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VIA ELECTRONIC MAIL ONLY

Palmdale City Council
38300 Sierra Highway
Palmdale, CA 93550

Re: Agenda Item 13.1, Public Hearing and review of Proposed Resolution No. CC 2022-031 for adoption; Request that the City Council Deny the Project

Dear Palmdale City Council:

This Firm represents Leona Valley Town Council ("Town Council"). The Palmdale City Council is considering approval of Phase 1A of the Ritter Ranch Specific Plan, Vesting Tentative Tract Maps ("VTTMS") 51604, 51605, 51606, 51607, 52093, & 52116; Planned Development ("PD") 21-001; Conditional Use Permit ("CUP") 22-001; and, Resolution No. CC 2022-031 (together, the "Project"). The Town Council filed Appeal 22-01, and requests that the City deny the Project because:

- The City predetermined outcome of the Appeal.
- The ancient and outdated 30-year old 1992 Ritter Ranch Specific Plan Final Program Environmental Impact Report ("FEIR") cannot form the basis for the Project approval.
- The Project will: (1) cause substantial changes to the FEIR; (2) be located where substantial changes have occurred with respect to the circumstances under which the Project will be undertaken; and, 3) result in the analysis of new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous FEIR was certified.
- A subsequent EIR is required.
- The City relies entirely upon the response letters and memorandum by DKS Associates and T&B Planning, Inc. There is no evidence that the City undertook an independent analysis of these response letters and memorandum before making a CEQA decision.
- The "findings" in the Resolution are inconsistent with the evidence, and in some cases there is no evidence at all supporting the "findings."

The issues raised in the Town Council prior letters and testimony remain valid, and are incorporate herein as if fully restated. This letter is part of the administrative record in this matter.

The City has a statutory obligation under the California Environmental Quality Act ("CEQA") to among other things, identify critical thresholds of significance, provide information to the public and public officials, and not to approve projects with the potential to cause significant environmental impacts without the imposition of all feasible mitigation measures and/or alternatives. The City has failed to carry out all of these obligations. Regulatory standards, as

the City has proposed in the Project conditions of approval do not avoid the need for the City to conduct an environmental analysis or impose conditions of approval.

Public Resources Code, section 21082, requires that all public agencies adopt by ordinance, resolution, rule or regulation objectives, criteria and procedures for the evaluation of projects. This requirement is necessary for consistency, efficiency and predictability in the Initial Study process. However, the City has not adopted any of these objectives, criteria, procedures or thresholds of significance, and as such, it is impossible for the City to state that a potential project has or does not have the potential to cause environmental impacts. The City is proposing to approve a Project with significant environmental impacts without the imposition of all feasible mitigation measures, without adequate public input, and without considering any alternatives.

1. The results of the Appeal is a predetermined outcome.

The City is focused and motivated by the supposed positive fiscal impacts generated by the Project which the City identifies as revenue from development fees and, ultimately, increased property tax and other revenues generated by the development of new residential neighborhoods in the Ritter Ranch Specific Plan.

This is contrary to the City's obligation under CEQA. CEQA contains a substantive mandate to fairly and honestly evaluate potential environment impacts and to require all feasible mitigation measures and alternatives that can lessen or avoid the identified environmental impacts. (Pub. Res. Code, § 21002.) Further, it is well documented that residential development results in a negative fiscal impact. (See e.g. Exhibit 1.)

Further, the CEQA conclusion is an afterthought and not considered first and foremost. There is no evidence to support the City's erroneous CEQA conclusion that: "1) the project will cause no substantial changes in any portion of the project which was described in EIR 90-4, which would require major revisions to EIR 90-4 due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects because the project is not modifying the scope or intent of the SP; 2) no substantial changes have occurred with respect to the circumstances under which the project is undertaken, which will require major revisions to said EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified environmental effects, because no significant development adjacent to the project area which impacts the infrastructure, services, or development potential within the City's boundaries has occurred; and 3) no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete, has been provided with respect to the SP." In fact, as explained in this letter, the facts draw the opposite conclusions.

2. The City cannot rely on the ancient and outdated 30-year old FEIR.

The City determined that the developer's application constituted a project under CEQA, and that CEQA compliance is required. According to the Office of Planning and Research, a master EIR, which the City claims the FEIR is, has a shelf life of about five years. (CEQA Guidelines, § 15179.) The CEQA Guidelines set forth the requirements that the City must comply with to utilize an ancient FEIR, which were not complied with.

The City further claims that nothing has changed in the last 30-years. This is not accurate as demonstrated below.

The project and mitigation was changed. As identified below, the Project will cause adverse or potentially adverse changes that require a new analysis and mitigation measures.

- The FEIR mitigation measure required that the developer construct a new fire station and public library which were removed from the Project without considering the impacts of these modifications as required by CEQA. The City is required to state a legitimate reason for removing mitigation measures and support the reason with substantial evidence. (*Napa Citizens for Honest Government v. Napa County Board of Supervisors* (2001) 91 Cal.App.4th 342.) The City failed to do this. Further, the proposed resolution, section 2(b), causes confusion to the public as it falsely states that “The Application anticipates residential development and all infrastructure and amenities anticipated by the SP.” Clearly, this “fact” which is relied upon to make the findings contained in the Resolution is erroneous. The City also attributes the furtherance of Strategic Plan Goal III, Invest in infrastructure to improve community livability, to the Project while at the same time it removes the developer’s obligation to construct infrastructure. Therefore, the City cannot rely on this “fact” to support its claim that the Project is consistent with Strategic Plan Goal III.
- The Project includes six new vesting tract maps. The City erroneously assumes that because there were six prior maps that expired, there can be no impacts caused by the new maps. However, these maps facilitate the reconfiguration of the development within the Ritter Ranch Specific Plan. There was no analysis of the traffic and other potential impacts caused by the reconfiguration. The notion that because the City previously approved the VTTMs in 2015 and found no further CEQA was required is not a justification for not preparing a subsequent EIR. The VTTMs expired and any so-called conclusions do not carry over to the current Project which is proposed seven years later.
- The City states that the proposed Residential Planned Development utilizes creative site-planning techniques which may not typically be utilized in conventional development. What are these? If they were new, then they were not considered in the FEIR. Since the new techniques are not identified, the public is not fully informed and it is impossible to determine whether these new techniques cause impacts.
- The City acknowledges that the proposed landscape plan, architectural design and materials, and site plan are designed to exceed the intent and desired effect of standards established in the Ritter Ranch Specific Plan. What does this mean? These new plans could cause new and more intense impacts. Do the landscaping plans require the use of more water, are invasive species permitted? How do the landscaping plans fit with the fuel modification plans that are necessary to reduce fire risk? Do the new architectural materials affect fire resistance? Does the new site plan cause new traffic impacts? None of these issues were analyzed.
- The original traffic report was omitted and there is a new traffic report. The original report did not include the completion of Ranch Center Drive and Avenue S, which are now used as thoroughfare from the Antelope Valley Freeway to more easily access all points west of Palmdale. It did not foresee the actual increased use of Bouquet Canyon and San

Fancisquito Canyon roads by commuters looking for an easier route than the Antelope Valley Freeway. This constitutes new information of substantial importance as the new study fundamentally changed the traffic analysis, traffic impacts and mitigation measures.

- The development agreement which among other things defined the applicant's responsibilities to fund and construct various infrastructure improvements (mitigation measures) expired. A new undefined agreement is required. But, that agreement is not included with the approvals. Without the new agreement, there is no assurance that the mitigation will be timely implemented.
- The City eliminated the requirement that the developer contribute a fair share cost of the construction of a fire station and the fair share cost of the construction of a public library. These were mitigation measures. The FEIR found that without these mitigation measures the impacts would be significant. The impacts of these significant changes has not been analyzed.
- The conditions of approval require an updated final hydrology study and hydraulics report. This is new information that is required to be available to the public before the Project is approved and included in a new environmental assessment. A similar condition was found to violate CEQA in *Sundstrom & County of Mendocino* (1988) 202 Cal.App.3d 296.
- Condition of approval No. 3 states that "Projects that exceed AVAQMD threshold levels shall contribute to the traffic mitigation programs imposed on the development in effect at such time building permits are issued for the project...." There is an assumption that the Project exceeds the threshold levels. There is no indication of the extent of the impact, the amount that shall be contributed to the traffic mitigation programs, what those traffic mitigation programs are, when and whether the traffic mitigation programs will be implemented, whether the traffic mitigation will be implemented in time to reduce the Project impacts, and whether the mitigation is sufficient to mitigate the impacts to less than significant.
- The City admits that energy was not evaluated in detail in the FEIR. CEQA requires an EIR discuss mitigation measures for significant environmental impacts, including "measures to reduce the wasteful, inefficient, and unnecessary consumption of energy. An energy analysis includes: (1) the project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, maintenance and/or removal; (2) the energy intensiveness of materials may be discussed; (3) the effects of the project on local and regional energy supplies and on requirements for additional capacity; (4) the effects of the project on peak and base period demands for electricity and other forms of energy; (5) the degree to which the project complies with existing energy standards; (6) the effects of the project on energy resources; (7) the project's projected transportation energy use requirements and its overall use of efficient transportation alternatives. (*Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256.) The City attempts to eliminate the importance of energy by wrongly claiming that energy was addressed in the air quality section of the FEIR. However, that section only address burning fossil fuel consumption's contribution to air quality and does not address energy impacts.
- The new traffic analysis concludes that level of service at the intersections of Elizabeth Lake Road/Palmdale Boulevard and 10th Street West/Tierra Subida Avenue would operate at

level of service E under future year (2024) conditions. However, the FEIR concluded the impact would be level of service D. This is a worse impact with less units.

- The City is requiring the developer pay fees to mitigate traffic impacts. However, paying fees alone is not a sufficient mitigation measure. There must be a correlation between the amount of fees and the impact, and certainty that the impacts will actually be fully mitigated by the infrastructure the fees pay for.

The circumstances under the Project will be undertaken have changed.

- Leona Valley has experienced a major increase in commuter based traffic in the past 10 years which was not contemplated or analyzed by the FEIR. Average Daily Trips in 1990 were estimated at 3000, as of 2020, they had more than doubled to 6500, even without any additional housing at Ritter Ranch. The City installed a new stop sign at the intersection of Elizabeth Lake Road and Godde Hill Road due to the increased traffic. DKS Associates admits that "...the increases in traffic on Elizabeth Lake Road may have doubled to 6,500 vehicles per day...." None of these changes and impacts have been analyzed.
- Since the Project was approved, the air quality rules and regulations have changed and the jurisdiction has changed from the SCAQMD to the AVAQMD. There is no analysis of the difference in rules and how that might impact the Project's effects. The basic modeling that determines the air quality impacts has been significantly revised. The latest air version is CalEEMod Version 2016.3.2. Not only has the EMFAC emissions changed, but the new models address air quality impacts that were not in previous models. For example, the "fugitive dust" category encompasses five general areas of fugitive dust emissions, including construction and demolition, materials handling, paved roads, unpaved roads, and storage piles. Information about travel behavior, trip lengths, etc. have been updated several times since the FEIR. Running the new models will likely result in new and more severe impacts. Further, in the last 30-years new air quality mitigation measures have been identified. For example to reduce GHG emissions The Greenhouse Gas Reduction Exchange (GHG Rx) was established which is a registry and information exchange for greenhouse gas emissions reduction credits designed specifically to benefit the state of California. There are also new energy mitigation measures such as: (1) the potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid-waste; (2) the potential for reducing peak energy demand; (3) alternate fuels (particularly renewable ones) or energy systems; and (4) energy conservation which could result from recycling efforts. These mitigation measures need to be assessed and required if applicable.
- There have been changes in the last 30-years to the California and federal species lists. The species of concern when the FEIR was certified are not current. The current lists are attached as Exhibits 2 and 3. These lists need to be compared to the assumptions in the FEIR and recent appropriately timed biological surveys to determine whether the Project will cause new or more severe impacts.
- Vehicle miles traveled ("VMT"), energy, and greenhouse gas emissions are new CEQA requirements that are not in the FEIR. The City now requires all new projects to analyze VMT and assess the GHG monitoring and impacts. There is no reason why this requirement should not be imposed upon this Project.

- This analysis was not conducted. See the attached CEQA guidelines, Exhibits 4-8.
- The Project baseline has indisputably changed.

3. The Memorandum of Consistency is not a recognized CEQA document and contains inaccurate information and conclusions.

The City relies on a memorandum of consistency prepared by T&B Planning, Inc. to avoid conducting an environmental analysis. However, CEQA does not recognize a memorandum of consistency. If the City is going to conduct this analysis then CEQA recognizes, and requires the preparation of an Initial Study if there is any analysis of the potential environmental impacts of a project to be studied. (CEQA Guidelines, § 15060, 15063, 15102, 15365.) It is through the Initial Study that the City determines the level environmental review. (CEQA Guidelines, § 15063.) The memorandum is less extensive than an Initial Study and is merely a token CEQA analysis. The memorandum fails to discuss all of the resource categories, reveal the source of the conclusions, the data relied upon, explain how the mitigation measures work. The City is utilizing this so-called memorandum as a way around complying with CEQA and preparing a subsequent EIR. T&B Planning, Inc.'s 26-page document and numerous technical studies is a testament to why a subsequent EIR is necessary and required.

The memorandum admittedly addresses potential impacts. The memo states that the “project incorporates applicable mitigation measures from the Ritter Ranch FEIR” and that the mitigation measures are included in the proposed Project’s conditions of approval. Thus, the assumption is made that the 30-year old mitigation measures would be sufficient to reduce the 30-year Project impacts to less than significant. This is false.

An EIR is required whenever the project may cause one or more potential environmental impacts. (Pub. Res. Code, §§ 21002.1, 21061; CEQA Guidelines, §§ 15080-15096, 15120-15132, 15160-15170.) This situation will be subject to the fair argument standard. Under that standard whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant or more severe impact an EIR is required. The testimony and letters of the Leona Valley Town Council and others living in the area are based upon substantiated opinion and facts that are known to the Town Council and public.

4. The City failed to conduct an independent analysis.

All environmental analysis must ultimately derive from the public agency. (See *Sundstrom & County of Mendocino* (1988) 202 Cal.App.3d 296.) The City relies entirely upon the response letters provided by the developer and does not conduct an independent review and analysis as required by CEQA. Further, the City cannot satisfy its obligations by simply considering environmental impacts. (See *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322, 326.) Rather, the City must recite that the City Council has made a full consideration of the FEIR and recognize the adverse environmental assessment of that FEIR and any overriding considerations, which was not done.

5. There are undisputed traffic impacts that are not addressed in the FEIR.

The developer does not dispute:

- that the geographic areas for study were restricted to eastbound traffic at the direction of the City (with the exception of 5%).
- The original 1990 TIA concluded that there would be a capacity deficiency west of the proposed project.
- In the event of a disaster such as a major earthquake or wildland fire, evacuation efforts would be severely impeded by the addition of thousands of new residents.
- The increases in traffic on Elizabeth Lake Road may have doubled to 6,500 vehicles per day.

These are clearly new circumstances that require a subsequent EIR.

6. The City is failing to protect Native American artifacts and sites.

Even though the City includes archaeological mitigation measures, the City states it does not intend to require additional archaeological monitoring. In 2005 and 2006, prehistoric artifacts and a prehistoric lithic production site was discovered, and it was determined that the site likely extends beyond the Phase IA development area. Further, the site is considered to be a CEQA-significant cultural resource. The attached Exhibits 15-17 which pertain to the site needs to be considered in an environmental analysis.

The City assumes in its conditions of approval that there will be grading activities extending beyond the Phase IA boundary area which is currently undisturbed. The City's actions are irresponsible and contrary to CEQA.

7. Greenhouse emissions were never analyzed.

The concept of the Project causing an increase in "greenhouse gas emissions" does not appear anywhere in the FEIR. The City relies on a court ruling that states greenhouse gases do not constitute new information of substantial importance (196 Cal.App.4th 515, 531-532 and 214 Cal.App.4th 1301, 1319-1320.) Neither of these cases support the City's failure to prepare a subsequent EIR that addresses greenhouse gas emission impacts caused by the Project.

The City further claims that because air quality emissions were addressed in the FEIR the Projects effect due to GHG emissions was readily available to the public. While criteria pollutants may have been addressed in the FEIR, GHGs are not criteria pollutants and require a separate analysis per the Office of Planning and Research Guidelines. Further, the City requires that all new developments assess GHG monitoring and impacts. There is no reason why this Project is being exempted from this City requirement.

8. The failure to include all parts of the Project constitutes unlawful piecemealing and Project splitting.

CEQA defines a project as the "whole of its actions" that may result in a direct or indirect physical change in the environment. (CEQA Guidelines, § 15378.) Project is given a broad interpretation in order to maximize the protection of the environment. (*McQueen v. Board of Directors of the Mid-peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143.) Under CEQA, the City must analyze the entire Project together.

According to the City the development agreement expired in June 2012. The conditions of approval require that a new agreement be executed between the City and applicant that replaces the development agreement, and that the Project shall be subject to all applicable provisions of the agreement. However, it is unknown what this agreement will require. This development agreement was a part of the original Ritter Ranch Specific Plan approval and should be a part of this approval. A number of the conditions of approval and mitigation measures rely on this development agreement. The potential environmental impacts associated with this part of the Project are not assessed with the rest of this Project. The proposed agreement is a reasonable foreseeable consequence of the Project (it is required) and the action will be significant in that it will likely change the scope or nature of the Project (since the Project will be subject to all applicable provisions of the agreement). This is classic unlawful piecemealing.

9. The conditions of approval and mitigation measures are woefully inadequate.

The City has identified a mitigation monitoring program with 117 mitigation measures that the Project must comply with to avoid significant environmental impacts. There is no condition of approval requiring compliance with all of these FEIR mitigation measures.

Mitigation measures have evolved in the last 30 years. New measures have been identified. See for example, Exhibits 9-12.

Further, the required mitigation is being unlawfully deferred. It is well established law, that an agency may not presume the success of mitigation measures that have not been formulated or adequately described at the time of project approval. (*Sundstrom & County of Mendocino* (1988) 202 Cal.App.3d 296.) Several of the conditions of approval require that mitigation be developed and approved at a later date, and leaves discretion whether and to what extent to mitigate to City staff. There will be no public process. For example, condition 26 requires that prior to development application approvals that focused surveys be conducted to establish the presence or absence of sensitive species, and if present applicable mitigation shall be implemented per Federal, State and local endangered species protection regulations as determined necessary by the City Planning Manager.

Finally, the City is required to consider the following types of mitigation by CEQA Guidelines, section 15370:

- Avoiding the impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments.

The City failed to consider these types of mitigation measures.

10. The City fails to consider the Project's impact on biological resources.

The Project site has recolonized with early succession native plant species. The visit by Glen Lukos Associates on November 17, 2021 to document current conditions was not conducted during the typical blooming period for most special-status plant species, and therefore there is a limitation relative to the detection and presence/absence of special status plants species could not be confirmed. As such, there is no new biological resource analysis that can be relied upon to determine new and more intense impacts caused by the Project.

11. The Project does not comply with current earthquakes protections.

With respect to Earthquake Faults, new faults were discovered by SunCal when they owned the property through their trenching project. This was not addressed in the FEIR because the condition was not known to exist. These new faults are required to be evaluated. There have also been changes to earthquake rules and zones - specifically as it relates to the Alquist-Priolo updated data. A simple overlay of the Phase 1 boundary on the Alquist-Priolo map shows homes are planned to be built right on top of faults - as well as the proposed school site.

Grading for the Project site occurred several years ago and did not comply with today's standards. RMA GeoScience evaluated the site conditions in 2021. Notably, the City did not report on whether the grading complied with today's standards. There are some undesirable conditions at the site which RMA proposed conditions to bring the grading up to the standard that existed at the time the grading was completed, but not to today's standards. T&B Planning states that any additional grading needs to be performed in accordance with the general earth work and grading specifications presented in Appendix A of the RMA letter, and subject to the mitigation measures in the FEIR. But, these mitigation measures are not part of the conditions of approval.

12. The City acknowledges that transmission lines may be hazardous to human health, but fails to consider the impacts and mitigation measures.

The City includes a mitigation measure that all homeowners and tenants must be advised of the potential health risks associated with power transmission lines, but there is no analysis that states the extent of this impact or the health risk. There are now methods for assessing risks such as that in Exhibit 13. Further, the Project will necessitate upgrades to the power capacity (voltage) of the power lines. The size of the towers has also increased. The proximity of the much taller towers to actual property lines means that if a tower falls over it will land on actual houses.

13. The Project's baseline has changed.

In order to determine whether the Project causes any potential environmental impacts a baseline of existing conditions is required. The existing environmental constitutes the baseline. (CEQA Guidelines, § 15125.) The prior approvals are not intact, and as such, a baseline that reflects today's existing conditions is required.

14. The Project's water supply is uncertain.

There was water agreement between the County of Los Angeles and the developer (SunCal) regarding water service for Ritter Ranch (Exhibit 14.) Is this "agreement" is transferable to the

new property owner? Without this agreement, how will an adequate water supply be provided to the development?

The City is required to interpret CEQA so “as to afford the fullest possible protection to the environment.” (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247.) The record to date does not demonstrate the City’s interest in environmental concerns. The Leona Valley Town Council urges the City Council to consider what is best for the environmental, and deny this Project.

15. The hazards associated with the Project have not been addressed.

The Project is located in a High Fire Hazard Severity Zone designation. The Project increases fire risks by providing fuel and ignition sources. Will the roadway system be sufficient for all persons and animals in the area to be evacuated? In 2019, Governor Newsom mandated that we, “Begin to deprioritize new development in areas of the most extreme fire risk. In turn, more urban and lower-risk regions in the state must prioritize increasing infill development and overall housing production.” The high wind velocity location combined with the High Fire Hazard Severity Zone is not addressed at all. The environmental impacts after a fire (ash, pollution, water runoff, mud & flood damage) were never addressed in the original FEIR. These fire-related impacts have a significant impact on public safety.

Very truly yours,

Alene M. Taber