



INTERNAL COMMUNICATION

DATE: August 22, 2017 **CODE:** L-010-0390-000

TO: Redding Planning Commission

FROM: Lily Toy, Senior Planner 

SUBJECT: Agenda Item 4(b)4 Use Permit Application UP-2017-00001, Parcel Map Application PM-2017-00002, General Plan Amendment Application GPA-2017-00003, and Rezoning Application RZ-2017-00004, Dignity Health North State Pavilion Project

The attached comment letters from the law firm of Adams Broadwell Joseph & Cardozo, California Department of Fish and Wildlife, Mike Jones, and Duane Milleman regarding the Initial Study/Mitigated Negative Declaration for the above-referenced item on today's agenda were received on August 18th and August 22nd.

In light of the extensive comments received, and the limited amount of time available to review and address these comments, staff recommends that Use Permit Application UP-2017-00001, Parcel Map Application PM-2017-00002, General Plan Amendment Application GPA-2017-00003, and Rezoning Application RZ-2017-00004, be **continued indefinitely**. Since this item was noticed for today's meeting, it will be necessary to conduct a public hearing prior to the consideration of a motion for a continuance.

LT:et

DevSrv\Planning\Projects\Use Permit-UP\UP-2017\UP-2017-00001 Dignity Health\Final Documents\UP-2017-00001 Dignity Health Memo to PC 082217.docx

Attachment

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Mike Jones
Duane Milleman
Lofton Moore, Dignity Health
Russ Wenham, Omni Means
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VIA EMAIL AND MAIL

Ms. Lily Toy, Senior Planner
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Re: Comments on the Initial Study / Mitigated Negative Declaration for the Dignity Health North State Pavilion Project (UP-2017-00001, PM-2017-00002, GPA-2017-00003, RZ-2017-00004)

Dear Ms. Toy:

We write on behalf of the **Redding Residents for Responsible Development** ("Redding Residents") to provide comments on the Initial Study ("IS") and Mitigated Negative Declaration ("MND") (collectively "IS/MND") prepared by the City of Redding ("City") for the Dignity Health North State Pavilion Project (UP-2017-00001, PM-2017-00002, GPA-2017-00003, RZ-2017-00004) ("Project"), proposed by Dignity Health Mercy Medical Center Redding ("Applicant").

The Project would be located on 10.55 acres at the southwest corner of Cypress and Hartnell Avenues, just south of the Cypress Avenue Bridge. The Project is located within the Federal Emergency Management Agency ("FEMA") 100-year floodplain for the Sacramento River. The Project involves the construction of three buildings totaling approximately 129,600 square feet with associated parking, landscaping, and infrastructure. The buildings will house a wellness center for ambulatory medical offices and clinics. The Project will require the following discretionary entitlements: a use permit for development and to encroach into the FEMA 100-year floodplain; a parcel map; a general plan amendment to amend the general plan from the existing designations of "General Office," "General

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Commercial,” and “Greenway,” to “Public Facility;” and a rezoning from GO-General Office and GC-General Commercial to PF-Public Facility.

Based upon our review of the IS/MND and supporting documentation, we conclude that the MND fails to comply with the requirements of the California Environmental Quality Act¹ (“CEQA”). The IS/MND fails to identify and explain the Project’s potentially significant environmental impacts and propose enforceable measures that can reduce those impacts to a less than significant level.

As explained in these comments, there is more than a fair argument that the Project will result in potentially significant impacts relating to air quality, public health, greenhouse gas emissions, hazards, and biological resources. The City may not approve the Project until it prepares an environmental impact report (“EIR”) that adequately analyzes the Project’s potentially significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We prepared these comments with the assistance of air quality and hazards experts Matt Hagemann and Hadley Nolan of Soil/Water/Air Protection Enterprise (“SWAPE”) and biological resources expert Scott Cashen. SWAPE’s technical comments and curricula vitae are attached hereto as **Attachment A**.² Mr. Cashen’s comments and curricula vitae are attached hereto as **Attachment B**.³

I. STATEMENT OF INTEREST

Redding Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. **Redding Residents includes International Brotherhood of Electrical Workers Local 340, Plumbers & Steamfitters Local 228, and Sheet Metal Workers Local 104**, and their members and their families who live and/or work in the City of Redding and Shasta County.

¹ Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. (“CEQA Guidelines”).

² **Attachment A**: Letter from Matt Hagemann and Hadley Nolan to Natalie Kuffel re: Comments on the Dignity Health North State Pavilion Project, August 15, 2017 (“SWAPE Comments”).

³ **Attachment B**: Letter from Scott Cashen to Natalie Kuffel re: Comments on the Initial Study and Mitigated Negative Declaration for the Dignity Health North State Pavilion Project, August 15, 2017 (“Cashen Comments”). Note, the documents cited in the Cashen Comments are included on a compact disc that was mailed with this letter.

Redding Residents have a strong interest in enforcing the State's 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 the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. AN EIR IS REQUIRED

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.⁴ "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR protects not only the environment, but also informed self-government."⁵ The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."⁶

CEQA's purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.⁷ CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard. Under that standard, a lead agency "shall" prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.⁸

⁴ See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.

⁵ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (*Goleta Valley*), internal citations omitted.

⁶ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁷ See Pub. Resources Code, § 21100.

⁸ Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 (*Laurel Heights II*); *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602 (*Quail Botanical*).

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In contrast, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

(1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur*, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may* have a significant effect on the environment.⁹

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”¹⁰ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.¹¹ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.¹²

“Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”¹³ According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064, subdivision (f):

⁹ Pub. Resources Code, § 21064.5 (emphasis added).

¹⁰ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

¹¹ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

¹² *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (*Friends of B Street*) (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

¹³ CEQA Guidelines, § 15384, subd. (a).

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”¹⁴ Deferring formulation of mitigation measures to post-approval studies is generally impermissible.¹⁵ Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.¹⁶ If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.¹⁷ Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report’s recommendations is insufficient to meet the standard for properly deferred mitigation.¹⁸

With respect to this Project, the IS/MND fails to satisfy the basic purposes of CEQA. The MND fails to adequately disclose, investigate, and analyze the Project’s potentially significant impacts, and fails to provide substantial evidence to conclude that impacts will be mitigated to a less-than-significant level. Because the IS/MND lacks basic information regarding the Project’s potentially significant impacts, the IS/MND’s conclusion that the Project will have a less-than-significant impact on the environment is unsupported.¹⁹ The City failed to gather the relevant data to support its finding of no significant impacts. Moreover, substantial evidence shows that the Project may result in potentially significant impacts. Therefore, a fair

¹⁴ CEQA Guidelines, § 15126.4, subd. (a)(2).

¹⁵ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

¹⁶ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical, supra*, 29 Cal.App.4th at p. 1604, fn. 5.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Pub. Resources Code, § 21064.5.

argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

III. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS

Under CEQA, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.²⁰ As discussed below, there is a fair argument supported by substantial evidence that the Project may result in significant impacts relating to air quality, public health, greenhouse gas emissions, hazards, and biological resources. The City is therefore required to prepare an EIR to evaluate the Project's impacts and propose mitigation measures to reduce those impacts to a less-than-significant level.

A. The IS/MND fails to properly analyze air quality impacts and additional mitigation measures are required.

The Redding General Plan creates a system for analyzing project-level air quality impacts.²¹ All projects must be mitigated with the Standard Mitigation measures ("SMMs") in order to reduce cumulative air quality impacts. If a project exceeds the Level "A" thresholds of: 25 pounds per day of oxides of nitrogen ("NOx"), 25 pounds per day of reactive organic gases ("ROG"), or 80 pounds per day of inhalable particulate matter ("PM"), then the City must impose the Best Available Mitigation Measures ("BAMMs") in addition to the SMM.²²

In the IS/MND, the City determined that the Level "A" thresholds were not exceeded that therefore only required the Project to implement the SMMs.²³ However, as noted by our air quality experts SWAPE, the City looked at the annual operational emissions, which are denoted in tons, rather than the pounds per day

²⁰ Pub. Resources Code, § 21082.2; CEQA Guidelines, § 15064, subs. (f), (h); *Laurel Heights II*, *supra*, 6 Cal. 4th at p. 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical*, *supra*, 29 Cal.App.4th at pp. 1601-1602.

²¹ See *City of Redding 2000-2020 General Plan, Air Quality Element*, pp. 25-32.

²² *Id.* at p. 26.

²³ IS, pp. 8-9.

emissions when making this determination.²⁴ When the pounds per day emissions are analyzed, SWAPE determined that the Project's NOx emissions (at 32 pounds per day) would exceed the 25 pounds per day Level A threshold.²⁵ Accordingly, the City must also impose all feasible and appropriate BAMMs.

B. Substantial evidence supports a fair argument that the Project may result in potentially significant impacts to the public health of nearby residents.

The IS/MND does not evaluate the potential health risk posed by the Project to nearby sensitive receptors from exposure to diesel particulate matter ("DPM").²⁶ DPM is a byproduct of diesel fuel combustion and is emitted by on-road vehicles and off-road construction equipment. As SWAPE demonstrates, there is substantial evidence that the Project could have a potentially significant health risk impact to certain nearby individuals when these toxic air contaminants are analyzed.²⁷

SWAPE's analysis indicates that a more refined health risk assessment must be conducted by the City before the Project can be approved.²⁸ If this health assessment determines that the Project could cause a potentially significant health risk impact, then additional mitigation measures to reduce DPM must be imposed. SWAPE has proposed multiple mitigation measures that could reduce the Project's DPM emissions.²⁹

C. The IS/MND's greenhouse gas threshold is not supported by substantial evidence.

The IS/MND uses a threshold of 10,000 metric tons of carbon dioxide equivalents ("MTCO_{2e}") per year to analyze greenhouse gas ("GHG") impacts.³⁰ According to the IS/MND, this threshold was recommended by the California Air Pollution Control Officers Association ("CAPCOA"), but in fact, CAPCOA

²⁴ SWAPE Comments, p. 1.

²⁵ SWAPE Comments, pp. 2-3.

²⁶ SWAPE Comments, p. 3.

²⁷ SWAPE Comments, p. 7.

²⁸ *Ibid.*

²⁹ SWAPE Comments, pp. 8-13.

³⁰ IS, p. 16.

recommended a threshold that was less than one tenth of the threshold used by the City: 900 MTCO_{2e} per year.

An agency's selection of a significance threshold must be supported by substantial evidence.³¹ Moreover, as stated by the California Supreme Court, "when the agency chooses to rely completely on a single quantitative method to justify a no-significance finding, CEQA demands the agency research and document the quantitative parameters essential to that method. Otherwise, decision makers and the public are left with only an unsubstantiated assertion that the impacts—here, the cumulative impact of the project on global warming—will not be significant."³² Here, the City has failed to select a threshold that is supported by substantial evidence and has therefore not substantiated its assertion that GHG impacts will be less-than-significant.

As acknowledged by the City, this threshold would only capture 50 percent of all residential and commercial development. CAPCOA recommended that bright-line thresholds capture 90 percent of emissions and created a generally applicable threshold of 900 MTCO_{2e} per year.³³ It was this 90 percent capture concept that was included by California Air Resources Board ("CARB") in its recommendations on CEQA thresholds.³⁴ Multiple air quality districts built upon that 90 percent capture concept to develop thresholds particular to their area. For example, Santa Barbara County adopted a bright-line numeric threshold of 1,000 MTCO_{2e} per year for industrial stationary-source projects, and Sacramento Metropolitan Air Quality Management District adopted a 1,100 MTCO_{2e} threshold for construction activities and land development projects in their operational phase.³⁵ In comparison, the 10,000 MTCO_{2e} per year threshold was merely something that was "considered by the Market Advisory Committee for inclusion in a Greenhouse Gas Cap and Trade System."³⁶ While some air districts use the 10,000 MTCO_{2e} per year threshold for

³¹ CEQA Guidelines, § 15064.7, subd. (b).

³² *Center for Biological Diversity v. California Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 228.

³³ CAPCOA, *CEQA & Climate Change*, January 2008, at pp. 42-45, available at <http://www.energy.ca.gov/2008publications/CAPCOA-1000-2008-010/CAPCOA-1000-2008-010.PDF>

³⁴ CARB, *Recommended Approaches for Setting Interim Significance Thresholds for Greenhouse Gases Under the California Environmental Quality Act*, October 24, 2008.

³⁵ See THE 2017 CLIMATE CHANGE SCOPING PLAN UPDATE, p. 135, fn. 210, available at https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf

³⁶ CAPCOA, *supra*, p. 45.

stationary sources,³⁷ we are not aware of any air district that has adopted such a high threshold for commercial and residential development.

Because the City has not created its own threshold to capture 90 percent of emissions, it should rely on the threshold developed by CAPCOA of 900 MTCO₂e per year.³⁸ The Project's greenhouse gas emissions are 6,351 MTCO₂e per year, exceeding this threshold. Accordingly, the Project could have a cumulatively considerable significant impact on climate change.³⁹

The City should also consider the recent guidance provided by the California Air Resources Board ("CARB") in its 2017 Climate Change Scoping Plan Update.⁴⁰ This is the most current information available about the GHG emissions reductions needed to achieve the State's climate long-term goals. Because this Project will not be operational until after 2020, it cannot rely on outdated 2020 goals.⁴¹ In the updated Scoping Plan, CARB recommends that "all new land use development implement all feasible measures to reduce GHG emissions to do its 'fair share' in supporting the State's goals" and states that "achieving no net increase in GHG emissions is the correct overall objective."⁴²

D. The IS/MND relies on an inadequate basis for determining the significance of impacts from hazards.

According to our hazards expert, SWAPE, a Phase I Environmental Site Assessment should have been prepared under standard environmental due diligence practices. Without this information, the City cannot ensure that there will be a less-than-significant impact to the environment from hazards that may be

³⁷ See, e.g., Sacramento Metropolitan Air Quality Management District, *SMAQMD GHG Thresholds of Significance Concepts*, August 2014, p. 6-10, available at <http://www.airquality.org/LandUseTransportation/Documents/Ch6GHG%20FINAL12-2016.pdf> and South Coast Air Quality Management District, *Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans*, December 2008, available at [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2)

³⁸ SWAPE Comments, p. 15.

³⁹ SWAPE Comments, p. 16.

⁴⁰ See THE 2017 CLIMATE CHANGE SCOPING PLAN UPDATE, p. 134, available at https://www.arb.ca.gov/cc/scopingplan/2030sp_pp_final.pdf

⁴¹ *Center for Biological Diversity v. California Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 223.

⁴² 2017 Climate Change Scoping Plan Update, *supra*, at pp. 105-106.

contained onsite from previous development.⁴³ This site was previously used as a gasoline service station from 1972 to 1998, which is evidence that contamination could exist and must be further analyzed and mitigated, if necessary.⁴⁴

E. There is substantial evidence of numerous potentially significant impacts to biological resources.

Our biological resources consultant, Scott Cashen, discovered numerous issues with the analysis conducted in the IS/MND and the proposed mitigation. Because of those issues, Mr. Cashen has concluded that the Project could have significant impacts on several sensitive biological resources.⁴⁵

First, Mr. Cashen notes that the Project site contains vegetation communities that are considered sensitive resources in the State of California and are “critically imperiled” or “imperiled.” The potential impact to these vegetation communities is not discussed in the IS/MND or the accompanying biological study report.⁴⁶ Nor does the IS/MND discuss the potential cumulative impacts to these sensitive resources from this development and other development that will further imperil these vegetation communities.⁴⁷ By evaluating only two related projects within less than half a mile of the Project site, the IS/MND overlooks this potentially significant impact. While lead agencies have discretion to select their geographic range, the selection must be supported by substantial evidence. The IS/MND’s selected range does not comport with relevant CEQA case law.⁴⁸

Second, Mr. Cashen found that the MND fails to disclose that multiple special-status species occur at, or immediately adjacent to, the Project site. Those species include: western pond turtle, yellow warbler, yellow-breasted chat, ringtail,

⁴³ SWAPE Comments, pp. 21-22.

⁴⁴ IS, p. 3.

⁴⁵ Cashen Comments, p. 19.

⁴⁶ Cashen Comments, pp. 1-2.

⁴⁷ *Id.* at pp. 13-14.

⁴⁸ See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1216 (cumulative impacts analysis inadequate for failing to analyze project 3.6 miles away); *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 739 (projects within 5 miles should be considered); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 721-725 (entire air basin should be considered when analyzing cumulative air quality impacts).

and western spadefoot.⁴⁹ Mr. Cashen has provided substantial evidence that each of these species could be significantly impacted by the Project development.⁵⁰

Third, the IS/MND fails to consider how edge effects (lighting, noise, and human activity associated with the Project) will affect nearby habitats.⁵¹ Mr. Cashen found that these edge effects could significantly impact nearby habitats.⁵²

Fourth, the IS/MND fails to analyze and mitigate a potentially significant impact to avian populations caused by the buildings' design features. Specifically, Mr. Cashen notes that the Project's buildings, with their large reflective windows adjacent to vegetation and open spaces, will pose a collision risk for a number of bird species that use the Sacramento River and associated riparian habitat.⁵³

Fifth, the IS/MND does not provide sufficient mitigation for an identified significant impact. The IS/MND found that the Project had the potential to "interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites."⁵⁴ However, as discussed by Mr. Cashen, the IS/MND proposes no mitigation to lessen this potentially significant impact.⁵⁵ Therefore, this potentially significant impact has not been reduced to a less-than-significant level. Moreover, Mr. Cashen has provided substantial evidence that this Project, in conjunction with the nearby Henderson-Parkview Open Space Restoration, Trail, and Kayak Access Project, could create a substantial barrier that may hinder wildlife movement.⁵⁶

Finally, three of the mitigation measures proposed in the IS/MND to address significant impacts to biological resources are insufficient. Each of the mitigation measure's deficiencies is discussed in turn below.

⁴⁹ Cashen Comments, pp. 4-7.

⁵⁰ *Id.* at pp. 7-8.

⁵¹ *Id.* at pp. 8-10.

⁵² *Ibid.*

⁵³ *Id.* at pp. 11-13.

⁵⁴ IS, p. 10.

⁵⁵ Cashen Comments, p. 10.

⁵⁶ *Ibid.*

a. Mitigation Measure 2 – Offset the Unavoidable Loss of Riparian Habitat

As previously stated, the Project site contains an “imperiled” or “critically imperiled” natural community that will be impacted by the Project. In order to offset the loss of riparian habitat, the IS/MND proposes planting Fremont Cottonwoods offsite and a minimum 3:1 ratio.⁵⁷ The City relies on a future “vegetation planting and management plan” to ensure the success of this measure. This represents deferred mitigation as the details provided in the MND are insufficient standards and guidelines for future actions.⁵⁸ The City also fails to note whether the land will be protected in perpetuity under a conservation easement.⁵⁹

But even more importantly, it is not clear how many trees will be replaced and whether other vegetation will also be required in order to recreate the lost habitat. According to the tree removal plan, 28 Fremont Cottonwoods would be removed by the Project. But only 20 Cottonwood trees are mentioned in the mitigation measure.⁶⁰ Additionally, 20 other native trees will be removed as part of the Project.⁶¹ There is no indication that these trees will be replaced. Finally, there is no requirement within the mitigation measure to replace the other riparian vegetative species that will be destroyed by the Project and are a necessary part of a riparian habitat. The City must mitigate the significant impact caused by the Project, which is the loss of riparian habitat, not simply the loss of the Cottonwood trees.⁶² As currently drafted, Mitigation Measure 2 is insufficient to mitigate this significant impact to a less-than-significant level.

b. Mitigation Measure 3 – Avoid the “Take” of Roosting Birds

Mitigation Measure 3, like Mitigation Measure 2, impermissibly defers important details about how the measure will be implemented. In order to prevent

⁵⁷ MND, p. 3.

⁵⁸ See *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 (finding a habitat management plan to be ineffective because it did not describe anticipated management actions or include standards or guidelines for actions that might be taken).

⁵⁹ See *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477 (finding habitat mitigation to be sufficient where on-site and off-site preserved area was “placed within a conservation easement and managed by a nonprofit management firm under a long-term management plan”).

⁶⁰ Cashen Comments, p. 15.

⁶¹ *Ibid.*

⁶² *Ibid.*

a take of roosting bats, the measure requires that a “qualified biologist” inspect the vegetation that will be removed and develop and oversee “appropriate measures.” The measure provides no standards for selecting the biologist or determining whether the proposed mitigation is “appropriate.” Moreover, no guidance is given on how the biologist should inspect the site and how often the inspections should occur, which could lead to the biologist failing to notice a roosting bat.⁶³ Finally, no inspection is required prior to the demolition of structures on the Project site. These structures could provide a roosting habitat for the pallid bat.⁶⁴ Accordingly, Mr. Cashen has determined that the Project’s impact on special-status bats remains potentially significant.⁶⁵

c. Mitigation Measure 4 – Avoid Disturbing Nesting Bald Eagles and Migratory Birds

Mitigation Measure 4 is similarly flawed. Measure 4 requires a survey by a “qualified biologist” if vegetation removal occurs during the nesting season. As stated by Mr. Cashen, this measure “fails to establish minimum standards for the pre-construction nesting bird survey, including the qualifications of the biologist, acceptable survey techniques, level of effort, and extent to which the survey needs to extend into ‘adjacent’ habitat.”⁶⁶ Additionally, Mr. Cashen notes that the buffer sizes provided in the measure is insufficient to protect bald eagles, which require a 1-mile buffer from construction activities.⁶⁷ Therefore, the Project has the potential to significantly impact bald eagles and other migratory birds, despite Mitigation Measure 4.

IV. CONCLUSION

There is substantial evidence supporting a fair argument that the Project may result in potentially significant adverse impacts that were not identified in the IS/MND, and thus have not been adequately analyzed or mitigated. We urge the City to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing a legally adequate EIR to address the potentially significant impacts described in this comment letter and the attached letters from SWAPE and Scott

⁶³ *Id.* at pp. 16-17.

⁶⁴ *Id.* at p. 17.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Id.* at p. 18.

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Cashen. This is the only way the City and the public will be able to ensure that the Project's significant environmental impacts are mitigated to less-than-significant levels.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Natalie Kuffel". The signature is written in a cursive, flowing style.

Natalie B. Kuffel

NBK:ljl

Attachments