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November 17, 2014

Via Email and U.S. Mail

William Nelson
Contra Costa County
Department of Conservation and Development
30 Muir Road
Martinez, CA 94553
Email: William.Nelson@dcd.cccounty.us

Re: Comments on the Draft Environmental Impact Report
Prepared for the Saranap Village Mixed Use Project in Contra
Costa County (SCH # 2014032060)

Dear Mr. Nelson:

We submit these comments on the Draft Environmental Impact Report
("EIR") prepared for the Saranap Village Mixed Use Project ("Project") in Contra
Costa County ("County") on behalf of Saranap Area Residents for Responsible
Development ("Saranap Area Residents"). Hall Equities Group ("Applicant") is
proposing the construction of 235 multi-family residential units and approximately
43,500 square feet of neighborhood-oriented businesses and services at the
intersection of Boulevard Way and Saranap Avenue in unincorporated Contra Costa
County. The Project site is addressed as 1285, 1298, 1299, 1300, 1310 and 1326
Boulevard Way and 1176 and 1180 Saranap Avenue. The site is situated between
the cities of Walnut Creek and Lafayette (Assessor Parcel Numbers: 184-010-035,
184-010-046, 184-450-025, 184-480-025, 185-370-010, 185-370-012, 185-370-018,
185-370-033).

Based upon our review of the Draft EIR and supporting documentation, we
conclude that the Draft EIR fails to comply with California Environmental Quality

1 Draft Saranap Village Environmental Impact Report, Prepared for Contra Costa County
Department of Conservation and Development (September 2014) [hereinafter DEIR]
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Act2 ("CEQA") requirements. As explained more fully below, the Draft EIR does not
comply with the requirements of CEQA because it: (1) fails to set forth a stable and
finite project description; (2) fails to set forth the environmental baseline for
hydrological resources and utilities; (3) fails to identify, analyze and mitigate to the
extent feasible, all the impacts that the Project will have on aesthetic resources, the
state's limited hydrological resources and impacts related to Greenhouse Gas
("GHG") emissions; and (4) defers formulation of mitigation measures to post
approval studies.

These deficiencies in the Draft EIR are fatal errors. As a result, the Draft
EIR fails to identify the Project's potentially significant environmental impacts and
propose measures that can reduce those impacts to a less than significant level.
Accordingly, the County may not approve a General Plan Amendment, Rezoning,
Major Subdivision and Final Development Plan for the Project until the Draft EIR
is revised to comply with CEQA standards.

The revised Draft EIR must be recirculated for public review and comment.
The purpose of recirculation is to give the public and other agencies an opportunity
to evaluate the new data and the validity of conclusions drawn from it.3 CEQA
requires recirculation of a Draft EIR when significant new information is added to
the Draft EIR following public review, but before certification.4 The CEQA
Guidelines clarify that new information is significant if "the DEIR is changed in a
way that deprives the public of a meaningful opportunity to comment upon a
substantial adverse environmental effect of the Project or a feasible way to mitigate
or avoid such an effect."5

We have reviewed the Draft EIR and its technical appendices with the
assistance of technical consultants Matt Hagemann and Anders Sutherland
(Attachment A). Their expert comments are attached to this letter.6 The County
must respond to the attached technical comments separately and individually.

2 Pub Resources Code §§ 21000 et seq
3 Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors (1981) 122 CalApp3d 813, 822
4 Pub Resources Code § 21092.1
5 CEQA Guidelines § 15088.5
6 Letter from Matt Hagemann and Anders Sutherland, SWAPE, to Meghan A. Quinn, Adams
Broadwell Joseph & Cardozo, Re: comments on the Saranap Village Project, Saranap, California
(November 14, 2014) [hereinafter SWAPE] Attachment A.
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I. STATEMENT OF INTEREST

Saranap Area Residents is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The coalition includes Walnut Creek residents, John T. Champion, Brian Lescure and Jonathan Landry, Lafayette resident, Joshua D. Johnson, the International Brotherhood of Electrical Workers Local 302, Plumbers and Steamfitters Local 159, Sheet Metal Workers Local 104, their individual members and families who live and/or work in Contra Costa County.

The individual members of Saranap Area Residents and the members of the affiliated labor organizations live, work, recreate and raise their families in Contra Costa County, including in the Cities of Lafayette and Walnut Creek. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work constructing the Project itself. They will be first in line to be exposed to any health and safety hazards that may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

The organizational members of Saranap Area Residents also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members that they represent. Development projects that lead to increased traffic congestion, air pollution and other adverse environmental impacts and that overtax public service systems can limit the potential for future growth and development and undermine future employment opportunities for Saranap Area Residents' members. Saranap Area Residents therefore has a direct interest in enforcing environmental laws to minimize the impacts of projects that would otherwise degrade the environment adversely impact public service infrastructure.

Finally, Saranap Area Residents' members are concerned about projects that risk serious environmental harm without providing countervailing economic benefits. The CEQA process allows for a balanced consideration of a project's socioeconomic and environmental impacts, and it is in this spirit that we offer these comments.

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II. LACK OF TIMELY INFORMATION AND POTENTIAL NEED TO SUBMIT FURTHER COMMENTS

A Notice of Availability ("NOA") of a Draft EIR was made publicly available on September 19, 2014.⁷ At the time of the Draft EIR's release, only a select number of references, namely, Appendices A through G, Cultural Resource Reports, Hazardous Materials Reports, Geological Reports and Utilities Reports, were posted to the County's Department of Conservation and Development ("DCD") website. However, the "References" section of the Draft EIR included an extensive twelve page list of documents referenced in the Draft EIR. For 82 of the documents listed, no links, web addresses or other information was provided for where these materials could be obtained. The County eventually posted 75 additional reference documents to the DCD website on November 7, 2014, only ten days prior to the close of the comment period of the Draft EIR. The DCD website indicates that the remaining seven documents can be found by searching the Contra Costa County website.

Given the voluminous materials that were posted to the County website one week prior to the close of the comment deadline, Saranap Area Residents requested an extension of the comment period in a letter dated November 10, 2014.⁸ Saranap Area Residents received a denial of their request on November 13, 2014.⁹ According to the County, the reference materials were available to the public for the entirety of the public comment period. However, in phone call discussions with DCD Staff, Saranap Area Residents were informed that these materials were in the possession of the environmental consultants, and could not be made publicly available until the consultants had responded to the request. CEQA requires that all documents referenced in an environmental review document be made available to the public for

⁷ See Notice of Availability and Notice of Public Hearing for the Saranap Village Mixed Use Project – Draft Environmental Impact Report (Sept 19, 2014) available at <http://www.cccounty.us/DocumentCenter/View/33348>

⁸ Letter from Meghan A Quinn, Adams Broadwell Joseph & Cardozo, to Theresa Speiker, Chief Assistant County Administrator Contra Costa County, John Kopchik, Interim Director Department of Conservation and Development Contra Costa County, and William Nelson, Contra Costa County, re: Request for Extension of Comment Period for the Draft Environmental Impact Report Prepared for the Saranap Village Mixed Use Project in Contra Costa County (SCH # 2014032060) (November 10, 2014) **Attachment B**.

⁹ Letter from John Kopchik, Interim Director Department of Conservation and Development Contra Costa County, to Meghan A Quinn, Adams Broadwell Josephy & Cardozo, re: Request for Extension of Public Comment Period for the Saranap village Mixed-Use Project Draft Environmental Impact Report (November 13, 2014) **Attachment C**.
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the entire comment period.¹⁰ Materials hereby a third party, which cannot be reached by members of the public, does not meet CEQA's requirement that all referenced documents be available to the public for the entirety of the noticed comment period.

Furthermore, Saranap Area Residents submitted a Public Records Act ("PRA") Request for all file materials related to the Project on November 5, 2014.¹¹ On November 7, 2014 we reached the County staff by phone to discuss the materials in the County's possession that were responsive to our request. By email on November 14, 2014, the County informed us that it would be unable to provide all the responsive materials until November 20, 2014;¹² three days after the close of the comment period.

For these reasons, Saranap Area Residents are unable to review all Draft EIR reference documents and supporting materials and other public documents associated with the Project prior to the close of the comment period. The County's failure to make all materials referenced or relied upon by the Draft EIR compromises our ability to fully understand the Project and to develop meaningful comments. For these reasons, we reserve the right to supplement these comments before the Project reaches the Board of Supervisors for approval.

III. THE DRAFT EIR FAILS TO ADEQUATELY DESCRIBE THE PROJECT

The Draft EIR does not meet CEQA's requirements because it fails to include an accurate, complete and stable Project description, rendering the entire analysis inadequate. California courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."¹³ CEQA requires that a project be described with enough

¹⁰ See Pub Resources Code, § 21092, subd (b)(1); 14 Cal Code Reg § 15087, subd (c)(5)
¹¹ Letter From Meghan A Quinn, Adams Broadwell Joseph & Cardozo, to Theresa Speiker, Chief Assistant County Administrator Contra Costa County, John Kopchik, Interim Director Department of Conservation and Development Contra Costa County, and William Nelson, Contra Costa County, re: Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report and Public Records – Saranap Village Mixed Use Project in Contra Costa County (SCH # 2014032060) (November 5, 2014) **Attachment D**.
¹² Email From William Nelson, Contra Costa County to Meghan A Quinn and Janet M Laurain, Adams Broadwell Joseph & Cardozo, re Response to Public Records Act Request for Saranap Village (November 14, 2014) **Attachment E**.
¹³ *County of Inyo v. City of Los Angeles* (1977) 71 Cal App 3d 185, 193
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particularity that its impacts can be assessed.¹⁴ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.¹⁵

The public cannot make informed comments on a project of unknown or ever-changing description. "A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental costs..."¹⁶ As articulated by the court in *County of Inyo v. City of Los Angeles*, "a curtailed, enigmatic or unstable project description draws a red herring across the path of public input."¹⁷ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.¹⁸

A. The Draft EIR Fails to Adequately Describe the Wastestream Associated with Demolition of the Onsite Structures

The Draft EIR proposes the demolition of approximately 25 residential units and 37,501 square feet of onsite commercial and institutional uses.¹⁹ The Project also proposes upgrades to underground utilities and storm drains located beneath the Project site.²⁰ The only information provided in Draft EIR regarding this component of the Project is the statement that "approximately 70,000 cubic yards of soil and debris would be removed, and approximately 3,000 cubic yards would be excavated and re-compacted."²¹ This is insufficient to enable a meaningful assessment of the potential impacts from the demolition or the site excavation and utility work.

Given the presence of historical Recognized Environmental Conditions ("RECs") at the Project site, more information is required so that the public and decision makers can adequately assess impacts associated with construction and disposal of the Project wastestream. A REC is the presence or likely presence of any hazardous substances or petroleum products on a property under conditions that

¹⁴ *Id.* at 192
¹⁵ *Sundstrom v. County of Mendocino* (1988) 202 Cal App 3d 296, 311
¹⁶ *Id.* at 192-193
¹⁷ *Id.* at 197-198
¹⁸ See, e.g., *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal 3d 376
¹⁹ DEIR, p 3-11
²⁰ DEIR, p 3-17
²¹ *Id.*
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indicate an existing release, a past release, or a material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water of the property.²²

According to the Draft EIR, the “construction is not expected to result in the generation of unique types of solid waste that would conflict with existing regulations applicable to solid waste disposal” at the landfill.²³ No further explanation is provided. Reviewing courts have held that such unsupported and conclusory statements violate CEQA where an “EIR’s conclusions call for blind faith in vague subjective characterizations.”²⁴ The Draft EIR does exactly this by failing to require testing of the soil to ensure it is free of hazardous substances or provide other substantial evidence to support its conclusion. The County is required to remedy this shortcoming, to ensure that the soil and debris can be properly disposed of at the Acme Landfill. Without more, the public and decision makers will be unable to make an informed decision regarding the potential impacts the Project may have on the environment. A Draft EIR that fully characterizes the soil and construction debris generated by Project demolition and construction is required.

B. The Draft EIR Fails to Provide a Consistent and Accurate Description of the Additional Stormwater Treatment and Drainage Features that Will Be Installed at the Project Site

The Project components include upgrades to stormwater and drainage systems at the Project site. However, the Draft EIR fails to provide an accurate and complete description of the proposed drainage features as required by CEQA. The Draft EIR states that “[s]tormwater management systems would be installed, which would bring the existing 1960s-era storm drainage facilities up to modern standards, including detention facilities located on-site.”²⁵ Although the Project Applicant has submitted Project plans, “[t]he Public Works Department made a preliminary determination that additional treatment may be needed beyond that initially proposed by the applicant to meet the requirements of the Contra Costa Clean Water Program and the NPDES MS4 permit.”²⁶ The Department is

²² <http://www.astm.org/Standards/E1527.htm>

²³ DEIR, p 4 17-3

²⁴ *Communities for a Better Env’t v. City of Richmond* (2010) 184 Cal App 4th 70, 85 (*internal citations omitted*)

²⁵ DEIR, p 3-17

²⁶ *Id.*, p 4 9-12
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reviewing the need for additional measures and capacity that may be located at the Project site.²⁷

It is clear from the Draft EIR that the details of the Project’s stormwater management system have not yet been determined: “A final determination would be made by the Public Works Department when it reviews the final project design to ensure it incorporates design standards consistent with the requirements of the Contra Costa Clean Water Program and the NPDES MS4 permit.”²⁸ CEQA requires that the County provide a clear and complete description of the entire Project and its associated impacts. Without a detailed description of the stormwater management features of the Project, it is impossible to conduct a meaningful evaluation of any potentially significant impacts associated with installation of the drainage features and with stormwater run-off generated by the Project.

A complete analysis of the stormwater issues is particularly important due to the impaired water quality in Suisun Bay, the water body to which the Project will discharge; historic erosion and flooding in the Blade Court area;²⁹ and the presence of historical RECs at the Project site. Without this essential information, the public and decision makers are unable to determine the nature of Project impacts on groundwater, drainage and public health. Because the Draft EIR fails to incorporate an accurate and complete description of the Project, the public’s review of impacts to hydrology and drainage has been impermissibly narrowed. The County must remedy this inadequacy in a legally sufficient recirculated EIR.

²⁷ *Id.*

²⁸ *Id.*

²⁹ DEIR, p 4 9-11; Appendix E: Hydrology Technical Reports, p 9 [*hereinafter* Appendix E]
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C. The Draft EIR Fails to Describe the Grading and Excavation Required for Project Construction

The Draft EIR fails to provide an adequate description of the grading at the Project site for two reasons. First, the EIR's description of the area that will be graded for improvements is inconsistent. The EIR states, "[t]he total area that would be disturbed by mass grading or trenching, including the off-site improvement areas, would be approximately 5.28 acres."³⁰ The Hydrology Reports, however, state that onsite development will occur within a total of 4.59 acres; onsite street improvements will occupy an area of 1.11 acres; and offsite improvements of .69 acres will take place.³¹ This brings the total area to be graded and improved by the Project to 6.39 acres. The County must remedy this defect, as the EIR maps only depict a 5.28-acre area for grading and improvements associated with Project construction.³²

Second, the Draft EIR simply states that "mass grading and trenching" is required for installation of new stormwater drainage features and utilities at the Project site.³³ More information is required regarding the depth and extent of trenching.

According to the EIR, "[t]he Project would require excavation for installation of building foundations and underground utilities. Infrastructure improvements, both on-site and off-site, would consist of new or relocated utility lines, together with all necessary appurtenances and facilities."³⁴ The EIR fails to provide information regarding the depth or extent of the excavation, preventing the public from assessing impacts on the groundwater table beneath the Project site, existing onsite utilities and gas lines and other existing underground utility appurtenances. This information is essential given the historic RECs at the Project site, and presence of groundwater approximately 13 feet below the Project site.³⁵ Without further information it is impossible to determine whether excavation could lead to groundwater contamination, or impacts on water mains and gas lines

³⁰ DEIR, p 3-17
³¹ Appendix E, p 3
³² DEIR, Figure ES-2
³³ DEIR, p 3-17
³⁴ *Id.*
³⁵ DEIR, p 4 9-4
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D. The Draft EIR Entirely Fails to Describe the Parking and Staging Areas Required for Project Demolition and Construction

A complete description of the Project's parking and staging areas is necessary to assess the Project's impacts. The Draft EIR fails to even mention the necessity of a staging area for Project construction. Project construction will require the use of large construction equipment such as excavators, bulldozers, water trucks, tractors, pavers, paving equipment, rollers, cranes and forklifts.³⁶ Hauling trucks will pick up and remove debris, and delivery trucks and site workers will travel to the site. The Draft EIR fails to identify where delivery and hauling trucks and worker vehicles will be parked or where construction equipment will be staged.

Depending on the use, size, surface composition and location, the Project's staging and parking areas could result in unanalyzed and unmitigated impacts to air quality and public health. Furthermore, the Project site is located in the midst of a residential, suburban neighborhood. If the construction and street improvements proposed by the Project adhere to the construction schedule described in the Draft EIR, residents will be impacted by the construction for at least 19 months. The County is required to adequately describe the staging and parking areas so that the community and decision makers are fully informed of the Project's potentially significant impacts.

E. The Draft EIR Fails to Adequately Describe the Amount of Water Required for Project Construction and Operation

The Draft EIR fails to fully identify the amount of water required for construction and operation of the Project in two respects. First, the Draft EIR fails to provide any information regarding the amount of water required for Project construction. According to the EIR appendices, Project construction will utilize a water truck for onsite improvements.³⁷ However, the Draft EIR fails to provide any information regarding the amount of water to be used, or the use for which this water is proposed.

Second, the Draft EIR fails to quantify the amount of water required for fire suppression at the Project site. The Draft EIR states only that "[i]t is anticipated

³⁶ Appendix B: Air Quality Technical Reports, p 5 [*hereinafter* Appendix B]
³⁷ *Id.*; *see also* Appendix F: Noise Technical Reports, p 10 [*hereinafter* Appendix F]
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that the fire service flows through EBMUD’s existing infrastructure would not be adequate to meet fire suppression requirements for the multilevel buildings proposed as a part of the Project. Therefore an on-site fire system, including pumps and storage tanks, would most likely be required.”³⁸ The EIR stops there. No further information is provided regarding the volume of water that will be stored in on-site tanks, the size of the tanks or where the tanks and pumps would be located.

The Draft EIR notes that “the project site is shown as being in an area that is considered a fire threatened community.”³⁹ It is particularly important here that the Draft EIR provide additional information regarding the amount of water required to ensure that there is a sufficient water supply for fire safety purposes, and the impacts associated with the construction, installation and operation of the tanks and pumps. The County must produce and recirculate an EIR that fully describes and assesses impacts associated with the fire suppression components of the Project, and that clearly identifies the quantities of water required for Project construction and operation.

F. The Draft EIR Entirely Fails to Set Forth A Description of the Trips Generated By Project Construction

The Draft EIR completely fails to describe the number of trips generated by Project construction. CEQA makes clear that a project description must describe *all* components and *activities* that are reasonably anticipated to become part of the project.⁴⁰ Indeed, CEQA requires evaluation of the impacts from the “whole of the project.”⁴¹ Accordingly, every phase of the Project must be assessed with the same level of specific details, including the construction phase. This is because, “[a] narrow view of a project could result in the fallacy of division . . . by separately focusing on isolated parts of the whole.”⁴²

All impacts associated with Project construction must be disclosed, analyzed and mitigated in the Draft EIR. However, the Draft EIR’s assessment of impacts to traffic and circulation is confined to the operational stage of the Project. According to the Draft EIR, construction will take place over the course of approximately 19

³⁸ DEIR, p 4 17-10

³⁹ *Id.*, p 4 8-4

⁴⁰ CEQA Guidelines, §15378 (*emphasis added*)

⁴¹ CEQA Guidelines § 15378, subd (a)

⁴² *Burbank-Glendale-Pasadena Airport Auth. v. Hensler* (1991) 233 Cal App 3d 577, 592 3199-004cv

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months.⁴³ During that time, hauling trucks will pick up and remove debris, while delivery trucks and site workers arrive. Accordingly, information is needed regarding the number of trips generated, and the distance of those trips. CEQA requires a description of the “whole of project,” which includes both construction, operation and any other anticipated phases of the Project.

IV. THE DRAFT EIR FAILS TO ADEQUATELY ESTABLISH THE EXISTING ENVIRONMENTAL SETTING AGAINST WHICH THE DEIR IS REQUIRED TO ANALYZE THE PROJECT’S POTENTIALLY SIGNIFICANT IMPACTS

The Draft EIR describes the existing environmental setting inaccurately and incompletely, thereby skewing the impact analysis. The existing environmental setting is the starting point from which the lead agency must measure whether a proposed Project may cause a significant environmental impact.⁴⁴ CEQA defines the environmental setting as the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, from both a local and regional perspective.⁴⁵

Describing the environmental setting accurately and completely for each environmental condition in the vicinity of the Project is critical to an accurate and meaningful evaluation of environmental impacts. The importance of having a stable, finite and fixed environmental setting for purposes of an environmental analysis was recognized decades ago.⁴⁶ Today, the courts are clear that “[b]efore the impacts of a Project can be assessed and mitigation measures considered, an [EIR] must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.”⁴⁷ In fact, it is:

[a] central concept of CEQA, widely accepted by the courts, that the significance of a Project’s impacts cannot be measured unless the DEIR first establishes the actual physical conditions on the property. In

⁴³ *Id.*, p 1-1

⁴⁴ *See, e.g., Communities for a Better Env’t v. S. Coast Air Quality Mgmt. Dist.* (March 15, 2010) 48 Cal 4th 310, 316; *Fat v. City of Sacramento* (2002) 97 Cal App 4th 1270, 1278, *citing* Remy, et al ; Guide to the Calif Environmental Quality Act (1999) p 165

⁴⁵ CEQA Guidelines §15125, subd (a); *Riverwatch v. City of San Diego* (1999) 76 Cal App 4th 1428, 1453

⁴⁶ *City of Inyo v. City of Los Angeles* (1977) 71 Cal App 3d 185

⁴⁷ *City of Amador v. El Dorado City Water Agency* (1999) 76 Cal App 4th 931, 952 3199-004cv

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other words, baseline determination is the first rather than the last step in the environmental review process.⁴⁸

An EIR must also describe the existing environmental setting in sufficient detail to enable a proper analysis of project impacts.⁴⁹ The CEQA Guidelines provide that “[k]nowledge of the regional setting is critical to the assessment of environmental impacts.”⁵⁰ This level of detail is necessary to “permit the significant effects of the project to be considered in the full environmental context.”⁵¹

The Draft EIR fails to accurately and adequately describe the environmental setting for hazardous materials, water quality, stormwater and drainage systems that will serve the Project. Decision makers cannot determine the Project’s impacts, and in turn, apply appropriate mitigation for those impacts, without an accurate description of the environmental setting. The County must gather the relevant data and revise the Draft EIR to include an accurate and complete description of the existing environmental setting.

A. The Phase I Environmental Site Assessment Fails to Adequately Establish the Environmental Setting for Hazardous Materials

The Draft EIR fails to fully characterize the potential hazards present at the Project site. The Phase I Environmental Site Assessment prepared for the Project states that there were several Leaking Underground Storage Tanks (“LUSTs”) at the Project site. The tanks have been removed, and a no further action letter was filed. At the time of the no action letter, however, the Project site was zoned for commercial use and no residential land uses were present or planned.⁵²

According to former Environmental Protection Agency hazards expert, Matt Hagemann, “[n]ow that the residential land is proposed for the Project, the 1994 closure of the site should be revisited by the San Francisco Bay Regional Water Quality Control Board [Regional Board].”⁵³ As explained in Mr. Hagemann’s comments, “[a]ccording to a Regional Board policy, when a residential land use is to

⁴⁸ *Save our Peninsula Comm. v. Monterey City Bd. of Supervisors* (2001) 87 Cal App 4th 99, 125
⁴⁹ *Galante Vineyards v. Monterey Peninsula Water Mgmt. Dist.* (1997) 60 Cal App 4th 1109, 1121-22
⁵⁰ CEQA Guidelines § 15125, subd (d)
⁵¹ *Id.*
⁵² SWAPE, p 3
⁵³ *Id.*
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be considered (at a location where residential land use was not present previously), a site specific human health risk assessment is required.”⁵⁴ Therefore, Mr. Hagemann concludes that soil samples must be taken where the tanks were present, and the sample results compared to regulatory screening levels, to ensure the safety of potential future residents.⁵⁵

B. The Draft EIR Entirely Fails to Set Forth the Existing Water Quality in the Receiving Water Bodies

The Draft EIR discloses that stormwater runoff from the Project site will flow to Suisun Bay, an impaired water body, but fails to set forth the pollutants for which the Bay is impaired. “[D]ecision makers and the general public should not be forced to ... ferret out the fundamental baseline assumptions that are being used for the purposes of the environmental analysis,” nor should the “EIR’s conclusions call for blind faith in vague subjective characterizations.”⁵⁶

In this case, the Draft EIR concludes that the Project’s stormwater discharges will not lead to a significant impact without first setting forth the baseline for water quality. In fact, the Draft EIR contains contradictory information. In direct opposition to the conclusion that the Project will not have an impact on water quality, the Draft EIR determines that the Project will add to the current pollutant load by increasing the amount of impervious surface area at the Project site. The Draft EIR then finds that “[a]ny increased pollution that would violate water quality standards is considered a potentially significant impact.”⁵⁷ The County must clarify and address this inconsistency.

The County must characterize the existing water quality in the receiving water bodies so that the public and decision makers can assess the veracity of the Draft EIR’s conclusion that the stormwater flows will not have a significant impact on water quality. This information is essential because, “[t]he total amount of pollutants entering aquatic systems from these diffuse, nonpoint [stormwater] sources is now generally considered to be greater than that from any other source, such as pipe discharges.”⁵⁸ Stormwater generated at the Project site will drain to a storm drain system, then, “[s]tormflows empty into Las Trampas Creek

⁵⁴ *Id.*
⁵⁵ *Id.*
⁵⁶ *Communities for a Better Env’t*, 184 Cal App 4th at 85 (internal citations omitted)
⁵⁷ DEIR, p 4 9-11
⁵⁸ *Id.*, p 4 9-2
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approximately one half mile southeast of the project.”⁵⁹ Las Trampas Creek is an open channelized water body, which ultimately empties into Suisun Bay.

According to the Draft EIR, Suisun Bay is, “already identified as an impaired water of the State.”⁶⁰ The Clean Water Act (“CWA”) requires each state to maintain a list of impaired water bodies. Pursuant to section 303(d) of the CWA, each state is required to detail the water body segments that are impaired, a priority listing of the impaired waters, the uses for each water body on the 303(d) list, the total maximum daily load (“TMDL”) that may be discharged to the water body, and the pollutants for which the water is impaired.⁶¹ The Draft EIR fails to fully characterize the water body by omitting any details regarding the pollutants for which Suisun Bay is impaired.

More information is required given the fact that 90% of the Project site is already covered by impervious surfaces, and the Project proposes the addition of yet more impervious surface area.⁶² Accordingly, a significant amount of runoff will be channelized and discharged to Las Trampas Creek, and then to Suisun Bay. Without further information regarding the water quality in the Bay, impacts to hydrology cannot be fully analyzed and mitigated. The County must remedy this defect in a legally sufficient EIR.

C. The Draft EIR Fails to Describe the Existing Capacity of the Stormwater and Drainage Systems to which the Project Proposes to Discharge

The Draft EIR states that the Project stormwater discharges will not overburden the existing downstream drainage system. However, the Draft EIR and Appendices discuss the historic flooding and erosion in the Blade Court area, which is located less than one mile from the Project site.⁶³ According to the Hydrology Report prepared for the Project, “[t]he Flood Control District indicated that the drainage improvement at Blade Court currently does not have sufficient capacity to carry 10-year storm runoff, and that there have been complaints about ponding and creek bank erosion in the area.”⁶⁴ The stormwater systems that serve the Project

⁵⁹ *Id.*, p 4 9-3
⁶⁰ *Id.*, p 4 9-11
⁶¹ 33 U S C § 1313(d) (2012)
⁶² DEIR, p 3-4
⁶³ DEIR, p 4 9-11; Appendix E, p 9
⁶⁴ DEIR, p 4 9-11.
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will flow through the Blade Court area, potentially exacerbating the flooding and erosion;⁶⁵ yet, the Hydrology Report claims that the “facilities have adequate capacity to convey th[e] storm water to its point of discharge.”⁶⁶ The County must remedy this inconsistency.

The Draft EIR violates CEQA by making conclusory statements regarding the capacity of the stormwater conveyance system, rather than providing data and factual information about the volume that the system can convey, the current volume being conveyed and any additional remaining capacity. Without this information, it is impossible to determine the veracity of the claims in the Draft EIR and its Appendices. Flooding and erosion in an area that drains to a stormwater system may suggest that the system to which the area discharges is experiencing significant stress. Without information regarding the capacity of the system, and the current amount of flow discharged during storm events, the public and decision makers will be unable to fully understand and address the Project’s impacts on the environment. The County must remedy this defect in a legally adequate EIR.

V. THE COUNTY LACKS SUBSTANTIAL EVIDENCE TO SUPPORT ITS CONCLUSIONS IN THE DRAFT EIR REGARDING THE PROJECT’S SIGNIFICANT IMPACTS; THE DRAFT EIR FAILS TO INCORPORATE FEASIBLE MITIGATION MEASURES NECESSARY TO REDUCE SUCH IMPACTS TO A LEVEL OF INSIGNIFICANCE

CEQA has two basic purposes, neither of which the Draft EIR satisfies. First, CEQA is designed to inform decision makers and the public about the potentially significant environmental impacts of a project before harm is done to the environment.⁶⁷ The EIR is the “heart” of this requirement.⁶⁸ 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.”⁶⁹

⁶⁵ *Id.*
⁶⁶ Appendix F, p 5
⁶⁷ CEQA Guidelines § 15002, subd (a)(1); *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal App 4th 1344, 1354; *County of Inyo v. Yorty* (1973) 32 Cal App 3d 795, 810
⁶⁸ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal 3d 68, 84
⁶⁹ *County of Inyo v. Yorty* (1973) 32 Cal App 3d 795, 810
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To fulfill this function, the discussion of impacts in a DEIR must be detailed, complete, and “reflect a good faith effort at full disclosure.”⁷⁰ An adequate EIR must contain facts and analysis, not just an agency’s conclusions.⁷¹ CEQA requires an EIR to disclose all potential direct and indirect, potentially significant environmental impacts of a project.⁷²

Second, if an EIR identifies potentially significant impacts, it must then propose and evaluate mitigation measures to minimize these impacts.⁷³ CEQA imposes an affirmative obligation on agencies to avoid or reduce environmental harm by adopting feasible project alternatives or mitigation measures.⁷⁴ Without an adequate analysis and description of feasible mitigation measures, it would be impossible for agencies relying upon the Draft EIR to meet this obligation.

Under CEQA, an EIR must not only discuss measures to avoid or minimize adverse impacts, but must ensure that mitigation conditions are fully enforceable through permit conditions, agreements, or other legally binding instruments.⁷⁵ A CEQA lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility.⁷⁶ This approach helps “insure the integrity of the process of decision by precluding stubborn problems or serious criticism from being swept under the rug.”⁷⁷

In this case, the Draft EIR fails to satisfy the basic purposes of CEQA. The Draft EIR’s conclusions regarding aesthetic impacts, biological, hydrological and water resources, impacts from greenhouse gas emissions and impacts to public services, are not supported by substantial evidence. In preparing the Draft EIR, the

⁷⁰ CEQA Guidelines § 15151; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal App 4th 713, 721-722

⁷¹ *See Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal 3d 553, 568

⁷² Pub Resources Code § 21100, subd (b)(1); CEQA Guidelines § 15126 2, subd (a)

⁷³ Pub Resources Code §§ 21002 1, subd (a), 21100(b)(3); CEQA Guidelines §§ 15002, subd (a)(2) and (3); *Berkeley Jets*, 91 Cal App 4th at 1354; *Laurel Heights Improvement Ass’n v. Regents of the University of Cal.* (1998) 47 Cal 3d 376, 400

⁷⁴ Pub Resources Code §§ 21002-21002 1

⁷⁵ CEQA Guidelines, § 15126 4, subd (a)(2)

⁷⁶ *Kings County Farm Bur. v. County of Hanford* (1990) 221 Cal App 3d 692, 727-28 (a groundwater purchase agreement was inadequate mitigation because there was no record evidence that replacement water was available)

⁷⁷ *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal 3d 929, 935 3199-004cv

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County: (1) failed to provide sufficient information to inform the public and decision-makers about potential environmental impacts; (2) failed to accurately identify and adequately analyze all potentially significant environmental impacts; and (3) deferred the identification of specific, enforceable mitigation measures. The County must correct these shortcomings and recirculate a revised EIR for public review and comment.

A. The Draft EIR Fails to Adequately Identify, Analyze and Mitigate Significant Impacts Associated with Greenhouse Gas Emissions

i. The Significant Impacts Associated with Greenhouse Gas Emissions Are More Severe than Demonstrated by the EIR

The Draft EIR fails to sufficiently identify and analyze the significance of the Greenhouse Gas (“GHG”) Emissions from the Project. The Draft EIR understates the significance of impacts associated with emissions by improperly taking a reduction for new Building Energy Efficiency Standards into its calculations, thereby reducing the total emissions estimate. The California Emissions Estimator Model (“CalEEMod”) User Guide Appendix A clarifies that reductions associated with the 2008 Energy Efficiency Standards have already been taken into account in formulating the calculations.⁷⁸ Accordingly, when data is entered into CalEEMod, those reductions are reflected in the CalEEMod output.

The EIR should incorporate a reduction in GHG emissions that reflects the difference between the 2008 Energy Efficiency Measures and the 2013 Energy Efficiency Measures. Instead, the EIR indicates that “[e]nergy demand was adjusted per the California Energy Commission’s 2013 standards for the Building Energy Efficiency Program.”⁷⁹ By improperly applying this reduction, the EIR’s calculations resulted in an approximate decrease in the CalEEMod numbers by 25% for residential land use and 30% for non-residential land use.⁸⁰ The County must recalculate the GHG Emissions associated with the Project so that the full scope of emissions generated can be mitigated.

⁷⁸ CalEEMod User Guide, Appendix A, p 31 **Attachment F.**

⁷⁹ Appendix D: Greenhouse Gas Technical Report, p 4 [hereinafter Appendix D]

⁸⁰ *Id.*
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ii. *The Draft EIR Defers Mitigation of Greenhouse Gas Emissions in Violation of CEQA*

The GHG Mitigation Plan in the Draft EIR defers the formulation and adoption of specific enforceable mitigation measures to an uncertain future date. CEQA prohibits a lead agency from deferring the formulation of mitigation measures to some future time.⁸¹ The Draft EIR’s approach to GHG mitigation violates CEQA for two reasons.

First, the GHG Mitigation Plan provides a vague outline of tentative plans for the deferred formulation of mitigation measures. “Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decision-making; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.”⁸²

In *Communities for a Better Environment v. City of Richmond*, the court invalidated an EIR, which proposed that the applicant adopt feasible mitigation measures to “mitigate or avoid” GHG impacts.⁸³ The Court determined that the EIR, “merely propose[d] a generalized goal ... and then set[] out a handful of cursorily described mitigation measures for future consideration that might serve to mitigate ... emissions resulting from the Project.”⁸⁴ Similarly, here, the Draft EIR sets forth a short non-exclusive list of measures from which the Applicant *may* choose to devise a GHG Mitigation Plan.⁸⁵ Under the terms of the Mitigation Plan, the Applicant may “modify or amend” the recommended measures, and also may “substitute measures.”⁸⁶ The GHG Mitigation Plan will then be approved by the County at a later date. The GHG Mitigation Plan proposed by the Draft EIR is analogous to the mitigation proposed in the EIR and rejected by the court in *Communities for a Better Environment v. City of Richmond*.

Second, the approach taken in the Draft EIR precludes meaningful public participation since the absence of a definitive mitigation measures prevents the public and decision makers from evaluating the effectiveness of the proposed

⁸¹ CEQA Guidelines, § 15126.4, subd (a)(1)(B)
⁸² *Communities for a Better Env’t*, 184 Cal App 4th at 93
⁸³ *Id.*
⁸⁴ *Id.*
⁸⁵ DEIR, p 4 7-14
⁸⁶ *Id.*
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mitigation plan. As explained in the *Communities for a Better Environment* case, CEQA requires that mitigation measures be developed during the public environmental review process, not after project approval:

The development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral negotiation between a project proponent and the lead agency after project approval, but rather, an open process that also involves other interested agencies and the public.⁸⁷

The seminal Sundstrom decision further explains the negative impact on the decision-making process that results from post-approval development of mitigation plans:

A study conducted after approval of a project will inevitably have a diminished influence on decision making. Even if the study is subjected to administrative approval, it is analogous to the sort of post hoc rationalization of agency action that has been repeatedly condemned in decisions constructing CEQA.⁸⁸

Because the EIR proposes only a “generalized goal” of reducing GHG Emissions associated with the Project and leaves the selection of specific mitigation measures to the Applicant, the GHG Mitigation Plan proposed by the Draft EIR violates CEQA. The County must remedy this inadequacy in an updated and recirculated EIR.

B. The Draft EIR Lacks Sufficient Evidence to Support its Conclusion that Project Impacts to Public Health Associated with Hazardous Materials Will Be Less Than Significant

The Draft EIR concludes that the Project will not cause any significant impacts with the implementation of mitigation.⁸⁹ However, the mitigation measures are insufficient to address the potentially significant impacts to workers and residents at the Project site. As previously described in this comment letter, the Project site was the subject of a removal action, which was deemed complete in

⁸⁷ *Communities for a Better Env’t*, 184 CalApp 4th at 93
⁸⁸ *Sundstrom*, 202 Cal App 3d at 307
⁸⁹ DEIR, p 4 8-14
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1994. Accordingly, there are additional impacts that have gone unmitigated for two reasons.

First, the EIR admits that “it is possible that construction activities could encounter previously unidentified contamination associated with the former location of the ...USTs or even other past land uses of the site. If not handled appropriately, construction workers or the public could become exposed to contaminants that could cause adverse health affects.”⁹⁰ Mr. Hagemann agrees and concludes in his comments that “[r]eleases of gasoline from USTs may contaminate soil and groundwater with petroleum compounds that may pose a risk to construction workers during earthmoving activities associated with Project developments.”⁹¹ The Draft EIR merely proposes the testing of soil once a hazard is detected,⁹² potentially exposing workers to volatile organic compounds. Testing should be conducted prior to the initiation of construction and “incorporated into a human health risk assessment to ensure development is protective of the health of the construction workers and the future residents.”⁹³

Second, at the time of the clean up and issuance of the Regional Board’s “No Further Action Letter,” the Project site was zoned commercial, but is now proposed for residential uses. As explained in Mr. Hagemann’s letter, “[n]ow that residential land use is proposed for the Project, the 1994 closure of the site should be revisited by the San Francisco Bay Regional Water Quality Control Board.”⁹⁴ Regional Board policy requires a site specific human health risk assessment when a residential land use is being considered at a location where no prior residential land uses were present.⁹⁵

In Mr. Hagemann’s expert opinion, the health and safety of workers and future residents will be in jeopardy unless soil samples are taken at the former tank locations and compared to regulatory screening levels.⁹⁶ In the absence of this information, there is no substantial evidence supporting the Draft EIR’s conclusion that the Project will not have a significant impact on public or worker health due to the presence of hazards.

⁹⁰ DEIR, pp 4 8-13 – 14
⁹¹ SWAPE, p 3
⁹² DEIR, p 4 8-14
⁹³ SWAPE, p 3
⁹⁴ *Id.*
⁹⁵ *Id.*
⁹⁶ *Id.*
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C. The Draft EIR Lacks Sufficient Evidence to Support its Conclusion that Project Impacts on Visual Resources Will Be Less Than Significant With the Incorporation of Mitigation Measures

The Draft EIR fails to identify mitigation measures sufficient to address impacts to visual resources in Contra Costa County. The Draft EIR concludes that, “[t]he Project could substantially degrade the visual character or quality of the project site or its surroundings.”⁹⁷ However, the Draft EIR confines its discussion of mitigation measures for impacts on visual resources to construction techniques, rather than the preservation of visual resources and tree plantings, as required by the Contra Costa County General Plan (“General Plan”).

The General Plan requires that “[i]n areas designated for urban development, the [General Plan] principles ... shall be applied in the review of development proposals.”⁹⁸ The General Plan continues, “[i]n order to conserve the scenic beauty of the County, developers shall generally be **required to restore the natural contours and vegetation of the land** after grading and other land disturbances. Public and private projects shall be designed to minimize damages to significant trees and other visual landmarks.”⁹⁹ According to the Arborist Report in Appendix C to the Draft EIR, “63 trees would require removal, all of which would fall within the development envelope for the three sites (Table 3, page 8). Of the 63 trees identified for removal, 23 qualified as *Protected trees*.”¹⁰⁰ Furthermore, eight of the trees on the Project site are coastal redwoods, including both young and mature trees.¹⁰¹

Contrary to the General Plan policies, the Draft EIR fails to consider the scenic value of the protected trees and other existing vegetation that would be impacted by the Project. The Draft EIR also fails to require the restoration of the trees that will be removed by the Project. Indeed, the mitigation measures proposed by the Draft EIR to address impacts to aesthetics include varying the style of housing, breaking up building masses and using a specific color palette.¹⁰² The

⁹⁷ DEIR, p 4 1-17
⁹⁸ Contra Costa County General Plan, p 9-5
⁹⁹ Contra Costa County General Plan, Policy 9-15 (*emphasis added*)
¹⁰⁰ Appendix C: Arborist report, Executive Summary
¹⁰¹ *Id.*, p 3
¹⁰² DEIR, pp 4 1-20 – 21
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Draft EIR completely fails to discuss how these mitigation measures will address the loss of tree line in the community.

The Draft EIR's failure to mitigate the removal of such a large number of trees that are considered to be visual resources by both the Contra Costa County General Plan and the CEQA Guidelines is entirely inexplicable. The Draft EIR offers no explanation for its failure to address the removal of trees, and instead emphasizes that the Project will be several feet shorter than the stand of redwoods it plans to replace.¹⁰³ This is wholly inadequate, as condominiums and strip mall shopping centers are not the visual equivalent of a majestic stand of redwood trees. The Project's negative effects on views of Mt. Diablo, Las Trampas Wilderness and "other features of beauty," such as live oak and coastal redwoods, constitute a potentially significant environmental impact under CEQA. The County is required to consider all feasible mitigation measures, including the planting of replacement trees, in order to minimize the Project's impacts on the visual resources of the Saranap community, and protects those resources as required by the General Plan and CEQA.

D. The Draft EIR Fails to Adequately Identify, Analyze and Mitigate Significant Impacts on Hydrology and Drainage

- i. The Draft EIR Lacks Sufficient Evidence to Support Its Conclusion that the Project Will Result in Less than Significant Impacts to Hydrology and Drainage*

The Draft EIR states the Project will not have significant impacts on hydrology with the incorporation of mitigation measures.¹⁰⁴ However, the Draft EIR fails to provide sufficient evidence to support its conclusion for two reasons. First, information in the Draft EIR demonstrates that the Project will exacerbate the reported erosion and flooding at Blade Court by adding to stormwater flows. Appendix G of the CEQA Guidelines clearly states that those projects which, "[c]reate or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems," and those that "substantially increase the rate or amount of surface run-off in a manner which would result in flooding on-or off-site," are considered to have a significant impact.¹⁰⁵

¹⁰³ See DEIR, p 4 1-18
¹⁰⁴ DEIR, pp 4 9-10 – 16
¹⁰⁵ CEQA Guidelines, Appendix G 3199-004cv

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The Draft EIR and Appendices discuss the historic flooding and erosion in the Blade Court area.¹⁰⁶ According to the Hydrology Report prepared for the Project, "[t]he Flood Control District indicated that the drainage improvement at Blade Court currently does not have sufficient capacity to carry 10-year storm runoff, and that there have been complaints about ponding and creek bank erosion in the area."¹⁰⁷ The stormwater systems that will serve the Project will flow through the Blade Court area, potentially exacerbating the flooding and erosion.¹⁰⁸ The County is required to acknowledge, analyze and mitigate this potentially significant impact.

Second, the Project will add 28,283 square feet of impervious surfaces to the Project site, creating additional sources of polluted runoff that will be discharged to the already-impaired Suisun Bay. According to CEQA, a Project is considered to have a significant impact if it "[v]iolate[s] any water quality standards or waste discharge requirements."¹⁰⁹ Therefore, the County must circulate a Draft EIR that discusses the TMDLs established for Suisun Bay and the Project's potential to result in a violation of the established TMDL.

The Draft EIR acknowledges that "[s]tormwater pollution, during both construction and operational phases of the Project, can include oils, fuels, heavy metals, pesticides, and other contaminants of concern that originate on rooftops and parking lots that are subsequently washed into local waterways during storm events."¹¹⁰ These materials will be discharged into Suisun Bay where "[a]ny increased pollution that would violate water quality standards is considered a potentially significant impact."¹¹¹ Suisun Bay is designated as impaired for Mercury, Polychlorinated Biphenyls ("PCBs") and Dioxin,¹¹² all of which are associated with stormwater runoff.¹¹³ The Draft EIR provides no information or

¹⁰⁶ DEIR, p 4 9-11; Appendix E, p 9

¹⁰⁷ DEIR, p 4 9-11.

¹⁰⁸ *Id.*

¹⁰⁹ CEQA Guidelines, Appendix G

¹¹⁰ DEIR, p 4 9-11

¹¹¹ *Id.*

¹¹² U S EPA, 303(d) Final List (2010) **Attachment G.**

¹¹³ "The principal route by which dioxins are introduced to most rivers, streams and lakes is soil erosion and storm water runoff from urban areas " U S EPA, Persistent Bioaccumulative and Toxic Chemical Program available at <http://www.epa.gov/pbt/pubs/dioxins.htm>
EPA has published an entire Handbook on the relationship between stormwater runoff, PCBs and their elimination from water sources See U S EPA, Fact Sheet: Polychlorinated Biphenyl (PCB) 3199-004cv

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analysis as to why the addition of these pollutants, which may exacerbate already impaired conditions in Suisun Bay, would not further degrade water quality. The County is required to prepare and recirculate a Draft EIR that provides evidence sufficient to demonstrate why this Project will not add to pollutant loading in Suisun Bay.

ii. *The Draft EIR Improperly Incorporates Mitigation Measures Proposed to Reduce Project Impacts to Hydrology and Drainage into the Project Description*

In its description of the Project components, the Draft EIR states that the Project will include low-impact development features designed to reduce impacts associated with stormwater discharges.¹¹⁴ The Draft EIR's low-impact design elements do not constitute adequate mitigation for two reasons. First, design elements in the Applicant's project description do not meet the requirements of CEQA, as they are not legally enforceable. CEQA requires that mitigation measures be "fully enforceable through permit conditions, agreements, or other measures."¹¹⁵

Second, the Draft EIR bases its conclusion that the Project will not have a significant impact on design elements set forth in the project description, which should be identified and made legally enforceable as mitigation measures in a mitigation monitoring and reporting program. Courts interpreting CEQA have prohibited lead agencies from conflating the identification of significant impacts and mitigation measures into one step.¹¹⁶ In *Lotus v. Department of Transportation*, the EIR under review identified construction techniques which would be used to reduce impacts to biological resources. These construction techniques were proposed in the project description and relied upon for a determination of no significant impact.¹¹⁷ The *Lotus* Court found that the EIR conflated the analysis, and determined that the construction measures should have been properly identified and incorporated as legally enforceable mitigation measures. Furthermore, the court went on to echo CEQA's requirement that an EIR must determine whether a potential impact is

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Total Maximum Daily Load (TMDL) Handbook, (2011) available at <http://water.epa.gov/lawsregs/lawsguidance/cwa/tmdl/upload/pcb-tmdl-handbook-fact-sheet.pdf>

¹¹⁴ DEIR, pp 4 9-11- 12

¹¹⁵ Pub Resources Code § 21081 6 subd (b)

¹¹⁶ See *Lotus v. Dep't of Transp.* (2014) 223 Cal App 4th 645, 655 - 56

¹¹⁷ *Id.* at 653
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significant prior to the imposition of mitigation.¹¹⁸ Once an EIR identifies a potential impact as significant, only then is it appropriate for the lead agency to identify and analyze the effectiveness of available mitigation measures.¹¹⁹ The Draft EIR for this Project makes a similar deviation from CEQA's requirements by making its determination of no significant impact based on the low-impact Project design measures. Based on the *Lotus* holding, these measures would be more properly incorporated as enforceable mitigation measures proposed after the lead agency has fully analyzed Project impacts on hydrology, absent those measures.

Reviewing courts "will not provide [a lead agency] a shortcut to CEQA compliance by allowing [it] to rely on mitigation measures that have not been adequately adopted."¹²⁰ In this case, the Draft EIR incorporates low-impact stormwater design mitigation measures into the project description and then determines that the Project's impacts will be less than significant. The courts have clearly held that construction measures incorporated into a project description do not constitute adequate mitigation measures, and cannot be relied upon for a determination that no significant effects will occur.¹²¹ The Draft EIR does exactly this by incorporating low-impact design measures into the project description, and basing its determination on the use of those measures, conflating the analysis.

The Draft EIR must be rewritten to identify impacts to drainage that may result from the addition of impervious surface area, and then identify and analyze the adequacy of mitigation measures, ensuring that they contain detailed performance objectives, as required by CEQA.¹²² These shortcomings must be corrected in a legally adequate EIR.

VI. CONCLUSION

The Project presents significant environmental issues that must be addressed prior to Project approval. The Draft EIR's Project description is improperly truncated. The Draft EIR fails to adequately establish the existing setting upon which to measure impacts to hydrological resources and utilities. The Draft EIR also fails to include an adequate analysis of and mitigation measures for the Project's potentially significant impacts. The County failed to include a reasonable

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¹¹⁸ *Id.* at 656

¹¹⁹ *Id.*

¹²⁰ *Id.* at 653

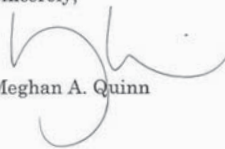
¹²¹ See *Lotus*, 223 Cal App 4th at 655 - 56

¹²² See CEQA Guidelines, § 15204
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discussion and improperly deferred the formulation of mitigation measures to post-approval studies for impacts associated with GHG emissions. Due to these significant deficiencies, a revised Draft EIR that addresses these inadequacies must be recirculated.

Sincerely,


Meghan A. Quinn

MAQ:clv

Attachments



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November 14, 2014

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Subject: Comments on the Saranap Village Project, Saranap, California

Dear Ms. Quinn:

We have reviewed the September 2014 Saranap Village Mixed-Use Project ("Project") Draft Environmental Impact Report (DEIR). The Project, located in the incorporated community of Saranap, California, will develop a community with up to 235 multiple family residential units and approximately 43,500 square feet of businesses and services.

We have prepared comments on impacts from Project construction and operation on Greenhouse Gas (GHG) Emissions and on Hazards and Hazardous Materials. A revised EIR should be prepared to adequately discuss these issues and to identify mitigation measures, where necessary.

Greenhouse Gas Emissions

The DEIR fails to provide adequate identification of operational GHG mitigation measures for the Project, and does not quantify the emission reduction capability attributed to each measure. The DEIR discloses that operational GHG emissions for the proposed Project will exceed the Bay Area Air Quality Management District (BAAQMD, or the "District") annual threshold of 3,740 megatons carbon dioxide equivalents (MT CO₂e/yr) by approximately 650 MT in 2016. The Greenhouse Gas Technical Report (GHGTR), attached as Appendix D to the DEIR, acknowledges that the overage is expected to decrease over time as energy supply becomes greener and automobiles become more efficient (Appendix D, p. 6). However, operational GHG emissions would still exceed the BAAQMD annual threshold in subsequent years, and neither the DEIR nor Appendix D provided any quantification of GHG emission mitigation strategy efficacy.

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Table 2-1 in the DEIR presents a summary of impacts and mitigation measures associated with construction and operation of the Project. Mitigation Measure GHG-2 is the only mitigation measure related to GHG emissions. The DEIR suggests that the implementation of Mitigation Measure GHG-2, a Project-Specific GHG Reduction Plan, will reduce GHG impacts to a less than significant level (DEIR, p. 2-7). This assertion is proffered without any discussion of the mitigation measures that will be included in the GHG Reduction Plan to achieve the approximate 15% reduction in operational GHG emissions required to achieve compliance with the District threshold. It is inappropriate for the DEIR to conclude that operational GHG impacts will be less than significant after mitigation without demonstrating the specific strategies for reduction.

The GHG analysis presented in the Project DEIR does not fulfill the CEQA requirements promulgated by the BAAQMD. The DEIR should present quantified estimates of both the reductions that will be achieved by the presently unidentified mitigation measures and the projected mitigated annual GHG emissions for the document to be considered for approval. The BAAQMD CEQA Air Quality Guidelines specifically dictate that, "the air quality analysis should quantify the reduction of emissions associated with any proposed mitigation measures and include this information in the CEQA document."¹ The Project DEIR and GHGTR should be revised to include a discussion of mitigation measures to be implemented and calculations demonstrating that the measures will achieve a 15% reduction in GHG emissions across the area, energy, mobile, waste, and water GHG sources identified in Table 6b of the GHGTR (Appendix D, p. 9).

The DEIR references the California Air Pollution Control Officer's Association (CAPCOA) document entitled *Quantifying Greenhouse Gas Mitigation Measures* in listing the potential mitigation measures that may be included in the *GHG Reduction Plan*. The CAPCOA document states that, "quantification of projects and mitigation under CEQA was the main focus in preparing this guidance document."² Table 2-1 of the DEIR superficially lists potential mitigation measures from the CAPCOA document that may be implemented, but does not make any effort toward actually quantifying the reductions. In order to demonstrate that the Project's GHG impacts will be less than significant, the DEIR should be revised to include an inventory of incremental reductions that will be attributed to each mitigation measure that is anticipated to be applied.

The 2008 CAPCOA document *CEQA and Climate Change* provides a summary of mitigation measures related to traffic, design, building energy efficiency, and social awareness, and their determined efficacy in reducing GHG emissions.³ The DEIR should be revised to include the specific combination or alternative combinations of mitigation measures evaluated by CAPCOA that will collectively reduce Project-level operational GHG emissions below the District threshold. Until this task is completed, the determination of GHG impacts being less than significant after mitigation is unfounded and inaccurate.

¹ http://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CEQA/BAAQMD%20CEQA%20Guidelines_Final_May%202012.ashx?la=en

² <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

³ <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>

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Hazards and Hazardous Materials

A former automobile service station was located at the Project site. The service station utilized four underground storage tanks (USTs): a 300 gallon waste oil UST, an 8,000-gallon gasoline UST, and two 4,000-gallon gasoline USTs. The USTs were excavated in 1987, and records indicate that all USTs were intact upon removal except one of the 4,000-gallon USTs "which had holes" (DEIR, p. 4.8-3). Two soil samples were collected from beneath each UST and sample results indicated "less than 10 parts per million (ppm) of contaminants of concern" (DEIR, p. 4.8-3). Following removal of the USTs, the site was granted regulatory case closure by the Regional Water Quality Control Board (RWQCB) on August 17, 1994.

When the site was closed in 1994, land use was commercial/industrial and no residential land uses were present. Now that residential land use is proposed for the Project, the 1994 closure of the site should be revisited by the San Francisco Bay Regional Water Quality Control Board. According to a Regional Board policy, when a residential land use is to be considered (at a location where residential land use was not present previously), a site specific human health risk assessment is required.⁴ To conduct a health risk assessment, samples of soil where the tanks were present should be collected and compared to regulatory screening levels, a process recommended in the Regional Board policy.

Releases of gasoline from USTs may contaminate soil and groundwater with petroleum compounds that may pose a risk to construction workers during earthmoving activities associated with Project development. Samples were reportedly collected that showed contaminants of concern below regulatory screening levels (DEIR, p. 4.8-3). However, because the site is now being considered for residential development, a new round of sampling should be conducted, and results should be incorporated into a human health risk assessment to ensure development is protective of the health of the construction workers and the future residents.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Anders Sutherland

⁴ http://www.waterboards.ca.gov/rwqcb4/water_issues/programs/ust/closure_criteria/closurecriteria.pdf

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