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November 12, 2015

VIA U.S. MAIL AND EMAIL

Heidi Tschudin, MRIC Contract Planner  
City of Davis  
Department of Community Development and Sustainability  
23 Russell Boulevard, Suite 2  
Davis, CA 95616  
maceranchinctr@cityofdavis.org

Re: Draft Environmental Impact Report for Mace Ranch Innovation Center  
Project (SCH # 2014112012)

Dear Ms. Tschudin:

On behalf of **Davis Residents for Responsible Development**, we submit these comments on the Draft Environmental Impact Report (“DEIR”) for the Mace Ranch Innovation Center Project (“Project”). The Project involves the development of a 2,654,000 square-foot Mace Ranch Innovation Center (“MRIC”) on 212 agricultural acres in unincorporated Yolo County, for research, office, and research and development (“R&D”) uses, with up to 10 percent supportive commercial uses including a 160,000 square-foot, 150-room hotel and conference center, and 100,000 square feet of retail such as shopping, dining, and fitness center uses. The Project includes 64.6 acres of green spaces including a 5.1-acre recreational park. The Project also contemplates future development of the 16.5-acre “Mace Triangle” area with up to 71,056 square feet of general commercial uses, including 45,900 of research, office, and R&D uses, and up to 25,155 square feet of retail, with potential for expansion of the existing Ikeda farm stand.

The DEIR purports to evaluate Project Alternative 7, the Mixed-Use Alternative, in the same level of detail as the above-described Project. The Mixed-Use Alternative would include 850 residential units within the MRIC. The DEIR concludes that this Project alternative is environmentally superior to the proposed

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Project, and applies the same development assumptions and mitigation measures for the Mixed-Use Alternative as it does for the proposed Project.<sup>1</sup>

As explained more fully below, the DEIR does not comply with the requirements of the California Environmental Quality Act (“CEQA”). The City may not approve the Project until an adequate DEIR is prepared and circulated for public review and comment.

## **I. INTRODUCTION**

### **A. Interest of Davis Residents for Responsible Development**

Davis Residents for Responsible Development (“Davis Residents”) is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. **The association includes Patrick O’Brien, Jorge Gomez, the International Brotherhood of Electrical Workers Local 340, Plumbers and Pipefitters Local 447, Sheet Metal Workers Local 104, and their members and their families who live and/or work in the City of Davis and Yolo County.**

Individual members of Davis Residents and its affiliated organizations live, work, recreate, and raise their families in Yolo County, including the City of Davis. They would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite. Davis Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there.

### **B. Lack of Timely Information and Potential Need to Submit Further Comments**

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<sup>1</sup> DEIR, pp. 2-10, 2-11.

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On October 12, 2015, Davis Residents submitted a written request for all materials referenced or relied on in the DEIR. CEQA requires that all referenced documents be made available for the entire public comment period.<sup>2</sup> On October 16th the City mailed Davis Residents a compact disc containing a bibliography and a copy of DEIR reference documents.<sup>3</sup> After reviewing the documents and in the process of preparing these comments, however, Davis Residents submitted additional requests for DEIR reference documents by e-mail to the City's Project planners, on November 6th and November 9th. The City has not yet provided the requested documents, which relate to traffic, air quality, and land use.

In addition, on October 12, 2015 Davis Residents submitted a Public Records Act request for all documents related to the proposed Project. The City provided some responsive records on November 5, 2015, but indicated that it was still in the process of compiling responsive records and would provide them by November 13, 2015, the day after the close of the public comment period on the DEIR.

Given the fact that Davis Residents has not yet received copies of requested DEIR reference materials and other public documents related to the Project, Davis Residents has not had sufficient time to review the relevant Project documents and supporting materials prior to the close of the comment period. This compromises our ability to fully understand the Project and to develop meaningful comments. For these reasons, we reserve the right to supplement these comments before the Project reaches the City for approval, including but not limited to the areas of traffic, air quality (and greenhouse gas emissions), and land use.

### **C. Summary of DEIR's Informational and Analytical Deficiencies**

As these comments will demonstrate, the DEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It fails in significant aspects to perform its function as an informational document that is meant "to provide public agencies and the public in general with detailed

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<sup>2</sup> Pub. Resources Code § 21092(b)(1); CEQA Guidelines § 15072(g)(4).

<sup>3</sup> The City's response to our Public Records Act request contains almost no e-mail correspondence. It is unclear whether the City intends to further supplement its response under the Public Records Act, but it seems likely that the City is in possession of additional documents related to the Project. If the City is withholding any documents on the basis of privilege, the Public Records Act requires that the City disclose this to us in writing. Gov. Code § 6255; *Haynie v. Superior Court* (2001) 26 Cal.4th 1061, 1074-1075.

information about the effect which a proposed project is likely to have on the environment” and “to list ways in which the significant effects of such a project might be minimized.”<sup>4</sup>

Substantial evidence indicates that the Project is likely to cause significant adverse impacts. The DEIR is legally defective due to its failure to adequately identify, evaluate and mitigate these potentially significant impacts. The errors and deficiencies of the DEIR include the following:

- The Project description is inadequate to undertake a “project level” CEQA review, because (1) the MRIC site design is conceptual in nature without adequate assurance regarding the allowable scope of future design changes; (2) redevelopment of the Mace Triangle site lacks even a preliminary plan; (3) there is too much uncertainty related to offsite Project components; and (4) the Mixed Use Alternative lacks basic, fundamental details such as the proposed square footage of residential development.
- Development of the Project site is split into four arbitrary “phases” for construction despite the fact that there is no formal development proposal or proposed construction schedule for the Project. This leads to an underestimation of environmental impacts, and inadequate mitigation measures to protect human health and the environment.
- There are numerous and significant flaws in the calculations used to support the air quality analysis, including: (1) an improper reduction in the calculated lot acreage compared to the actual size of the Project site; (2) failure to calculate construction emissions associated with Project features such as parking areas; (3) unsupported reductions in commercial and construction worker trip lengths; (4) an estimation of “vehicle miles travelled” that is not supported by evidence, and in any case is not properly included in emissions calculations; (5) failure to perform a Health Risk Assessment to analyze health hazards from diesel particulate matter and related emissions;

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<sup>4</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391.

(6) using unrealistic and inaccurate calculations of construction-related air pollution; and (7) failing to calculate emissions associated with off-site Project construction requirements.

- The Project will have significant unmitigated impacts on biological resources, including an imperiled population of burrowing owls that lives immediately adjacent to the Project site, wildlife that depend on the Yolo Bypass Wildlife Area, and Swainson's hawks, for which the DEIR concludes that impacts are "significant and unavoidable" without considering all feasible mitigation measures such as providing additional substitute foraging habitat.
- The risk of exposing workers and nearby residents to hazardous materials was not adequately investigated because the DEIR relies on 90% fewer soil samples collected from the MRIC site than is standard protocol, a basic Phase I Environmental Site Assessment is completely lacking for the Mace Triangle site, previously abandoned gas wells on the Project site lack adequate investigation, and there is no assessment of potential hazards at offsite areas that will be disturbed by the Project.
- Impacts associated with the Mixed Use Alternative are not adequately identified, quantified, and mitigated.
- Mitigation of most Project impacts has been improperly deferred to a later date.
- Cumulative impacts are not properly analyzed.
- The DEIR does not ensure that the Project will comply with the landscape irrigation reduction requirements mandated by the Governor's April 1, 2015 Executive Order B-29-15.

The DEIR must be withdrawn and revised to address these errors and deficiencies. Because of the substantial omissions in the information disclosed in the DEIR, revisions necessary to comply with CEQA will be, by definition, significant. In addition, substantial revision will be required to address impacts

that were not disclosed in the DEIR. Because these revisions are significant, the revised DEIR will need to be recirculated for additional public comment.

We prepared our comments regarding the DEIR analyses with the assistance of air quality and hazards experts Mr. Matthew Hagemann and Ms. Jessie Jaeger and biological resources expert Scott Cashen. Their comments are attached to this letter as Attachments A and B, along with each expert's curriculum vitae. The City must respond to these expert comments separately and individually.

## **II. CEQA REQUIRES THE DISCLOSURE OF ALL POTENTIALLY SIGNIFICANT PROJECT IMPACTS AND THE INCORPORATION OF ALL FEASIBLE MITIGATION MEASURES NECESSARY TO REDUCE SUCH IMPACTS TO BELOW A LEVEL OF SIGNIFICANCE**

CEQA has two basic purposes. First, CEQA is designed to inform decisionmakers and the public about the potential, significant environmental effects of a project.<sup>5</sup> Except in certain limited circumstances, CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR").<sup>6</sup> An EIR's purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, an EIR "protects not only the environment but also informed self-government."<sup>7</sup>

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."<sup>8</sup> CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.<sup>9</sup> In addition, an adequate EIR must contain the facts and analysis necessary to support its conclusions.<sup>10</sup>

The second purpose of CEQA is to require public agencies to avoid or reduce environmental damage when possible by requiring appropriate mitigation measures

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<sup>5</sup> CEQA "Guidelines," 14 Cal. Code Regs. § 15002(a)(1).

<sup>6</sup> See, e.g., Pub. Resources Code § 21100.

<sup>7</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

<sup>8</sup> CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

<sup>9</sup> Pub. Resources Code § 21100(b)(1); CEQA Guidelines § 15126.2(a).

<sup>10</sup> See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

and through the consideration of environmentally superior alternatives.<sup>11</sup> If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.<sup>12</sup> CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.<sup>13</sup> Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the EIR to meet this obligation.

As discussed in detail below, the DEIR fails to meet either of these two key goals of CEQA. The DEIR fails to adequately and completely describe the Project and the Project setting and fails to disclose and evaluate all potentially significant environmental impacts of the Project. In addition, it proposes mitigation measures that are inadequate, unenforceable, vague or so undefined that it is impossible to evaluate their effectiveness.

### III. THE PROJECT DESCRIPTION IS INSUFFICIENT TO ALLOW FOR MEANINGFUL CEQA REVIEW

The courts have repeatedly held that “[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”<sup>14</sup> CEQA requires the lead agency to describe the project with enough particularity to enable environmental review.<sup>15</sup> “A curtailed or distorted project description may stultify the objectives of the reporting process.”<sup>16</sup> “Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental cost . . .”<sup>17</sup> As articulated by the court in *County of Inyo v. City of Los Angeles*, “a curtailed, enigmatic or unstable project description draws a red herring across the path of public input.”<sup>18</sup>

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<sup>11</sup> CEQA Guidelines § 15002(a)(2)-(3); see also, *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, 400.

<sup>12</sup> Pub. Resources Code §§ 21002.1(a), 21100(b)(3).

<sup>13</sup> Pub. Resources Code §§ 21002-21002.1.

<sup>14</sup>*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

<sup>15</sup>*Id.* at 192.

<sup>16</sup>*Id.* at 192-193.

<sup>17</sup>*Id.*

<sup>18</sup>*Id.* at 198.

The project description here fails to meet this basic threshold because it offers a broad, enigmatic and inconclusive Project description. The DEIR is touted as a “project-level analysis” of both the MRIC development and the Mace Triangle redevelopment.<sup>19</sup> However, there are many unstable and uncertain components of these proposed developments. First, the preliminary plan for the MRIC is “conceptual” in nature, and although it sets forth “logical” zone restrictions for density, building square footage, and land uses, there is no indication that the City intends to make these zones enforceable through mandatory conditions of approval. The DEIR acknowledges that the final development plan for the MRIC may change, and although it describes in detail the land use and square footage limitations set forth in the preliminary plan, the DEIR does not indicate whether and how these limitations will be made mandatory components of the approved Project.<sup>20</sup>

Second, the Project description is inadequate because the DEIR provides almost no detail about the allowable land uses, building densities, or preliminary layout of the proposed Mace Triangle Planned Development (“P–D”) district. Under the City’s Municipal Code, every proposed P–D district requires a preliminary plan showing densities, building layouts, parking, open space, and other features that are “reasonably necessary to properly interpret and evaluate” the proposal.<sup>21</sup> Environmental review of a P–D district is intended to be based on this preliminary plan.<sup>22</sup>

The DEIR states that the City anticipates approximately 49,901 square feet of new research, office, or R&D uses, and 25,155 square feet of ancillary retail on the Mace Triangle site through redevelopment.<sup>23</sup> This is the only information provided about the proposed P–D district. Without an accurate description of the proposed allowable land uses, densities, and preliminary layout of the P–D district, neither the City nor the public can analyze the potential environmental impacts associated with rezoning the Mace Triangle parcels into a P–D district. Again, the Project description fails to meet basic parameters for CEQA review and fails to meet the basic requirements for rezoning under the Municipal Code.

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<sup>19</sup> DEIR p. 1-4.

<sup>20</sup> DEIR pp. 3-22, 8-6. In fact, in June 2015 the Applicant withdrew its application for a Tentative Subdivision Map because of the “broad range of variables yet to be determined as part of the land use entitlement process.” (Letter from Matthew Keasling to Mike Webb dated July 12, 2015.)

<sup>21</sup> Davis Municipal Code §§ 40.22.050, 40.22.060.

<sup>22</sup> *Id.*

<sup>23</sup> DEIR p. 3-53.

Third, the DEIR allows for numerous “alternatives” for the essential offsite components of the Project. Water supplies may come from the existing 12-inch City water main located along Mace Boulevard, or from the 20-inch water main connected to the City’s nearby water tank.<sup>24</sup> Wastewater may be carried north from the Project site through a new 8-inch main connecting to an existing 42-inch main, or may be carried east from the Project site through a new main connected to an existing 21-inch main, or a parallel line may be installed.<sup>25</sup> Traffic improvements associated with the Project may take three different forms.<sup>26</sup> Needed improvements to City Fire Department facilities may also take three different forms.<sup>27</sup> Finally, offsite stormwater control features may take three different forms.<sup>28</sup> It is impossible to gauge the impacts of the Project without basic concrete information about the offsite utility upgrades, traffic improvements, public safety and stormwater facilities that will be required as part of the Project. The failure to provide a stable Project description for these offsite improvements not only prevents an accurate assessment of their associated environmental impacts, but also results in legal problems with “deferred mitigation” (discussed below).

Fourth, the DEIR states that the Mixed Use Alternative (“MUA”), which includes 850 residential units, is “evaluated at a level of detail that is equal to the analysis of the proposed project.”<sup>29</sup> It is clear, however, that this alternative was analyzed as an afterthought. The City’s Notice of Preparation of a DEIR for the Project did not indicate that residential land uses were under consideration, and in fact stated that the Project would “maintain the City’s slow growth policy by prohibiting residential uses within the site.”<sup>30</sup>

The DEIR includes a separate chapter analyzing the MUA, but provides almost no detail about this alternative other than the number of residential units and the potential location of residential buildings. The DEIR provides no information about the size or expected square footage of the residential building

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<sup>24</sup> DEIR pp. 3-39, 3-54.

<sup>25</sup> DEIR pp. 2-99, 3-39 to 3-43, 3-54.

<sup>26</sup> DEIR pp. 2-81 to 2-85, 2-111 to 2-116.

<sup>27</sup> DEIR p. 2-108.

<sup>28</sup> DEIR p. 8-97.

<sup>29</sup> DEIR p. 7-1.

<sup>30</sup> DEIR, Appendix A, p. 9.

development, other than to indicate that the buildings may be up to 85 feet tall.<sup>31</sup> This is not sufficient information to evaluate the MUA at a project level under CEQA. The problems that stem from this inadequate Project description are further discussed below.

#### **IV. THE CITY LACKS SUBSTANTIAL EVIDENCE TO SUPPORT ITS CONCLUSIONS IN THE DEIR REGARDING THE PROJECT'S SIGNIFICANT IMPACTS AND FAILS TO INCORPORATE ALL FEASIBLE MITIGATION**

There are currently no detailed development proposals submitted for the MRIC site, yet the DEIR purports to divide its analysis into four separate but similar phases. Each phase would involve the construction of between 540,000 and 714,000 square feet of new buildings, and the Mixed Use Alternative adds 300 residential units each in Phases 2 and 3 and 250 units in Phase 4.<sup>32</sup>

The City does not propose any development limitations or mitigation measures that would make this arbitrary division of construction activities enforceable, yet it presumes that the Project site would not be operational until 20 years from now, in 2035. As a result, the DEIR underestimates the Project's potential construction-related impacts on air quality (including pollutants that exacerbate asthma, cancer, and other health risks), GHG emissions, noise, traffic, and other impacts that would occur if the MRIC site is developed at a more rapid pace.

Conveniently, the DEIR's projected delay in buildout of the MRIC site until 2035, and the projected delay in residential construction until Phase 2, results in significantly lower estimated air pollution impacts and other impacts, which in turn results in fewer requirements for standard mitigation measures designed to protect public health. The Yolo County Air Pollution Control District ("YCAPCD") has adopted thresholds of significance for air pollution during construction that are based on yearly emissions of pollution from a construction site. It is projected that

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<sup>31</sup> DEIR p. 8-6.

<sup>32</sup> DEIR pp. 2-4, 3-16, 8-24 to 8-26.

air pollutant emissions from construction equipment will be drastically reduced over the next 20 years.<sup>33</sup>

Therefore, by estimating that the bulk of construction will occur later in time and be spread out over 20 years, without putting in place any restrictions to ensure that a slow buildout will occur, the DEIR reaches the artificial conclusion that there will be no adverse impacts on air quality during construction. The DEIR requires no mitigation measures in the shorter term, such as cleaner burning construction equipment and fuels, increased dust suppression techniques, and other requirements that are routinely imposed on large construction projects in California.

There is not substantial evidence in the record to support the City's decision to spread its analysis of Project impacts on the MRIC site over the next 20 years. Such a long buildout period is speculative, and it arbitrarily avoids a what would otherwise be an inevitable conclusion of environmentally significant impacts that require mitigation. The problems associated with the City's approach are further discussed below.

#### **B. The DEIR Fails to Adequately Disclose, Analyze, and Mitigate Significant Air Quality Impacts**

The DEIR relies on estimates of Project air pollution emissions that were calculated using the California Emissions Estimator Model ("CalEEMod"). As explained by Mr. Hagemann and Ms. Jaeger, CalEEMod provides recommended default inputs (based on Project information) and outputs (emissions estimates) for construction projects using site specific information such as land use type, meteorological data, total lot acreage, building sizes, and typical equipment associated with the project type.<sup>34</sup> If more specific project information is known the user can change the default values and input project-specific values, but CEQA requires that such changes be justified by substantial evidence.<sup>35</sup>

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<sup>33</sup> See DEIR, Appendix C (calculations for air pollutant emissions drop significantly between 2017 and 2035).

<sup>34</sup> Hagemann and Jaeger Comments, **Attachment A**, p. 5.

<sup>35</sup> *Ibid.*; CalEEMod User Guide, pp. 2, 9, available at: <http://www.caleemod.com/>

Once all of the values are inputted into the model, the Project's construction and operational emissions are calculated and "output" files are generated. The CalEEMod output files for the Project are found in Appendix C and Appendix E of the DEIR. Mr. Hagemann and Ms. Jaeger closely reviewed these output files to determine whether accurate parameters were utilized when calculating the Project's air pollutant emissions. They analyzed which default values were changed in favor of different "user defined" values.<sup>36</sup> They found that for both criteria air pollutants and greenhouse gas emissions ("GHGs"), a number of the values inputted into the model were inconsistent with information disclosed in the DEIR, and resulted in an underestimation of Project impacts. Accordingly, in their opinion, "an updated air quality and greenhouse gas assessment and an updated DEIR should be prepared to adequately assess the impacts that construction and operation of the Project will have on regional air quality and global climate change."<sup>37</sup> These flaws are discussed in detail below.

#### 1. Project Size and Land Uses Not Accurately Calculated

The first flaw with the air quality modeling for the Project is that CalEEMod requires its users to input not only the square feet of building development on a project site but also the total acreage of the lot to be developed. For this Project the CalEEMod output files show that although the total square feet of building development was input into the model, the total lot area was listed as only 63.88 acres, even though the Project lot area for the MRIC site is 212 acres and for the Mace Triangle site is 16.5 acres. Mr. Hagemann and Ms. Jaeger concluded that reducing the calculation of emissions associated with construction to less than one-third of the entire Project area results in "a huge underestimation of Project emissions."<sup>38</sup>

Second, the CalEEMod output files show that there was no calculation of construction-related emissions associated with building the Project's parking areas, green spaces, and transit plaza, which comprise a significant area of development.<sup>39</sup>

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<sup>36</sup>*Ibid.* (citing CalEEMod User Guide, pp. 7, 13, available at: <http://www.caleemod.com/>, and noting that "a key feature of the CalEEMod program is the 'remarks' feature, where the user explains why a default setting was replaced by a 'user defined' value").

<sup>37</sup> *Ibid.*, p. 5.

<sup>38</sup> *Ibid.*, p. 6.

<sup>39</sup> *Ibid.*.

Below is a highlight of DEIR Table 3-2 showing these land uses for the proposed MRIC development:

<b>Land Use</b>	<b>Size</b>
<i>Research; Office; R&amp;D</i>	<i>1,510,000 sf</i>
<i>Manufacturing; Research</i>	<i>884,000 sf</i>
<i>Ancillary Retail</i>	<i>100,000 sf</i>
<i>Hotel/Conference</i>	<i>160,000 sf (150 rooms)</i>
<i>Green Space</i>	<i>64.6 acres</i>
<i>Landscaped Parking</i>	<i>12.6 acres</i>
<i>Transit Plaza</i>	<i>0.6 acres</i>
<b>Total Acres</b>	<b>212 acres</b>
<b>Total square footage</b>	<b>2,654,000 sf</b>

An excerpt from the CalEEMod output files, below, shows that the proposed “Green Space,” “Parking,” and “Transit Plaza” land uses (outlined in red above) were not included in the air modeling conducted for the DEIR:

Land Uses	Size	Metric	Lot Acreage	Floor Surface Area	Population
Research & Development	1,510.00	1000sqft	34.66	1,510,000.00	0
Research & Development	45.00	1000sqft	1.05	45,001.00	0
Manufacturing	884.00	1000sqft	20.29	884,000.00	0
Hotel	150.00	Room	5.00	217,800.00	0
Regional Shopping Center	100.00	1000sqft	2.30	100,000.00	0
Regional Shopping Center	25.16	1000sqft	0.50	25,155.00	0

As explained by Mr. Hagemann and Ms. Jaeger, these errors resulted in a significant underestimation of Project impacts, because lot size and land use types “are used throughout CalEEMod in determining default variables and emission factors that go into the model’s calculations,” such as the estimation of emissions from construction-related mobile sources.

Third, in addition to the fact that the CalEEMod calculations do not include any estimations for parking area construction, the Project design drawings show that 80.3 acres of the MRIC site would be dedicated to parking, which is inconsistent with the DEIR’s estimation of only 12.6 acres of parking.<sup>40</sup> Inputting an accurate acreage for parking is critical to obtaining an accurate estimate of construction emissions from paving equipment and other construction equipment

<sup>40</sup> *Ibid.*, p. 7.

associated with building parking structures.<sup>41</sup> These inconsistencies must be addressed in a revised DEIR.

2. Construction and Commercial Trips to and From the Project Site Are Underestimated

The CalEEMod calculations estimate that there will be zero “hauling trips” to and from the Project site at all times during construction. In effect, this means that haul trucks would never be needed to transport construction waste, soil, or other materials. This “zero haul” estimate is unrealistic. Moreover, the commercial and construction worker trip lengths to and from the Project site were reduced from the Yolo County defaults, based on undisclosed “vehicle miles of travel data from the traffic consultant.”<sup>42</sup> The DEIR suggests that this “VMT” data was obtained from a combination of reports and other data, but the City has not yet responded to Davis Residents’ written request for this supporting information.<sup>43</sup> As explained by Mr. Hagemann and Ms. Jaeger, the CalEEMod default trip lengths for commercial and construction worker trips are location-specific and should not be reduced without substantial evidence to support such a deviation.<sup>44</sup>

3. VMT Estimates Are Unsupported and Associated Emissions Are Incorrectly Calculated

The DEIR provides an estimation of daily vehicle miles travelled (“VMT”) for a Project operational date of 2035, but the only supporting evidence for this estimation is a “personal communication” with a traffic consultant.<sup>45</sup> The DEIR must be revised to explain the methodology used to calculate the estimated VMT associated with Project operations.

Even if the daily VMT estimate were accurate, the CalEEMod output files use a VMT that is underestimated by 37% from the VMT estimate provided in the

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<sup>41</sup> *Ibid.* pp. 7-8.

<sup>42</sup> *Ibid.* pp. 8-9 (citing DEIR, Appendix C).

<sup>43</sup> DEIR p. 4.14-18; email from Ellen Wehr to Katherine Hess, Zoe Mirabile, and Heidi Tschudin dated November 6, 2015.

<sup>44</sup> Hagemann and Jaeger Comments, p. 9.

<sup>45</sup> *Ibid.*; DEIR p. 4.7-24; “personal communication” memo with Bob Grandy dated Feb. 6, 2015.

DEIR.<sup>46</sup> This means that criteria air pollution and GHG emissions associated with Project operations are also underestimated accordingly.

Mr. Hagemann and Ms. Jaeger prepared updated CalEEMod output files based on corrected inputs, including corrected land uses and commercial and worker trip lengths. These output files are conservative, because the information needed to correct other parameters discussed above was not readily available. The corrected output files show a significant increase in estimated air pollution, in amounts that exceed the 10-ton annual threshold for emissions of nitrogen oxides (NO<sub>x</sub>) during construction, and also exceed three established thresholds of significance during Project operation.<sup>47</sup> Moreover, GHG emissions are projected to exceed regional thresholds by 10% more than projected in the DEIR.<sup>48</sup> These results show new and significantly increased environmental impacts from the Project, and an updated and corrected air quality analysis must be prepared and circulated for public review.

4. Diesel Particulate Matter Emissions Are Inadequately Evaluated and a Health Risk Assessment Should Be Prepared

Despite the large size of the Project and the close proximity of sensitive receptors, the DEIR does not include a Health Risk Assessment (“HRA”), which is a report that is routinely used to calculate the increased risk of cancer and other health hazards associated with exposure to Project emissions such as diesel particulate matter (“DPM”). The DEIR states that an HRA was not prepared because construction-related particulate matter would generally be below the threshold of significance for meeting the California Ambient Air Quality Standards (“CAAQS”), and construction would be only a “temporary” source of pollution.<sup>49</sup>

As explained by Mr. Hagemann and Ms. Jaeger, however, this justification is flawed. First, the estimated construction period, 18 years, is anything but temporary. The Office of Environmental Health Hazard Assessment (“OEHHA”) has rejected this same reasoning, and in its most recent guidelines recommend that any project with a construction period of more than two months in duration should be evaluated for cancer risks to nearby sensitive receptors.<sup>50</sup>

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<sup>46</sup> *Ibid.*, p. 9; DEIR, Appendix C, p. 560 and Appendix E, p. 222.

<sup>47</sup> *Ibid.*, pp. 10-11, and attachments.

<sup>48</sup> *Ibid.* p. 11.

<sup>49</sup> DEIR pp. 4.3-33, 4.3-34.

<sup>50</sup> Hagemann and Jaeger Comments, p. 12.

Second, the cancer risks associated with construction-related emissions are not comparable to the CAAQS. The CAAQS are designed as general “ambient” air quality standards that encompasses all activities and emissions in an entire region, whereas the standards used in a Health Risk Assessment are designed as site-specific standards to protect those in the immediate vicinity of a project site. Accordingly, the YSAQMD has adopted a cancer risk standard of 10 in one million. In the opinion of Mr. Hagemann and Ms. Jaeger, “simply comparing the construction PM10 emissions to CAAQs thresholds is inadequate,” and is also inconsistent with other CEQA evaluations recently conducted by the City for other large development projects, such as the Nishi Gateway Project, in which the YSAQMD’s cancer risk threshold of 10 in one million was used.<sup>51</sup>

Mr. Hagemann and Ms. Jaeger prepared a simple HRA using the particular matter emissions estimates and sensitive receptor locations from the DEIR, and applying HRA methodologies prescribed by OEHHA.<sup>52</sup> This basic assessment is conservative, because as discussed above the emissions estimates in the DEIR are incorrect. Nevertheless, their simple HRA estimates cancer risks for adults, children, and infants near the Project site of 96, 430, and 205 in one million, respectively. This is much higher than the YSAQMD threshold of significance of 10 in one million. This new significant impact must be further analyzed and addressed in a revised DEIR.

5. Construction-related Air Quality Modeling Is Unrealistic and Results in an Underestimation of Project Impacts

As discussed above, the DEIR attempts to spread construction of the Project out over 20 years without any enforceable limitations on development. The modeling used to support the DEIR’s analysis of air quality impacts during Project construction acknowledges that the specific assumptions about phased development are “speculative,” and does not attempt to quantify emissions associated with constructing each Project phase.<sup>53</sup> It does, however, model the development of the Project over 20 years as “one phase,” purportedly for the purpose of providing a

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<sup>51</sup> *Ibid.*, p. 13.

<sup>52</sup> *Ibid.*

<sup>53</sup> DEIR p. 4.3-21.

conservative estimate of construction-related emissions.<sup>54</sup> In fact, the DEIR does not provide a conservative estimate of emissions, because the use of one fictitious 20-year construction phase distorts and underestimates the emissions that will occur during construction, particularly in the closest upcoming years.

The DEIR estimates that Phase 1 would encompass 48 acres of land and 540,000 square feet of building construction, Phases 2 and 3 would each encompass 29 acres of land and 700,000 square feet of building construction, and Phase 4 would encompass 86 acres of land and 714,000 acres of construction.<sup>55</sup> Site access would first be provided to Phase 1 in the southern portion of the Project site, and development would “move out” to the center, north, and east, “gradually extending” away from the City’s urbanized areas.<sup>56</sup>

The CalEEMod calculations used to predict air pollution during construction requires the lead agency to estimate the timing of certain activities such as site grading, building construction, and other activities. The CalEEMod calculations contained in DEIR Appendix C does not make an estimate about the buildout of different Project phases—which for purposes of making a conservative estimate should anticipate that some phases may overlap. Instead, the duration of construction was “modified” so as to occur in one slow phase and so that various aspects of construction do not overlap at all.<sup>57</sup>

The CalEEMod calculations do not reflect the phased development of portions of the Project site and do not reflect what is likely to occur on the Project site. Instead, the calculations estimate emissions using the following unrealistic construction schedule for the entire Project site:

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<sup>54</sup> DEIR p. 4.3-21.

<sup>55</sup> DEIR pp. 3-43 to 3-47. As discussed later in these comments, the CalEEMod calculations in DEIR Appendix C do not include any estimation of construction emissions under the Mixed Use Alternative.

<sup>56</sup> DEIR pp. 3-43, 3-46.

<sup>57</sup> DEIR p. 4.3-21.

<b>Construction activity</b>	<b>Timing of activity</b>	<b>Total number of work days</b>
Site preparation	July 2017 – Jan. 2018	150
Grading	Jan. 2018 – Aug. 2019	395
Paving	Aug. 2019 – Aug. 2020	280
Building construction and painting	Aug. 2020 – June 2035	3,860

Modeling the construction period with such exorbitantly long construction phases results in three outcomes: (1) because none of the major construction activities overlap, on average no more than eight pieces of construction equipment are anticipated on the Project site at any one time, which reduces the average level of pollutants emitted from the site; (2) the bulk of construction activity will occur many years into the future, when estimated air pollution emissions from construction equipment are much lower;<sup>58</sup> and (3) combining the first two factors together results in “annual emissions estimates” far lower than under a realistic construction schedule, creating the illusion that construction emissions will not be significant, when in fact they will be significant.<sup>59</sup>

It is unrealistic to assume that it will take 150 working days to prepare the Project site for grading (i.e. remove vegetation), 395 working days to grade the site (an average of .6 acres of grading per day), 280 working days to install paving, and 3,860 working days to construct and paint Project buildings. The CalEEMod default assumptions for a project of this size and type are 40 days for site preparation, 110 days for grading, 75 days for paving, 1,110 days for building, and 75 days for architectural coatings (painting).<sup>60</sup> These default assumptions are based on surveys of similarly sized construction projects.<sup>61</sup>

By spreading out Project construction over one fictitious 20-year continuous phase, the DEIR overestimates the number of Project construction days by 3,175 more days than the CalEEMod default for a project of similar size and type. As a

<sup>58</sup> See DEIR, Appendix C, modeling runs p. 9.

<sup>59</sup> DEIR p. 4.3-24 (Table 4.3-6).

<sup>60</sup> *Ibid.*, p. 2.

<sup>61</sup> CalEEMod User’s Guide, p. 24, available at: <http://www.caleemod.com/>

result, the DEIR concludes that the highest annual emissions for nitrogen oxides (“NOx”) is only 7.6 tons per year, which falls below the annual YSAPCD threshold of 10 tons per year.<sup>62</sup> This calculation is entirely fictitious. 7.6 tons represents the highest annual emissions resulting from the CalEEMod calculations, and because the calculations spread out Project construction and extended the default number of working days by 225%, the highest annual emissions estimates are for 2018, which was calculated to include *only* site preparation and grading.<sup>63</sup>

In reality, even if the City does put limitations on the Project to ensure that construction phasing occurs, the first phase of construction would begin in 2017 and would encompass site preparation, grading, paving and building construction on at least 48 acres, over a much quicker time period than provided in the DEIR. The CalEEMod defaults, and a common-sense assumption, is that site preparation, grading, paving, and the beginning of building construction would likely all occur in the first year on Phase 1 construction. This would result in significantly higher emissions estimates that would trigger the requirement for health-protective mitigation.

The emissions disclosed in the DEIR are substantially underestimated and do not represent what is reasonably likely to occur. Accordingly, the DEIR’s findings pertaining to Project construction emissions are not supported by substantial evidence and fail to disclose and mitigate significant air quality impacts. Had the DEIR not gone to such great lengths to alter the CalEEMod default assumptions, it would not have reached the conclusion that construction emissions will be below the threshold of significance. The result may be a cost savings for the Project Applicant but it is an undue threat to health and air quality for the City’s residents and workers.

6. Offsite Construction Is Improperly Excluded from Emissions Calculations

The Project will require offsite construction, and most if not all of the offsite construction activities will need to occur early on in the development of the Project site. First, an offsite stormwater detention area or pumping station will need to be constructed, which may involve significant excavation and grading activities over

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<sup>62</sup> DEIR p. 4.3-24.

<sup>63</sup> DEIR, Appendix C, Air Quality, Unmitigated, Yolo County, Annual, pp. 4, 9.

an area that is equal to or greater than the size of the Project site.<sup>64</sup> It can reasonably be assumed that the activity of creating this stormwater detention area, which involves removing and stockpiling topsoil from up to 327 acres of City-owned property, excavating up to 2.5 feet, and replacing the topsoil, will occur at a similar time as the development of the Project site.<sup>65</sup> This would result in a significant increase in the volume of construction-related air pollution emissions, which would certainly exceed the threshold of significance under CEQA, requiring mitigation.

Second, the Project will involve offsite construction of sewer lines, and will likely also require upgrades to potable water lines and related pumping stations. These upgrades would take place during the initial phase of Project development, yet the DEIR does not analyze the associated construction-related air pollutant emissions. Third, the proposed Project mitigation for traffic will involve the offsite construction of traffic features, and the impacts of that mitigation are not accounted for in the DEIR's impacts analysis. In sum, the air quality emissions analysis is not only unrealistic in terms of on-site construction activities, but is also lacking a key analysis of offsite construction activities.

## **B. The DEIR Fails to Adequately Disclose, Analyze, and Mitigate Significant Impacts to Biological Resources**

### **1. Impacts to Burrowing Owls**

As described by biological resources expert Scott Cashen, the DEIR fails to disclose the fact that burrowing owls are nearly extirpated in Yolo County, and have suffered a precipitous decline in population numbers of 77% in recent years.<sup>66</sup> Last year it was estimated that only 15 pairs of burrowing owls remained in Yolo County.<sup>67</sup> The DEIR must disclose this information so that the public and decision-makers can adequately assess the Project's potential impacts. The DEIR also incorrectly claims that burrowing owls have not been identified on or near the Project site since 2005, when in fact a pair of burrowing owls has nested in the adjacent lot on Fermi Place for at least the past two years, and this year produced 5

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<sup>64</sup> DEIR, p. 8-97.

<sup>65</sup> *Ibid.*

<sup>66</sup> Comments of Scott Cashen, **Attachment B**, p. 2.

<sup>67</sup> *Ibid.*

to 7 offspring.<sup>68</sup> There is additional evidence that owls were observed on the Project site itself in 2014 and 2015.<sup>69</sup>

Not only does the DEIR fail to report this critical information, but “protocol” level surveys for owls were never conducted, even though the California Department of Fish and Wildlife’s (“CDFW”) 2012 guidance on burrowing owls recommends such surveys. Mr. Cashen’s comments explain in detail why these surveys are critical to establishing an adequate description of the environmental setting and for devising effective mitigation strategies.<sup>70</sup> According to Mr. Cashen, and particularly given the new information described above, the results of protocol-level surveys must be circulated for review by the public and resources agencies such as CDFW, in a revised DEIR.<sup>71</sup>

Mr. Cashen also explains that the proposed mitigation technique of “passive relocation” is discouraged by CDFW. If passive relocation is determined to be the only option after consideration of other avoidance and minimization techniques, there may be risks to burrowing owls, which should be considered a significant impact under CEQA.<sup>72</sup> In fact, without certain measures in place, passive relocation would likely have adverse impacts. The DEIR does not require these protective measures.<sup>73</sup>

Mr. Cashen also concludes that the proposed mitigation for burrowing owls is insufficient in other ways. It is his opinion that compensatory mitigation should be required as a matter of course, that the protocol for pre-construction surveys must be strengthened, that minimum buffers must be established, biologist qualifications established, triggers for mitigation firmly established, and management practices and performance standards established for mitigation sites.<sup>74</sup> This is particularly important because the City’s mitigation site at the Yolo County Grasslands Regional Park has been ineffective for conserving burrowing owl populations.<sup>75</sup>

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<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*, p. 3.

<sup>71</sup> *Ibid.* pp. 3-4.

<sup>72</sup> *Ibid.* p. 4.

<sup>73</sup> *Ibid.*

<sup>74</sup> *Ibid.* pp. 5-6.

<sup>75</sup> *Ibid.* p. 7.

In Mr. Cashen's professional opinion, the Project "would cause the extirpation of the breeding territory that occurs near the intersection of Second Street and Mace Boulevard," and "would accelerate the decline of burrowing owls in Yolo County." This significant impact is not adequately analyzed or mitigated in the DEIR.

## 2. Impacts to Swainson's Hawks

The City's rationale for why impacts to Swainson's hawk foraging habitat are "significant and unavoidable" is not clearly articulated.<sup>76</sup> According to the DEIR, this finding is based on the fact that the Project site is "outside the City limits" and not "anticipated in any City environmental documents." This rationale and conclusion must be further explained.

In order to make a finding of a significant and unavoidable impact the City must first demonstrate that it has imposed all feasible mitigation measures. As described by Mr. Cashen, "the DEIR fails to demonstrate why the City could not impose a higher habitat compensation ratio (e.g., 3:1), or why the City could not require other measures that would promote Swainson's hawk conservation (e.g., a scientific study)."<sup>77</sup> In Mr. Cashen's professional opinion, "a higher habitat compensation ratio could reduce Project impacts to a less-than-significant level."<sup>78</sup> This possibility must be explored in a revised DEIR.

## 3. Impacts to Yolo Bypass Wildlife Area

The Project site is located only 2.5 miles west of the Yolo Bypass Wildlife Area, with vacant agricultural farmland in between. The Project will result in a significant increase in reflective glass, nighttime lighting, and new drainage and landscape features attractive to birds that rely on the Yolo Bypass. Moreover, all stormwater drainage leaving the Project site will be discharged through a drainage channel directly into the Yolo Bypass, which provides habitat for birds and salmon.

The Yolo Bypass Wildlife Area provides very important biological habitat, serving as a key stopover for migratory birds along the Pacific Flyway, and a

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<sup>76</sup> *Ibid.* p. 4.

<sup>77</sup> *Ibid.*

<sup>78</sup> *Ibid.*

rearing area for salmon and other fish species.<sup>79</sup> CEQA's regulatory guidelines provide that "[k]nowledge of the regional setting is critical to the assessment of environmental impacts."<sup>80</sup> This level of detail is necessary to "permit the significant effects of the Project to be considered in the full environmental context."<sup>81</sup> The DEIR fails to accurately and adequately describe the location of the Project in relation to migratory bird corridors and wildlife habitat areas in the vicinity of the Project site. Without an accurate description of this environmental setting the Project's potential impacts to biological resources are not fully disclosed. To comply with CEQA, the EIR must be revised to include a description of the Yolo Bypass Wildlife Area that accurately portrays its ecological significance.

Migrating birds that utilize the Yolo Bypass are sensitive to nighttime lighting and other attractions that could draw them away from their feeding grounds and cause disorientation and stress that results in exhaustion, predation, decreased reproduction and other impacts. The DEIR's analysis of lighting focuses on compliance with the City's nighttime lighting standards, but does not provide any description of the types of lighting that will be allowed on the Project site, the height and number of light poles, or their brightness. The Project site is located near an important migratory bird stopover area, and increased nighttime lighting could have potentially significant adverse effects on birds. Bird disorientation from nighttime lighting is a well-known phenomenon:

- "Light fixation is a constant bird hazard .... Hundreds of terrestrial bird species fly and migrate under cover of night. While the mechanisms for birds' attraction to artificial night lighting are not well understood, its hazards to birds have been well documented."<sup>82</sup>
- "Our data show that chronic low intensities of light at night can dramatically affect the reproductive system [of birds]. ... [W]e call

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<sup>79</sup> See e.g.:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/docs/cmnt081712/sldmwa/sommeretal2001b.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/cmnt081712/sldmwa/sommeretal2001b.pdf);

<sup>80</sup> CEQA Guidelines § 15125(d).

<sup>81</sup> *Id.*

<sup>82</sup> International Dark-Sky Association, "Effects of Artificial Light at Night on Wildlife," available at <http://www.darksky.org/assets/documents/PG2-wildlife-bw.pdf>

for collaboration between scientists and policy makers to limit the impact of light pollution on animals and ecosystems.”<sup>83</sup>

- “Researchers have used radar imagery to determine how birds respond to lit environments. The observations found that once they fly through a lit environment they’ll return to that lit source and then hesitate to leave it.”<sup>84</sup>
- “Artificial night lighting affects the natural behavior of many animal species. It can disturb development, activity patterns, and hormone-regulated processes, such as the internal clock mechanism; *see references* in Rich and Longcore (2006). Probably the best-known effect, however, is that many species are attracted to, and disoriented by, sources of artificial light, a phenomenon called positive phototaxis. Apart from insects, birds that migrate during the night are especially affected (Verheijen 1958). This may cause direct mortality, or may have indirect negative effects through the depletion of their energy reserves. Reviewing the literature, Gauthreaux and Belser (2006) conclude that “all evidence indicates that the increasing use of artificial light at night is having an adverse effect on populations of birds, particularly those that typically migrate at night.”<sup>85</sup>

Light pollution is considered a serious threat to ecological communities because it has the potential to alter physiology, behavior, and population ecology of wildlife.<sup>86</sup> The DEIR lacks adequate information about the lighting that will be installed at the Project site, including the abundance of lights, the maximum luminous emittance (intensity) of bulbs, and the location of light fixtures. This

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<sup>83</sup> Abstract from Dominoni, Quetting, and Partecke, *Long-Term Effects of Chronic Light Pollution on Seasonal Functions of European Blackbirds (Turdus merula)* (2013), available at: <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0085069;jsessionid=67A0B84F31C6AC10244327B64679FF68>

<sup>84</sup> Flap.org, *Lights and Nighttime Collisions*, available at: <http://www.flap.org/lights.php>.

<sup>85</sup> Poot et al., *Green light for nocturnally migrating birds*, *Ecology and Society* 13(2): 47 (2008), available at: <http://www.ecologyandsociety.org/vol13/iss2/art47/>

<sup>86</sup> T. Longcore and C. Rich, *Ecological light pollution*. *Frontiers in Ecology and the Environment* 2: 191-198 (2004), available at: <http://www.urbanwildlands.org/Resources/LongcoreRich2004.pdf>

information is essential to assessing the impacts of the Project's lighting on sensitive biological resources.

The only mitigation measure for nighttime lighting is for the Project Applicant to submit a "lighting plan" to the City in the future, which limits light trespass and glare beyond the Project site "to a reasonable level," and complies with the Municipal Code.<sup>87</sup> This mitigation measure is designed to address human perceptions of nighttime lighting, not biological disturbance. The DEIR does not adequately disclose, analyze, or mitigate the potentially significant impacts of increased nighttime lighting within the mostly undeveloped buffer surrounding the Yolo Bypass Wildlife Area.

There are also a potentially significant impacts from Project noise and pollutants entering the Yolo Bypass Wildlife Area. First, the DEIR indicates that in order to accommodate increased stormwater flows from the Project site, either a large agricultural field will need to be excavated by up to 2.5 feet adjacent to the Yolo Bypass, or a new stormwater pumping station will be installed.<sup>88</sup> The disruption to wildlife associated with either of these activities must be addressed and mitigated. Second, the DEIR indicates that the Project site may be used for "special events that require amplified noise."<sup>89</sup> This would also create a potentially significant disturbance for wildlife in the Yolo Bypass Wildlife Area. Overall, the impacts of nighttime lighting and noise disturbance must be addressed and mitigated in a recirculated DEIR.

**C. The DEIR Fails to Adequately Disclose, Analyze, and Mitigate Significant Impacts from Hazardous Materials**

1. Additional Sampling is Necessary to Determine if Pesticide Residuals Exist on the MRIC Site

Organochlorine pesticides such as DDT, DDE, and chlordane were used from the 1940s until the 1970s when they were banned. These compounds can persist in the soil for hundreds of years. The California Department of Toxic Substances Control ("DTSC") states that DDT and similar substances "are ubiquitous" in soil

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<sup>87</sup> DEIR p. 2-14.

<sup>88</sup> DEIR p. 8-98.

<sup>89</sup> DEIR p. 8-5.

that is being developed for new uses, “due to heavy agricultural usage prior to cancellation in 1972.”<sup>90</sup>

Exposure to DDT can result in headaches, nausea, and convulsions, and the U.S. EPA identifies DDT and DDE as probable human carcinogens. Chlordane has also been classified as a probable human carcinogen by the U.S. EPA, and exposure can result in neurological effects. The California Department of Health has recently identified pesticides as an asthma trigger.<sup>91</sup> During earthmoving activities, construction workers and neighboring residents, some located only hundreds of feet from the Project site, may be exposed, via inhalation of dust, to Project site soils that might contain harmful levels of pesticide residuals associated with historic agricultural activities on the site, causing toxic effects and an increase in the incidence of asthma.

The DEIR includes the results of soil samples collected on the MRIC portion of the Project site and analyzed for residual pesticides, but as explained by Mr. Hagemann and Ms. Jaeger “these samples were not collected according to protocol established by the California Department of Toxic Substances Control (DTSC).”<sup>92</sup> The MRIC site was historically used for agriculture, and the DEIR acknowledges the potential for residual concentrations of organochlorine pesticides such as DDT, DDE, and chlordane, to be present in soils at the Project site.

To evaluate potential health risks from exposure to pesticides, a sampling program was undertaken at the MRIC site that included an analysis of organochlorine pesticides in soil. However, the sampling program does not provide a reliable basis for making decisions about potential pesticide risks. As discussed by Mr. Hagemann and Ms. Jaeger:

[S]hortcuts were taken in the amount of samples that were collected for analysis. The DTSC sampling guidance calls for the collection of a far greater number of soil samples than were collected under the program conducted for the DEIR. In the Phase I Environmental Site Assessment (ESA) commissioned by the applicant for the DEIR, only 34 soil samples were collected for the characterization of the presence

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<sup>90</sup> Comments of M. Hagemann and J. Jaeger, **Attachment A**, p. 2.

<sup>91</sup> *Ibid.*, p. 2.

<sup>92</sup> *Ibid.*, p. 1.

of organochlorine pesticides in the soil. This effort is admittedly only 10% that which is required by DTSC for adequate characterization.<sup>93</sup>

The Phase I ESA prepared for the MRIC site acknowledges that “DTSC guidance called for 200 soil sample locations being distributed over the 212-acre Site.”<sup>94</sup> However, “at the request of the Client,” the sampling was reduced “to ten percent of the recommended sampling locations for the agricultural fields in order to gain an initial understanding of chemicals present in soil.”<sup>95</sup>

The results of the Phase I study are unreliable for determining potential pesticide health risks to construction workers and nearby residents who may be exposed during construction. According to Mr. Hagemann and Ms. Jaeger, “a proper investigation that includes the protocol sampling and analysis of 200 soil borings for potential pesticide contamination should be undertaken,” and “a full understanding of health risks can only be gained with an investigation that is based on a sampling program consistent with DTSC guidance.”<sup>96</sup> Additional samples need to be collected and compared to health-based regulatory screening levels in a revised DEIR.

2. No Soil Sampling Was Conducted on the Mace Triangle Site, or on Offsite Parcels That Will Be Subject to Project Disturbance

In contrast to the inadequate number of soil samples collected on the MRIC portion of the Project site, zero soil sampling was conducted at the Mace Triangle site for pesticide residuals in soils. Mitigation Measure 4.8-2(c) states that a soil sampling workplan shall be submitted for later approval by the Yolo County Environmental Health Department, but without knowing what the soil sampling plan will be, and particularly in light of the inadequate sampling on the MRIC site, there is no assurance that the results will be reliable or that the public and workers will be protected. As noted by Mr. Hagemann and Ms. Jaeger, “the deferral of pesticide sampling at the Mace Triangle site does not allow for disclosure of potentially hazardous conditions that may pose health risks to construction workers and neighboring residents.”<sup>97</sup> Instead of waiting for future development to trigger

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<sup>93</sup> *Ibid.*, p. 2 (citing DEIR p. 4.8-16).

<sup>94</sup> *Ibid.*

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*, p. 3.

pesticide sampling, sampling should be conducted now and included in a revised DEIR.

The DEIR also indicates that a large area of agricultural land near the Project site may be scraped of topsoil, excavated up to a depth of 2.5 feet, and the topsoil replaced in order to provide stormwater control for the Project site.<sup>98</sup> Offsite utilities and traffic improvements will also be required. The DEIR does not include any pesticide sampling requirements for these areas, or call for soil sampling in strict accordance with DTSC protocol. In the opinion of Mr. Hagemann and Ms. Jaeger, “the potential for residual pesticides to be present” in the agricultural soils where significant excavation may occur soil is high.<sup>99</sup> This is a new potentially significant impact that must be identified, analyzed, and properly mitigated in a revised DEIR.

3. Potential Hazards from Abandoned Gas Wells at Mace Triangle Site and MRIC

No Phase I ESA was prepared for the Mace Triangle site for inclusion in the DEIR, and therefore the DEIR does not disclose the existence of potential hazards there. However, Mr. Hagemann and Ms. Jaeger discovered records of two former “dry gas” wells abandoned on the site in the 1980’s.<sup>100</sup> “Hazards posed by improperly abandoned wells include risk of explosion, fire, and exposure to toxic components of natural gas which include benzene, a known human carcinogen.”<sup>101</sup> The City needs to investigate the previous abandonment techniques for these two wells and must impose any mitigation that is necessary to ensure the wells do not pose a safety risk or a risk to human health. Any necessary mitigation, which may include re-abandonment of the wells in a safe manner, should be included in the revised DEIR.<sup>102</sup>

The Phase I ESA conducted on the MRIC site disclosed the existence of a former well that was abandoned in 1974. Again, in the opinion of Mr. Hagemann and Ms. Jaeger, the techniques used to abandon this well need to be evaluated in a revised DEIR, and mitigation imposed as necessary, including potential re-

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<sup>98</sup> DEIR p. 8-97.

<sup>99</sup> Hagemann and Jaeger Comments, **Attachment A**, p. 4.

<sup>100</sup> *Ibid.*

<sup>101</sup> *Ibid.*, pp. 4-5.

<sup>102</sup> *Ibid.*, p. 5.

abandonment of the well.<sup>103</sup> In sum, the DEIR lacks substantial evidence to conclude that the risks of public and worker exposure to hazardous materials is less than significant.

#### **D. The Mixed Use Alternative Is Not Adequately Analyzed**

There are numerous inadequacies in the DEIR's analysis of the Mixed Use Alternative ("MUA"). First, regarding aesthetic impacts, the MUA would allow residential and hotel buildings up to 85 feet in height, and R&D buildings up to 65 feet in height, 10 feet taller than the proposed maximum height for hotel buildings and R&D buildings under the proposed Project.<sup>104</sup> The MUA would also have a much higher density, with a 0.82 floor-to-area ratio ("FAR"), as opposed to a 0.5 FAR for the proposed Project.<sup>105</sup> The DEIR concludes that aesthetic impacts would be "significant and unavoidable," but instead of exploring potentially feasible mitigation measures to reduce the significance of this impact, the DEIR improperly concludes that mitigation measures are "not required."<sup>106</sup> The DEIR also fails to analyze the significant impacts of adding more nighttime lighting and taller buildings to the Project design, which will create more significant aesthetic and biological resources impacts that need to be analyzed and mitigated.

Regarding air quality impacts, the DEIR reasons that because the MUA involves the "same area of disturbance as the proposed project, the construction-related criteria air pollutant emissions would likely be similar to what is expected for the proposed project."<sup>107</sup> This conclusion is not supportable. Adding 850 new housing units to the Project and increasing the density of development on the Project by more than 30% is a *significant* change that will require a corresponding increase in construction workers, construction material deliveries, construction equipment, and construction activities. The DEIR indicates that the MUA was analyzed using the CalEEMod computer model, but the CalEEMod calculations attached to the DEIR do not include any calculations of the development of housing units under the MUA.<sup>108</sup> The City has not yet responded to Davis Residents' request for more information regarding these revised CalEEMod calculations. In

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<sup>103</sup> *Ibid.*

<sup>104</sup> DEIR p. 8-6.

<sup>105</sup> DEIR p. 8-9.

<sup>106</sup> DEIR p. 8-32.

<sup>107</sup> DEIR p. 8-40.

<sup>108</sup> DEIR, Appendix C, Air Quality Modeling Results.

general, however, the fact that the CalEEMod calculations of maximum annual NO<sub>x</sub> pollution from construction equipment did not change *at all* with the addition of 850 new residential units lends support to the argument that the City's approach to modeling construction emissions is entirely unrealistic and is not protective of public health.

Regarding the health risks of diesel particulate matter, noise impacts, and other construction-related impacts, the DEIR does not acknowledge or analyze the likelihood of significant impacts to residents living in the first phase of residential development on the Project site during the period when subsequent construction phases will occur.<sup>109</sup> This is a significant oversight in the DEIR analysis.

Regarding public services, the DEIR does not contain any analysis of how the introduction of almost 400 new school children to the eastern part of the City would be accommodated by the City's school system or whether new school facilities would need to be constructed. The DEIR's reliance on the possibility of school impact fees is inadequate.<sup>110</sup> Moreover, regarding impacts to fire fighting services, the DEIR improperly relies on one personal communication with the City Fire Chief on February 5, 2015, in which the Fire Chief stated that Station 33 can adequately serve the proposed Project (although he expressed concern about impacts to back-up fire service downtown).<sup>111</sup> In February 2015 the City was not proposing to add up to 850 residential units to the Project, and therefore the Fire Chief's statements do not necessarily hold true for the MUA.

These are only several examples of the inadequacies of the DEIR's analysis of the MUA. If the City proposes to rely on the DEIR to approve the MUA, it must first recirculate the DEIR with a more detailed Project description and a corrected and more robust analysis of the associated environmental impacts.

**F. The DEIR Contains Numerous Examples of “Deferred Mitigation,” Which Is Not Allowed Under CEQA**

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<sup>109</sup> See e.g. DEIR p. 8-112 (discussing noise impacts to a nearby church but not to onsite residential receptors).

<sup>110</sup> DEIR p. 8-132.

<sup>111</sup> DEIR p. 8-188.

It is improper to defer the formulation of mitigation measures under CEQA.<sup>112</sup> Courts have imposed several parameters for the adequacy of mitigation measures. First, the lead agency may not defer the formulation of mitigation measures until a future time unless the EIR also specifies the specific performance standards capable of mitigating the project's impacts to a less than significant level.<sup>113</sup> Deferral is impermissible where an agency "simply requires a project applicant to obtain a ... report and then comply with any recommendations that may be made in the report."<sup>114</sup> Second, a public agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>115</sup> Third, "[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments."<sup>116</sup> Fourth, mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate.<sup>117</sup>

Many of the mitigation measures in the DEIR simply call for further studies and reports, without meaningful performance standards and without the opportunity for further public involvement. These include the following Mitigation Measures:

- 4.1-3 (future lighting plans must limit light trespass and glare to a "reasonable" level);
- 4.4-4(b) (burrowing owl mitigation "may include" compensatory mitigation—or may not);
- 4.5-1 and 4.5-2 (future cultural studies may or may not produce "sufficient data," and if so, an evaluation of unspecified mitigation will be reviewed by the City, and "might include" avoidance of cultural resources, or Project redesign);

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<sup>112</sup> CEQA Guidelines § 15126.4(a)(1)(B);

<sup>113</sup> *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 793-94; *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.

<sup>114</sup> *Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1275.

<sup>115</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).

<sup>116</sup> CEQA Guidelines § 15126.4(a)(2).

<sup>117</sup> *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61,79.

- 4.8-2(b) and (c) (future analysis of hazardous materials shall include “soil sampling”);
- 4.9-1 (future drainage reports may recommend on-site or off-site measures, channel modification, or other unspecified measures);
- 4.11-4 (future noise report shall include “a detailed list” of noise reduction measures needed);
- 4.14-1 and 4.14-2 (future traffic studies shall determine when traffic mitigation will be installed, what measures will be installed, and whether payment of fees is an acceptable alternative);
- 4.14-5 (future neighborhood traffic calming plan will use measures “proven in other neighborhoods”);
- 4.14-6(a) (future travel demand management program may select from any number of strategies in an attempt to achieve trip reduction);
- 4.14-9(b) (future bicycle/pedestrian study shall evaluate bicycle and pedestrian crossing options, with consideration of “construction costs”);
- 4.15-3 (future monitoring and study of the sewer system by the Project Applicant could result in required sewer upgrades or replacement);
- 5-19 (future payments of mitigation fees for impacts to fire-fighting services may be used in any number of undisclosed ways);
- 5-22 (future travel route management strategies will be developed);  
and
- 5-26(a) (future wastewater treatment plant analysis could result in future plans for capacity improvements).

Not only do these measures lack adequate performance criteria and contain uncertainties about their efficacy and feasibility, but the implementation of a

number of these measures will result in potentially significant environmental impacts that must be analyzed as part of the DEIR process. The deferral of mitigation, and the lack of analysis of the impacts of mitigation, is a violation of CEQA.

**V. THE CITY HAS NOT REQUIRED THE PROJECT TO COMPLY WITH LANDSCAPE IRRIGATION REQUIREMENTS OF THE GOVERNOR’S EXECUTIVE ORDER NUMBER B-29-15**

The State of California is in its fifth straight year of drought. On April 1, 2015, the Governor of California issued Executive Order B-29-15, declaring a continued state of emergency and ordering expedited actions to mitigate the effects of drought.<sup>118</sup> One requirement of the Executive Order is that “newly constructed homes and buildings” shall be prohibited from irrigating with potable water “that is not delivered by drip or microspray systems.”<sup>119</sup>

To implement this new requirement, the State Water Resources Control Board adopted emergency regulations that prohibit “irrigation with potable water of landscapes outside of newly constructed homes and buildings in a manner inconsistent with regulations or other requirements established by the California Building Standards Commission and the Department of Housing and Community Development.”<sup>120</sup> The Building Standards Commission and the Department of Housing and Community Development adopted temporary emergency regulations to implement the mandates of Executive Order B-29-15 on May 29, 2015, and are now in the process of finalizing more permanent regulations.<sup>121</sup> The DEIR does not ensure that the Project will comply with the mandates of Executive Order B-29-15.

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<sup>118</sup> Executive Order B-29-15, available at: [http://gov.ca.gov/docs/4.1.15\\_Executive\\_Order.pdf](http://gov.ca.gov/docs/4.1.15_Executive_Order.pdf) (April 2015).

<sup>119</sup> *Ibid.*, p. 2.

<sup>120</sup> 23 Cal. Code Regs. § 864(a)(8), available at:

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/docs/emergency\\_regulations/adopted\\_regs\\_womarkup.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/emergency_regulations/adopted_regs_womarkup.pdf) ;

[http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/docs/emergency\\_regulations/proposed\\_emergency\\_regulations\\_25percent\\_faq.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/emergency_regulations/proposed_emergency_regulations_25percent_faq.pdf), p. 3.

<sup>121</sup> <http://www.documents.dgs.ca.gov/bsc/2015TriCycle/MWELO/BSC-EF-01-15-ISOR-Pt11.pdf>

## VI. CONCLUSION

It is essential that the City's EIR adequately identify and analyze the Project's foreseeable direct, indirect and cumulative impacts. It is also imperative that any and all feasible mitigation measures be presented and discussed. Indeed, CEQA requires nothing less. As discussed above, the Project will result in significant impacts in a number of areas, including air quality, biological resources, and hazardous materials. The DEIR continues to mischaracterize, underestimate, or fail to identify many of these impacts. Furthermore, many of the mitigation measures relied upon by the DEIR will not in fact mitigate impacts to the extent claimed, and in certain cases will cause other significant impacts that are not properly analyzed.

A Draft EIR must be recirculated if: (1) it reveals new substantial environmental impacts not disclosed in the draft EIR; (2) it reveals a substantial increase in the severity of impacts (unless mitigated); (3) comments have been received that identify new feasible mitigation measures, but the feasible mitigation measures are not adopted; or (4) it is so fundamentally and basically inadequate and conclusory in nature that public comment on the draft EIR was essentially meaningless.<sup>122</sup>

The courts have held that the failure to recirculate an EIR turns the process of environmental evaluation into a "useless ritual" which could jeopardize "responsible decision-making."<sup>123</sup> Both the opportunity to comment and the preparation of written responses to those comments are crucial parts of the EIR process.

These comments have identified substantial environmental impacts that were again not discussed at all in the DEIR or were not meaningfully considered. These include direct and cumulative impacts on air quality, biological resources, and hazardous materials. The DEIR must be withdrawn, revised and recirculated to properly evaluate these impacts.<sup>124</sup>

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<sup>122</sup> CEQA Guidelines § 15088.5, subd. (a).

<sup>123</sup> *Sutter Sensible Planning v. Sutter County Board*, (1981) 122 Cal.App.3d 813, 822.

<sup>124</sup> CEQA Guidelines § 15088.5, subd. (a).

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These comments have also identified feasible mitigation measures for significant, unmitigated impacts that have not been evaluated or proposed for adoption by the DEIR. Under CEQA Guidelines, a Draft EIR must be revised and recirculated to allow for public comment on these unadopted, feasible mitigation measures.<sup>125</sup> These deficiencies result in an DEIR “so fundamentally inadequate and conclusory in nature that public comment on the draft was in effect meaningless.”<sup>126</sup>

The DEIR must be revised to correct its errors, fully disclose and evaluate all Project impacts and to identify feasible mitigation that is enforceable and effective. Once those corrections are made, recirculation for public comment and review of these revisions is required. The DEIR must be revised again in order to resolve its inadequacies and must be recirculated for public review and comment.

Sincerely,



Ellen L. Wehr

ELW:ljl

Enclosure: CD w/attachments

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<sup>125</sup> *Id.*

<sup>126</sup> *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4<sup>th</sup> 1112, 1130.