

OLD EAST DAVIS NEIGHBORHOOD ASSOCIATION

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March 19, 2018

Members of the California Air Resources Board (CARB), in care of:
Rana McReynolds, Clerk of the Board
Rana.McReynolds@arb.ca.gov

cc: Lezlie Kimura Szeto, Manager, Sustainable Communities Policy and Planning Section,
CARB Lezlie.Kimura@arb.ca.gov
Ellen Peter, Chief Counsel, ellen.peter@arb.ca.gov

Dear Board Members:

I am the president of the Old East Davis Neighborhood Association (OEDNA). Our neighborhood is the oldest neighborhood in Davis and is a designated Historical Conservation District.

As you consider revisions to SB-375 targets, I bring your attention to our neighborhood's recent experience with a deeply flawed planning and approval process for an SB-375 Transportation Priority Project (TPP) proposed for Old East Davis.

The TPP known as the Trackside Center clearly violated City of Davis land use policies for mass, scale, and compatibility with nearby historical homes. Although OEDNA repeatedly objected to these violations in written comments submitted to the City of Davis, the Project was approved by the Davis City Council on November 14, 2017. OEDNA subsequently filed suit in Yolo Superior Court (Case Number PT17-2111).

We wish to convey the following points, summarized here, with additional details on subsequent pages:

1. SACOG found the proposed project consistent with their Sustainable Communities Strategy (SCS) TPP requirements, and therefore eligible for CEQA streamlining under SB-375. The City of Davis subsequently carried out streamlined review, despite the project's clear violations of local land use policies and mitigation measures, including Design Guidelines adopted by ordinance for the protection of historical resources.
2. The engagement by SACOG with Old East Davis about how regional plans will affect our neighborhood has been exceedingly poor.
3. The CARB Chief of the Transportation Planning Branch in charge of SB-375 implementation, Nicole Bourne, publicly advocated for the Trackside Center project, arguably engaging in incompatible activities.

It is our experience that CEQA streamlining under SB-375 can be used by Metropolitan Planning Organizations and lead agencies as a pretext for non-transparent planning processes,

to limit the effectiveness of community input and to create land use precedents without adequate vetting, circumventing local plans and planning processes.

As you review SB-375 implementation, we urge you to focus on the bill's primary intent: to reduce greenhouse gases through regional transportation plans. Further, we urge you to affirm that SB-375 must not be used to bypass local zoning and land use laws and plans, consequently harming existing communities.

1. SACOG found the proposed project consistent with their Sustainable Communities Strategy (SCS) TPP requirements, and therefore eligible for CEQA streamlining under SB-375. The City of Davis subsequently carried out streamlined review, despite the project's clear violations of local land use policies, including Design Guidelines adopted by ordinance for the protection of historical resources.

The text of SB 375 states: *"...Nothing in a sustainable communities strategy shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region.... Nothing in this section relieves a public or private entity or any person from compliance with any other local, state, or federal law."* (California Government Code Section 65080(K).) Thus it is specifically *not* the intent of SB-375 that streamlining be used to bypass local land use plans and policies.

The Trackside Center TPP violated local policies for mass, scale, and compatibility with nearby historical homes, stated in the City of Davis Municipal Code and the Davis Downtown and Traditional Residential Neighborhoods (DDTRN) Design Guidelines. These Design Guidelines, which also are codified by ordinance, qualify as "uniformly applicable development policies or standards" under CEQA streamlining provisions enacted by SB-226 (Public Resources Code 15183.3 (f) (7)). Therefore, compliance with Design Guidelines is recognized in CEQA law. The Trackside Center was unanimously found to be inconsistent with the DDTRN Design Guidelines by the City of Davis Historical Resources Management Commission, at a December 12, 2016 public hearing. And, the City of Davis Planning Commission unanimously failed the project's design review at an August 23, 2017 public hearing.

The City of Davis planning staff carried out a streamlined review of the Trackside Center TPP, despite these findings of the project's inconsistencies with local plans, and the project was eventually approved by the City Council. OEDNA's lawsuit against the City of Davis brings four causes of action, including violations of CEQA and city land use laws and plans.

2. The engagement by SACOG with Old East Davis about how regional plans will affect our neighborhood has been exceedingly poor.

Our neighborhood learned, after SACOG's 2012 SCS had been adopted, that much of Old East Davis is contained in the Davis Corridor/Center Community, defined as the area within a half-mile radius of the Davis AMTRAK Station. Property owners were not notified that their properties were within the proposed planning area nor apprised of the potential impact focused on our neighborhood of the plan.

In a letter to former SACOG CEO Mike McKeever, dated November 2, 2015, our neighborhood requested a meeting, seeking information about how SACOG's regional plans articulate with City of Davis land use policies, especially those applicable to Old East Davis. We asked how the

City of Davis works with SACOG to set growth targets, and stated our desire to be involved in setting targets for the 2016 SCS update. Our letter was not answered.

During this time, according to documents made public as part of the Trackside Center planning process, SACOG and the City of Davis were determining the project's eligibility for CEQA streamlining as a TPP. Despite our repeated requests for information from city planners about their intentions for the project's review, we learned that the project had been deemed eligible for streamlining under SB-375 only when the project's Sustainable Communities Environmental Assessment Initial Study was released on July 11, 2017.

Both SACOG and the City of Davis failed to engage openly and transparently with Old East Davis about their intentions for our neighborhood and changes to plans and ordinances that likely would occur as a result of the plan.

3. The CARB Chief of the Transportation Planning Branch in charge of SB-375 implementation, Nicole Bourne, publicly advocated for the Trackside Center project, arguably engaging in incompatible activities.

In a December 13, 2017 letter to Richard Corey and Ellen Peter (CARB Executive Officer and Chief Counsel, respectively) OEDNA described Nicole Bourne's public advocacy for the Trackside Center proposal and asked whether this advocacy is incompatible with her responsibilities as the CARB manager in charge of SB-375 implementation. It is our impression that Branch Chief Bourne failed to demonstrate appropriate neutrality and impartiality with regard to the project, in light of her role as a regulator, and that political goals other than reducing GHG may be involved.

On January 31, 2018, Ellen Peter responded to our letter, stating that in advocating for the Trackside Center, Nicole Bourne acted in her private capacity and not on behalf of CARB. Ms. Peter based her response on the premise that "...Local approval determinations on projects such as Trackside Center are not within the scope of CARB's SB-375 administrative responsibilities. CARB has no local development project planning approval responsibility pursuant to SB-375."

We find this response unsatisfactory and flawed by circular reasoning. CARB, and Nicole Bourne in her particular role, establishes a target for SACOG (and other MPOs), and subsequently reviews and approves SACOG's SCS, which must demonstrate how they will meet the target. Old East Davis has been included as a designated Corridor/Center community in SACOG's SCS since 2012. The Trackside Center is the first project proposed in our neighborhood under SACOG's SCS, and sets a precedent for land use in Old East Davis on the eve of Davis' General Plan Update. CARB and Nicole Bourne will review SACOG's progress in meeting its SCS target (under SB-150), yet Ms. Peter fails to recognize the regulatory closed loop constituted by Bourne's advocacy followed by her review.

We respectfully request that the Board consider the following sequence of actions: the setting of a regional target, review and approval of an SCS plan to meet the regional target, advocacy for a precedent-setting project within the SCS, SCS progress review (under SB-150) and finally establishment of an updated regional target. We claim that this constitutes a potential violation of Government Code Section 19990(e), which states: "Performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by the officer or employee."

Ms. Bourne made no disclaimer about her role with CARB in her public statements advocating the Trackside Center project to the City Council nor in her co-authorship of the OpEd printed in the Davis Enterprise before the hearing, however, her position and authority with CARB is well known in the community, particularly to Council members.

We expect state officers and employees to maintain unquestionable neutrality and impartiality with regard to their regulatory duties. We believe that a State official who is responsible to recommend and enforce standards at the state level as implemented by a regional entity composed of local officials has direct and indirect control and influence over local decisions to implement such standards.

As a final point, the Davis City Council held a public hearing on the Lincoln 40 project, which had been approved by SACOG as a TPP. At the applicant's request, an EIR was prepared for the project. At the public hearing, City staff stated that an EIR was prepared, but because it was approved as a TPP, "no CEQA review was required". Clearly City staff, and now the Council have a misunderstanding of the difference between "streamlining" and CEQA review requirements.

In summary, the OEDNA respectfully requests that as you consider revisions to SB-375 targets, the CARB should review the process by which these targets are set and include meaningful public involvement. Further, we request that you prepare and disseminate clearer educational materials to local jurisdictions about the specific streamlining allowed, and not exempted, under SB 375. Finally, we request that you review the roles and ethical boundaries of officials that are implementing your programs and standards.

Sincerely,

A handwritten signature in cursive script, reading "Rhonda J. Reed".

Rhonda Reed, President
Old East Davis Neighborhood Association