



December 18, 2023

Merced City Planning Commission
c/o Scott McBride, Commission Secretary
City Clerk, City of Merced
678 18th Street
Merced, CA

Issues re: Agenda Item E.2 | VST Development Plan

The VST development plan has long been a priority development project for the City and the County. Almost 30 years ago, the community influenced the University of California Regents to locate the 10th Campus of the University of California in Merced, in large part because of the “Merced Promise” that a university community would be planned along with the university so that this new world class university could be supported by an integrated, planned “worldclass” support area. The VST property is that support area.

Between 1995 and 2005, the State, County and City developed a plan for the UCP area and UC Merced opened for enrollment in Fall 2005. UC Merced’s enrollment is now over 9,100 undergraduate and graduate students. In 2012 the City of Merced adopted the Merced Vision 2030 General Plan which established the development and annexation of the VST property as a priority development area to support UC Merced.

While there has been no real construction on the VST property to date, it has been preparing for development over the last 20 years including planning for or providing for adequate utilities, and completing mitigation measures under the 2009 EIR, including state and federal biological resources regulatory compliance and permits. Most recently, VST has led the update to the University Community Plan, conducted detailed sewer and water studies, and developed a Specific Plan through a collaborative effort with the County, City Council, City staff and UC Merced. This effort benefited from dozens of public presentations and community meetings, and the input from those meetings has informed the plan. The project is now ready to produce the housing, shopping and service areas, amenities, public services and utilities, and the transportation improvements necessary to support the university. The Planning Commission’s action on this project is one of the last essential steps to fulfilling the “Merced Promise” that was made 30 years ago.

The environmental impact report provides a thorough evaluation of the project’s environmental consequences and concludes almost without exception that the project before you is environmentally superior compared to the UCP that was adopted in 2005, and which was the basis for support in the City’s Vision 2030 General Plan. It has also been shown that the project will be a fiscal asset to the City, with all of the onsite amenities and facilities maintained by Specific Plan properties through a Community Facilities District, Master Homeowners Association and other financing mechanisms. According to the calculations in the Specific Plan, the net benefit to the City is estimated to be \$3.8 million per year. The project will also deliver a key portion of Campus Parkway, provide a site for a fire station and police station that has been identified in the Public Services and Safety Elements of the General Plan, and other public utilities and services.

There are numerous features and benefits of the project. Rather than go through the project's other features and benefits, we would like to highlight several issues that are in response to comments that may come up the public hearing, or issues that have come up at other hearings. These issues include sewer collection capacity, housing, parks and recreation, and environmental justice.

Sewer Collection Capacity

The City is currently updating its Sewer Collection Master Plan. As a key technical study, VST conducted a detailed review of existing sewer flows, monitored sewer flows from Bellevue Ranch to calibrate flows from North Merced, and made projections of future sewer flows using the City's computer model. It was observed that many of the assumptions about future sewer flows made in 2010 did not occur, and flows from UC Merced were less than one-fourth of that projected in the last master plan. The model was re-calibrated using documented flows, and capacity was reserved for approved development projects, all uses and users in the North Merced Sewer Assessment District (NMSAD), and full buildout of UC Merced. The third-party technical study concluded that "The model results from the Existing, Near-Term, and Near-Term with VST scenarios indicated all wastewater collection system trunk lines operate within city-established capacity criteria." The City's recent review of the sewer collection system agrees with these conclusions.

The City has identified several capacity enhancement and repair projects in the current Capital Improvement Plan including modification to the Bellevue Ranch pump station and R Street force main, replacement of the 48" West Street sewer interceptor with a 60" sewer starting at V Street and West Ave, and construction of a new 48-inch parallel sewer and creek crossing starting at Bear Creek Court and ending at V Street and West Avenue and terminating at the City Wastewater Treatment Plant. These improvements have been determined to provide additional sewer system capacity of 34,600 equivalent dwelling units (EDU), including 9,000 EDUs for "Pre-Annexation Areas", including VST, above and beyond the capacity needed for approved development projects and properties in the NMSAD. These improvements are expected to be completed by 2025. The City determined that these improvements will provide adequate sewer capacity for the Project. Upon the start of Phase 1E of the project and prior to commencing construction of Phase 2 of the VST Project, VST is committed to evaluate the capacity of the sewer collection and construct, if the City has not constructed by that date, a 30" supplemental bypass sewer trunk line within the V Street right of way between 16th Street and 6th Street.

The updated Sewer Collection System Master Plan is being developed with the above conditions and conclusions.

Housing

The University Community Plan directs that the VST project is to provide a range of housing types are appropriate to support the university's students and staff. Consequently, the project's housing products and choices are heavily skewed toward apartments, student housing, mixed use housing, condominiums, and small-lot workforce housing, as compared to more typical larger lot single family homes. These housing types represent 77 percent of the housing that is to be delivered in Phase 1 of the project which is expected to be built out over the term of the new city housing element. And, overall, at buildout, these housing types represent over two-thirds of the housing in the project. Because of its environmental clearances and permits, the project can provide an immediate injection of over 1,500 higher density dwelling units to address the community's critical shortage of apartments, student housing and condominiums.

It is also noteworthy that upon annexation, Phase 1 of the VST project will supply enough units that are zoned at 20 units to the acre or more (the density that HCD recognizes as suitable for housing for Lower and Very Low Income families) to cover over 40 percent of the community’s need for Very Low and Lower Income units over the next eight years. With the adoption of the Specific Plan and annexation, this inventory is planned and ready to go. As shown below there are over 1,800 units that are planned for densities suitable for Very Low- and Low-income families, compared to the RHNA allocation of 4,283 units. The project is also providing more inclusionary housing than required by the City’s recently adopted RHNA Housing Production Policy, with 325 units provide compared to the 140 required by the policy. These commitments are memorialized in the project’s Specific Plan and Development Agreement.

VST Phase 1 Housing Production Statistics

	Very Low	Low	Moderate	Above Moderate	Total
Phase 1 City Inclusionary Housing Policy Requirement	58	40	42		140
Phase 1 Project Inclusionary Housing (Onsite and/or Fee)	100	175	50		325
Phase 1 Project Housing Supply	125	1,736	329	606	2,796
City 2023 RHNA Requirement (2023-2032)	2,543	1,742	1,838	4,394	10,517
City 2016 RHNA Requirements (2015-2023)	918	574	540	1,044	3,076
Phase 1 Project Supply of 2023 RHNA Requirement	4.9%	99.7%	17.9%	13.8%	
Phase 1 Project Supply of 2016 RHNA Requirement	13.6%	302.4%	60.9%	58.0%	

Parks and Recreation

The project diverges from the City’s past practices in a number of ways. First, it provides more parks and recreation facilities and provides them within walking distance of each dwelling unit. As noted in the VST Specific Plan, there is a total of 73.2 acres of public and private park space, 20 acres of space for active recreation in the various Linear Parks, and 4.8 acres of active park areas in the various schools, for a total of 98 acres of parks. This provides parks at a rate of 8.8 acres per 1,000 residents, 75% higher than the 5.0 acres per 1,000 resident rate prescribed by the City of Merced. While the current City standard provides park facilities and features in centralized neighborhood and community parks, the VST Specific Plan provides the same level of neighborhood and community parks facilities, plus mini-parks, and pocket parks and community gardens, which are be located no more than 500 feet from any individual residential unit. The project has 49.8 acres of larger neighborhood and community parks in the project, excluding the linear parks, pocket parks, mini-parks, and school park facilities, which provides these facilities at 4.91 acres per 1,000 population.

These recreational facilities are provided incrementally as demand occurs and are not deferred in any way. The cumulative park acreage at any one phase does not drop significantly below 5 acres per 1,000, with cumulative park acres ranging from 2.82 acres per 1,000 population in Phase 1A to 6.57 acres per 1,000 by the completion of Phase 1E. The main community park in Phase 1 occurs after approximately 75% of the Phase 1 buildout and is located at the geographic center of Phase 1. Parks and recreational are provided in a manner and location that are greatest use to the residents rather than in a way this is the least maintenance costs.

Second, the project provides all of the park facilities and features required by the City of Merced’s 2004 Park and Open Space Master Plan, and more. None of the facilities required by City policy are assumed to be provided by another development, or by the City. As noted in the table below,

parks and recreation improvements are provided at levels at or exceeding City requirements. By comparison, if the VST parks and recreation facilities were provided by current City standards, the neighborhood park (and no other park facilities) would occur in Phase 1D, about 10 years into the project, and at 75% buildout of Phase 1, with no park facilities provided in development Phases 1A, 1B and 1C. There would also be fewer recreational features, with no tennis courts, no basketball courts, no community gardens, no pickleball courts, no community recreation center, and no swimming pool.

VST Specific Plan Parks Facilities

Facility	Units	City Standard/1,000 per Master Plan Table 5.4	Indicated Need per Master Plan	Specific Plan Provided
Adult Softball Fields	Fields	0.088	0.90	1.00
Youth Baseball Fields	Fields	0.345	3.50	4.00
Soccer Fields	Fields	0.286	2.90	3.00
Indoor Gym	Courts	0.074	0.75	1.00
Pool Space	Square Feet	151.000	1,533.65	3,750.00
Pathways and Trails	Miles	0.200	2.03	5.00
Tennis Courts	Courts	-	-	6.00
Basketball	Courts	-	-	8.00
Community Gardens	Acres	-	-	2.50
Pickleball	Courts	-	-	4.00

Finally, funding the construction and maintenance for all of the parks facilities are provided by Specific Plan residents and property owners. There is no reliance on City grants, the General Fund, or parks fees from other areas of the City. The Community Recreation facility will be supported by the on-site Master Homeowners Association.

Environmental Justice and Equity

It is hard to imagine a project with more community benefits and more community “equity” than one like VST that returns all of its net proceeds to scholarships and to support youth. VST’s efforts to date with the four high schools in Merced has resulted in the award of over \$6,400,000 in scholarships to 3,947 students who “...demonstrate academic performance and/or potential, who have the respect and support of fellow students and teachers, who have exhibited good citizenship during school and/or personal service to the community in which they live, and who clearly need financial support in order to attain objectives through higher education.” Of these students, 35.7 percent (120) were from South Merced (east of Thornton, south of 99, north of Mission/Dickenson Ferry) vs. South Merced’s 23.7% of total area 2020 population. Nineteen percent (32 of 168) of the scholarship recipients were from South Merced. Seventy-five percent of the recipients of the scholarship award are self-identified as a non-white ethnic category, virtually identical to the ethnic makeup of the County; 21 percent of the recipients of the scholarship award self-identified as Asian; and, 31.2 percent of the recipients of the scholarship award self-identified as Hispanic.

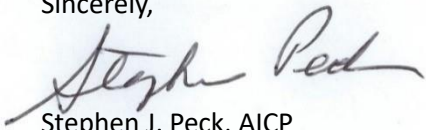
Nevertheless, comments have been made about the social and economic inequities of the project. Reference is made to two letters to the County Planning Commission and the Merced County Board of Supervisors that refute claims that the VST project promotes and exacerbates economic and environmental disparities between North Merced and South Merced. In fact, the project has been shown to

conform to the Attorney General's guidelines for communities to promote environmental justice in development projects. The project reduces pollution by reducing VMT and incorporating features that minimize GHG, it promotes the equitable distribution of public facilities, promotes food access in the project, promotes safe and sanitary dwelling units, and promotes physical activity.

Our correspondence (attached) has also conclusively demonstrated that there is no disparity in food access between North Merced and South Merced and that the project does not create one; that the project does not create an inadequate distribution of public facilities; that there is not an inadequate distribution of parks, public safety facilities, roads or transit; that there is no evidence to suggest that South Merced is without basic city water, stormwater drainage, fire protection services, and that the VST project would create an inequitable distribution. It also shows that South Merced has received public and private investment that is actually disproportionately higher than its geographic or population share of the City. According to City reports on its Capital Improvement Program spending, South Merced (City Council Districts No. 1 and No. 2) has received \$19.5 million (49.9%) of the \$39 million in CIP spending over the past five years. South Merced represents approximately 22% of the City's population and one-fourth of its land area, so the commitment of CIP expenditures are twice as high as elsewhere in the community. The City and other public entities are also investing more than \$10 million (\$8 million from the City of Merced) in the development of a major sports facility at "CP42," a 42-acre sports park on Mission west of Highway 99 in South Merced. Over the past 20 years since the adoption of the South Merced Master Plan, there has been new private investment in excess of \$500 million, including 450 acres (1,850 units) of new residences, 30 acres of new schools and 20 acres of new commercial buildings, in comparison to the 2,250 acres of development overall in the community. While South Merced represents approximately 22% of the population and 26% of the City's land area, it has received 20% of the new private investment in the community, as measured by developed land areas. Therefore, there is no evidence to suggest that South Merced is without any private investment, that investments have been steered away from South Merced, or that there is a lack of public investment. In fact, public investment has been twice the rate as the rest of the community and the rate of private investment has been at a rate comparable to its vacant geographic land area. Over that same period, the VST property has received no public investment and no private investment, despite having been planned for development more than 30 years ago.

Finally, thank you to the City staff for their diligence and commitment. We respectfully request that the commission recommend approval of environmental review #23-44, annexation and pre-zoning #23-03, General Plan amendment #23-04, and establishment of Planned Development #80 to the Merced City Council.

Sincerely,



Stephen J. Peck, AICP
VST Project Manager and Project Planner

Attachments: VST Project Informational Handout
Buchalter Letter to County PC re: Leadership Counsel Comments (9/5/2023)
Buchalter Letter to County BOS re: AG's Guidance on Environmental Justice (10/9/2023)



VST Project Status Report City of Merced Planning Commission

Virginia Smith Charitable Scholarship Trust Keeping the “Merced Promise”...for the Children of Merced County

Where Have We Been?

This project started in the mid-1980’s when representatives from VST met with representatives from the UC Regents office to discuss the location of the next UC Campus. Those discussions were successfully finalized in 1995 as the result of a Countywide effort and VST’s donation of 3,000 acres of land to the UC. The community and VST promised that the remaining land would be planned and developed, with the proceeds from the sale of that land used to provide scholarships for County students. Last year AB 3312 went into effect, and this year VST completed the necessary Specific Plan, amendment of the UCP, environmental documents and other tasks to allow development.

Where Are We and What’s Next?

After almost 30 years of planning and support, VST is about to complete one of the most critical and significant steps to expand the scholarship program—getting land use entitlements to enable it to sell the property for development and to expand the scholarship endowment 30 fold, and to all eligible high school graduates in the County. A Specific Plan and UCP Amendment have been vetted with County and City staff, and EIR is now in public review, and public hearings are scheduled with the County Planning Commission in mid-June and mid-July, and the project is scheduled for review by the Board in August. The City Council will then consider the Specific Plan and annexation, with final annexation approval by LAFCo in December.

What is the Current Status and Plan for the Future?

The Specific Plan includes 3,860 houses of all types, and 850,000 square feet of village, neighborhood and community retail uses. Being faithful to the original spirit of the UCP that was adopted in 2004, the VST Specific Plan, complies with City affordable housing requirements, provides housing tailored to UC demographics to attract and retain staff, provides neighborhood parks a community sports park and community hiking trails has a site for an onsite Fire Station and Police substation; and, generates less traffic, significantly less water use, complies with MIUGSA water allowances has fewer greenhouse gas emissions, and is the is the environmentally superior alternative.



Over the past five decades VST has awarded over \$6,400,000 in grants to 4,000 students. These awards are based on the qualities of each student to be a “Virginia Smith Scholar”. A Virginia Smith Scholar demonstrates academic potential, the respect and support of fellow students and teachers, has earned recognition through good citizenship during school and/or personal service to the community in which they live, and clearly needs financial support in order to attain objectives through higher education. In order to be eligible, students must have attended a public high school in the city of Merced for a minimum of three years, lived in Merced County during the period of attendance, and have a cumulative high school GPA of 3.0 or more. Information on the scholarship recipients:

- Over the past 50 years, 4,000 students have received scholarships.
- In 2023, 168 students received scholarships.
- In 2023, all 336 students from Merced high schools who completed their College A-G requirement received a \$500 grant.
- 75 percent of the recipients of the scholarship award are self-identified as a non-white ethnic category.
- 21 percent of the recipients of the scholarship award self-identify as Asian.
- 31.2 percent of the recipients of the scholarship award self-identify as Hispanic.
- 35.7 percent (120) of the scholarship and grant recipients in 2023 were from South Merced (east of Thornton, south of 99, north of Mission/Dickenson Ferry) vs. South Merced’s 23.7% of total area 2020 population.
- The average scholarship amount over the last three years is \$2,650 per year per recipient per year.

Project Benefits and Features—By the Numbers

- 100% percent of the net proceeds from the land sale will be used to expand the scholarship endowment by more than \$125 million, and would result in an increase of the annual scholarships from \$450,000 per year to \$8,000,000. All high schools in the County would be eligible. All students in the County meeting College A-G requirements would now be eligible, an increase of over 900 students per year to a total of over 1,200 students per year.
- The project would result 2,850 affordable and workforce housing units (x-low to moderate) to support employment at the UC and in the community, 500 of which are proposed to be deed restricted for extremely low, very low, low and moderate income affordable housing units. The affordable housing program provides more units than required by the City of Merced, and provides greater affordability by disproportionately skewing the units to the lower income groups.
- The project includes a Community Foundation that will generate \$500,000 a year at buildout to support countywide outdoor science education at Green Meadows, visual and performing arts, Science, Technology, Engineering and Mathematics (STEM) Education, college, technical and career education, and charter/magnet school programs.
- Shift of 5,500 cars a day (from the current total of 6,400) from Lake Road to Campus Parkway.
- Result in LESS than half the current onsite water use; beneficial impact on surrounding private wells. Net water use at buildout less than 2 AF/Acre per year.



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September 5, 2023

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VIA E-MAIL (PLANNING@COUNTYOFMERCED.COM)

Chairman Mark Erreca and Members of the
Merced County Planning Commission
2222 M Street
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Re: Responses to the Leadership Counsel Comments on the Project

Dear Chairman Erreca and Members of the Planning Commission:

Buchalter, A Professional Corporation (“Buchalter”) represents the Virginia Smith Trust (“VST”) as land use counsel for the development of the VST Property located in Merced County. I understand that on August 23, 2023, a spokesperson for the Leadership Counsel offered comments about my client’s proposed development project on the VST Property (“VST Project”) as the Merced County Planning Commission continued the item to the September 12, 2023 Planning Commission meeting. The purpose of this letter is to address the Leadership Counsel’s inaccurate and misleading comments about the VST Project that it already raised on the VST Project Draft Subsequent Environmental Impact Report (“SEIR”), and Merced County dismissed as not supported by substantial evidence. That is the case once again.

VST recognizes the value of informed and constructive input during the planning and environmental processes. Over the last five years, VST has presented the VST Project to dozens of community organizations, the City, the County, and to the Leadership Counsel, in particular. As a result of its community outreach efforts, VST has integrated a number of project features that address community comments and environmental issues. The VST respects and values the role that the community plays in commenting on significant projects when those comments are based on legitimate issues and facts. Unfortunately, that is not the case once again with the Leadership Counsel’s comments.

buchalter.com

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VST Project Background

The VST has engaged in planning the development of its property since the County first undertook the planning process for the University Community Plan (“UCP”) in 2001 as the State of California planned the development of the tenth University of California campus in Merced County. The VST Property has been planned for development for more than 20 years as an integrated community with the UC Merced Campus based on the State of California’s direction to locate the campus in Merced. The integrated development of the VST Property and the University Community Plan area was intended to avoid possible negative effects that affected the development of other campuses in the state where such coordinated planning did not occur. To that end, Merced County adopted the University Community Plan in 2001; and, while UC Merced has continued to grow in enrollment and significance in the community and the State, no supporting development has occurred in the University Community Plan area. The VST Project is the first real step in completing the promised support and planned development for the area.

Following the County’s adoption the University Community Plan, the City of Merced conducted a broad-based community led planning process that resulted in the adoption of a development plan for South Merced in 2007. That plan has resulted in the commitment of hundreds of millions of dollars of public and private investment in South Merced, even while the University Community Plan area has languished and remains undeveloped. We appreciate that the Leadership Counsel would like even more resources directed to South Merced, but to suggest that *no* resources have been directed to South Merced, and that South Merced is somehow lacking in water supply, sanitary sewer service, accessibility to basic commercial goods and services like grocery stores, schools and transit is misleading, unsubstantiated, and incorrect for the reasons further provided below. Moreover, there is no relationship between the City of Merced’s efforts to address conditions throughout the City and VST’s proposed development plans for its Property in a different location in Merced County.

Legal Standards

The California Environmental Quality Act (Pub. Resources Code §§ 21000 *et seq.*) (“CEQA”) requires that an EIR include adequate information to ensure informed decisions are made about a project. CEQA further requires that the lead agency evaluate whether or not a proposed project will result in a significant environmental impact based on substantial evidence. Under Public Resources Code Section 21082.2(c), substantial evidence includes facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. Argument, speculation, unsubstantiated opinion are not substantial evidence. The substantial evidence standard of review applies to disagreements concerning the methodology used for studying an impact, and the reliability or accuracy of the data upon which the EIR relied. Even when

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commenters suggest that different conclusions should be reached, or different methods of gathering and compiling statistics could have been used, that does not constitute substantial evidence. The issue is not whether other methods might have been used, “but whether the agency relied on evidence that a reasonable mind might accept as sufficient to support the conclusion reached in the EIR.” *North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. Of Directors*, 216 Cal.App.4th 614, 615 (2013). Moreover, when an agency prepares an EIR, the issue is whether substantial evidence supports the agency’s conclusions, not whether others might disagree with those conclusions (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. Of Directors*, 216 Cal.App.4th 614, 624 (2013)). Substantial evidence similarly is required to support the County’s decision to approve or deny a project.

The Leadership Counsel made several unsubstantiated claims that the VST Project should be rejected because the County did not evaluate a host of impacts to South Merced in the VST Project SEIR. The County rejected those unsupported comments in the Final SEIR. For the same reasons set forth in the Final SEIR and the additional reasons detailed below, the commenters’ unsubstantiated claims also do not support the denial of the VST Project.

There is no evidence to suggest that South Merced is without basic city water and wastewater services, stormwater drainage, fire protection or transportation services.

Most of South Merced is covered by the South Merced Specific Plan and is within the City of Merced, with some areas in unincorporated Merced County. The City provides water and wastewater services to existing City areas and water services to areas in the County adjacent to the City through Out of Boundary Service Agreements approved by the Merced County Local Agency Formation Commission (“LAFCo”). In 1989, the City and the County cooperated in the delivery of water services to much of the unincorporated area of South Merced as part of the Cone-Harrison Improvement Project. The City has continued providing domestic water services to these areas for over 30 years. There are no reported water quality issues associated with City water and sewer services. The City provides services to its residents regardless of their location within the incorporated city limits.

Several fire stations provide fire protection services to South Merced within the unincorporated and incorporated areas within or adjacent to the City’s Sphere of Influence. Merced County Fire Station No. 81 at Martin Luther King Way and 8th Street in South Merced, Merced Fire Station No. 51 on 16th Street East of G Street, and Merced City Fire Station No. 52 at the Merced Airport, and Merced City Fire Station 54 provide fire protection services as noted in the City of Merced Fire Department Response and Coverage Maps that demonstrate that all of South Merced complies with the first-in, 4-minute travel time response requirements, and the 8-

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minute travel time for back-up response.¹ Because of this overlapping and redundant coverage, South Merced enjoys better fire response coverage than many areas of North Merced. With respect to the provision of police services, a police substation is located at Canal and 11th Streets in South Merced. By contrast, North Merced is not served by a separate police substation (unless and until the VST Project develops). An additional fire station is planned at MLK and Vasser Street in conjunction with future development. According to the City of Merced Municipal Services Review, South Merced is adequately served by water, wastewater, stormwater and fire and police services.

Therefore, there is no evidence that South Merced is without basic utilities and urban services, including fire protection and transportation. Moreover, the development of the VST Specific Plan Project will not hinder the ability for the County or the City to provide these services to South Merced.

There is no evidence to suggest that South Merced is without grocery stores.

Contrary to the Leadership Counsel's comments that South Merced does not have access to grocery stores, there are seven major grocery stores, including Costco Wholesale, Food Center, Save More Market, Rancho San Miguel Market, Save Mart, Grocery Outlet, Best Buy Market that serve all or part of South Merced. In addition, there are 12 smaller grocery stores that are located within or immediately adjacent to South Merced. The City has planned two additional neighborhood commercial centers to serve future development. The average service population in Merced for a full line grocery store ranges from 10,000 to 15,000 persons based on Merced's current ratio of residents to full line grocery stores. South Merced has one full service grocery store available per 3,500 persons which is more than twice the density of grocery stores available to other residents in Merced. Moreover, the other major grocery stores in the community at Olive/G Street such as Raley's, FoodMax, and Food4Less are centrally located in the community and are equidistant from and equally accessible to the northern most portions of North Merced (Bellevue Road), and the southernmost portions of South Merced (Mission/Dickenson Ferry Road). These central grocery stores are accessible with regularly scheduled transit services.

In addition to the availability of neighborhood and convenience commercial services, South Merced has access to regional retail facilities currently under development at Campus Parkway/Highway 99, community commercial facilities and services in Downtown Merced.

Therefore, there is no evidence that South Merced is without grocery stores, nor is there evidence that it is underserved in any way. Moreover, the development of the VST Specific Plan

¹ This does not include response times from County Fire Department 81 on Martin Luther King Way.

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Project will not hinder any commercial services that are currently provided in or planned in South Merced as part of the South Merced Master Plan.

There is no evidence to suggest that North Merced receives inequitable public and private investment.

Over the past decade, the City and County have made substantial public and private investment in South Merced. These improvements have included the commitment of millions of dollars in 1989 of County Community Development Block Grant (“CDBG”) and Clean Water Act funds to provide water services to virtually all unincorporated areas as part of the Cone-Harrison Improvement Project. According to City reports on its Capital Improvement Program spending, South Merced (City Council Districts No. 1 and No. 2) has received \$19.5 million (49.9%) of the \$39 million in CIP spending over the past five years. South Merced represents approximately 22% of the City’s population and one-fourth of its land area, so the commitment of CIP expenditures are twice as high as elsewhere in the community. The City and other public entities are also investing more than \$10 million (\$8 million from the City of Merced) in the development of a major sports facility at “CP42,” a 42-acre sports park on Mission west of Highway 99 in South Merced.

Over the past 20 years since the adoption South Merced Master Plan, there has been new private commercial development and over 1,850 new residential units resulting in new private investment in excess of \$500 million, including 450 acres (1,850 units) of new residences, 30 acres of new schools and 20 acres of new commercial buildings, in comparison to the 2,250 acres of development overall in the community. South Merced’s share of development has been proportional to its geographic area in the community. While South Merced represents approximately 22% of the population and 26% of the City’s land area, it has received 20 % of the new private investment in the community, as measured by developed land areas. Other public investments have included the extension of Mission Avenue to SR 99 to enhance regional access, and extensive utility and infrastructure improvements. Therefore, there is no evidence to suggest that South Merced is without any private investment, that investments have been steered away from South Merced, or that there is a lack of public investment. In fact, public investment has been twice the rate as the rest of the community and the rate of private investment has been at rate comparable to its vacant geographic land area. Over that same period, the VST property has received no public investment and no private investment.

The development of the VST Specific Plan Project will not hinder the ability for the County or the City to continue providing for such public and private investment opportunities in South Merced.

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There is no evidence to suggest the VST Project would concentrate wealth in the Specific Plan area.

Implementation of the VST Project would substantially increase VST's scholarship endowment from the sale of the land. Over a 30-year period, the project will generate \$250 million to \$300 million in scholarships Countywide that will be distributed to eligible high school graduates. In South Merced alone in 2022 and 2023, VST paid or committed to pay \$604,500 for 78 grant and scholarship recipients. If this continues, the total allocated to South Merced students from the project is estimated to be \$20 million to \$25 million

Growth and development in the community will not be exclusively focused in the VST project, nor in North Merced. Based on the South Merced Specific Plan, 4,500 new dwelling units, 163,000 SF of neighborhood commercial services, 1.3 million square feet of general and community retail goods and services, 105,000 SF of office space, 69 acres of parks and open space are planned to be developed in South Merced. Development planned for South Merced exceeds that planned for VST, with almost twice the amount of commercial and office space planned for South Merced compared to the VST property. The residential growth planned for South Merced includes 3,700 Low Density dwelling units which are primarily for Moderate and Above Moderate income groups, 600 units at Medium Density, and 1,560 units at "Village Density". There are no units planned at 20 units per acre or above (the density designated by the state as being potentially feasible for Low Income households); by comparison the VST project proposes that 2,256 of its 3,857 (60%) units be developed at a density of 20 units to the acre or greater. New Moderate and Above Moderate income housing appear to be more concentrated in South Merced than in the VST Project. Community amenities are also being planned for South Merced, including improvement of the existing 24 parks, 69 acres of new parks, and the CP42 sports park, most of which are publicly funded, compared to the parks and recreation facilities in the VST Project that are being funded by developers and homeowners in the project.

Therefore, there is no evidence that South Merced is without new planned development. Moreover, the development of the VST Specific Plan Project will not hinder the ability for the City to continue approving new development projects in South Merced pursuant to the South Merced Master Plan.

The Leadership Counsel suggests that 25% of new housing built in North Merced must be restricted to very low-income and extremely low-income residents, while an additional 15% should be deed restricted to low-income residents.

The Leadership Counsel's recommendation suggests that 40 percent of the proposed residential development should be deed-restricted for Extremely Low, Very Low and Low Income Households. Other than individual publicly sponsored and publicly financed affordable

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housing projects, this level of affordability does not occur anywhere in California. In addition to being contrary to the University Community Plan which requires that VST housing be tailored to the income ranges associated with employment at UC Merced, it is economically and financially infeasible.

A recent report prepared for the City of Merced on its Inclusionary Housing Fee has indicated that a total level of affordability for deed-restricted housing is 8%-9% is the maximum feasible amount to allow development to occur, across all City RHNA Housing Production Policy categories of Moderate, Low and Very/Extremely Low. Under the adopted City RHNA Housing Production Policy, 8.75% of housing in a new project would have to be deed-restricted affordable housing for Low and Very/Extremely Low Income households. The rate requested by Leadership Counsel is five times the level associated with existing City policies.

According to the City's Inclusionary Housing Fee analysis, any rate above a total rate of 9% covering Moderate, Low and Very/Extremely Low Income housing will compromise the financial feasibility of a project and erode the value of the property. The VST project proposes a 13% level of affordability for deed-restricted units on the base 3,857 units (10.1% of the units after the density bonus), which will cost VST \$26.4 million more than the level recommended by the City's consultant. The level of affordability at the level requested by Leadership Counsel would cost \$468,354,750, based on the affordability Gap Analysis in the City's consultant's report, which is more than 4.5 times the likely entire value of the VST property. This requested level of affordability absurd and far exceeds any local or state requirements or Constitutional nexus principles. Moreover, such an unreasonable and unsupportable recommendation would eliminate ALL future scholarship revenue from the project, and would compromise the educational futures of tens of thousands of future deserving students in Merced County for the benefit of 7 residents in South Merced who happen to be represented by the Leadership Counsel.

We respectfully request that the Planning Commission reject the Leadership Counsel's recommendations as unsupported by any evidence, but based instead on misrepresentations, that are not constructive and are irrelevant to the decision before the County. The commenter's comments are misguided and do not accurately represent the County's and the City's past and present commitments to providing affordable housing, utilities and services, and resources to all economic and geographic areas of the community. Moreover, any effort on the part of the Leadership Counsel to redirect funds from the VST scholarship programs for Merced County students will adversely impact the very population that the Leadership Counsel says is support.

Buchalter

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We appreciate the Planning Commission's deliberations concerning the VST Project at your upcoming hearing in September.

Regards,

BUCHALTER
A Professional Corporation

A handwritten signature in blue ink, appearing to read 'Alicia Guerra', with a long horizontal line extending to the right.

Alicia Guerra
Shareholder

AG/nj

cc: Michael Profant, Deputy County Counsel
Raul Mendez, County Executive Officer
Mark Hendrickson, Assistant County Executive Officer
Steve Maxey, Community and Economic Development Director
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October 9, 2023

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VIA E-MAIL

Chair Silveira and Members of the Board of
Supervisors of the County of Merced
2222 M St.
Merced, CA 95340

Re: Leadership Counsel Comments on the VST Project

Dear Chair Silveira and Members of the Board of Supervisors,

Buchalter, a Professional Corporation (“Buchalter”) represents the Virginia Smith Trust (“VST”) as land use counsel for the development of the VST Property located in Merced County (the “County”). On August 23, 2023, a spokesperson for the Leadership Counsel offered comments to the County Planning Commission about my client’s proposed development project on the VST Property (“VST Project”). On September 5, 2023, I submitted a letter to the Planning Commission refuting the Leadership Counsel’s inaccurate and misleading comments (see **Exhibit A**). On September 13, 2023, the Planning Commission adopted resolutions recommending that the Board of Supervisors approve the VST Project.

At the Planning Commission’s September 27th hearing on the VST Development Agreement, the Leadership Counsel reiterated their unsubstantiated claims, and once again, we explained why the Leadership Counsel’s comments are without merit. It seems that the Leadership Counsel is of the incorrect view that the VST, a charitable educational trust with property in North Merced, is somehow responsible for fixing the unsupported alleged concerns from a handful of community members in South Merced. Just as the VST noted before, there is no legal basis, or any other basis for that matter, for the Leadership Counsel to suggest that somehow the VST Project in unincorporated Merced County is responsible for addressing their concerns regarding prior decisions made by the City of Merced in South Merced. The purpose of this letter is to once again address the Leadership Counsel’s inaccurate comments about the VST Project with respect to environmental justice principles, and explain how the VST Project addresses the Attorney General’s best practices for environmental justice.

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Attorney General’s Best Practices for Environmental Justice

On September 15, 2023, the California Attorney General’s Office issued guidance and best practices (the “AG Guidance”) for how jurisdictions can promote environmental justice for marginalized communities. These policies address efforts to reduce exposure to air pollution, while promoting public facilities, food access, safe and sanitary homes, and physical activity. As explained below, the Project is consistent with each of these policies.

Reduce Pollution Exposure

Environmental justice policies should result in a reduction in pollution exposure for disadvantaged communities. (AG Guidance, p. 14.) This includes limiting pollution sources that communities are exposed to, including those related to water contamination, pesticides, hazardous waste, and oil and gas facilities. (AG Guidance, p. 14.) Effective policies would reduce the exposure of disadvantaged communities to pollution, such as by limiting the siting of new sources of air pollution, prohibiting truck routes through residential communities, and avoiding placing incompatible land uses next to each other. (AG Guidance, pp. 14-15.)

The VST Project is consistent with each of these measures. First, the VST Project will locate compatible land uses within proximity to each other. Sensitive receptors, such as residences and schools, will not be located near any sources that may emit deleterious impacts. (VST Specific Plan, fig. 4.) Moreover, in accordance with the SEIR, the VST Project will implement Mitigation Measure 3.1-2a, which involves a host of measures that reduce long-term emissions of air pollutants. These measures include: restricting idling time for heavy duty trucks accessing commercial sites, installing traffic calming measures, installing bikeway infrastructure, and meeting Tier 2 electric vehicle charging standards for all land use types, among other measures. Additionally, the VST Project will provide necessary housing for nearby UC Merced employees and students, thereby reducing long vehicular travel trips and corresponding impacts on South Merced residents and minimizing impacts to disadvantaged communities located in other parts of Merced County. The only uses planned for the VST Project, besides residential and public uses are commercial/office uses. These uses do not result in the pollution that typically impacts disadvantaged communities, such as heavy industrial uses or hazardous waste facilities. Although the VST Project will inherently avoid major pollutant impacts based on the proposed uses, the VST Project is self-mitigating with respect to any possible marginal impacts that it may cause.

The VST Project will also result in lower Vehicle Miles Travelled (VMT) and resulting Greenhouse Gas Emission compared to other projects in the region, because of its location next to UC Merced as evaluated in the EIR. As the *Vehicle Miles Traveled (VMT) Analysis (January 21, 2022)*, prepared by VRPA Technologies, demonstrates, VMT per capita for the VST Project will be one-third of the Countywide average, and VMT per employee for work trips will be one-

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third of the Countywide average. Locating the Project near UC Merced will reduce air quality impacts on County residents, including those in disadvantaged communities in the County. In addition to having a beneficial environmental impact, the reduction of per capita VMT will result in financial benefits to UC Merced staff and employees, many of whom are of moderate and lower incomes. On an annual basis Project area residents would spend \$26.5 million less each year on vehicle maintenance and operations. Each employee household would show an annual reduction of \$6,100 in the cost of vehicle operations and maintenance, and project area households would spend \$6,800 less per year than the county average. Further, the project will provide all-electric appliances in the residential portions of the project which will substantially reduce the GHG, ozone precursors and other regional pollutants.

Promotion of Public Facilities

Promoting environmental justice includes ensuring that disadvantaged communities have access to amenities such as public transit, health care facilities, and community centers. (AG Guidance, p. 15.) Public facilities can also include community centers, libraries, public transit, parks and recreation facilities, safe drinking water and wastewater services, active transportation infrastructure, flood control, and health care services. (AG Guidance, p. 15.)

The VST Project will further these principles by providing numerous public facilities throughout the planning area. For example, the VST Specific Plan will be providing transit locations throughout the planning area for UC Merced, the City of Merced, and Merced County bus transit services. (VST Specific Plan, pp. 105-09.) The VST Project will develop several public facilities, including public parks, a regional sports park, a community recreation center, fiber optic infrastructure, and community Wi-Fi. (VST Specific Plan, p. 18.) These facilities will be open to the public, in addition to community residents. Moreover, the VST Project will install the domestic water, wastewater, and storm water utilities necessary to serve the VST Project. (VST Specific Plan, pp. 111-15.) Finally, the VST Project will also include approximately 17 miles of publically accessible bikeways. (VST Specific Plan, p. 138.) The comments in **Exhibit A** demonstrate the South Merced residents are not deprived of Public Facilities, and the VST Project will not result in modification of that condition.

Promotion of Food Access

Environmental justice measures encourage local governments to reduce health risks for disadvantaged communities by promoting access to healthy, affordable food, such as with grocery stores that provide fresh produce. (AG Guidance, p. 16.) This includes local policies that encourage approvals for grocery stores and other options for obtaining healthy food. (AG Guidance, p. 16.)

The VST Project proposes to create a “complete ‘linked’ community.” (VST Specific Plan, p. 18.) This includes a “full-service supermarket within biking or walking distance of the

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University,” and all onsite residential units. (VST Specific Plan, p. 18.) Among the residential units are the 500 affordable units which will be included as part of the VST Project. (VST Specific Plan, p. 39.) Further, the centrally located community recreation center will include a structure intended to accommodate a farmers’ market. (VST Specific Plan, p. 30.) All residents of the VST and UCP community will have access to local grocery stores and produce and healthy food options.

The comments in **Exhibit A** demonstrate that South Merced residents are not deprived of grocery stores or have inadequate food access. In fact, their access to major full line grocery stores is higher than average for residents in the City of Merced.

Promotion of Safe and Sanitary Homes

The AG Guidance explains that environmental justice policies around safe and sanitary homes involve ensuring that homes limit indoor air pollution, promote the proximity of community amenities like transit, and mitigate issues associated with older housing stock such as lead-based paint and mold. (AG Guidance, p. 16.) Additional policies can support affordable housing and reduce displacement. (AG Guidance, p. 16.)

The VST Project will incorporate electric appliances in all residences, including electric water heaters and electric heating, ventilation, and air conditioning, as provided in Mitigation Measure 3.1-2a. This limits the exposure of indoor residents to pollutants like natural gas. As noted above, the VST Project will include affordable residential units and will not involve the demolition of existing housing. Thus, the Project will not involve any displacement. (VST Specific Plan, p. 39.) Moreover, new development constructed on the VST Property will comply with adopted California and local Building Codes. Therefore, the Project would eliminate and minimize threats caused by lead-based paint or mold.

Promotion of Physical Activity

Finally, local governments should implement policies that promote physical activity. (AG Guidance, p. 17.) By doing so, this works to reduce the compounded health risks associated with the lack of physical activity. (AG Guidance, p. 17.) This includes promoting access to parks and other spaces for physical activity, and developing facilities that support biking, walking, and public transit. (AG Guidance, p. 17.). The VST Project includes various public facilities including parks, a sports park, and a community center. (VST Specific Plan, p. 18.) The Project also includes accessible sidewalks and approximately 17 miles of public bikeways. (VST Specific Plan, pp. 91, 138.) Further, the VST Project will include numerous bus stops that will serve three different transit providers. (VST Specific Plan, pp. 105-09.) All of these resources will be publicly available. Thus, the VST Project will satisfy the AG’s recommendations for furthering environmental justice with respect to encouraging physical activity.

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Conclusion

As explained above, the VST Project will conform to each of the measures that the Attorney General's Office has explained promote environmental justice. Incorporating these measures into the VST Project will ensure that the Project will not disproportionately harm any communities with respect to environmental impacts. Accordingly, on behalf of the VST, we respectfully request that the Board of Supervisors reject the Leadership Counsel's unwarranted and inaccurate comments with respect to the implementation of environmental justice measures. We also request that the Board of Supervisors consider all of the evidence before you that demonstrates that the VST Project will implement the County's vision for a community integrated with UC Merced. We ask that you consider all of the benefits the VST Project will provide to the Merced County community, including scholarships to many Merced County students to that they may attend secondary educational institutions.

Thank you for your consideration of this important project for the future of the Merced community.

Sincerely,

BUCHALTER
A Professional Corporation

A handwritten signature in blue ink, appearing to be 'Alicia Guerra', with a long horizontal line extending to the right.

By

Alicia Guerra

AG:nj

cc: Raul Lomeli Mendez
Michael Profant
Mark Hendrickson
Steve Maxey
Tiffany Ho
Steve Tietjen
Stephen Peck