the "Proposed Project" in the EIR. Only after certification of the EIR did Mr. Stevenson and other stakeholders learn of this sleight of hand.

Upon discovery of the unexplained departure from the "Proposed Project," Mr. Stevenson and stakeholders began working with City staff in September 2020 to address the many problems inherent in the City's abrupt change to Alignment 5A on the south side of the creek. Given the value the City usually places on public engagement, our client remained hopeful. After each meeting, however, City staff provided a new "hurdle" to returning to Alignment 5B. These

“hurdles” remained despite increasing data from refined designs that Alignment 5A will have even more severe environmental impacts than understood when the EIR was certified, including irreversible impacts to creek bed erosion, slope stabilization, mature oak trees, and oak woodland habitat. Only after City staff prolonged our client’s efforts to collaborate did staff decide there was not enough time to return to Alignment 5B because, according to staff, further delay might jeopardize grant funding.

This letter and the supporting documents thus provide the analysis and data demonstrating that not only can your Council implement Alignment 5B on the north side of the creek without jeopardizing grant funds, but that such action is imperative to avoid long-term impacts to the environment, community, and stakeholders. In fact, because the City advanced Alignment 5B as the “Proposed Project” in its 2016 application for a competitive Active Transportation Program (“ATP”) grant, returning to that alignment will ensure the City does not risk a loss of grant funds for changing the scope of the project without the necessary grant approval. With a return to Alignment 5B, your Council has the opportunity to restore trust in the public process and deliver a new community amenity with substantial grant funds, all without causing long-term environmental impacts to Linda Creek and surrounding properties.

1. Refined project plans reveal that Alignment 5A will cause more severe impacts than understood when the EIR was certified.

Over 2 years after certification of the EIR, the engineering firm on contract with the City completed 65% design plans for Alignment 5A, which provide a more refined and accurate engineering and design for that alignment than in the EIR. These 65% plans, released in May 2021, implement several significant changes from the Alignment 5A described in the EIR. After analyzing the EIR and 65% plans, qualified experts completed technical analyses that explain how the changes in the 65% plans will result in irreversible environmental impacts that were unknown when your Council certified the EIR. These analyses were provided to the City in 2 letters from the Soluri Meserve law firm on November 4 and November 16, 2021, and the letters explain the EIR’s legal deficiencies based on these new impacts. (Attachment A [Nov. 4, 2021 letter from Soluri Meserve law firm]; Attachment B [Nov. 16, 2021 letter from Soluri Meserve law firm].) The California Wildlife Foundation, Dry Creek Conservancy, and California Rural Indian Health Board, Inc., (“CRIHB”) have also urged the City to return to Alignment 5B to avoid these severe impacts to mature oak trees and creek bed erosion and instability, among other concerns. (Attachment C [Feb. 1, 2022 letter from the California Wildlife Foundation]; Attachment D [Jan. 20, 2022 letter from the Dry Creek Conservancy]; Attachment E [Nov. 15, 2021 letter from CRIHB]; Attachment F [Aug. 20, 2020 letter from CRIHB].)

First, a Certified Arborist and a Senior Biologist with 28 years of professional experience in wildlife biology, forestry, and natural resources management, evaluated Alignment 5A in light of the 65% plans and determined that the EIR failed to quantify the number of oak trees that will be removed for that alignment and the numerous environmental impacts that will follow. (Attachment G [Tree Impact Assessment for the Dry Creek Greenway East Phase 1 Trail Project]; Attachment H [Assessment of Biological Resource Impacts Associated with the Segment 5

Alignment Options for the Dry Creek Greenway East Trail Project].) As Mr. Cashen explains in detail, the EIR assumed that “large oak and riparian trees would not be removed” and construction would not occur in the dripline of those trees. In contrast to these assertions, the 65% plans “show that Trail Alignment Option 5A would be constructed immediately adjacent to the steep southern bank of Linda Creek, and that it would require removal of at least 23 riparian oaks, leading to erosion and sedimentation in the creek and loss of fish and wildlife habitat.” (Attachment H at p. 4.) In addition, “many of the oaks that are not removed will decline and eventually die due to Project impacts to the root zone.” (*Id.* at p. 11.) Mr. Cashen explains that the “valley oak riparian woodlands in the Project area are extremely important to conservation of biological diversity,” including use by over “330 species of birds, mammals, reptiles, and amphibians.” (*Id.* at p. 2.)

Second, a Principal Geologist with Lettis Consultants International, Inc. (“LCI”) identified new severe impacts to Linda Creek from Alignment 5A that will result from the 65% plans and changed conditions to the bank of Linda Creek since release of the draft EIR in 2018. LCI determined that Alignment 5A will exacerbate the already eroding bank of the south side of Linda Creek, thereby undermining the stability of the narrow path for the Trail Project that would be directly adjacent to existing commercial buildings. Those buildings are located only 35 to 60 feet south of the bank of Linda Creek, and Alignment 5A will place the trail in that narrow strip of land between the commercial properties and eroding creek bank. The existing erosion of the creek bank and narrow strip of unstable ground between Linda Creek and Mr. Stevenson’s commercial buildings is easily seen in a photograph from the LCI Report. (Attachment I, at p. 11 [Executive Summary of Geomorphic Observations of Linda Creek and Potential Impacts].) In contrast to this alarming threat, the EIR erroneously stated that “[t]here would be no change in the bank erosion severity” with Alignment 5A, which was based primarily on a 2014 fluvial report. As LCI explains in detail, the 2014 fluvial report no longer reflects existing conditions or the extent of tree removal disclosed in the more detailed 65% plans. (EIR at p. 4.5-15.)

Most significantly, the LCI report concludes:

- “The larger oaks and their root mats are stabilizers for the Linda Creek streambanks [T]he trees located on the southern bank of Linda Creek along 730 Sunrise #200 and #100 may be over 150 yrs old The age of the trees highlights their role in stabilizing the streambank in its present location”
- “Damage or death of protected and non-protected trees would negatively affect bank stability. Based on the proposed trail alignment, it appears much of the construction would proceed under the drip line of bank-stabilizing oak trees”
- “Any construction disturbance that leads to weakening of the vegetation currently stabilizing the southern streambank [] could lead to streambank failure.”
- “CBEC (2014) noted moderate erosion risk to the trail through this reach. Changed conditions at this location justify a reassessment of the trail erosion risk in this location. Using the criteria in CBEC (2014) it is likely this reach may be reclassified to represent **high to extreme erosion risk** due to trail proximity to active bank erosion, active bank retreat, and minor southerly channel migration.”

- “LCI observations suggest higher stage flow poses a **greater hazard to bank stability**. At this higher stage, the flood wall is expected to restrict lateral migration of floodwaters northward, potentially focusing additional flow along the southern bank, most worryingly along the cutbank adjacent to 730 Sunrise #200.”
- “The proposed concrete retaining wall will likely promote increased flow velocity and northern lateral migration which may increase erosion to the stream bed and northern bank across from 730 Sunrise Avenue #100. The as-designed termination of this retaining wall near the cobble weir (at the approximate property boundary between 730 Sunrise Avenue #100 and #200) may induce a corresponding increase in erosion to the southern streambank along 730 Sunrise #200 due to increased stream flow and southward lateral channel migration downstream of the proposed retaining wall.”
- “Grading in proximity to the northeast corner of 730 Sunrise #100 could reduce foundation stability.”

(Attachment I.) As Mr. Cashen demonstrates with a map based on the 65% plans, “[d]ue to physical and environmental constraints, **it would be impossible for the City to redesign Trail Alignment Option 5A to avoid impacting the oaks that stabilize the southern bank of Linda Creek.**” (Attachment H at pp. 12, 19.)

In light of the new information revealed in the 65% plans, it would be reckless to press forward with Alignment 5A when doing so will remove at least 23 mature oak trees, including oak trees estimated at 150 years old, and lead to the mortality of more oak trees through unavoidable damage to roots during construction. The loss of these trees will destroy critical wildlife habitat and degrade the scenic landscape that the Trail Project is supposed to promote and protect. It will also erode the creek bed and undermine the stability of the narrow strip of land between the commercial buildings and creek bed, ultimately jeopardizing the safety of trail users and surrounding building occupants.

2. Alignment 5B as described in the City’s ATP grant application remains the superior alignment.

Your City staff and the Stakeholder Representative Group considered Alignments 5A and 5B over the course of 10 meetings and determined that Alignment 5B was superior. Even after your Council certified the EIR, City staff with substantial expertise still believe that Alignment 5B is superior. After receiving the letters and technical analysis discussed above, your City Floodplain Manager, CRS Coordinator, and Senior Civil Engineer stated:

In general, they oppose our Option 5A on the south side of Linda Creek thru [sic] Sunrise area and support Option 5B that would run along the north side. **For what it’s worth, I have always believed that Option 5B was best suited for our trail.** I just want to ensure that you are aware our project team **needs to do some additional work to properly address these apparent shortcomings in our process.**

(Attachment J [Dec. 2, 2021 email from Brian Walker].)

When compared to Alignment 5A, it is easy to understand why Alignment 5B was advanced as the “Proposed Project” and your Floodplain Manager still believes it is “best suited” for the Trail Project. In stark contrast to Alignment 5A, Alignment 5B on the north side of the creek will not impact oak trees and oak woodland habitat because Alignment 5B can utilize the City’s existing maintenance path, which can be seen in several images in Mr. Cashen’s report. (Attachment H at pp. 17, 18.) In fact, the EIR overstates impacts to oak woodland from Alignment 5B because it erroneously identified certain areas as oak woodland when those areas are only grassland. (*Id.* at p. 6.) Ironically, the EIR also understated the impacts to oak woodland from Alignment 5A by mislabeling oak woodland as grassland. (*Ibid.*) Even if Alignment 5B affects the roots of some oak trees, “a fundamental difference between these oaks and the oaks on the south side of Linda Creek is that they are not located on the creek bank, and thus, do not serve critical functions in maintaining bank stability and aquatic habitat.” (*Id.* at p. 14.)

In addition to the severe environmental impacts revealed through the 65% plans, Alignment 5B remains the superior alignment for the numerous reasons that the Stakeholder Representative Group and City staff originally chose to advance it as the “Proposed Project.” These reasons include:

- Alignment 5A requires retaining walls on both sides of Linda Creek, while Alignment 5B only requires retaining walls on the north side of Linda Creek and will use approximately 635 less linear feet of retaining walls. (EIR at pp. 6-18 to 6-19.)
- Construction activities will be closer to residences under Alignment 5A, including significant ground vibration for residents along Meadow Gate Drive that are only 35 to 45 feet from Bridge #14 for Alignment 5A. (EIR at pp. 4.10-15, 6-19.)
- Alignment 5A has more significant and severe impacts to the stream, aquatic, and riparian habitat, including critical habitat for Central Valley steelhead and essential fish habitat for Central Valley fall-run Chinook salmon. (EIR at p. 4.3-53.)
- Alignment 5A has more significant and severe impacts to wetlands. (EIR at p. 4.3-53.)
- Alignment 5A has a more significant impact to the loss or disturbance of active raptor nests. (EIR at pp. 4.3-68, 4.3-78.)
- Alignment 5B retains the scenic landscape with the retention of mature oak trees. (EIR at p. 4.3-46.)
- Alignment 5B reduces impacts and facilitates trail construction by utilizing the existing maintenance path for the trail. (EIR at p. 3-21.)
- Alignment 5A will have greater areas of temporary and permanent impacts. (EIR at pp. 4.7-12, 4.7-15.)
- Bridge #14 and illumination for the bridge with Alignment 5A will be closer to and visible from surrounding residences, while Bridge #13 for Alignment 5B will be screened from view by 200 feet of existing dense vegetation between the bridge and residences. (EIR at pp. 4.1-14 to 4.1-16.)

The primary “benefits” of Alignment 5A over Alignment 5B that have been expressed to date are that Alignment 5A does not require a low-flow trail crossing, provides 2 connections to

Sunrise Avenue, and requires less right of way. These assertions of benefit, however, are without merit.

First, the vague concerns about permitting with the Central Valley Flood Protection Board are unsupported and misleading. The “concerns” about a variance expressed to your Council when the EIR was certified directly conflict with City staff’s strategic decision to omit the term “variance” in the grant application. When discussing the City’s response to the grant application question regarding the permits required for the Trail Project, Carl Walker, your prior Floodplain Manager for more than a decade, stated:

I suggest removing the term, “... and variance” from the CVFPB encroachment permit listed below. Let’s let the CVFPB decide whether we will require a variance before subjecting ourselves to one. **We have been very successful lately in working with CVFPB staff to not require a variance for our permits, and in anticipation of future changes to their standards, we might be able to process low-flow crossings without a variance.**

(Attachment K [Aug. 29, 2016 email from Carl Walker to Mike Dour].) It is disingenuous for staff to influence your decision based on an overstated variance concern that staff intentionally excluded from the grant application.

The City’s success in implementing low-flow crossings is also clear based on at least 6 similar low-flow bridges on existing trails in the City. (Attachment L [April 4, 2022 letter from Uborra Engineering & Planning, Inc. identifying 6 low flow trail crossings along upper Miner’s Ravine Trail].) Moreover, Alignment 5A poses far more serious environmental and permitting concerns due to the unavoidable creek bed erosion and instability, which were not addressed in the certified EIR and, as discussed more below, will require the Central Valley Flood Protection Board to prepare a subsequent EIR before issuing any permit.

Second, and as discussed in more detail below, increased connectivity to Sunrise Avenue is inconsistent with the safety benefits of the Trail Project advanced in the City’s ATP grant application, which seeks to avoid placing pedestrians and bicyclists on busy arterial streets with multiple conflict points. As the EIR recognizes, Sunrise Avenue is an arterial street and the “primary function of arterial roadways is to move large volumes of traffic through the [City] to other sections and beyond.” (EIR at p. 4.13-1.) The emphasis of multiple routes to connect to heavily trafficked Sunrise Avenue is especially concerning when there are neither the plans nor capacity to add designated bike lanes to Sunrise Avenue. (See Attachment M [recommended bicycle networks from City of Roseville’s 2008 Bicycle Master Plan showing no plan for bike lanes on Sunrise Avenue].) These safety impacts with Alignment 5A were not even analyzed in the City’s EIR for the Trail Project, as it focused on Alignment 5B.

While a single member of the Stakeholder Representative Group appreciated dual connections, providing scenic off-road bike trails with multiple connection points to busy urbanized roads is inconsistent with how the City has previously developed its unique trail system. Currently, the City offers similar amenities to the Trail Project with the Miner’s Ravine Trail and

Antelope Creek Trail. Notably, those trails could have provided connection points to arterial roads similar to Sunrise Avenue (Roseville Parkway, Eureka Boulevard, and Douglas Boulevard). Instead, and consistent with the safety concerns expressed in the City's ATP grant application, "[t]he trails do not directly connect to any of these 3 roadway arterials, rather, the Miner's Ravine Trail system uses park and ride style parking lots in the vicinity of these arterial as trailheads" and "[t]he Antelope Creek Trail has no connection to Roseville Parkway." (Attachment L.) With Alignment 5B, the Trail Project will provide a fully accessible connection to Sunrise Avenue without creating bicycle and pedestrian risks that will result if Sunrise Avenue is elevated as key point of connectivity. Additional safer points for connection will remain in close proximity to Sunrise Avenue, including at Oak Ridge Drive and Meadow Gate Drive.

Numerous members of the public, including residential and commercial property owners, have also raised legitimate safety concerns about how the Trail Project will increase the use of trails and the creek beds along the trails as preferred locations for the increasing unhoused population. CRIHB, which hosts health and wellness-related educational trainings and cultural gatherings in its ceremonial structure that will be severely affected by Alignment 5A, provided the City with "incidents of trespassing, destruction of property, and invasion of privacy during business and non-business hours by unhoused and possibly other individuals who traverse the creek banks and utilize the creek area as temporary living quarters and to engage in illegal activities." (Attachment E.) Encampments in these locations raise serious concerns about public safety from increased risks of vegetation wildfires and human waste and debris contaminating creeks, especially when encampments are built close to the creek's edge during summer months and then are inundated during winter months. New convenient access to the trail on both sides of Sunrise Avenue where there are increased opportunities to obtain services and solicit donations from the high volume of motorists and then easily access more secluded locations to reside in the evening will increase the use of the trail at that location for encampments.

Beyond increased use of the trail for encampments, Sunrise Avenue in this area has high levels of crime. (See Attachment F [letter from CRIHB with map of Roseville crime rates].) Unfortunately, CRIHB has experienced the impacts of these levels of crime on the property it acquired for "Tribal communities from throughout California to gather" and "engage in health and wellness-related educational trainings and cultural gatherings." (*Ibid.*) Consistent with the high levels of crime in that area, CRIHB has already suffered the "cutting of large sun screens installed to protect our guests from sunlight, the burning of the gazebo, and intrusion of our educational and cultural sessions by individuals drinking alcohol by the creek adjacent to our property." (*Ibid.*) Alignment 5A is adjacent to CRIHB's property on the south side of Linda Creek and, especially with easy access from Sunrise Avenue, Alignment 5A "will increase the ease of access to the back of [CRIHB's] property" on the south side of Linda Creek and "the occurrence and possibly severity of damage and intrusion of privacy will increase." (*Ibid.*) The enhanced connectivity at Sunrise Avenue will also jeopardize safety for surrounding residents given the direct connection the Trail Project will provide to a nearby residential cul-de-sac.

The proximity of these properties to Sunrise Avenue where Alignment 5A will provide quick access to the Trail Project will also increase the use of surrounding properties as de facto parking lots for trail access. As tenants immediately adjacent to Sunrise Avenue explain, commercial buildings along the south side of Linda Creek have larger parking lots that are closer to the creek and the business owners already “suffer from a significant number of unauthorized persons regularly utilizing [their] parking lot and property for access to the creek,” which has brought “significant problems including vandalism, trash dumping, needles and syringes waste and human fecal waste on [their] property.” (Attachment N [Oct. 8, 2020 letter from Chris Airola and Lisa Van Biber].) In contrast, Alignment 5B will not induce or exacerbate these problems because the buildings on the north side of Linda Creek have smaller parcels, more controlled parking areas, and are located further from the creek. (*Ibid.*) Alignment 5B will thus encourage public access to the trail at the trail head parking lots constructed as part of the Trail Project instead of shifting that burden to private property owners.

Third, while Alignment 5B requires additional right of way, the acquisition needs are minor given the scope of the Trail Project, and there is no reason to believe the City will have difficulty acquiring this right of way. The Council should not make a short-sighted decision with long-term environmental effects simply to avoid acquiring right of way, especially when the property owners have not objected to the alignment that will require the acquisition. Moreover, the vast majority of right of way needed for Alignment 5B is to provide connectivity to Sunrise Avenue. As discussed more throughout this letter, removing connectivity to Sunrise Avenue completely would enhance the safety features of the Trail Project by constructing a bicycle and pedestrian path independent from the busy arterial road with multiple driveways and opportunities for accidents. Our client would not object if the City implemented Alignment 5B without any connection to Sunrise Avenue. Nonetheless, even if the additional right of way for Alignment 5B is obtained to provide a connection at Sunrise Avenue, Alignment 5A was estimated to cost over \$1 million more than Alignment 5B when the EIR was certified. While the City will not share current estimates, the difference is likely greater now. In fact, the May 18, 2022 agenda item seeking a budget adjustment reveals that the cost difference is greater than anticipated. (See Attachment O [City staff memorandum indicating that part of the budget adjustment provides funds for the first amendment to the agreement with Psomas]; Attachment P [first amendment to agreement with Psomas increasing contract budget and expanding the scope of work for “New trail Connection to Sunrise Avenue Bridge (structural design, water line relocation design, trail design and geotechnical evaluation)”].)

When weighing these considerations, almost all members of the Stakeholder Representative Group concluded that Alignment 5B was superior and City staff shared this same conclusion in electing to advance Alignment 5B as the “Proposed Project” in the EIR and ATP grant application. Given the opportunity to understand concerns of the stakeholders that were shielded from your Council when the EIR was certified and weigh both options with the information known today, there is little question that Alignment 5B remains superior.

3. The new significant environmental impacts and substantial increase in the severity of environmental impacts revealed in the 65% plans will preclude state agencies from relying on the EIR to issue permits necessary to complete the Trail Project.

The severe environmental impacts revealed through the 65% plans jeopardize the City's ability to deliver the Trail Project within the grant deadlines discussed in more detail below. As the EIR explains, the City served as the lead agency under the California Environmental Quality Act ("CEQA") for the Trail Project, but subsequent approvals are required by responsible agencies that must rely on the EIR, including the Central Valley Regional Water Quality Control Board, Central Valley Flood Protection Board, and California Department of Fish and Wildlife. (EIR at p. 1-8.) In doing so, CEQA requires that each responsible agency consider the EIR and "reach[] its own conclusions on whether and how to approve the project involved." (CEQA Guidelines section 15096, subd. (a).)

If, at the time a responsible agency considers the EIR, circumstances have changed sufficient to warrant a subsequent EIR under CEQA Guidelines section 15162, Guidelines subsection 15052(a)(2) requires the responsible agency to assume the role of lead agency and prepare a subsequent EIR. As Ms. Meserve details in her November 4, 2021 letter, the new significant environmental impacts and substantial increase in the severity of impacts revealed through the 65% plans require preparation of a subsequent EIR. (See Attachment A.)

The new and substantially more severe impacts to critical fish habitat are under the permitting jurisdiction of the California Department of Fish and Wildlife and the new and substantially more severe impacts to water quality and downstream impacts from erosion are under the permitting jurisdiction of the Central Valley Regional Water Quality Control Board and Central Valley Flood Protection Board. These responsible agencies will thus be required to perform additional analyses under CEQA Guidelines sections 15052 and 15162 to address the new and substantially more severe environmental impacts revealed through the 65% plans. Any minor delays associated with returning to Alignment 5B would be substantially less delay than preparation of a subsequent EIR by a responsible agency prior to issuance of the approvals necessary to complete the Trail Project.

4. The City advanced Alignment 5B as the "Proposed Project" in its competitive ATP grant application and needs a change in project scope to implement Alignment 5A.

The City advanced Alignment 5B as the "Proposed Project" in its June 2016 application for competitive ATP funds from the Sacramento Area Council of Governments ("SACOG"), which is administered by the California Department of Transportation ("Caltrans"). (See Attachment Q, sheets 6, 7 ["Preliminary Layout Drawing" submitted with ATP application].) ATP is a competitive grant in which multiple jurisdictions compete for limited funds and are scored based on numerous criteria. Given the competitive process to obtain funds, grant conditions require that the project advanced in the application that served as the basis of the score be the project actually implemented. For example, when a funding allocation is made, the "detailed description of the project scope must match the information listed in the Project Programming

Request” and, “[i]f the project scope description has changed from the original Project Programming Request,” then the allocation cannot be made unless the agency complied with the scope change process and obtained written “concurrence from all the project partnering agencies.” (Caltrans Local Assistance Program Guidelines, Chapter 25, p. 29-30;¹ see also *id.* at p. 29 [“Caltrans will verify that the full project scope approved by the CTC is included in the PS&E as part of the Construction (CON) allocation, final payment, and project close out.”].) Here, the City failed to obtain a change in scope to implement Alignment 5A, thus precluding allocation of grant funds for the new alignment that differs significantly from Alignment 5B.

As part of the scope change process, the ATP Grant Guidelines make it clear that any change must be weighed against the benefits of the project identified in the project application. A request for change of scope must include: “An estimate of the impact the proposed scope change would have on the potential of the project to deliver the project benefits *as compared to the benefits identified in the project application* (increase or decrease in benefit) and an explanation of the methodology used to develop the aforementioned estimates.” (2019 ATP Guidelines at p. 17, emphasis added.) Requiring consideration of the project advanced in the application ensures fairness in the competitive grant process because each grant is scored based on the promises made in the application. In its competitive grant application, Alignment 5A was included on maps as a potential alternative, but the application failed to disclose how Alignment 5A would change grant scoring for the project or that Alignment 5A might be implemented without a change in scope.

In addition, the City represented that Alignment 5B was the project for which funds were sought to obtain the points necessary to receive the competitive grant. First, for a total potential of 10 points for “Public Participation and Planning,” the City promoted the public engagement process and expressly praised the selection of Alignment 5B advanced as the “Proposed Project”:

The comprehensive public engagement program included opportunities for the public to identify key opportunities and constraints as well as key criteria for evaluating project alternatives. Rating criteria developed during this process included consideration for property compatibility, trail use performance, public safety, environmental effects and municipal operations. *The evaluation process assisted the City and the trail design team with identifying key opportunities and constraints, alternative alignments, potential connection points and sensitive private property concerns.* For example, a connection to Sunrise Avenue was identified as a key need.

(Attachment R [Part B, Question 4 of ATP grant application].)² If the application disclosed that, after obtaining grant funds, the City intended to disregard stakeholder input and change from the

¹ Available online at: <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapg/g25.pdf>.

² For text not visible in the attachment, the full ATP application is available online at: <https://catc.ca.gov/-/media/catc-media/documents/programs/atp/2017/2017-successful-project-app/pla-dry-creek-greenway-multi-use-trail-project-roseville.pdf>.

alignment determined superior during the public engagement process, the City likely would have received 0 points for Public Participation and Planning. This level of deception in a competitive grant is unfair to the other government agencies that applied for ATP grant funds but did not score enough points to receive an award.

Second, with a total potential of 10 points, Question 3 of the ATP grant application considers the history of collisions in the project area. In seeking to obtain the maximum points possible, the City's application references the number of instances vehicles crashed into bicyclists and pedestrians within the project vicinity, identifies Sunrise Avenue as having the highest crash rate of the roads examined, and concludes, "As expected the vast majority of collisions occur on the heavily trafficked arterials streets of Cirby Way, Sunrise Avenue, Douglas Blvd and Riverside Avenue." (Attachment S [Part B, Question 3 of ATP grant application].) In touting how the Trail Project will improve these conditions, the City claims:

The best counter measure for all these accidents is to separate bicycle and pedestrian traffic from the motorists. The current alternatives of using heavily trafficked arterial streets does not provide a safe comfortable option for users. No bike lanes exist through the project area on the four major arterials (Cirby Way, Riverside Avenue, Douglas Blvd or Sunrise Avenue). The numerous driveway access points and traffic signals along these arterials results in numerous potential conflict points.

(Attachment S.) The above quoted language is the entirety of the City's explanation as to how the project will reduce bicycle and pedestrian accidents and thus is the only grounds upon which the City could have been awarded points for the Trail Project's improvement to pedestrian and bicycle safety. Alignment 5B addressed the problems of collisions with pedestrians and bicyclists by providing an undercrossing at Sunrise Avenue and an access point to Sunrise Avenue without incorporating Sunrise Avenue as an integral trail connection. In contrast, Alignment 5A will provide direct connections to Sunrise Avenue on both sides, giving the false impression that Sunrise Avenue is an important connection point for trail use and encouraging pedestrians and bicyclists to continue trail use on Sunrise Avenue, which does not have bicycle lanes and has numerous busy driveways creating conflict points. Alignment 5A thus directly conflicts with the "best counter measure" touted in the City's ATP application.

The likelihood of injury from this known design flaw in Alignment 5A will most significantly affect vulnerable populations, such as children and the elderly, who may reasonably assume that the City would not construct a trail that encourages continued travel in an unsafe location. This is especially concerning when the City boasted in its ATP grant application that the "trail will be used extensively by students, children and the elderly and is in close proximity to several senior living facilities and schools" and that the trail "serves older, economically disadvantaged neighborhoods." (Attachment T [Part B, Questions 5 and 6 of ATP grant application].) If Alignment 5A was advanced as the "Proposed Project" in the ATP application, the City would not have been awarded the same points for pedestrian and bicyclist safety.

Third, for a total potential of 15 points, Question 3 also assesses how the project will remedy safety hazards to pedestrians and bicyclists and the application emphasizes how the Trail Project will provide an independent, off-street trail to gain the most points:

It is estimated that approximately half of the bicycle and pedestrian related collisions in the City of Roseville resulted from bicyclists riding against traffic, violations involving crossing at an inappropriate location or failure to yield right-of-way. The Class 1 trail and sidewalk improvements included in this project, will provide a separate safe facility that will improve safety for both non-motorized and motor vehicles, significantly reducing the number of occurrences these conflict issues could occur and reduce the number of bicyclists using the same travel lane as motor vehicles on these heavily tracked streets.

(Attachment S.) If the City had applied for a change in scope to implement Alignment 5A, Caltrans would have been tasked with evaluating Alignment 5A against the statements in the City's grant application. Caltrans also would have had the opportunity to consider the continued use of grant funds for an alignment with significant stakeholder opposition and new irreversible environmental impacts. Continuing with Alignment 5A without approval for a change in scope thus risks loss of the ATP funds. In contrast, because Alignment 5B was identified as the Proposed Project in the ATP grant application, an amendment request for a change in scope is not required to return to the original alignment.

5. Returning to Alignment 5B will not jeopardize grant funds.

As referenced earlier in this letter, City staff has claimed that reversion to Alignment 5B would jeopardize grant funding. (Attachment U [March 16, 2021 letter from Dominick Casey].) Simply stated, it would not. Trail Project is fully funded through the: (1) Solutions for Congested Corridor Program ("SCCP"); (2) SACOG ATP; (3) Congestion Mitigation and Air Quality Improvement Program, 23 U.S.C. § 149, ("CMAQ"); and (4) Local Transportation Funds ("LTF"). We will thus address each of these funding sources and explain why any relatively minor delay to implement Alignment 5B as originally advanced in the EIR and ATP grant application will not jeopardize the approximately \$10.7 million in local funds for the Trail Project or approximately \$60 million in regional funds for the Placer-Sacramento Gateway Plan.

Overall and as the analysis herein demonstrates, the City is wise to consider the project schedule and milestones when deciding whether to undertake any action that may delay project delivery. While unjustified and substantial delays could eventually jeopardize SCCP, ATP, or CMAQ funds, the guidelines and agreements for all 3 funding sources ensure flexibility and recognize that delays with significant public works projects are often inevitable. In allowing for multiple extensions, the policies of the 3 funding programs recognize that expediency should never be the sole consideration. Nor should project schedules dictate decisions that will have lasting environmental and economic impacts to the community. Here, the relatively minor delay to return to the "Proposed Project" in the EIR and ATP grant application will not jeopardize project funds and will prevent significant environmental and economic damage revealed thorough the 65% plans

that your Council could not have fully understood when the EIR was certified and Alignment 5A was substituted for Alignment 5B.

A. Solutions for Congested Corridor Program (SCCP)

The Road Repair and Accountability Act of 2017, commonly referred to as Senate Bill 1, created the SCCP program, and the California Transportation Commission (“CTC”) awards \$250,000,000 in SCCP grants annually. SCCP grants are administered following the SCCP Guidelines and, once awarded, Caltrans administers the grant funds, including review of allocations, project schedules, and necessary approvals from the CTC. Awarded funds for SCCP and other Caltrans administered grants are programmed, but not “allocated” until the project is “ready to advertise” for construction. (Caltrans Local Assistance Program Guidelines, Chapter 25, p. 30.)³ For the Trail Project, no construction funds have been allocated, which confirms the Trail Project has not advanced to a point that Caltrans or the City believe construction is imminent.

The project schedule, which is initially proposed in a baseline agreement, seeks to ensure that SCCP projects are completed in a relatively timely manner. (2020 SCCP Guidelines, section 20.)⁴ While advancing project schedules, the SCCP Guidelines recognize that numerous unforeseen or exigent circumstances often justify deviation from an anticipated schedule. (2020 SCCP Guidelines, sections 19, 22, 23.)

Here, the Trail Project has been awarded \$6.239 million in SCCP funds for construction. (See Attachment V [Project Programming Request identifying \$6,239,000 for “CON”].) While the SCCP Progress Reports identify all project milestones and early project milestones can affect construction deadlines, only the construction milestones are tied to the SCCP funds. In the Quarter 3 Progress Report for fiscal year 21/22, the construction contract award completion date is stated as January 31, 2023. (Attachment W [Progress Report – FY 21/22 Q3].) City staff have indicated, however, that they intend to seek an extension of 1 or more current project milestones. (Attachment X [March 28, 2022 email from Mike Dour indicating the City intends to seek a time extension in June 2022].) Even without the anticipated extension, almost 9 months remain in the current project schedule to make the necessary modifications to revert to the original alignment and award a construction contract.

Because the City has not yet sought any SCCP extensions for the Trail Project, the City may request a 12-month extension for construction allocation, which is the date Caltrans allocates funds for construction; a 12-month extension for contract award; and a 20-month extension for construction completion. (See 2020 SCCP Guidelines, sections 22, 23; Caltrans Local Assistance Program Guidelines, Chapter 25, Table 1, p. 39.) After award of the construction contract, the implementing agency generally has 36 months to complete construction, but “the Commission

³ Available online at: <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/lapg/g25.pdf>.

⁴ Available online at: <https://catc.ca.gov/-/media/ctc-media/documents/programs/sccp/adopted-2020-sccp-guidelines-combined-file-march-20-a11y.pdf?msclkid=3e245a09aa0f11ec9f57472a0a6fa9e2>.

may extend the deadline for completion of work and liquidation of funds if necessary to accommodate the proposed expenditure for the project.” (2020 SCCP Guidelines, section 22.)

In seeking an extension of a particular project phase, the City would be required to demonstrate extraordinary circumstances. (SCCP Guidelines, section 23.) While the City presumably believes extraordinary circumstances currently justify its upcoming request for an extension, including the need to return to Alignment 5B as an additional circumstance necessitating a project extension will strengthen the City’s request. As documented in the technical studies previously discussed, the severe environmental impacts to creek bed erosion, slope stability, mature oak trees, and oak woodland habitat revealed through the 65% plans give rise to exigent circumstances necessitating and justifying the change in alignment to avoid the significant environmental impacts that could not have been known at the time of EIR certification.

Implementing Alignment 5B will not cause substantial delay because that alignment was the “Proposed Project” in the EIR. As Ms. Meserve explains in her letter, the return to Alignment 5B can be advanced in compliance with CEQA through reliance on a brief EIR addendum, which does not require additional environmental review or public review and comment. (See CEQA Guidelines section 15164.) The simplicity of an addendum can be seen in your Council’s recent adoption of an 8-page addendum to the Trail Project EIR on April 20, 2022. (Attachment Y [April 20, 2022 Addendum to Trail Project EIR].) Moreover, given the ability to avoid significant environmental impacts with Alignment 5B, reliance on a categorical exclusion under the National Environmental Protection Act (“NEPA”) would be appropriate and no additional environmental review would be required.

While the Trail Project is part of the larger Placer-Sacramento Gateway Plan for which SCCP funds have been awarded, nothing in the SCCP Guidelines suggests that the project schedule for the Trail Project could somehow jeopardize or impact the other distinct projects in the Placer-Sacramento Gateway Plan. Instead, the SCCP Guidelines specifically recognize that a larger project can be segmented “because of its size, funding, or delivery schedule.” (2020 SCCP Guidelines, section 12.) The SCCP Project Baseline Agreement for the Placer-Sacramento Gateway Plan – Phase 1 identifies 9 segmented projects with separate implementing agencies and independent Project Programming Requests and project schedules. (See SCCP Project Baseline Agreement for the Placer-Sacramento Gateway Plan – Phase 1.)⁵ The Trail Project is 1 of those 9 segments. Thus, even if re-alignment somehow caused the Trail Project to fall behind on the project delivery schedule, delay in the Trail Project does not impact the other independently programmed projects of the Placer-Sacramento Gateway Plan, and each of the 9 projects will remain subject to its unique project milestones.

Nor does any potential delay to implement Alignment 5B hinder the City’s ability to continue with the majority of the Trail Project. The Trail Project seeks to construct independent

⁵ Available online at: <https://catc.ca.gov/-/media/ctc-media/documents/programs/baseline-agreements/2021-06/SCCP/3-Placer-Sacramento-Gateway.pdf>.

new trail segments that will connect to different termination points of existing trail segments and collectively provide 10 miles of connected trail upon completion. (Attachment Z [map submitted with ATP grant application identifying 3 distinct segments].) The EIR identifies up to 4 project phases with the first phase constructing multiple segments from Riverside Avenue/Darling Way to Rocky Ridge Drive, including the Sunrise Avenue segment at issue. (EIR at p. 3-37.) As seen on the ATP application, this phase 1 includes 2 existing trail segments, thus phase 1 alone has at least 3 distinct segments separated by existing segments. (Attachment Z.) Exhibit 3-4 in the EIR also shows the substantial segment of existing trail between the segment with Sunrise Avenue (Sheet 3) and the remainder of phase 1 of the Trail Project (commencing on Sheet 5). (EIR at pp. 3-11 [Exhibit 3-4], 3-22 [Sheet 3 Segment], 3-25 [Sheet 4 Segment with existing trail], 3-27 [Sheet 5 Segment].) Exhibit 3-4 also identifies multiple different project construction access and staging areas, which demonstrate the intent and feasibility of advancing independent construction projects for various segments. (EIR at p. 3-11 [Exhibit 3-4].) Treating phase 1 as a single construction project that will or must be constructed simultaneously is misleading and inconsistent with the trail segments identified in the ATP grant application and EIR. Instead, the lack of connectivity between the 3 segments of the Trail Project and existing trails separating each segment confirm that construction could commence on segments unaffected by the alignment at Sunrise Avenue and any potentially expiring project funds could be utilized on those trail segments first.

B. SACOG Active Transportation Program (ATP)

The ATP was created by Senate Bill 99 and Assembly Bill 101 and consolidated several federal and state transportation programs with the goal of “making California a national leader in active transportation.” (Caltrans Local Assistance Program Guidelines, Chapter 22.) Consistent with SCCP funds, Caltrans administers ATP funds, and SACOG is also delegated certain administrative functions. Here, the Trail Project has been awarded approximately \$4.5 million in ATP funds.

Similar to SCCP, ATP allows for multiple extensions and “one time extension *per phase, per applicable project component* is permitted.” (See Attachment AA [Caltrans “ATP Timely Use of Funds Guidelines” table], italics added;⁶ see also Caltrans Local Assistance Program Guidelines, Chapter 25, p. 39.) On May 13, 2021, the City received a 20-month extension to the “allocation” component of the “construction” phase. (See Attachments BB and CC [June 2, 2021 letters from Caltrans].)⁷

⁶ Available online at: <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/atp/tuf/2021/atp-timely-use-of-funds-guidelines20220113-a11y.pdf>.

⁷ The same 20-month extension was approved in 2 separate letters for the “CON” and “CON-NI” phases. For ATP funds, “NI” denotes “non-infrastructure” programs aimed at “education and encouragement activities that further the goals of the ATP” and can include “those benefiting school students, older adults, or entire communities.” (See Caltrans March 16, 2022 Active Transportation Program: Non-Infrastructure Program Expenditure and Cost Guidance, available online at <https://dot.ca.gov/-/media/dot-media/programs/local-assistance/documents/atp/cy6/atp-ni-guidance-cy-6->

With that extension, the allocation deadline for construction was extended to February 28, 2023, which means Caltrans must allocate funds for construction by that date. The allocation deadline is not the deadline for completion of construction or even execution of the construction contract.⁸ From the date of allocation, construction contracts are generally anticipated to be awarded within 6 months and then construction is generally anticipated to be completed within 36 months of contract award. These 2 additional project components (“Award” and “Completion”) are also eligible for 12-month extensions for each phase, for a total potential extension of at least an additional 24 months for the construction phase. For the Completion Component, the table also notes that “[a]dditional time beyond the 36 months can be requested at the time of allocation.”

With the 20-month construction allocation extension, it is difficult to imagine that returning to the “Proposed Project” Alignment 5B would require an extension of the additional construction milestones. Nonetheless, even if it did and similar to the SCCP funds, the environmental impacts revealed through the 65% plans give rise to extraordinary circumstances supporting any necessary future extension requests and any funds even close to expiring can be prioritized on other phase 1 trail segments.

C. Congestion Mitigation and Air Quality Improvement Program (CMAQ)

CMAQ is a federal program administered by Caltrans and Caltrans has delegated certain administrative functions to SACOG and the Placer County Transportation Planning Agency (“PCTPA”). CMAQ federal funds are administered through a Master Agreement Administering Agency-State Agreement for Federal-Aid Projects (“Master Agreement”) and then funds are encumbered through execution of Program Supplements. (Attachment DD [Master Agreement] at Article 1, Section 4.) Once funds are encumbered through a Program Supplement, the Master Agreement provides that the federal funds are “available for liquidation for a period of seven (7) years from the beginning of the State fiscal year the funds were appropriated in the budget.” (*Id.* at Article IV, Section 16.) For the Trail Project, while the Master Agreement was executed in 2007, the Program Supplement for CMAQ funds is dated June 16, 2020 and encumbered just under \$600,000 in federal funds on that date. (Attachment EE [Program Supplement].) Accordingly, those federal funds are available for liquidation until at least June 16, 2027.

While the federal funds were only recently encumbered, the CMAQ funds for the Trail Project are being utilized for preliminary environmental and design, and the City originally sought CMAQ funds in 2010. For federally allocated funds like CMAQ, FHWA can require repayment if right-of-way acquisition or actual construction is not undertaken within 10 years of project authorization for preliminary engineering. (23 C.F.R. § 630.112(c)(2).) This 10-year deadline is

[final-3-2022.pdf](#).) The “NI” component of the Trail project will “provide trail user education at nearby schools.” (ATP Application at p. 19.)

⁸ While it appears that ATP funds are only programmed for the construction phase of the Trail Project, if any ATP funds are programmed for earlier project phases (PA&ED, PS&E, and R/W), the City is still able to seek extensions of at least 32 months for each phase (20 months for Allocation Component and 12 months for Expenditure Component).

not absolute and is routinely extended based on a low threshold of reasonableness. (See *ibid.* [“The State may request a time extension for any preliminary engineering project beyond the 10-year limit with no repayment of Federal funds, and the FHWA may approve this request if it is considered reasonable.”].) For the Trail Project, the City submitted a time extension request for the preliminary engineering phase over 10 years on August 4, 2021, but FHWA determined an extension was not necessary because right of way acquisition had commenced. Caltrans reported back to the City on November 4, 2021, “Great news! FHWA came back and said that a time extension won’t be needed. They will drop this project off the PE Over 10 list.” (Attachment FF [Nov. 4, 2021 email from Jacky Vang].)

D. Local Transportation Funds (LTF)

Local Transportation Funds are derived from state retail sales tax and the PCTPA is tasked with apportioning the funds by population, allocating the funds for projects, and administering the funds. City staff confirmed our understanding that there are no project milestones or schedules related to the use of LTF. As previously discussed, LTF provides flexibility to use grant funds on earlier phase 1 trail segments to avoid any risk of expiring grant deadline and then use LTF on later segments, including the segment at Sunrise Avenue if needed. For phase 1, which will construct segments of the Trail Project from Riverside Avenue/Darling Way to Rocky Ridge Drive and includes the Sunrise segment at issue, the most recent budget summary from SACOG indicates construction costs are broken down at \$209,763 of CMAQ; \$4,500,000 of ATP; \$6,239,000 of SCCP; and \$3,911,237 of local agency funds. (Attachment GG.) This means the City has almost \$4 million in local funds that are not subject to project schedules or milestones. The same report indicates that \$2,321,738 in local agency funds are budgeted for the engineering phase and the only funds budgeted for right of way (\$910,000) are local agency funds. The City thus has substantial funds budgeted for engineering that are not subject to grant project schedule deadlines and no right of way funds subject to deadlines. As previously discussed, the City can prioritize any grant funds on other segments of phase 1 to provide further assurance that implementing Alignment 5B will not jeopardize any funds subject to a project milestone.

6. Returning to Alignment 5B or, at the least, agendizing a discussion of the alignment with the stakeholders will restore integrity to the City’s public engagement process.

Given the complexity of the Trail Project, City staff performed initial feasibility studies and created the Stakeholder Representative Group. According to the City’s website, the “Stakeholders Representative Group is providing input on the Dry Creek Greenway Trail project representing a broad array of community interests. Representatives include residents, property owners, business owners, the Dry Creek Conservancy, Biking Roseville, Sun City Cycling Club, local schools, and others. Stakeholder Representatives will act as a liaison between the City and their respective group, to communicate and gauge the interests and concerns of their group.” The Stakeholder Representative Group had 10 meetings with the City project team, including a site tour, and the minutes from each meeting reflect the level of detail and time each stakeholder representative dedicated to the Trail Project.

When viewed in isolation, the City's use of the Stakeholders Representative Group would and likely should be commended as an effective means of developing a superior project by seeking input from those directly affected. As previously discussed, the City in fact relied on this public process to score points on its competitive ATP application. The EIR also elevated the value of these efforts: "The community input received during this process informed the proposed project's design and alignment." (EIR at p. 3-6.)

While the Stakeholder Representative Group did not reach complete consensus on the alignment at issue, the notes from the final meeting reflect that a strong majority of the stakeholders had concluded Alignment 5B was superior. (Attachment HH [Feb. 27, 2013, SRG Meeting #9 Summary.] City staff then committed to pursuing the strongly preferred alignment as the "Proposed Project." After expending a significant amount of time to shape the project advanced in the EIR, stakeholders understandably believed they could trust the City project team they had worked with through numerous meetings to implement the "Proposed Project" or, at the very least, reconvene the Stakeholders Representative Group if City staff determined at some point in the future that it was going to recommend a different alignment than the "Proposed Project." Surely, if staff thought Alignment 5A was superior at the close of the stakeholder meetings, your Council would have expected staff to advance Alignment 5A as the "Proposed Project" in the EIR and ATP grant application.

Instead, staff advanced Alignment 5B as the "Proposed Project." Staff's apparent change in direction was not based on new information. Significantly, staff did not inform your Council that its new recommendation was inconsistent with the consensus developed through the stakeholder meetings. In fact, in the staff report for the agenda item, staff touted the "robust public participation program with multiple neighborhood, stakeholder and community meetings," but conveniently omitted that staff's recommendation was inconsistent with the consensus and understanding of most stakeholders. (Attachment II [Council Communication].) If staff had provided this complete picture and acknowledged that none of the stakeholders who had expressed serious concerns about Alignment 5A during the stakeholder meetings were aware of the change or present for the Council meeting to certify the EIR, your Council would have likely rejected this flawed public process and continued the item. Instead, because of the incomplete information provided, the Council adopted Alignment 5A without a single Council member asking a question or commenting about that alignment.

The diversity of stakeholders urging your Council to implement the alignment advanced as the Proposed Project illustrates the flawed public process that occurred. You have received letters from CRIHB, the Dry Creek Conservancy, and California Oaks Foundation of the California Wildlife Foundation. All of these organizations share our client's concerns about the irreversible and severe impacts to the environment and surrounding property that will result from Alignment 5A. Nor should your Council adhere to Alignment 5A under the false guise of expediency because that alignment will cause further delays for necessary additional environmental review prior to issuance of state permits and the change in scope process for the ATP grant.

In returning to Alignment 5B, your Council has the opportunity to avoid severe environmental impacts with minimal delay, construct the project advanced in the competitive grant application, restore public trust, and use awarded grant funds to provide a trail with safe connectivity points while retaining the scenic landscape. We remain committed to collaborating with the City to deliver the Trail Project consistent with the City's mission to provide "exceptional services in a fiscally responsible manner that enhance the quality of Roseville today and into the future."

Very truly yours,

HEFNER, STARK & MAROIS, LLP

By



Chad E. Roberts

cc: Dominick Casey, City Manager
Michael Dour, Alternative Transportation Manager
Marc Culver, Public Works Director
Cathy McKeon, California Department of Transportation
Sharon Bertozzi, California Department of Transportation
Rambabu Bavirisetty, California Department of Transportation
Shalini Chandra, California Department of Transportation
James P. Day, Office of Local Assistance, Caltrans District 3
Jacky Vang, Office of Local Assistance, Caltrans District 3
Jennifer Osmondson, Biologist, California Department of Transportation
James Corless, Sacramento Area Council of Governments
Patrick Moeszinger, North Central Region, California Department of Fish and Wildlife
Lynn Coster, Central Valley Regional Water Quality Control Board
Andrea Buckley, Central Valley Flood Protection Board
Mike Luken, Placer County Transportation Planning Agency
Melodi McAdams, United Auburn Indian Community of the Auburn Rancheria
Anna Starkey, United Auburn Indian Community of the Auburn Rancheria
Rebecca Allen, United Auburn Indian Community of the Auburn Rancheria
Dr. Mark LeBeau, California Rural Indian Health Board, Inc.
Janet Cobb, California Wildlife Foundation
Angela Moskow, California Oaks Foundation
Gregg Bates, Dry Creek Conservancy
Osha R. Meserve, Soluri Meserve, A Law Corporation
Al Johnson, Al Johnson Consulting