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Marilou R. Ayupan, P.E.  
Interim Public Works Director  
Public Works Department  
City of Union City  
34009 Alvarado-Niles Road  
Union City, CA 94587

**Re: *Quarry Lakes Parkway – CEQA Opinion***

Dear Ms. Ayupan:

You requested that our office provide a legal opinion on whether further environmental review is required for the Quarry Lakes Parkway (QLP) Project under CEQA’s supplemental environmental review standards. Our legal opinion is that no further review under CEQA is required to implement the Project. Our opinion is based on CEQA law and the information presented in the Quarry Lakes Parkway Transportation Memorandum prepared by Kittelson & Associates dated June 2020 and the Transportation Memorandum prepared by ICF dated June 2020 (collectively, “Transportation Memoranda”).

CEQA Principles on Supplemental Environmental Review

Public Resources Code section 21166 and CEQA Guidelines section 15162 and 15163 govern supplemental review and prohibit further environmental review except in very limited circumstances. When an EIR has already been prepared for a project, “*no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless*” there are substantial changes to the project, changed circumstances or new information which would result in new or substantially more severe significant impacts than disclosed in the certified EIR. The purpose of significantly restricting supplemental review is that, once an EIR is certified, CEQA’s rules of finality and certainty come into effect to allow projects to move forward without repeating the lengthy and expensive environmental review process. “These limitations are designed to balance CEQA’s central purpose of promoting consideration of the environmental consequences of public decisions with interests in finality and efficiency.” (*Friends of College of San Mateo Gardens v. v. San Mateo County Community College District* (2016) 1Cal.5th 937, 959.) Furthermore, a public agency may require a subsequent EIR only when the agency grants a discretionary approval. Once all discretionary approvals have been obtained, no agency has jurisdiction to require a further EIR. (*Cucamongans United for Reasonable Expansion v.*

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*City of Rancho Cucamonga* (2000) 82 Cal.App.4th 473, 479; *Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1597.)

Application of CEQA Principles to Quarry Lake Parkway (QLP)

An environmental impact report (EIR) was prepared for the East-West Corridor (EWC) project by the former Alameda County Transportation Improvement Authority (ACTIA) and certified in 2009 (EWC EIR). The EWC project is now known as the QLP project. None of the standards for CEQA supplemental review are triggered by the QLP project. First, there is no discretionary decision by the City required to implement the project. Since there is no discretionary decision, CEQA does not apply. In addition, based on the information presented in the Transportation Memoranda, the standards for supplemental review are not triggered.

There are no substantial changes to the project from that analyzed in the EWC EIR. The Project is in the same general footprint and accommodates the uses (vehicles, bicycles and pedestrians). There are no new or substantially more severe significant impacts from those disclosed and analyzed in the EWC EIR. The Transportation Memoranda show that the QLP project will not result in significant impacts on safety, vehicle delay or VMT. The Project would improve safety for vehicles, bicyclists and pedestrians by providing an alternative route with reduced collision risk from existing conditions. The Project will result in an overall reduction in vehicle hours traveled (VHT) and an associated reduction in vehicle hours of delay (VHD) compared to 2040 forecasts without the QLP. VMT would be slightly reduced compared to 2040 without project conditions. The QLP project also is consistent with local and regional transportation plans. It will provide benefits of accommodating planned transit-oriented, infill growth, promoting multi-modal transportation including transit, bicycles and pedestrian, improving transportation system connectivity (especially to transit) and providing system redundancy. There also is no “substantial” new information or changed circumstances that would result in new or substantially more severe significant impacts. The Kittelson Transportation Memorandum describes minor differences between the current growth forecasts for 2040 and those used in the EIR for 2035. These minor differences do not meet the “substantial” standard.

In conclusion, it is our legal opinion that supplemental environmental review under CEQA is not required for the City’s implementation of the approved QLP (formerly EWC) project.

Sincerely,

  
Timothy D. Cremin

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