

Comment Letter 12

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June 7, 2007

VIA EMAIL AND OVERNIGHT DELIVERY

Thomas J. Haglund
Acting Community Development Director
City of Hanford
317 North Douty Street
Hanford, CA 93230

Re: Comments on the Draft Environmental Impact Report for the Live Oak
Master Plan, Live Oak Residential Project, SCH No. 2006091015

Dear Mr. Haglund:

We are writing on behalf of the Hanford Residents and Workers for Responsible Development ("Hanford Residents and Workers") to provide comments on the April 2007 Draft Environmental Impact Report ("DEIR") for the Live Oak Master Plan, Live Oak Residential Project ("Project").¹ As explained more fully below, the DEIR does not comply with the requirements of the California Environmental Quality Act ("CEQA"). The City of Hanford ("City") may not approve the Project until the errors in the DEIR are corrected and a revised document is recirculated for public review and comment.

I. INTRODUCTION

Hanford Residents and Workers is a coalition comprised of Clint Champlin, Antony David, Bryan Wilson, International Brotherhood of Electrical Workers, Local 100, Plumbers and Pipefitters, Local 246 and Sheet Metal Workers, Local 162. Mr. Champlin, Mr. David and Mr. Wilson are residents of the City of Hanford. Locals 100, 246 and 162 represent hundreds of workers that live and/or work in the

¹ Due to failure to provide timely notice of the availability of the DEIR and the commencement of the public comment period, the City of Hanford granted an extension to June 13, 2007 to file these comments. See Confirmation Letter from Thomas A. Enslow to City of Hanford (May 14, 2007).

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City of Hanford, Kings County and surrounding counties. Their members construct and maintain residential, commercial and industrial facilities throughout the region.

Hanford Residents and Workers submit these comments based on concerns that the proposed Project may result in adverse environmental impacts affecting the communities where its members live and work.

Poorly planned and environmentally detrimental projects may jeopardize future construction 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 here. Continued degradation can, and has, caused construction moratoria and other restrictions on growth in California, including in the San Joaquin Valley. This, in turn, reduces future employment opportunities in the construction industry.

In addition, the members of Hanford Residents and Workers live and work in the very communities that suffer the impacts of environmentally detrimental projects. These members and their families breathe the same polluted air that others in the community breathe and suffer the same health and safety impacts. For these reasons, Hanford Residents and Workers have a strong interest in enforcing environmental laws such as CEQA.

The Project evaluated in the DEIR includes a planned unit development permit, tentative subdivision maps, a development agreement, and construction of infrastructure improvements to support the full development of the Project. The Project covers approximately 390 acres and includes the construction of 1,560 dwellings, 21 acres of parkland and 31.6 acres of open space/conservation land. The City of Hanford has prepared the DEIR as the lead agency under CEQA. The DEIR examines the potential impacts resulting from construction and operation of the Project.

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 information about the effect which a proposed project is likely to have on the

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environment” and “to list ways in which the significant effects of such a project might be minimized.”²

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. Among the errors contained in the DEIR are:

- An incomplete Project description;
- An incomplete Project Setting;
- Failure to adequately evaluate and mitigate construction and operational air quality impacts;
- Failure to evaluate and mitigate the Project’s greenhouse gas impacts;
- Failure to adequately evaluate and mitigate the Project’s biological impacts;
- Failure to adequately disclose and mitigate significant water quality impacts and groundwater overdraft impacts;
- Failure to adequately disclose and evaluate potential hazardous contamination of soil and groundwater on Project site;
- Failure to disclose potentially significant traffic impacts;
- Failure to adequately mitigate the Project’s conversion of agricultural land; and
- Failure to adequately evaluate and mitigate the Projects’ noise impacts.

The DEIR must be withdrawn and revised to address these errors. Because these revisions will be significant and raise previously undisclosed impacts, the revised DEIR must be recirculated for public comment.³

We reviewed the DEIR for the Project with the help of technical experts, including the environmental consulting agency SWAPE (air quality, water supply, hazards and noise) and biologist Scott Cashen. Their attached technical comments

² *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391.

³ Pub. Resources Code § 21091.1; 14 Cal. Code Regs. (“CEQA Guidelines”) § 15088.5; *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, *supra*, 6 Cal.4th at 1129.

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are submitted in addition to the comments in this letter. Accordingly, they must be addressed and responded to separately.

II. CEQA REQUIRES THAT ALL POTENTIALLY SIGNIFICANT PROJECT IMPACTS BE IDENTIFIED AND ALL FEASIBLE MITIGATION MEASURES BE INCORPORATED

CEQA has two basic purposes. First, CEQA is designed to inform decisionmakers and the public about the potential, significant environmental effects of a project.⁴ 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").⁵ 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."⁶

To fulfill this function, the discussion of impacts in an EIR must be detailed, complete, and "reflect a good faith effort at full disclosure."⁷ An adequate EIR must contain facts and analysis, not just an agency's conclusions.⁸ CEQA requires an EIR to disclose all potential direct and indirect, significant environmental impacts of a project.⁹

The second purpose of CEQA is to require public agencies to avoid or reduce environmental damage when possible by requiring appropriate mitigation measures and considering environmentally superior alternatives.¹⁰ If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation

⁴ CEQA Guidelines § 15002, subd. (a)(1).

⁵ See, e.g., Pub. Resources Code § 21100.

⁶ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

⁷ CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.

⁸ See *Citizens of Goleta Valley v. Board of Supervisors*, *supra*, 52 Cal.3d at 568.

⁹ Pub. Resources Code § 21100, subd. (b)(1); CEQA Guidelines § 15126.2, subd. (a).

¹⁰ CEQA Guidelines § 15002, subds. (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*, *supra*, 52 Cal.3d at 564; *Laurel Heights Improvement Ass'n v. Regents of the University of California*, *supra*, 47 Cal.3d at 400.

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measures to minimize these impacts.¹¹ CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.¹² 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 goals of CEQA. The DEIR fails to disclose and evaluate all potentially significant environmental impacts of the Project. It further fails to evaluate numerous feasible mitigation measures available to minimize significant impacts. In addition, many of the mitigation measures that are proposed are unenforceable, vague, unnecessarily deferred or so undefined that it is impossible to evaluate their effectiveness.

III. THE DEIR PROVIDES AN INADEQUATE PROJECT DESCRIPTION

The DEIR provides an inadequate Project description. The definition of the project under review in an EIR is critically important since it informs the public and government decisionmakers of the nature of the proposed activity and determines the scope and content of the analysis that follows. The courts have declared that “[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”¹³

Without an accurate description on which to base an EIR’s analysis, CEQA’s objective of furthering public disclosure and informed environmental decision-making would be impossible and consideration of mitigation measures and alternatives would be rendered useless.¹⁴ If key Project features are not described, then the related direct, indirect and cumulative impacts cannot be evaluated; mitigation measures cannot be imposed; and alternatives cannot be effectively evaluated.

¹¹ Pub. Resources Code §§ 21002.1, subd. (a), 21100, subd. (b)(3).

¹² Pub. Resources Code §§ 21002-21002.1.

¹³ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193; *see also City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438; *Rural Land Owners Association v. Lodi City Council* (1983) 143 Cal.App.3d 1013, 1024-1025; *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 829-830.

¹⁴ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-193, 197-198, 203.

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The DEIR describes the Project as both the proposed residential development and the “construction of infrastructure improvements to support the full development of the Project.” The DEIR, however, fails to fully describe and evaluate significant infrastructure improvements identified as part of the Project. The infrastructure improvements that require further description and evaluation include enlarging and extending electric, gas and telephone facilities and significant street and highway improvement projects.¹⁵

These activities may result in additional construction emissions, noise, biological and other impacts that are not included in the DEIR evaluations. These activities must be evaluated and made subject to appropriate Project mitigation measures.

IV. THE DESCRIPTION OF THE PROJECT SETTING IS INADEQUATE AND INCOMPLETE

A. The DEIR Fails to Disclose That the City Water Supply Is Significantly Out of Compliance with the Federal Arsenic MCL

12-01 → The DEIR’s description of the Project setting is also inadequate because it fails to disclose that the City’s municipal water supply is currently contaminated with arsenic at levels well above the federal maximum concentration level (“MCL”).

12-02 → The City of Hanford is under a September 13, 2006 enforcement order from the United States Environmental Protection Agency (“EPA”), Region 9, for violations of the Clean Water Act.¹⁶ Specifically, EPA cited the City for violation of the Safe Drinking Water Act (“SDWA”) by failing to reduce City drinking water arsenic levels to the federal MCL standard of 0.010 milligrams per liter (mg/L).¹⁷ The 2005 City of Hanford Consumer Confidence Report (the most recent report available) shows that citizens of Hanford are being served drinking water at up to 0.078 mg/L, nearly eight times the federal MCL.¹⁸

¹⁵ DEIR at pp. 4.10-13, 4.10-14, 4.12-25.

¹⁶ EPA, Fed. Admin. Order, Docket No. PWS-AO-2004-028 (Sept. 13, 2006).

¹⁷ *Id.*

¹⁸ City of Hanford, Consumer Confidence Report (2005).

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The DEIR, inaccurately and misleadingly claims, "The City is in technical compliance with the EPA regulations and therefore meets the water quality standards."¹⁹ As explained in the attached SWAPE comments and the September 13, 2006 EPA enforcement letter, the City is currently in violation of the SDWA for exceedances of the Arsenic MCL. It is not in "technical compliance" with the MCL for arsenic. The September 13, 2006 EPA enforcement letter requires the City to achieve compliance with the Arsenic MCL by December 31, 2009, but does not alter the applicable MCL until that date. Nor does it state that the City is in "technical compliance."

Under EPA regulations, Hanford's water supply is in "significant noncompliance" with the Arsenic MCL. A water supply is deemed to be in "significant noncompliance" when it is contaminated with hazardous substances at a level that presents an unreasonable risk to health. EPA guidelines state that where no unreasonable risk to health ("URTH") level has been established, an analytical result twice the MCL will trigger a finding of "significant noncompliance."²⁰ Because no URTH level has been established for arsenic, municipal water with arsenic concentrations of equal to or greater than 0.02 mg/L (twice the Arsenic MCL of 0.01 mg/L) is deemed in significant noncompliance.²¹

The DEIR must be revised to disclose that the City's water quality contains arsenic at unsafe levels and is in significant noncompliance with the Arsenic MCL.

B. The DEIR Fails to Disclose That the Hanford Elementary School District Is Significantly Over Capacity

12-03

The DEIR's description of the Project setting is also deficient because it fails to disclose that the Hanford Elementary School District is currently over capacity. In its scoping comments dated September 21, 2006, the Hanford Elementary School District warns that it is significantly over capacity.²² By state formulas, the District currently has 420 un-housed students even after the opening of a new K-6 in

¹⁹ DEIR at p. 4.6-19.

²⁰ See EPA, Implementation Guidance for the Arsenic Rule (Aug. 2002) at p. II-3.

²¹ *Id.*

²² DEIR, Section 9; Hanford Elementary School District letter to City of Hanford re NOP and Initial Study – Live Oak Residential Project (Sept. 21, 2006) at p. 1.

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August 2006.²³ The DEIR must be revised to disclose this significant aspect of the Project setting.

The DEIR must also be revised to disclose that sufficient funds will not be available to purchase and construct a new elementary school by Project build-out. In its September 21, 2006 comment letter, the District states:

The developer fees collected by the District for new residential and commercial development are not adequate to build new schools. These fees barely cover the cost of temporary portable classroom leases, and, with the rising cost of land, will not cover the full cost of the purchase of land for future school sites. Therefore, this proposed development does pose a significant impact to the District.²⁴

The lack of space for new students and the lack of funds for purchasing and constructing new school classrooms are significant details that must be disclosed in the DEIR.

C. The DEIR Fails to Disclose How Many Acres of the Project Are Farmland of Statewide Importance

12-04

The DEIR's description of the Project setting is also inadequate because it fails to adequately describe the significance of the Project's agricultural land. Approximately 390 acres of farmland will be converted to urban uses under the Project.²⁵ The DEIR states that 215 acres of this farmland is Prime Farmland.²⁶ The DEIR also states that the Project will convert Farmland of Statewide Importance. However, the DEIR fails to quantify how many acres of the Project are considered Farmland of Statewide Importance. The DEIR must be revised to disclose the number of acres of Farmland of Statewide Importance that will be converted by this Project.

²³ *Id.*

²⁴ *Id.*

²⁵ DEIR at pp. 3-2, 4.2-7.

²⁶ DEIR at pp. 4.2-6, 4.2-9.

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V. THE DEIR'S EVALUATION OF AIR QUALITY IMPACTS IS LEGALLY DEFICIENT

The San Joaquin Valley has the worst air quality in the nation (along with the Los Angeles region).²⁷ The San Joaquin Air Basin is designated as serious non-attainment for the federal and stated standards for ozone and particulate matter.²⁸

These pollutants result in serious and deadly health impacts, including asthma, chronic bronchitis and other respiratory diseases.²⁹ One in five children suffers from asthma in Kings County, the highest rate in the state.³⁰ Over 2,200 people in the San Joaquin Valley were estimated to have died prematurely in 2003 and 2004 because of dirty air.³¹ In addition, air pollution is costing Valley residents more than \$3 billion a year in health related costs, including premature death, asthma treatments and missed days of work and school.³²

Air quality in the San Joaquin Valley must be improved to protect human health. Because of the severe air quality problems in the region, the City cannot adopt a statement of overriding considerations for significant and unavoidable impacts on air quality unless it first requires all feasible mitigation to reduce or eliminate these significant impacts.³³

A. Additional Mitigation for Emissions from Project Construction Should Be Required

12-05

The DEIR admits that construction of the Project will result in significant air quality impacts from particulate matter ("PM") and ozone emissions (from ozone

²⁷ Hall, et al, Institute for Economic and Environmental Studies, *The Health and Related Economic Benefits of Attaining Healthful Air in the San Joaquin Valley* (2006); Union of Concerned Scientists, *Clearing the Air in the San Joaquin Valley: Developing an Action Plan for Regulators, Legislators, and the Public* (Feb. 2005).

²⁸ Hall, et al, Institute for Economic and Environmental Studies, *The Health and Related Economic Benefits of Attaining Healthful Air in the San Joaquin Valley* (2006); SWAPE Comments at p. 5.

²⁹ *Id.*

³⁰ Hernandez, et al, Central California Children's Institute, *Struggling to Breathe: the Epidemic of Air Pollution Among Children and Adolescents in the San Joaquin Valley* (2004).

³¹ Grossi, "Catching Our Breath," *Fresno Bee*, (Dec. 19, 2004).

³² Hall, et al, Institute for Economic and Environmental Studies, *The Health and Related Economic Benefits of Attaining Healthful Air in the San Joaquin Valley* (2006).

³³ Pub. Resources Code §§ 21002-21002.1.

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precursors ROG and NOx).³⁴ The DEIR provides a list of mitigation measures to address the air quality impacts from Project construction. These measures alone still result in air quality impacts that are "significant and unavoidable."³⁵

In their attached comments, SWAPE has identified numerous additional feasible mitigation measures that could further reduce the Projects impacts and have been required at similar projects in the San Joaquin Valley. These additional measures must be imposed, given their demonstrated feasibility.

Additional dust control measures identified by SWAPE include:

- Install wheel washers for all exiting trucks, or wash off all trucks and equipment leaving the site;
- Install wind breaks at windward side(s) of construction areas;
- Suspend excavation and grading activity when winds exceed 20 mph; and
- Limit area subject to excavation, grading and other construction activity at any one time.

In addition, the DEIR should be revised to explicitly state that a dust control plan will be submitted and that construction will not commence until approval of the plan. The San Joaquin Valley Air Pollution Control District ("SJVAPD") requires compliance with Regulation VIII to reduce fine particulate matter (dust/PM10) emissions generated by construction activities and road construction if a residential project is greater than 10 acres. Submittal of a plan is required before the start of construction activity on any site that will include 10 acres or more of disturbed surface area for residential developments. Approval of the plan is required before beginning construction activities. Although the DEIR states that compliance with Regulation VIII will be achieved, it fails to expressly require submittal and approval of a dust control plan.

The DEIR should also identify additional mitigation for PM10, ROG, NOx and diesel emissions from motorized construction vehicles and equipment.³⁶ In

³⁴ DEIR at pp. 2-6, 4.3-44, 4.3-48.

³⁵ *Id.*

³⁶ Mitigation measures for fugitive dust resulting from the earthmoving activities above do not mitigate for PM10 impacts as a direct result of motor vehicle exhaust. (See SJVAPCD letter re Live Oak NOP (Sept. 20, 2006) at p. 1 ("compliance with Regulation VIII does not mitigate the PB10

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their attached comments, SWAPE has identified the following additional mitigation measures:

- Ensuring that all construction equipment is properly tuned and maintained;
- Minimizing idling time to 10 minutes, both on and off site;
- Portable engines and portable engine-driven equipment units used at the Project work site should be registered with the SJVAPCD;
- Using electricity from power poles rather than temporary diesel or gasoline powered generators; and
- Using ultra low-sulfur diesel (15 ppm sulfur) (available from many California refineries including the Equilon Refinery in Martinez) or other alternative diesel formulations such as CARB certified PuriNOx (available at Ramos Oil in Dixon).

B. The DEIR Improperly Piecemeals the Project's Operational Impacts

The DEIR is legally deficient because it improperly piecemeals its evaluation of the Project's operational impacts by analyzing each Project phase separately. As a direct result of this piecemealing, the DEIR incorrectly concludes that the Project will not result in significant operational impacts.

12-06

It is well settled that CEQA prohibits piecemealing the evaluation of a Project's impacts. This prohibition ensures "that environmental considerations not become submerged by chopping a large project into many little ones."³⁷ The Project evaluated under CEQA must thus be the "whole" of the action not its individual parts.³⁸

In their attached comments, SWAPE reviews the URBEMIS model numbers upon which the DEIR bases its analysis. SWAPE concludes that, using the DEIR's

impact from equipment exhaust"). The California Air Resources Board (CARB) has also identified diesel particulate emissions as a toxic air contaminant. (SJVAPCD letter re Live Oak NOP (Sept. 20, 2006) at p. 3.)

³⁷ *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592.

³⁸ CEQA Guidelines § 15378.

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own modeling data, the unmitigated Project will produce total operational emissions of 33.36 tons of ROG per year and 25.75 tons of NOx per year. After Project mitigation measures are taken into account, the Project will produce operational emissions of 28.79 tons of ROG per year and 20.62 tons of NOx per year.

The SJVAPCD thresholds of significance for operational emissions are 10 tons per year for ROG and 10 tons per year for NOx.³⁹ The Project operational emissions are thus more than *double* the threshold of significance for NOx and almost *triple* the threshold of significance for ROG.

The DEIR, however, improperly reduces these emission calculations by splitting operational emissions between the Project's six phases.⁴⁰ By segmenting the Project's operational impacts, the DEIR chops the Project's operational impacts into six smaller pieces, each below the SJVAPCD threshold of significance. Nowhere in the DEIR are the Project's total impacts at build-out calculated and evaluated. Such piecemealing of Project impacts is improper and misleads the public as to the Project's actual impacts.

The URBEMIS Model clearly shows that the Project will result in significant long-term operational impacts due to increased emissions of ROG and NOx. Given the basin's non-attainment status for ozone, the Project's operational emission of ROG and NOx in excess of the SJVAPCD's significance thresholds is a substantial contribution to violations in air quality. The DEIR must identify the Project's operational emission of ROG and NOx as a significant impact. This impact must be disclosed and appropriate mitigation measures must be evaluated in the DEIR.

Additionally, the DEIR must identify how the Project will comply with SJVAPCD Rule 9510. Rule 9510 requires a project applicant to reduce 33% of the baseline NOx emissions over a period of 10 years. Reduction of NOx emissions as required by Rule 9510 can be achieved through on-site measures, such as vehicle trip reduction or enhanced energy efficiency, or off-site measures, such as purchase of cleaner equipment or retirement of old vehicles. Rule 9510 requires that any quantifiable emissions offset must be documented in an Air Impact Assessment ("AIA") application submitted to the SJVAPCD prior to public agency discretionary action. Excess emissions require payment of an off-site mitigation fee, currently \$7,100 per ton (<http://www.valleyair.org/rules/currentrules/r9510.pdf>).

³⁹ DEIR at p. 4.3-42.

⁴⁰ DEIR at p. 4.3-42 (Table 4.3-18).

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Compliance with Rule 9510, however, will not reduce Project impacts to a level of insignificance. The Project will exceed the SJVAPCD threshold of significance for ROG and NOx even if the Project complies with the Rule 9510 requirement to reduce 33% of the baseline NOx emissions over a period of 10 years. Accordingly, additional mitigation measures above and beyond compliance with Rule 9510 must be imposed and described in a revised DEIR.

C. The DEIR Fails to Evaluate the Project's Potential Impact on Greenhouse Gas Emissions

The DEIR is further deficient because it fails to quantify and evaluate the Project's greenhouse gas emissions.

The State of California recognizes that emissions of greenhouse gasses contribute significantly to global warming.⁴¹ Global warming will result in significant impacts on the health and welfare of the people of the State of California.⁴²

12-07

Global warming is caused by greenhouse gasses, such as carbon dioxide ("CO2") and methane, which reflect the heat radiating from the earth back towards the earth, rather than back towards the sky.⁴³ Scientific data has shown that unprecedented levels of greenhouse gas emissions have created a warmer climate and resulted in the loss of many of our world's glaciers.⁴⁴ Global warming impacts, such as drought and sea level rise, directly affect California.⁴⁵

The State Legislature recently passed Assembly Bill 32 ("AB 32"), which adopted the California Global Warming Solutions Act of 2006.⁴⁶ AB 32 requires the State Air Board to develop regulations to reduce statewide greenhouse gas emissions to 1990 levels by 2020.⁴⁷

⁴¹ See Health and Saf. Code § 38501; Executive Order S-3-05 (June 1, 2005).

⁴² *Id.*

⁴³ SWAPE, Comments on Live Oak DEIR (June 6, 2007) ("SWAPE Comments") at p. 3.

⁴⁴ Health and Saf. Code § 38501; Executive Order S-3-05 (June 1, 2005).

⁴⁵ *Id.*

⁴⁶ See Health and Saf. Code § 38500, *et seq.*

⁴⁷ Health and Saf. Code §§ 38550, 38560.

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In addition to and independent of AB 32, CEQA also requires consideration of a project's potential contribution to greenhouse gas emissions. The California Attorney General, for example, has recently filed a petition for writ of mandate challenging San Bernardino County's General Plan Update EIR based on the County's failure to evaluate and disclose the General Plan Update's impact on emissions of greenhouse gases and global warming.⁴⁸ The Attorney General has alleged that the EIR was legally inadequate because it failed to quantify or estimate the current levels of emissions in the County and increases in emissions from the Project, failed to evaluate the effects of those increases on warming and reductions required by AB32, and failed to require mitigation for such impacts.

In their attached comments, SWAPE testifies that the Project may result in the production of significant levels of greenhouse gas emissions. Project components associated with greenhouse gas emissions include increased residential home energy consumption, increased vehicular traffic, and increased wastewater and solid waste treatment. These emissions must be quantified and disclosed.

Once quantified, these emissions must be evaluated to ensure that the Project will not impede the Legislative mandate to reduce statewide greenhouse gas emissions to 1990 levels by 2020. Moreover, feasible mitigation measures must be evaluated.

D. Additional Mitigation for ROG, NOx and Greenhouse Gas Emissions from Project Operation Exists and Is Feasible

12-08

The DEIR lists some mitigation measures that would help to reduce the Project's operational ROG, NOx and greenhouse gas emissions. However, a number of the measures listed lack enforceability or are so undefined as to preclude any meaningful evaluation of their effectiveness.

Mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate.⁴⁹ Mitigation measures must be

⁴⁸ *People v. County of San Bernardino* (Super. Ct. San Bernardino County, 2007, No. 700329), Petition for Writ of Mandate.

⁴⁹ *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

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specific and fully enforceable through permit conditions, agreements or other legally binding instruments.⁵⁰

The following mitigation measures listed in the DEIR lack enforceability and should be revised as follows:

- The DEIR requires the use of double pane windows only to the “extent practical.”⁵¹ Without specific guidance as to when installation would not be “practical,” this measure is vague and unenforceable. The use of double-paned windows should be required unconditionally.
- The DEIR requires developers only to “install the most energy efficient, but cost-effective appliances available on the market.”⁵² Without specific guidance as to what is considered “cost-effective”, this measure is vague and unenforceable. The DEIR should require installation of energy efficient appliances that meet or exceed specifically identified standards, such as energy star appliances.

12-08
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Even with these and the other measures identified in the DEIR, ROG, NOx and greenhouse gas emissions will remain significant. Numerous additional feasible mitigation measures are available that could further reduce the Project's operational impacts on air quality and global warming.⁵³ These additional measures must also be imposed, where feasible. These measures include:

- Require solar or low-emission water heaters that exceed compliance requirements under Rule 4902;
- Installation of solar panels on roof to supply electricity for air conditioning and heating;
- Landscaping with appropriate drought-tolerant species to reduce water consumption;
- Landscaping to reduce energy demand for cooling;
- Conducting community landscape maintenance with electric equipment;

⁵⁰ CEQA Guidelines § 15126.4, subd. (a)(2).

⁵¹ DEIR at p. 2.10.

⁵² *Id.*

⁵³ See SWAPE Comments at pp. 3-4.

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- Orienting buildings to minimize energy requirements;
- Providing signed and striped bicycle and pedestrian trails that link to existing and future trails and to nearby commercial and service areas;
- Identify how carpooling can be encouraged, including identification of carpool facilities in community locations, including carpool information on literature that is distributed within the community and by designating a carpool parking area within the development;
- Incorporation of passive solar design and shaded landscaping to maximize solar cooling and heating and to reduce the need for air conditioning in the development, including awnings or other shading mechanism for windows and patios;
- Incorporation of residential green building guidelines for construction of the Project;
- Consideration of fair share funding for transit improvements needed to serve the Project;
- Requiring energy efficient lighting, appliances, heating and cooling systems;
- Installation of increased wall and ceiling insulation;
- Utilization of day lighting (natural lighting) systems such as skylights, light shelves, interior transom windows etc.; and
- Installation of whole house fans to promote circulation.

Mere identification of these measures is not sufficient. The DEIR must also identify which of these measures shall be required. Where measures are not required, the DEIR must demonstrate that imposition of the measures would not be economically feasible.

VI. THE DEIR FAILS TO ADEQUATELY EVALUATE AND MITIGATE POTENTIAL IMPACTS ON BIOLOGICAL RESOURCES

The DEIR's evaluation of the Project's impacts on biological resources is deficient for a number of reasons:

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A. The DEIR's Conclusion That the San Joaquin Kit Fox Is Unlikely to Be Present in the Project Area Lacks Foundation

The DEIR improperly concludes that the San Joaquin kit fox is "unlikely" to occur in the Project area.⁵⁴ As a result, potential impacts on this endangered species are not disclosed and appropriate mitigation measures are not required. Moreover, this conclusion directly contradicts the determination by the California Department of Fish and Game ("CDFG") that the San Joaquin kit fox has the potential to occur in the Project area.⁵⁵

The field observations referenced in the DEIR are insufficient to rebut the CDFG's determination.⁵⁶ The DEIR indicates that: *A large burrow with evidence of small candid tracks was observed in the southern portion of Sand Slough.* Project biologists concluded, based on existing habitat, proximity to Houston Avenue, and the presence of a road-killed fox, that this burrow most likely belongs to a non-native red fox. This is insufficient evidence to conclude with any certainty that the burrow is not used or has not been used by the San Joaquin kit fox. The burrow meets the U.S. Fish and Wildlife Service's ("USFWS") definition of a "potential den" for kit fox use.⁵⁷ Moreover, San Joaquin kit fox tracks are known to be smaller than red fox tracks, and tracks observed at the Project site are listed as "small."⁵⁸

The failure to quantify and identify the observed tracks creates an unrebutted fair argument that these tracks may be from the San Joaquin kit fox. CEQA places the burden of environmental investigation on the government rather than the public. As a result an agency is not allowed to "hide behind its own failure to gather relevant data."⁵⁹ If an agency fails to gather the relevant data and correct the deficiencies in the record, the EIR will lack the necessary evidentiary foundation to rebut substantial evidence of potential impacts.

Without additional substantive information, the applicant must conclude that the burrow is potentially a kit fox den. Moreover, if no take authorization/permit

⁵⁴ DEIR at p. 4.4-8.

⁵⁵ CDFG, Letter to City of Hanford re Live Oak Project NOP (Oct. 16, 2006) at p. 2.

⁵⁶ Scott Cashen (TSS Consultants), Comments on Live Oak DEIR (June 2, 2007) ("Cashen Comments") at pp. 1-2.

⁵⁷ USFWS, Standardized Recommendations for Protection of the San Joaquin kit fox Prior to or During Ground Disturbance (June 1999) at p. 60.

⁵⁸ Cashen Comments at pp. 1-2.

⁵⁹ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

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has been issued, then potential dens must be monitored as if they were known dens.⁶⁰

Even if a non-native red fox exclusively used the observed den, this is not sufficient evidence alone to rebut the CDFG's finding that the San Joaquin kit fox has the potential to occur in the area. The lack of an observed den does not mean that the San Joaquin kit fox does not pass through or hunt in this area. Indeed, the Biotic Evaluation admits that "Project construction has the potential to cause mortality to kit foxes" in the event individuals pass through the site at the time of Project construction.⁶¹ This significant impact is undisclosed in the DEIR.

The potential presence of a San Joaquin kit fox den in the Project area is a significant impact that must be disclosed and mitigated. The potential for Project construction to cause mortality to San Joaquin kit foxes must also be disclosed as a significant impact of the Project. Appropriate mitigation must be evaluated and imposed.

B. The DEIR Incorrectly Omits Potentially Occurring Special-Status Species

Several potentially occurring special-status species have been omitted from the DEIR:

12-10

First, the DEIR states that California black walnut trees are associated with Project sloughs. The California black walnut tree is a special-status species. However, the tree was omitted from the DEIR's list of special-status species in the vicinity of the Project area. Without indicating potential impacts on California black walnut trees, appropriate mitigation measures cannot be applied.⁶²

Second, the DEIR states that ferruginous hawks and merlins may forage on the site during the winter, but that these species do not breed in the region. The DEIR does not provide additional discussion of potential Project impacts on ferruginous hawks or merlins, nor does it propose mitigation measures. However,

⁶⁰ USFWS, Standardized Recommendations for Protection of the San Joaquin kit fox Prior to or During Ground Disturbance (June 1999) at p. 56.

⁶¹ Live Oak Associates, Inc., Biotic Evaluation (Feb. 23, 2007) at p. 34.

⁶² See Cashen Comments at p. 2.

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ferruginous hawks and merlins have special-status, and impacts to their wintering habitat should be evaluated and discussed.⁶³

Third, the Biotic Evaluation conducted by Live Oak Associates indicates that a northern harrier and loggerhead shrike were observed in, or adjacent to, the site. Table 4.4-2 of the DEIR lists occurrence of these two species in the study area only as "possible". Because these species appear to have been detected within the study area, the table should list their occurrence as "present". Both species have special-status. Thus, the Biotic Evaluation should have included additional information and discussion of these observations, including whether any territorial, courtship or other breeding behavior was observed.⁶⁴

Fourth, the Biotic Evaluation conducted by Live Oak Associates indicates that a great egret and great blue heron were observed in, or adjacent to, the site. Both of these species have special-status at their rookery sites. The DEIR does not address the presence of either of these species, and adequate mitigation for the protection of potential rookery sites must be provided. At a minimum, the applicant should have a qualified biologist conduct a pre-construction survey to identify any rookeries within the Project area. The applicant also needs to provide a mitigation plan for the protection of rookeries should they occur within the site.⁶⁵

C. The DEIR and the Biotic Evaluation Fail to Describe Methods Used for Environmental Assessment

12-11

Neither the DEIR nor the Biotic Evaluation contains a "methods" section describing the methods used to conduct surveys, resource evaluations, and the environmental assessment. Such a description is critical to provide an understanding of the scientific rigor and credibility associated with the work.⁶⁶

Despite the potential presence of threatened and endangered species (e.g., San Joaquin kit fox and Swainson's hawk), it appears the biological consultant has only conducted reconnaissance-level surveys on the site. If this is in fact the case,

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at p. 3.

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documented occurrences of species on the site may not accurately reflect the plant and animal communities present.⁶⁷

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Without a “methods” section in the DEIR, it is impossible to evaluate the adequacy of environmental assessments conducted for the Project. CEQA requires conclusions in an EIR to be supported by substantial evidence.⁶⁸ Furthermore, an EIR must provide the reader with the analytic bridge between its ultimate findings and the facts in the record.⁶⁹ By failing to provide the public with a basic description of the survey methods, the DEIR’s reliance upon these surveys lacks adequate foundation.

D. The DEIR Relies on Surveys That Provide Inadequate Information About Breeding of Special-Status Birds

12-12

Plant and animal species occurring in the study area were documented in spring and in December of 2004.⁷⁰ Bird communities in particular vary considerably between the seasons. In general, surveys conducted in December are useful in documenting winter and year-round resident species, whereas surveys conducted in the spring are useful in documenting spring migrants and year-round residents. For most special-status bird species in California, the primary emphasis is on the status of the breeding population.

Because of their seasonal timing, the surveys conducted provide very little information on special-status bird species that breed (or may be breeding) within the Project area.⁷¹ As a result, the DEIR lacks foundation for its conclusions regarding the presence and breeding activities of special-status species in the Project area.⁷²

⁶⁷ *Id.*

⁶⁸ Pub. Resources Code § 21081.5; CEQA Guidelines § 15091, subd. (b).

⁶⁹ *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506; see CEQA Guidelines § 15091.

⁷⁰ Live Oak Associates, Inc., Biotic Evaluation (Feb. 28, 2007) at pp. 42, 46.

⁷¹ Cashen Comments at p. 3.

⁷² See *Sundstrom v. County of Mendocino*, *supra*, 202 Cal.App.3d at 311.

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- 12-13 **E. The DEIR Does Not Adequately Assess How Sloughs Will Affect Special-Status Species**
- The DEIR states that sloughs within the Project area may be used for stormwater runoff from the site by incorporating grass swales.⁷³ Impervious surfaces, such as those that will be created by the proposed Project, alter the timing and volume of stormwater runoff.
- The DEIR should state the effect the proposed Project will have on the runoff hydrograph, and the predicted effect grass swales will have in mitigating the runoff hydrograph to within a "normal" range. Changes in the hydrograph of sloughs has the potential to affect riparian vegetation used by special-status animal species, as well as the sustainability of California black walnut trees associated with Project sloughs.⁷⁴ The DEIR must be revised to discuss how any potential changes in the hydrographs of the sloughs will affect associated special-status species.
- 12-14 **F. The DEIR Fails to Address the Possible Presence of Swainson's Hawk Nests**
- Swainson's hawks have the potential to nest in the riparian woodlands within the site.⁷⁵ Protocol-level surveys as described in the attached comments of biologist Scott Cashen should be conducted to investigate the presence of Swainson's hawk nest sites within and adjacent to the Project area. To meet the minimum level of protection for the species, three completed surveys are required during each of at least the two survey periods prior to Project initiation.
- 12-15 **G. The DEIR Fails to Mitigate Potential Impacts on Breeding and Foraging Habitat of Special-Status Species**
- The DEIR incorrectly assumes that the Project will have a less than significant impact on the loss of possible breeding and foraging habitat of special-status animal species.⁷⁶ According to the California Natural Diversity Database, an active Swainson's hawk nest site is located within 10 miles of the proposed Project

⁷³ DEIR at p. 4.4-19.

⁷⁴ Cashen Comments at p. 3.

⁷⁵ *Id.*

⁷⁶ DEIR at p. 4.4-20.

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area.⁷⁷ Moreover, several habitats suitable for Swainson's hawk foraging are present within the proposed Project area.⁷⁸

Under CDFG guidelines, a proposed project that will adversely affect suitable Swainson's hawk foraging habitat within a ten-mile radius of an active nest is considered to have a significant impact requiring mitigation.⁷⁹ The CDFG has developed mitigation guidelines for proposed projects that will adversely affect suitable Swainson's hawk foraging habitat. These measures include the purchase of habitat management land *and* the funding of a management endowment.

The DEIR must be revised to disclose this potential impact and to impose the appropriate mitigation measures.

H. The DEIR Fails to Adequately Mitigate for the Loss of Burrowing Owl Habitat

12-16

The DEIR's proposed mitigation measures for the relocation of burrowing owls within the Project area are not sufficient to reduce the effect of the Project to a less than significant level.⁸⁰ The DEIR needs to quantify the timing of passive relocation efforts, the specifications for artificial burrows and mounds, the location of artificial burrows in relation to destroyed burrows, and the amount of suitable foraging habitat remaining within the home range(s) of displaced owls. The DEIR must be revised to adequately assess whether habitat for special-status species exists within the Project area.

I. The DEIR Fails to Adequately Assess Whether Habitat for Special-Status Plant Species Exists Within the Project Area

12-17

The DEIR concludes that the likelihood of special-status plant species occurring within the Project area is quite small, but that some habitat for special-status plant species is present within the site's non-native grassland habitat.⁸¹ If potential habitat for special-status plant species exists within the Project area, a qualified biologist should conduct a rare plant survey in potentially suitable

⁷⁷ Cashen Comments at p. 4.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ DEIR at p. 4.4-20.

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habitats during the appropriate flowering period(s).⁸² Without such a survey, the DEIR's conclusion that the Project will not affect special-status plant species habitat lacks foundation.

J. The DEIR Fails to Define the Methods That Will be Used to Measure Canopy Closure

12-18

The DEIR states that the applicant will revegetate graded slough banks.⁸³ Success for revegetated slough banks is generally defined as 60% canopy closure.⁸⁴ The DEIR must define the methods that will be used for measuring canopy closure. Without specific and enforceable standards for revegetation, the effectiveness of this mitigation measure is impossible to evaluate.

K. The DEIR Fails to Provide Adequate Mitigation Measures for Cumulative Impacts to Foraging Habitat of Special-Status Species

12-19

The DEIR concludes that cumulative impacts to foraging habitat for special-status bat and bird species may be significant. Despite this admission, the DEIR fails to evaluate or recommend any mitigation for this impact.

If an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.⁸⁵ Mitigation is the teeth of the CEQA process.⁸⁶ Identification of a project's environmental impacts is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium.⁸⁷

In lieu of evaluating potential mitigation measures, the DEIR states that in order to be effective, mitigation for such cumulative impacts "usually require[s] regional planning."⁸⁸ The DEIR then states that no such programs are in effect in Kings County.

⁸² Cashen Comments at p. 4.

⁸³ DEIR at p. 4.4-27.

⁸⁴ Cashen Comments at p. 4.

⁸⁵ Pub. Resources Code §§ 21002.1, subd. (a), 21100, subd. (b)(3).

⁸⁶ *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.

⁸⁷ *Id.*

⁸⁸ DEIR at pp. 4.4-23, 4.4-26, 4.4-29, 4.14-3.

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Even if this statement were true, the current lack of regional planning programs does not relieve the lead agency from the duty to evaluate other potential mitigation measures. In his attached comments, biologist Scott Cashen identifies several appropriate mitigation measures for cumulative impacts to foraging habitat.⁸⁹ These measures include purchase of conservation land or conservation easements. They also could include dedication of funds towards habitat enhancement and management.

Furthermore, regional programs do exist in the area. The USFWS *Recovery Plan for Upland Species of the San Joaquin Valley, California* provides a regional plan for the recovery and conservation of special-status species that occur in the San Joaquin Valley.⁹⁰ Special-status bat and bird species identified in the DEIR as potentially present in the Project area are covered as umbrella species in this plan.⁹¹ In addition, Kings County has established Wildlife Conservation Areas and Wildlife Habitat Networks.⁹² At a minimum, the DEIR must evaluate options to fund or support these regional habitat conservation plans.

L. The DEIR Fails to Account for the Possibility That Sand and Lone Oak Sloughs Are Jurisdictional Waters of the United States

12-20

The Project applicant has proposed enlargement of Sand and Lone Oak Sloughs to serve as stormwater detention basins. Sand and Lone Oak Sloughs are potentially jurisdictional Waters of the United States. Although a formal wetland delineation has not been conducted on the site, the DEIR states the Project will have no impact on federally-protected waters. If Sand and Lone Oak Sloughs are going to be altered, a formal wetland delineation is required before the applicant can conclude the Project will have no impact on federally protected waters.⁹³

⁸⁹ Cashen Comments at pp. 4-5.

⁹⁰ *Id.* at p. 5.

⁹¹ *Id.*

⁹² See King County Comprehensive Plan, Chapter 4, Policies E-169 through E-183.

⁹³ Cashen Comments at p. 5.

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VII. THE DEIR FAILS TO ADEQUATELY EXAMINE POTENTIAL WATER SUPPLY IMPACTS

A. The DEIR Fails to Disclose and Mitigate the Impact of Potentially Supplying Project Residents and Workers with Arsenic-Contaminated Drinking Water

12-21

The DEIR is also inadequate because it fails to adequately evaluate and disclose potential water supply quality impacts. In their attached expert comments, SWAPE reviews the relevant evidence and concludes that the Project may result in significant undisclosed public health impacts as the result of its reliance on a drinking water supply contaminated with arsenic.

As discussed in detail, *infra*, in Section IV.A of this comment letter, the City's municipal water supply currently is in significant noncompliance with the federal Arsenic MCL of 0.01 mg/L. The City's 2005 Consumer Confidence Report shows that citizens of Hanford are being served drinking water with arsenic concentrations of up to eight times the federal MCL.⁹⁴ As a result, the City is under a September 13, 2006 EPA enforcement order to reduce its municipal water arsenic levels to a safe level no later than December 31, 2009.

In response to the EPA enforcement order, the City submitted a schedule for compliance with the Arsenic MCL.⁹⁵ To meet the requirements of the EPA order, the City is undertaking three phases of construction as outlined in the DEIR:

- abandonment of four wells;
- construction of six new, deeper wells; and
- rehabilitation of three wells.

Water treatment is not planned to address arsenic concentrations in drinking water. Instead the City is planning to use dilution to reduce the arsenic concentration. The City plans to tap deeper aquifers that have lower concentrations of arsenic relative to the shallower wells, which are slated for replacement and rehabilitation.⁹⁶

⁹⁴ City of Hanford, Consumer Confidence Report (2005).

⁹⁵ City of Hanford, Arsenic Reduction Schedule.

⁹⁶ *Id.*

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→ The DEIR states that samples from those deeper aquifers report arsenic concentrations of “less than the current [sic] state MCL of 0.05 mg/L.”⁹⁷ The DEIR fails, however, to evaluate whether the arsenic concentrations in the deeper aquifers are less than the new applicable Arsenic MCL of 0.01 mg/L. Accordingly, the DEIR lacks foundation for its assumption that the deeper aquifers will be able to provide water to meet the lower standard.

Without substantial evidence that the proposed dilution/deep aquifer mitigation program will be successful, other feasible mitigation measures must be considered. The EPA describes numerous other feasible treatment options to meet the new arsenic drinking water standard. These options include: ion exchange; activated alumina; reverse osmosis; modified coagulation/filtration; modified lime softening; electrodialysis reversal; and oxidation/filtration. Treatment, rather than dilution, is a feasible option.⁹⁸

For any of these mitigation measures to be effective, however, they must be in place prior to construction of the Project. Even if successful, the DEIR does not require the City of Hanford Arsenic Reduction Plan to be fully implemented prior to completion of the first phase of the Project. The DEIR estimates that the first phase of new residential units for the proposed Project will be completed in “two years” and that the City’s arsenic reduction program “should be complete” by then.⁹⁹

If plans for water quality improvements are not successfully completed by the time of construction, residents of new homes will be reliant on a water supply that is significantly out of compliance with the Safe Drinking Water Act. Providing residential homes, schools and public parks with drinking water that contains arsenic above the EPA MCL is a potentially significant impact that must be disclosed and evaluated in the DEIR.

An adequate evaluation of this impact must disclose the potential health impacts related to arsenic contamination. CEQA requires that an EIR disclose any health and safety problems that may be caused by the Project.¹⁰⁰ The DEIR must

⁹⁷ DEIR at p. 4.6-4.

⁹⁸ For example, SWAPE reports that the city that borders Hanford, Armona, removes arsenic from its groundwater using treatment technologies rather than dilution.

⁹⁹ DEIR at p. 4.6-19.

¹⁰⁰ CEQA Guidelines § 15126.2, subd. (a).

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be revised to disclose the potential health risks of arsenic contamination. These risks include cancer of the bladder, lungs, skin, kidneys, nasal passages, liver and prostate.¹⁰¹

Adequate measures must also be put into place to ensure that no new residential homes, schools or public parks are inhabited prior to certification by the EPA of compliance with the Arsenic MCL. Uncontaminated drinking water should also be provided to workers constructing the Project.

B. The DEIR's Water Supply Assessment Is Inadequate Because It Relies Upon an Outdated 2000 Urban Water Management Plan

The DEIR is further deficient because it relies upon a defective Water Supply Assessment and upon an outdated Urban Water Management Plan ("UWMP"). The California Legislature has declared that the availability of water supply is a critical planning consideration in any new development project. In adopting Senate Bill 610 ("SB 610"), the Legislature amended the Water Code to ensure that there is a direct relationship between land use decisions and water supply.¹⁰² Pursuant to SB 610, the DEIR must determine if existing and projected water sources are sufficient for anticipated Project demands.

12-23

SB 610 requires that a "Water Supply Assessment" be prepared to assess water supply for various types of projects prior to development. Under SB 610, the Water Supply Assessment must include "[a]n analysis of the sufficiency of the groundwater from the basin or basins from which the proposed project will be supplied to meet the projected water demand associated with the proposed project."¹⁰³

The 2005 Water Supply Assessment ("2005 WSA") prepared for the Project and referenced in the DEIR is deficient because it relies upon an outdated 2000 UWMP. The 2005 WSA states that:

The 2000 Urban Water Management Plan, therefore, addressed the water supplies required for development on this [Live Oak] property,

¹⁰¹ SWAPE Comments.

¹⁰² Water Code §§ 10910 & 10912.

¹⁰³ Water Code § 10910, subd. (f)(5).

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based on the City's projected population element of the General Plan.¹⁰⁴

This Water Supply Assessment considers that the water demands associated with this Project have already been accounted for in the 2000 Urban Water Management Plan.¹⁰⁵

At the same time that the 2005 WSA was prepared, a new 2005 UWMP was completed for the City. The DEIR inaccurately claims that water demands associated with the Project were accounted for in the 2005 UWMP.¹⁰⁶ The 2005 UWMP, however, also relies wholly on the outdated analysis previously provided in the 2000 UWMP:

The Live Oak Development project, previously known as the Lone Oak Development, is located southwest of the City, but is included in the planning boundary of the 2002 General Plan. This project proposes 1,562 dwelling units and 8 acres designated for public facilities. As with the Hanford Square Development, the water demands for this project have been previously accounted for in the City's 2000 Urban Water Management Plan.¹⁰⁷

The 2000 UWMP analysis is outdated because it fails to take into account the impacts of the 2006 reduction in the federal arsenic standard from 0.05 mg/L to 0.01 mg/L on aquifer supplies and overdraft. The need to explicitly plan for the impact of the reduced arsenic standard on the Live Oak Project is made apparent by the following statement from the DEIR:

In an average or wet year, the water supply sources exceed the water needs. The annual quantity of groundwater available to the City is not expected to vary significantly in relation to wet or dry years, as shown in Table 4.6 - 3. *This assumes that the groundwater yield is not reduced due to water quality issues.*¹⁰⁸

¹⁰⁴ Hanford, 2005 Live Oak WSA at p. 4.

¹⁰⁵ *Id.* at p. 6.

¹⁰⁶ DEIR at p. 4.6-1.

¹⁰⁷ 2005 UWMP at p. 5-5.

¹⁰⁸ DEIR at p. 4.6-9.

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As discussed, in an attempt to achieve compliance with the SDWA, Hanford has begun a program to tap deeper aquifers. In general, these new and rehabilitated wells will tap groundwater at depths of 1500 feet.¹⁰⁹ Most of the current municipal wells tap different, shallower aquifers.¹¹⁰ A number of these wells will be closed.

Because different aquifers will be tapped than evaluated in the 2000 UWMP, the WSA must be revised to determine the impact of the Project on the deeper aquifers. The WSA must also be revised to evaluate the potential need for alternative sources of water if dilution, rather than treatment, is used to meet the current arsenic health standard.

C. The DEIR Fails to Evaluate and Mitigate the Project's Contribution to Regional Overdraft Conditions

12-24

The DEIR is also deficient because it fails to quantify and mitigate the Project's impact on groundwater overdraft conditions. The groundwater basin underlying the City of Hanford is the Tulare Lake Basin, which is part of the Tulare Lake Hydrologic Region.¹¹¹ The Tulare Lake Hydrologic Region is in overdraft in the average year and dry year conditions.¹¹² The California Water Plan Update, Bulletin 160-98 lists the 1995 overdraft for the Tulare Lake Region at 820,000 acre-feet.¹¹³ Groundwater overdraft is expected to continue in the Tulare Lake Region at least until 2020 according to the California Water Plan Update.

The Project will increase total groundwater withdrawals by 2,955 gallons per minute ("gpm") to a total of approximately 27,450 gpm.¹¹⁴ This represents a massive 11% increase in City groundwater withdrawals. Nonetheless, the DEIR concludes that the Project will have no impact on groundwater supplies in the region.

¹⁰⁹ SWAPE Comments at p. 11.

¹¹⁰ *Id.*

¹¹¹ DEIR at p. 4.6-2.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

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The DEIR should discuss, on the basis of a revised Live Oak Water Supply Assessment, impacts of the new arsenic standard on water supply and overdraft conditions. The DEIR should discuss increased groundwater demand at depths of approximately 1500 feet, the interval at which Hanford's wells are being drilled in the attempt to meet the new federal arsenic standard. The DEIR should include calculations to quantify how much the additional overdraft the Live Oak Project will contribute to the noted regional overdraft conditions in the Tulare Lake Subbasin and the environmental consequences of overdraft.

To mitigate additional overdraft that will result from the Project, the DEIR should identify measures that will conserve groundwater remaining in storage. Mitigation measures that should be considered in the DEIR should include:

- Purchasing surface water supplies for local aquifer recharge equivalent to the amount of water needed for the Live Oak Project; and
- Treating upper aquifer (i.e. less than 900 feet deep) groundwater to provide a supply equal to the amount needed for the Live Oak Project.

VIII. THE DEIR FAILS TO DISCLOSE AND EVALUATE POTENTIAL HAZARDOUS CONDITIONS ON THE PROJECT PROPERTY

A. The DEIR Fails to Evaluate the Potential Presence of Hazardous and Persistent Pesticides in Project Soil and Groundwater

12-25

Despite express recommendations from the Department of Toxic Substances Control ("DTSC") and the Project's Phase I consultants, the DEIR fails to evaluate and mitigate potential pesticide contamination on the site. These recommendations along with the historic agricultural use of the Project parcels are substantial evidence that the hazardous and persistent pesticides may contaminate Project soil and groundwater. This potentially significant impact requires further investigation and, if necessary, remediation.

Historical uses of the proposed Live Oak Project area include agriculture. Orchards (including walnuts), row crops and a dairy are known to have been located on the Project site. Agricultural land use in Kings County is associated with pesticide residue in soils, including organochlorine pesticides such as DDT, DDD

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and DDE.¹¹⁵ For example, at a similar site located approximately two miles to the north of the proposed development, concentrations of DDE and DDT that exceeded federal human health screening guidelines prompted the removal of soils under DTSC oversight.¹¹⁶

During the scoping period, DTSC submitted comments dated September 26, 2006 in which it expressly recommended “additional research be conducted to determine whether pesticides were used on the proposed development site.”¹¹⁷ If pesticide usage was confirmed, DTSC further recommended:

areas be tested for environmentally persistent pesticides and metals prior to development. The results of any testing should be evaluated to determine if concentrations present in soils will be protective of residents and workers.¹¹⁸

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The Project’s Phase I Environmental Site Assessment (“Phase I ESA”) also recommended soil sampling for pesticides and related metals in surface soil, in areas used for burning, and in a low lying area at the Sanchez Feed and Seed Yard.¹¹⁹

Despite the express recommendations by both the DTSC and the Project Phase I consultant, no site assessment activities or soil sampling were documented in the DEIR. CEQA places the burden of environmental investigation on the government rather than the public. As a result, the DEIR may not rely upon its failure to gather relevant data.¹²⁰ By failing to gather the relevant data and correct the deficiencies in the record, the DEIR lacks the necessary evidentiary foundation to conclude that the potential presence of pesticides in the Project soil is not a significant impact.

The DEIR should be withdrawn until soil sampling has been conducted and evaluated for potential health impacts to construction workers and future residents.

¹¹⁵ SWAPE Comments at p. 12.

¹¹⁶ *Id.*

¹¹⁷ DTSC, Letter to City of Hanford re Live Oak Project NOP (Sept. 26, 2006).

¹¹⁸ *Id.*

¹¹⁹ Phase I ESA at p. 41.

¹²⁰ *Sundstrom v. County of Mendocino*, *supra*, 202 Cal.App.3d at 311.

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If contamination is confirmed, appropriate remediation actions must be identified and required.

CEQA also requires that an EIR disclose any health and safety problems that may be caused by the Project.¹²¹ The construction of residential homes, schools, and public parks on land potentially contaminated with pesticides and related metals may pose a significant health and safety risk to construction workers, residents, school children and park users.

According to the Center for Disease Control, organochlorine pesticides are concentrated in fatty tissues and are passed on to infants via breastmilk and to fetuses via the placenta.¹²² They are associated with cancer, neurological and liver problems and to birth defects.¹²³ The DEIR must be revised to disclose these potential risks.

B. The DEIR Fails to Adequately Investigate the Potential Presence of Diesel, Oil and other Hazardous Waste Contamination on Project Property

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The DEIR is also inadequate because it fails to evaluate actual field observations of potential diesel and oil contamination on Project property and fails to identify an open, hazardous waste investigation on Project property. This represents a potentially significant impact that requires further investigation and, if necessary, remediation.

The DEIR fails to adequately investigate and evaluate actual field observations of potential contamination. The Phase I ESA reported numerous observations from a site visit to the Sanchez Feed and Seed Store, including visibly stained soils in the vicinity of several large aboveground storage tanks ("AST"), including one diesel AST.¹²⁴ The Phase I ESA also reported two empty underground storage tanks, numerous 55-gallon drums containing oil and other

¹²¹ CEQA Guidelines § 15126.2, subd. (a).

¹²² Center for Disease Control, Third National Report on Human Exposure to Environmental Chemicals (2005).

¹²³ *Id.*

¹²⁴ Phase I ESA at p. 31.

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unidentified waste and earthen trenches containing unidentified, dark, viscous liquid.¹²⁵ The Phase I ESA concluded:

The discolored soils appears (sic) to have resulted from the leakage of fuels during fuel dispensing at the ASTs. The integrity of the pavement partially underlying this area is not known. In addition, the condition of soils underlying the fuel ASTs is not known. *Further assessment, including the collection and analysis of soil samples for fuel constituents should be conducted at the areas of discolored soils at the fuel ASTs, and underlying the ASTs.*¹²⁶

Despite these observations and express recommendations, no soil sampling results were provided in the DEIR to address the Phase I findings. On the basis of the Phase I observations and recommendations, a soil sampling program in coordination with DTSC should be undertaken to determine if petroleum hydrocarbons are present in the soil and underlying groundwater at the Sanchez Feed and Seed property and the adjacent dairy. An adequate evaluation should include risk assessment calculations to show that environmental conditions are protective of the health of construction workers and future residents. If significant contamination is confirmed, appropriate remediation or mitigation measures must be identified.

The failure to disclose or evaluate these potential hazards renders the DEIR legally inadequate. The DEIR must be revised and recirculated to address these issues.

In addition, the DEIR fails to disclose that hazardous waste sites within a one-mile radius of the Project are listed as open files in a Regional Water Quality Control Board's ("RWQCB") database.¹²⁷ These sites include:

- Houston Ave. Landfill
 (No Address in Geotracker)
 Status: Open under Spills, Leaks, Investigations, and Cleanup ("SLIC")

¹²⁵ *Id.* at pp. 34, 37.

¹²⁶ *Id.* at p. 41 (emphasis provided).

¹²⁷ SWAPE Comments at p. 13.

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- Inactive Houston Ave. Landfill
11th Avenue & Houston Ave.
Status: Open under Landfill Program
- Sanchez Property (Former Houston Avenue Landfill)
11300 HOUSTON AVE.
Status: Open under SLIC
- Sanchez and Sanchez Grain
HOUSTON AVE. & SPRR (Southern Pacific RR)
Status: Open

The Phase I ESA, however, only identifies the "Sanchez Property" from this list at a location "¾ mile to the east of the proposed project area."¹²⁸ The Phase I goes on to say:

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Although the address of the Sanchez Property listing corresponds to the site, review of RWQCB files reveals that the SLIC listing refers to property owned by Sanchez family at the Former Houston Avenue Landfill site. Investigations associated with the Sanchez Property SLIC site have been conducted concurrently with assessments at the Old Hanford County Dump, as these listings refer to the same former landfill facility.¹²⁹

The DEIR, however, fails to identify with sufficient specificity the documentation it relies upon to conclude that this listing refers to a different property than stated. The "Sanchez Property (Former Houston Avenue Landfill)" is listed in the RWQCB database at 11300 Houston Avenue. This corresponds to a location within the southeastern corner of the Project boundary, not to a location "¾ mile east of the proposed project." The location of the Sanchez Property (Former Houston Avenue Landfill) at 11300 Houston Avenue plots directly east of the Sanchez Feed and Seed Store at 11320 Houston Avenue.

SWAPE reviewed the available RWQCB files and found no conclusive evidence that this listing refers to different property than listed. The actual location and status of the Sanchez Property case under the RWQCB's SLIC program

¹²⁸ Phase I ESA at p. 15.

¹²⁹ *Id.*

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must be confirmed with the RWQCB before it can be assumed that this listing refers to a different location than the address listed.

IX. THE DEIR FAILS TO ADEQUATELY ANALYZE THE PROJECT'S POTENTIAL IMPACT ON TRAFFIC

The DEIR is also deficient because it fails to adequately assess the Project's traffic impacts. Tables 4.12-8 and 4.12-9 show that the Live Oak Project's direct impact (Live Oak Project plus existing conditions) and short-term cumulative impact (existing plus currently approved projects plus Live Oak Project) on traffic will result in four intersections with a level of service ("LOS") of "F", one intersection with LOS "E" and one intersection with LOS "D."¹³⁰

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The DEIR requires funding for a number of street and intersection improvements and concludes that this will mitigate the Project's direct and short-term cumulative traffic impacts to a level of insignificance.¹³¹

The DEIR, however, fails to provide any assurances that planned improvements will be implemented in time to avoid significant traffic impacts.¹³² In addition, the DEIR admits in the air quality analysis that the traffic "[i]mprovements are planned, *but may not be constructed prior to full project build-out.*"¹³³

If the improvements are not constructed prior to construction of the Project, significant and avoidable traffic impacts will occur until such time as the improvements are actually constructed. Because no measures are in place to ensure that necessary traffic improvements are implemented before the Project and other foreseeable projects are constructed, the DEIR lacks foundation for its conclusion

¹³⁰ DEIR at pp. 4.12-24 & 4.12-29; see also pp. 2-20 & 2-21.

¹³¹ DEIR at pp. 4.12-25 & 4.12-34; see also DEIR at pp. 2-20 – 2-22.

¹³² See *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79 (mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate); see also *Save Our Peninsula Committee v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 141. We are not challenging the sufficiency of the traffic fee as a mitigation measure, but rather the lack of foundation for the assumption that the traffic improvements will be in place in time to avoid significant direct and short-term, foreseeable cumulative impacts altogether.

¹³³ DEIR at p. 4.3-30 (emphasis provided).

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that the Project will not result in significant traffic impacts. The DEIR must be revised and re-circulated to correct this error.

The failure to ensure necessary traffic improvements are constructed prior to construction of the Project is also inconsistent with the City of Hanford General Plan. General Plan Objective PF 1 states that the City must ensure "sufficient levels of facilities and services prior to or concurrent with planned development." General Plan Policy PF 1.1 requires that "[n]ew development shall be phased according to the capacity of public facilities and services to serve new development." The DEIR, however, fails to require Project construction to be phased to ensure that necessary traffic improvements are constructed prior to or concurrently with Project development.

X. THE DEIR FAILS TO REQUIRE ADEQUATE MITIGATION FOR THE PROJECT'S SIGNIFICANT AGRICULTURAL IMPACTS

The threat that farmland conversion poses to the viability of continued agriculture in the San Joaquin Valley as a whole cannot be overstated.

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In only a century and a half since the Gold Rush, almost seven hundred thousand acres on the floor of the Valley have been developed for urban use. Almost one hundred thousand acres of this were paved over in the 1990's alone. Within just the next generation, close to a million more acres of farmland could vanish, putting additional pressure on the ability of the region's farmers to continue producing food for the state, the nation and the world.¹³⁴

The factors driving agricultural land conversion to urban uses in Hanford are similar to many other areas of the Valley, warranting special attention to this important regional issue in review of the Project. All communities have a responsibility to help preserve the agricultural base of the Central Valley, even as those same communities grow and provide housing for Valley residents.

¹³⁴ American Farmland Trust, "The Future is Now: Central Valley Farmland at the Tipping Point?", available at: <http://www.farmland.org/reports/futureisnow/introductionX.html>.

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Approximately 390 acres of farmland will be converted to urban uses under the Project.¹³⁵ The DEIR states that 215 acres of this farmland is Prime Farmland.¹³⁶ The rest appears to be Farmland of Statewide Importance.¹³⁷

The DEIR concludes that the Project's conversion of Prime Farmland and Farmland of Statewide Importance is a "significant and unavoidable" impact.¹³⁸ As a significant effect under CEQA, the City is required to consider feasible mitigation and alternatives that would lessen or eliminate this significant impact.¹³⁹

In response to this obligation, the DEIR states that, in the mid 1990's, the City acquired 1,600 acres of land south of the City that "will remain in agricultural use."¹⁴⁰ The DEIR further states that, including this Project, approximately 1,400 acres of land have been added to the City and removed from agricultural use. The DEIR relies upon this City land to partially mitigate the Project's loss of farmland.

The DEIR, however, fails to disclose whether the 1,600 acres of land acquired by the City for agricultural use will remain protected farmland in perpetuity or how such protection is assured. The Project will remove farmland from production in perpetuity – and so must the mitigation measure.¹⁴¹ Moreover, mitigation measures must be enforceable.¹⁴² The City also fails to disclose whether the mitigation land is of similar quality as the farmland converted under the Project.

The proposed farmland mitigation must be described in more detail to allow the public to determine its effectiveness. Mitigation measures that are vague or so undefined that it is impossible to evaluate their effectiveness are legally inadequate.¹⁴³

¹³⁵ DEIR, pp. 3-2, 4.2-7.

¹³⁶ DEIR at pp. 4.2-6, 4.2-9.

¹³⁷ The DEIR states that the Project will convert Farmland of Statewide Importance, but fails to disclose how many acres of the Project are considered Farmland of Statewide Importance.

¹³⁸ DEIR at pp. 4.2-11.

¹³⁹ See Pub. Resources Code, § 21002; CEQA Guidelines §§ 15126.4, subd. (a), 15126.6, subd. (b).

¹⁴⁰ DEIR at p. 4.2-10.

¹⁴¹ See CEQA Guidelines § 15370, subd. (e).

¹⁴² CEQA Guidelines § 15126.4, subd. (a)(2).

¹⁴³ *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

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Hanford Residents and Workers suggest that the City revise the proposed mitigation for agricultural land conversion impacts to require the placement of enforceable agricultural conservation easements on the City's mitigation property, or other appropriate property, to provide at least 1:1 mitigation for all farmland permanently converted to urban uses as a result of the Project. The City should also ensure that the conservation easements protect agricultural land of equal or greater quality as the land being converted. The conservation easements should be granted to an appropriate land trust to ensure enforceability. An adequate endowment for maintenance of the conservation easement must also be provided.¹⁴⁴

The DEIR's statement that no other mitigation measures are feasible lacks foundation. Conservation easements are feasible mitigation for impacts to farmland caused by the Project and are commonly applied throughout the San Joaquin Valley. Numerous statutory schemes underscore the importance of preserving agricultural lands and point to conservation easements as an appropriate method to mitigate impacts to agriculture.¹⁴⁵

Several land trusts are active in the Kings County region, including, The American Farmland Trust and The Sequoia Riverlands Trust. The Great Valley Center's Agricultural Transaction Program and the California Department of Conservation's California Farmland Conservancy Program have also promoted and funded farmland easement programs in the San Joaquin Valley area. The DEIR must evaluate the feasibility of participation in other existing conservation easement programs before it may conclude that additional mitigation is not feasible.

The DEIR must be revised to adequately describe the proposed agricultural mitigation for the Project. If agricultural use on the proposed mitigation property is not currently protected in perpetuity, enforceable conservation easements should be purchased or granted to appropriate land trusts to ensure that mitigation land will remain protected farmland.

¹⁴⁴ See, e.g. Central Valley Farmland Trust Stewardship Endowment Policy.

¹⁴⁵ See, e.g., California Land Conservation Act of 1965 ("Williamson Act"), Gov. Code 51200 et seq.; California Farmland Conservancy Program Act, Pub. Resources Code, § 10201 et seq.; Farmland Protection Policy Act, 7 U.S.C., § 4201, et seq.; see also Gov. Code, § 815 et seq. (encouraging preservation of agricultural land through conservation easements).

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XI. THE DEIR FAILS TO ADEQUATELY EVALUATE AND MITIGATE THE PROJECT'S NOISE IMPACTS

The DEIR's noise analysis is also inadequate because it improperly piecemeals noise impacts, fails to identify significant nighttime noise impacts, and fails to disclose or require its own consultant's mitigation recommendation.

The DEIR evaluates the noise level for Project residents from nearby traffic and the noise level for Project residents from the nearby operation of the Viking Ready-Mix plant.¹⁴⁶ In both cases, the noise levels are found to exceed the City's standard of significance. Mitigation is then proposed to reduce the daytime noise level of each source to just below the City's standard of significance.¹⁴⁷

The DEIR, however, fails to evaluate the cumulative noise level from *both* traffic and operation plant noise levels. The DEIR must be revised to evaluate the total noise level that will be heard at Project residences. Without such an analysis, the DEIR lacks foundation for its conclusion that Project residences will not be subject to significant noise levels.

In addition, the DEIR fails to disclose that Project residents will be subject to significant nighttime noise levels from the nearby operation of the Viking Ready-Mix plant. The City of Hanford General Plan Hazards Management Element non-transportation nighttime exterior noise level standard is 45 dB Leq at the nearest boundary line of the residential Project site.¹⁴⁸ The Environmental Noise Analysis prepared for the DEIR concludes that the Viking Ready-Mix plant operational noise level would exceed this nighttime standard unless a 14-foot high barrier was constructed adjacent to Houston Avenue.¹⁴⁹

The DEIR fails to disclose this significant impact on nighttime noise levels. It also fails to describe or require the recommended 14-foot high barrier mitigation. The DEIR must be revised and recirculated to disclose this significant impact and to evaluate the recommended mitigation.

¹⁴⁶ See DEIR, § 4.8.

¹⁴⁷ DEIR at pp. 4.8-16 & 4.8-22.

¹⁴⁸ j.c. brennan & associates, Inc., Live Oak Master Plan Environmental Noise Analysis (March 17, 2006) at p. 17.

¹⁴⁹ *Id.* at pp. 17-18.

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- 12-30
- XII. THE CITY MUST PREPARE AND RECIRCULATE A REVISED DRAFT EIR AS A RESULT OF ITS INADEQUACIES**
- CEQA requires a lead agency to recirculate an EIR when significant, new information is added to the EIR following public review but before certification.¹⁵⁰ The CEQA Guidelines clarify that new information is significant if “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project” including, for example, “a disclosure showing that ... [a] new significant environmental impact would result from the project.”¹⁵¹
- As discussed above, the proposed Project will have numerous impacts that are different and more severe than those described in the EIR, including impacts related to air quality, biological resources, water supply, soil contamination, traffic and noise, among others. The EIR also lacks adequate mitigation for the significant impacts it identifies. A revised and recirculated EIR is required.
- 12-31
- XII. CONCLUSION**
- The proposed DEIR fails to fulfill its responsibilities under CEQA. The comments presented above identify numerous impacts that are undisclosed, erroneously evaluated or insufficiently mitigated. The Project as currently described will burden, rather than complement, the existing community. A revised DEIR must be prepared to correct these deficiencies. Because such revisions would be significant, the revised DEIR must be recirculated for public review and comment.

¹⁵⁰ Pub. Resources Code § 21092.1.

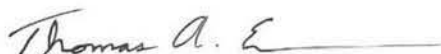
¹⁵¹ CEQA Guidelines § 15088.5.

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Hanford Residents and Workers thank the City of Hanford for providing us
the opportunity to comment on this matter.

Sincerely,

A handwritten signature in black ink that reads "Thomas A. Enslow". The signature is written in a cursive style with a long horizontal line extending to the right.

Thomas A. Enslow

TAE:cnh
Attachments

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