

Letter 23

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July 17, 2024

Via Email and Overnight Mail

City of Sacramento

Community Development Department

Attn: Scott Johnson, Senior Planner

300 Richards Boulevard, 3rd Floor

Sacramento, CA 95811

Email: SRJohnson@cityofsacramento.org

Re: **Preliminary Comments on the Draft Environmental Impact
Report for the Airport South Industrial Project (SCH No.
2022030181)**

Dear Mr. Johnson:

23-1

We are writing on behalf of **Sacramento Residents for Responsible Development** ("Sacramento Residents") to provide preliminary comments on the Draft Environmental Impact Report for the Airport South Industrial Project (SCH No. 2022030181) ("Project") proposed by NorthPoint Development ("Applicant") and prepared by the City of Sacramento ("City") and the Sacramento Local Agency Formation Commission ("Sacramento LAFCO") as co-lead agencies¹ pursuant to the California Environmental Quality Act ("CEQA").²

The 474.4-acre Project site is undeveloped and consists entirely of agricultural land. The Project site is bound by I-5 to the north, the City of Sacramento boundary to the east, the West Drainage Canal to the south, and Power Line Road to the west.³

¹ City of Sacramento, Draft Environmental Impact Report for the Airport South Industrial Project and Appendices (SCH No. 2022030181) (hereinafter "DEIR") (May 29, 2024) available at <https://www.cityofsacramento.gov/community-development/planning/environmental/impact-reports>.

² Pub. Resources Code ("PRC") §§ 21000 et seq.; 14 Cal. Code Regs ("14 CCR") §§ 15000 et seq. ("CEQA Guidelines").

³ DEIR, p. 1-3.
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While the entire Project site is proposed for annexation into the City limits, only a 353.5-acre portion of the Project site is currently proposed for development as part of requested entitlements.⁴ If the annexation is approved, the proposed Project would include development of an industrial park that would allow for construction of up to 5,204,500 square feet ("sf") of industrial uses within five parcels totaling 235.6 acres, as well as approximately 98,200 sf of retail/highway commercial uses, including approximately 73,400 sf of hotel/hospitality uses, on approximately 13.4 acres of the overall site. Parcels 6A through 6C and 7A through 7C are proposed retail/highway commercial uses generally situated south of the intersection of I-5 and Metro Air Parkway.⁵

The Project site also includes several nonparticipating parcels, comprised of approximately 83 acres.⁶ The proposed Project would result in first-tier entitlements for future industrial uses of approximately 1,404,800 sf within the nonparticipating parcels.⁷

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Based upon Residents' review of the DEIR and supporting documentation, Residents conclude that the DEIR fails to comply with the requirements of CEQA. The DEIR fails to adequately analyze many of the Project's significant environmental impacts and fails to propose enforceable mitigation measures that can reduce those impacts to a less than significant level, as required by CEQA. Residents reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.⁸

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I. STATEMENT OF INTEREST

Sacramento Residents is an unincorporated association of individuals and labor organizations with members who may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes the **Sacramento-Sierra's Building**

⁴ DEIR, p. 1-3.

⁵ DEIR, p. 1-3.

⁶ DEIR, p. 1-3.

⁷ DEIR, p. 1-3.

⁸ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.
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and Construction Trades Council and its affiliated unions, the members of those unions and their families, and other individuals that live, recreate and/or work in and around the City of Sacramento and Sacramento County.

Sacramento Residents supports the development of sustainable commercial and industrial centers where properly analyzed and carefully planned to minimize impacts on public health and the environment. Industrial warehouse projects like the Project should avoid adverse impacts to air quality, noise levels, transportation, and public health, and should take all feasible steps to ensure that unavoidable impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can commercial and industrial development truly be sustainable.

The individual members of Sacramento Residents and the members of the affiliated labor organizations live, work, recreate and raise their families in and around the City of Sacramento and Sacramento County. 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 would be the first in line to be exposed to any health and safety hazards which 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.

Sacramento Residents and its members also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members they represent. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the City, and by making it less desirable for businesses to locate and people to live and recreate in the City, including the Project vicinity. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities.

Finally, Sacramento Residents are concerned with projects that can result in serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.⁹ It is in this spirit Sacramento Residents offer those comments.

⁹ PRC § 21081(a)(5); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171, 7328-005j



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II. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.¹⁰ “The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”¹¹

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CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project.¹² “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”¹³ 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.”¹⁴ As the CEQA Guidelines explain, “[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.”¹⁵

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.¹⁶ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be

¹⁰ PRC § 21100.

¹¹ *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal* (“*Laurel Heights I*”) (1988) 47 Cal.3d 376, 390 (internal quotations omitted).

¹² Pub. Resources Code § 21061; CEQA Guidelines §§ 15002(a)(1); 15003(b)-(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 (“[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”).

¹³ *Citizens of Goleta Valley*, 52 Cal.3d at p. 561 (quoting *Laurel Heights I*, 47 Cal.3d at 392).

¹⁴ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; see also *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”) (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).

¹⁵ CEQA Guidelines § 15003(b).

¹⁶ CEQA Guidelines § 15002(a)(2), (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.
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avoided or significantly reduced.”¹⁷ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment” to the greatest extent feasible and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”¹⁸

While courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.’”¹⁹ As the courts have explained, a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.”²⁰ “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.”²¹

III. THE PROJECT DESCRIPTION IS INADEQUATE

23-5

The DEIR does not meet CEQA’s requirements because it fails to include an accurate and complete 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 EIR.”²² CEQA requires that a project be described with enough particularity that its

¹⁷ CEQA Guidelines § 15002(a)(2).

¹⁸ PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 887, 888.

¹⁹ *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).

²⁰ *Berkeley Jets*, 91 Cal.App.4th at p. 1355; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards*, 60 Cal.App.4th at p. 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

²¹ *Sierra Club*, 6 Cal.5th at p. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).

²² *Stopthenmillenniumhollywood.com v. City of Los Angeles* (2019) 59 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* (“*CBE v. Richmond*”) (2010) 184 Cal.App.4th 70, 85 89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.
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impacts can be assessed.²³ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.²⁴ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.²⁵

23-6

CEQA Guidelines section 15378 defines "project" to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."²⁶ "The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval."²⁷ Courts have explained that a complete description of a project must "address not only the immediate environmental consequences of going forward with the project, but also all "reasonably foreseeable consequence[s] of the initial project."²⁸ "If a[n]... EIR... does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law."²⁹

23-7

A. The DEIR Fails to Describe the Project's End Uses with Sufficient Particularity to Adequately Evaluate Trips Generated by the Project

The DEIR states that the future tenants of the proposed industrial buildings are not currently known, but that the tenant mix of the regional market consists of "regional suppliers, such as Amazon and Walmart, that deliver goods directly to consumers".³⁰ Based on these current market conditions, the DEIR states that "a strong need exists for light industrial warehousing to act as fulfillment centers for

²³ 14 CCR § 15124; *see, Laurel Heights I, supra*, 47 Cal.3d 376, 192-193.

²⁴ *Id.*

²⁵ *Sundstrom v. County of Mendocino ("Sundstrom")* (1988) 202 Cal.App.3d 296, 311.

²⁶ CEQA Guidelines § 15378.

²⁷ *Id.*, § 15378(e).

²⁸ *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

²⁹ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

³⁰ DEIR, p. 3-8.

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regional retailers”³¹. In order to develop the traffic characteristics of the proposed Project, trip-generation statistics published in the Institute of Transportation Engineers (“ITE”) Trip Generation Manual for the proposed Project’s land uses were compared to data from Metro Airpark development to the north of the Project site.³² Based on the comparison, the transportation consultants for the Project estimate that the Project’s industrial land uses will generate approximately 12,794 vehicle trips per day or 2.458 trips per 1,000 square feet.³³ However, the DEIR fails to justify why this rate is assumed, given that existing uses in the Metro Airpark generate significantly greater vehicle trips. For example, according to Appendix N, the Amazon SMF5 facility generates 4.46 trips per 1,000 square feet per day during the “Off-peak season” and 7.43 trips per 1,000 square feet per day during “Peak Season”.³⁴

As a result, the DEIR fails to analyze the trip generation of reasonably foreseeable land uses and fails to provide sufficient information about the Project’s expected uses and configuration for the public and decisionmakers to ascertain which of these end uses are likely for the Project. This informational defect affects the entire DEIR, as different types of warehousing have different environmental impacts.

The trip generation rate selected by the DEIR may drastically underestimate the Project’s GHG and VMT impacts. A greater number of trips results in greater traffic impacts and greater emissions of GHGs. Given the large uncertainty in the trips generated by the Project, the DEIR fails to meet CEQA’s requirement that a project be described with enough particularity that its impacts can be assessed.³⁵

23-8

Additionally, despite the transportation analysis’ determination that the Project would generate 12,794 trips per day, the air quality analysis for the Project relies on an average daily trip rate of 10,096.73 for the industrial park use.³⁶ This figure appears to be based on the assumption that the Project would operate 300 days per year.³⁷ Neither the DEIR nor the Appendices support the assumption that

³¹ *Ibid.*

³² *Id.*, Appendix O: Trip Generation and Distribution Memo, pdf p. 2971.

³³ *Ibid.*

³⁴ *Id.* pdf, p. 2972.

³⁵ 14 CCR § 15124; *see, Laurel Heights I, supra*, 47 Cal.3d 576, 192-193.

³⁶ DEIR, Appendix C: CalEEMod Output Sheets, pdf, p. 1207.

³⁷ *Id.* pdf, p. 1218 (The CalEEMod output sheets state that Operational Offroad equipment will operate 300 days per year.)

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the Project would not operate 24 hours per day, 365 days per year. As a result, the DEIR fails to provide substantial evidence of the Project's anticipated air quality and GHG emissions impacts.

23-9

The City must revise and recirculate the DEIR to correct these deficiencies and present a revised trip generation analysis and corresponding air quality and GHG emissions analyses which reflect reasonably foreseeable conditions at the Project site.

B. The Project Description Fails to Include Reasonably Foreseeable Backup Generators

23-10

The DEIR fails to disclose potential backup/emergency stationary generators for the Project's operations. The DEIR's project description does not address whether backup generators are a reasonably foreseeable component of the Project, and the DEIR's technical analyses assume no backup generators will be installed for operations. The DEIR does not disclose any conditions or mitigation measures that limit or prevent the use of backup generators. Thus, the DEIR must disclose and analyze the potential use of backup generators because (1) they are a reasonably foreseeable consequence of the Project, and (2) the use of backup generators will increase the Project's environmental effects.³⁸

In *East Oakland Stadium Alliance v. City of Oakland*,³⁹ the Court of Appeal upheld an EIR's analysis of emissions from backup generators. The EIR's analysis assumed that generators would operate for 50 hours of testing and maintenance annually, while allocating no time for actual emergency use. In discussing the lead agency's duty to analyze backup generator emissions, the Court stated that "if the annual need for emergency generator use is reasonably foreseeable, the EIR was not entitled to disregard such use merely because it would occur at unpredictable times."⁴⁰ The Court explained that use of a generator was reasonably foreseeable because, "[a]s noted in the EIR, some parts of the Bay Area are subject to predictable, sustained power outages undertaken to reduce the risk of fire."⁴¹ Thus,

³⁸ *Id.*

³⁹ (2023) 889 Cal. App. 5th 1223.

⁴⁰ *Id.* at 1252.

⁴¹ *Id.* at 1253.

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↑ “[t]he EIR was required to make neither a generally applicable nor a worst-case assumption; rather it was required to make a reasonable estimate of likely annual use of the generators at the project site.”⁴²

Here, as in *East Oakland Stadium Alliance*, back-up generators are a reasonably foreseeable consequence of the Project due to increasingly common Public Safety Power Shutoff (“PSPS”) events and extreme heat events. Extreme heat events (“EHE”) are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.⁴³ According to the California Public Utilities Commission (CPUC) de-energization report⁴⁴ in October 2019, there were almost 806 PSPS events that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers. The California Air Resources Board estimates that with 973,000 customers impacted by PSPS events in October 2019, approximately 125,000 back-up generators were used by customers to provide electricity during power outage.⁴⁵ The widespread use of back-up generators to adapt to PSPS and EHE events suggests that back-up generators are a reasonably foreseeable consequence of the Project.

23-11

↓ Furthermore, the DEIR states that the Project may be developed with cold storage warehouses⁴⁶ which are designed to keep temperature sensitive items in a temperature-controlled environment and require a constant energy supply to power refrigeration. Cold storage warehouses thus commonly utilize backup generators.⁴⁷

⁴² *Id.*

⁴³ Governor of California, 2021, Proclamation of a state of emergency, June 17, 2021.

⁴⁴ <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020, Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

⁴⁵ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at

<https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps>.

⁴⁶ DEIR, p. 4.9-26 (“[T]he PUD Guidelines [for the Project site] anticipate that the project site will be developed for tenants primarily focused on warehouse and distribution uses, light manufacturing and assembly, cold storage, and other uses as indicated in City of Sacramento Planning and Development

Code Section 17.226”). (Emphasis provided)

⁴⁷ California Air Resources Board, Comments re: Notice of Preparation (NOP) for the United States Cold Storage Hesperia Project (Project) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2020069036 (July 24, 2020), available at <https://ww2.arb.ca.gov/sites/default/files/classic/toxics/ttdceqalist/uscoldstorage.pdf> (stating that the HRA prepared for the Project should account for all potential health risks from Project-related diesel 7328-005).



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which typically rely on fuels such as natural gas or diesel,⁴⁸ and thus can significantly impact air quality, GHG emissions, and public health through emissions of criteria air pollutants, GHGs, and toxic air contaminants ("TACs") including DPM.⁴⁹

Diesel back-up generators emit significant amounts of Nitrogen Oxides ("NOx"), sulfur dioxides ("SO₂"), particulate matter ("PM10"), carbon dioxide ("CO₂"), carbon monoxide ("CO"), and volatile organic compounds ("VOC").⁵⁰ These

PM emission sources such as backup generators, TRUs, and heavy-duty truck traffic); Kusing Power Generator, <http://ksdieselgenerator.com/2019/backup-generator-for-cold-storage-room.html>, last visited 6/21/2021 ("Backup power supply is necessary for cold storage room to remain functional to avoid deterioration of high value-added goods such as vegetables and food stored in the room after long period of power failure"); East Coast Power Systems, Electrical Power Systems for Warehouses, <https://www.ecpowersystems.com/resources/electrical-power-systems/electrical-power-systems-for-warehouses/> (explaining that some warehouses that deal with refrigeration have to have multiple power backup generators by law).

⁴⁸ SCAQMD, Fact Sheet on Emergency Backup Generators.

<http://www.aqmd.gov/home/permits/emergency-generators> ("Most of the existing emergency backup generators use diesel as fuel").

⁴⁹ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> ("When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts)").

⁵⁰ University of California, Riverside Bourns College of Engineering—Center for Environmental Research and Technology, Air Quality Implications Of Backup Generators In California, (March 2005), pg. 8, available at <https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=84c8463118e4813a117db3d768151a8622c4bf3b>; South Coast AQMD, Fact Sheet on Emergency Backup Generators ("Emissions of Nitrogen Oxides (NOx) from diesel-fired emergency engines are 200 to 600 times greater, per unit of electricity produced, than new or controlled existing central power plants fired on natural gas. Diesel-fired engines also produce significantly greater amounts of fine particulates and toxics 7328-005j



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emissions affect not only air quality, but also create significant health risks.⁵¹ Since the Project may include cold storage, it is reasonably foreseeable that the Project would require on-site backup generators. Omission of the Project's reasonably foreseeable use of backup generators results in an underestimation of the Project's air quality, greenhouse gas, and health risk impacts.

In sum, omission of backup generators in the DEIR results in an underestimation of the Project's air quality, greenhouse gas, energy, and health risk impacts. The DEIR must be revised to resolve this project description inconsistency and correct the affected impacts analyses to accurately disclose the Project's potentially significant impacts.

C. The DEIR Fails to Describe the Development Agreement

23-12

According to the DEIR, the Applicant and the City will enter into a Development Agreement to assure that the Project would be completed in compliance with the plans submitted by the Applicant and assure the Applicant of vested rights to develop the project.⁵² However, the DEIR fails to contain any analysis of the potential environmental impacts that may be caused by implementation of the Development Agreement. The DEIR's failure to describe this

emissions compared to natural gas fired equipment."), available at <http://www.aqmd.gov/home/permits/emergency-generators#Fact2>.

⁵¹ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> ("When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts)").

⁵² DEIR, p. 3-12.
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critical component of the Project, and failure to analyze its impacts as required by CEQA results prevents the public and decisionmakers from analyzing the potential environmental impacts of the Development Agreement.

A development agreement is a contract between an agency and a developer establishing certain development rights with any person having a legal or equitable interest in the property at issue. The purpose of a development agreement is generally to extend the life of the entitlements in exchange for the provision of public benefits and to reduce the economic risk of development.⁵³ While a development agreement must advance an agency's local planning policies, it may also contain provisions that vary from otherwise applicable zoning standards and land use requirements as long as the project is consistent with the general plan and any applicable specific plan.⁵⁴ For this reason, it is critical that the terms of a proposed development agreement be disclosed to the public and analyzed during the Project's CEQA review in order to determine whether the development agreement may have potentially significant impacts that are not otherwise inherent in the Project.

When a development agreement is required to implement a project, it is considered part of the project under CEQA.⁵⁵ Development agreements must be enacted in accordance with the Government Code and applicable local planning codes, and must undergo environmental review at the time of adoption. Therefore, any development agreement for the Project must be described in the EIR and considered by the City's decision makers at the same time as the rest of the Project approvals.

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The DEIR fails to disclose any of the terms being considered for inclusion in the Development Agreement, including the length of time the Development Agreement will be in effect. The DEIR must be revised to correct this omission. In particular, the public must be allowed to consider whether the proposed Development Agreement will have significant impacts in addition to the impacts disclosed in the DEIR *before* the City enters into a contract with the Applicant which could guarantee the long-term existence of those impacts during the life of the contract. It is conceivable that, by extending the Project's land use

⁵³ Gov. Code §§ 65864-65869.5.

⁵⁴ *Id.*

⁵⁵ See Gov. Code § 65864; 14 CCR §§15352 (a), (b), 15378; *Save Tara v. City of West Hollywood* (2006) 45 Cal.4th 116, 7328-005j.



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entitlements, the mitigation measures implemented for the Project will cease to be effective over the term of the Development Agreement, resulting in new significant environmental impacts from the Project. In addition, it is possible that the Development Agreement could have further significant environmental impacts not analyzed in the DEIR.

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Additionally, the public must have an opportunity to evaluate and comment on the specific public benefits conferred by the Agreement, as the City has great discretion in determining what constitutes a public benefit. The City decisionmakers and the public must consider what public benefits would warrant providing the Applicant a guarantee on the Project's entitlements. Examples of public benefits could include community workforce or skilled and trained workforce requirements, or funds or community services provided to the City to offset air quality, transportation, GHG emissions, and biological resources impacts associated with the Project. City residents and other members of the public must be given a meaningful opportunity to provide input to the City on what public benefits the City should require.

23-15

Because the Development Agreement was not included in the DEIR's analysis of the Project, the DEIR must be revised and re circulated in order to give the public an opportunity to comment on the Project's adverse impacts or mitigation measures that are affected by the terms of the Agreement.⁵⁶

IV. THE DEIR FAILS TO ADEQUATELY DISCLOSE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS

23-16

An EIR must fully disclose all potentially significant impacts of a project, and must implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.⁵⁷ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁵⁸

⁵⁶ 14 CCR §15088.5 (a); *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112.

⁵⁷ 14 CCR § 15064(b).

⁵⁸ *Kings City Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732, 7328-005j



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Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁵⁹ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁶⁰ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will 'determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements.'⁶¹

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'⁶²

A. The DEIR Fails to Accurately Disclose and Mitigate the Project's Potentially Significant Operational Health Risks

23-17

The DEIR includes an operational health risk assessment ("HRA") evaluating impacts from exposure to diesel particulate matter ("DPM") emissions from Project operation on nearby sensitive receptors, which include single-family residences and Paso Verde K-8 School, located approximately 200 feet east and 200 feet south of the project site, respectively.⁶³ The HRA estimates that the maximum cancer risk posed to the nearby, existing sensitive receptors as a result of Project operation would be 9.53 in one million, which would not exceed the SMAQMD significance threshold of 10 in one million.⁶⁴

23-18

The DEIR's conclusion is unsupported for several reasons. As discussed above, the DEIR's emissions modeling relies on unsupported assumptions regarding the reasonably foreseeable trip generation rates of the Project which results in underestimated emissions. Additionally, the DEIR fails to evaluate the health risk

⁵⁹ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

⁶⁰ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 112, 435.

⁶¹ *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

⁶² *Berkeley Jets*, 91 Cal.App.4th at 1355.

⁶³ DEIR, p. 4.3-51.

⁶⁴ DEIR, p. 4.3-51, Table 4.3-11.
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posed by DPM emissions from backup generator use during Project operation. As such, the DEIR's evaluation of the Project's potential health risk impacts, as well as the subsequent conclusion that the health risk posed by exposure to the Project operational TAC emissions is less-than-significant is unsupported by substantial evidence.

The City must prepare a revised HRA for the Project and present its findings in a revised and recirculated DEIR for the Project.

B. The DEIR Fails to Consider and Implement All Feasible Mitigation Measures to Reduce Project Emissions

23-19

The DEIR states that the Project's Operational ROG and NOX emissions would be above the applicable SMAQMD thresholds of significance and could create a conflict with, or obstruct implementation of, the applicable air quality plan, and result in a significant impact.⁶⁵ The DEIR concludes that, despite implementation of all feasible mitigation, the Project's emissions impacts are significant and unavoidable.⁶⁶ The DEIR states that "Although Mitigation Measure 4.3-2 requires preparation and implementation of a project-specific Air Quality Mitigation Plan (AQMP) which would result in a 35 percent reduction in emissions, emission levels would still exceed the applicable threshold of significance and, therefore, the impact would remain significant and unavoidable."⁶⁷ This conclusion violates CEQA, as the City fails to adopt, or even consider, numerous feasible mitigation measures.

CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.⁶⁸ In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.⁶⁹ Yet, as explained below, the DEIR falls far short of this mandate by failing to even evaluate feasible and effective mitigation strategies to address the Project's significant air quality and GHG emissions impacts.

⁶⁵ DEIR, p. 4.3-46.

⁶⁶ DEIR, p. 4.3-47.

⁶⁷ DEIR, p. 6-8.

⁶⁸ CEQA Guidelines § 15002(a)(2).

⁶⁹ PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883, 7328-005.



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Despite the DEIR's assertion, Mitigation Measure 4.3-2 does not constitute "all feasible mitigation" as there are several additional mitigation measures that the DEIR could include to reduce the Project's significant impacts from NO_x and GHG emissions, such as those presented in the California Office of the Attorney General's ("OAG") *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* ("Best Practices").⁷⁰

The Best Practices were developed to aid local agencies to achieve CEQA compliance, and promote environmentally-just development when they are considering warehouse project proposals.⁷¹ The OAG developed the Best Practices based on knowledge gained from monitoring, providing comments on, and litigating, warehouse development projects in California.⁷² The Best Practices state that while CEQA analysis is necessarily project-specific, the document provides feasible best practices and mitigation measures which were adapted from actual warehouse projects in California.⁷³

The Best Practices provides examples of environmentally superior methods of developing warehouse projects and offers sample mitigation measures that a local agency should consider when faced with a project such as the Project proposed here. For example, the Best Practices encourage local governing bodies to proactively plan for logistics projects by establishing industrial districts near major highway and rail corridors but away from sensitive receptors in order to help attract investment while avoiding conflicts between warehouse facilities and residential communities.⁷⁴

23-20

Here, the proposed Project defies many of the recommendations in the Best Practices and the DEIR fails to consider additional feasible mitigation measures to reduce the Project's air quality and GHG emissions impacts. For example, the Project is immediately adjacent to sensitive receptors to the east and south, which is at odds with the guidance provided by the OAG, which recommend:

⁷⁰ California Office of the Attorney General, *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* (hereinafter "Best Practices") (September 2022) available at <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf>

⁷¹ Best Practices, p. 1.

⁷² Best Practices, p. 1.

⁷³ Best Practices, p. 1.

⁷⁴ Best Practices, p. 3.

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- Per CARB guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors.⁷⁵

As noted above, the closest receptors are 200 feet to the east and south of the Project site, considerably closer than what is recommended by the Best Practices.

The DEIR also fails to consider many of the Best Practices in considering potential impacts from air quality and GHG emissions from project construction and operation. The DEIR fails to include mitigation measures that conform with the Best Practices, which for construction include:

23-21

- Requiring off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.⁷⁶
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Limiting the amount of daily grading disturbance area.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.⁷⁷

23-22

For operational air quality and GHG emissions impacts, the Best Practices recommend:

- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.

⁷⁵ Best Practices, p. 6.

⁷⁶ The DEIR includes Mitigation Measure 4.3-1(b) which requires that construction equipment be a combination of engine Tier 3 or Tier 4 off-road construction equipment, or hybrid, electric, or alternatively fueled equipment, thereby failing to require all Tier 4 equipment (DEIR, pp. 4.3-13 - 4.3-44).

⁷⁷ Best Practices, p. 8.

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- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.⁷⁸
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.

23-23

The DEIR fails to demonstrate conformance with any of the above recommendations. The Best Practices also include several recommendations and suggested mitigation measures regarding warehouse noise and transportation impacts that the DEIR fails to take into account. The City must consider all of the recommendations of the OAG and incorporate any feasible measures recommended in the Best Practices as mitigation measures in the DEIR to further reduce the Project's significant (and in some cases significant and unavoidable) air quality, GHG emissions, transportation, and noise impacts.

23-24

V. THE STATEMENT OF OVERRIDING CONSIDERATIONS MUST CONSIDER WHETHER THE PROJECT PROVIDES EMPLOYMENT OPPORTUNITIES FOR HIGHLY TRAINED WORKERS

The DEIR concludes that the Project will have significant and unavoidable environmental impacts related to aesthetics, agricultural resources, air quality, GHG emissions, and energy.⁷⁹ Therefore, in order to approve the Project, CEQA requires the City to adopt a statement of overriding considerations, providing that the Project's overriding benefits outweigh its environmental harm.⁸⁰ An agency's determination that a project's benefits outweigh its significant, unavoidable impacts "lies at the core of the lead agency's discretionary responsibility under CEQA."⁸¹

The City must set forth the reasons for its action, pointing to supporting substantial evidence in the administrative record.⁸² This requirement reflects the policy that public agencies must weigh a project's benefits against its unavoidable

⁷⁸ Mitigation Measure 4.3-2 requires that the Project applicant require all tenants of the on-site industrial uses to use zero-emission forklifts. However, the DEIR does not require all on-site equipment, including yard trucks, to be zero-emission.

⁷⁹ DEIR, pp. 6-6 – 6-9.

⁸⁰ 14 CCR § 15043.

⁸¹ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

⁸² PRC § 21081 (b); 14 CCR, § 15093 (a) and (b); *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 357.

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environmental impacts, and may find the adverse impacts acceptable only if the benefits outweigh the impacts.⁸³ Importantly, a statement of overriding considerations is legally inadequate if it fails to accurately characterize the relative harms and benefits of a project.⁸⁴

In this case, the City must find that the Project's significant, unavoidable impacts are outweighed by the Project's benefits to the community. CEQA specifically references employment opportunities for highly trained workers as a factor to be considered in making the determination of overriding benefits.⁸⁵ Currently, there is not substantial evidence in the record showing that the Project's significant, unavoidable impacts are outweighed by benefits to the community. For example, the Applicant has not made any commitments to employ graduates of state approved apprenticeship programs or taken other steps to ensure employment of highly trained and skilled craft workers on Project construction. Therefore, the City would not fulfill its obligations under CEQA if it adopted a statement of overriding considerations and approved the Project as currently proposed.

23-25

We urge the City to prepare and circulate a revised EIR which identifies the Project's potentially significant impacts, requires all feasible mitigation measures and analyzes all feasible alternatives to reduce impacts to a less than significant level. If a Statement of Overriding Considerations is adopted for the Project, we urge the City to consider whether the Project will result in employment opportunities for highly trained workers.

23-26

VI. CONCLUSION

For the reasons discussed above, the DEIR for the Project is wholly inadequate under CEQA. It must be thoroughly revised to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for additional public review. Until the DEIR has been revised and recirculated, as described herein, the City and Sacramento LAFCO may not lawfully certify the EIR or approve the Project's requested entitlements.

⁸³ PRC § 21081 (b); 14 CCR, § 15093 (a) and (b).

⁸⁴ *Woodward Park Homeowners Association v. City of Fresno* (2007) 150 Cal.App.4th 683, 717.

⁸⁵ PRC § 21081 (a)(3) and (b).

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Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Kevin Carmichael

KTC:lj1

7/28/2025

