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VIA E-MAIL

February 10, 2025

Nicole Moore, Planning Manager
 City of Stockton, Community Development Department
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**RE: Comment on the Recirculated Draft Environmental Impact Report
 for the South Stockton Commerce Center Project of the City of
 Stockton (SCH # 2020090561)**

Dear Ms. Moore:

On behalf of the **Carpenters Local Union #152** ("Local 152"), our Office is submitting these comments on the Recirculated Draft EIR ("RDEIR" or "**Recirculated DEIR**") for the City of Stockton's ("City") South Stockton Commerce Center Project ("**Project**"), located on a 422.22-acre site and aiming to create 13 development lots at Parcel APN ## 177-110-040, 177-100-030, 177-110-050, 201-020-010, and 177-050-090 ("**Project Site**").

Per the City's Notice of Availability ("**NOA**") for the RDEIR:

PROJECT DESCRIPTION: The SSCC Project proposes a **Tentative Map** for the **422.22-acre site** to create **13 development lots, two basin lots, one park lot, one open space lot, and one sewer pump station lot**. Of the 13 development lots, **12 will** be for development of a **mix of industrial** uses and **one** will be for development of **commercial** uses. Although a **Site Plan** is **not currently** proposed, for planning purposes a **conceptual site plan** was prepared to establish a **target** Floor Area Ratio that was used to generate the **maximum square footage of building area** for the Tentative Map and for purposes of environmental review. As described in Chapter 2.0, Project Description, the Project would result in a maximum of **6,091,551 square feet of industrial** type land uses, **140,350**

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square feet of commercial land uses, 54 acres of open space, 41 acres of public facilities, and 18 acres of right-of-way circulation improvements. (NOA, p. 1, *emph. added.*)

Also, per the NOA:

The Draft EIR has identified the following environmental issue areas as having **significant and unavoidable** environmental impacts from implementation of the project: **Aesthetics**; **Agricultural Resources**; **Greenhouse Gases, Climate Change, and Energy**; **Transportation and Circulation**; **Cumulative Aesthetics**; **Cumulative Agricultural Resources**; **Cumulative Air Quality**; and **Cumulative Greenhouse Gases, Climate Change, and Energy**; and **Cumulative Transportation and Circulation**. All other environmental issues were determined to have no impact, less than significant impacts, or less than significant impacts with mitigation measures incorporated into the Project

(NOA, p. 1, *emph. added.*)

Numerous state agencies, including the Department of State and Attorney General commented on the adverse impacts of the Project on the environment and most critically on the disadvantaged population near the Project site. Yet, the City appears to be inclined to adopt a Statement of Overriding Considerations and overlook all the adverse impacts, including on human beings, by claiming that those impacts are outweighed by economic, employment, tax considerations and other monetary considerations.

Local 152 is a labor union that represents thousands of union carpenters who live and work in San Joaquin County, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

Individual members of Local 152 live, work, and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

Local 152 expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearing and proceeding related to this Project. Gov. Code, § 65009, subd. (b); Pub. Res. Code, § 21177, subd. (a); see *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see also *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

Local 152 incorporates by reference all comments related to the Project or its CEQA review, including on the Initial Study, original Draft EIR and on the Recirculated

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DEIR. See *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project's environmental documentation may assert any issue timely raised by other parties).

Moreover, Local 152 requests that the City provide **advance notice** of any upcoming hearings, as well as for any and all notices referring or related to the Project, as required by the Municipal Code, as well as under the California Environmental Quality Act (CEQA) (Pub. Res. Code, § 21000 *et seq.*), and the California Planning and Zoning Law ("Planning and Zoning Law") (Gov. Code, §§ 65000–65010). California Public Resources Code Sections 21092.2, and 21167(f) and California Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body. We request that such notice be *both* mailed and **e-mailed** to us.

Also, we note that the City failed to provide us advance notice of the published RDEIR and the comment period, despite the fact that our law firm has repeatedly requested advance notice, including in its Public Records Act requests to the City and its recent comment on the City's Notice of Preparation of the Recirculated DEIR. **We, therefore, once again reiterate our request for an advance notice of all hearings and notices** related to the Project and **request** that such advance notice be both **emailed and mailed to us**.

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I. THE CITY SHOULD REQUIRE THE USE OF A LOCAL WORKFORCE TO BENEFIT THE COMMUNITY'S ECONOMIC DEVELOPMENT AND ENVIRONMENT

As also noted in our prior comment to the City's Notice of Preparation of the RDEIR, the City should require the Project to be built by contractors who participate in a Joint Labor-Management Apprenticeship Program approved by the State of California and make a commitment to hiring a local workforce.

Community benefits such as local hire can be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

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[A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

(**Exhibit A** [March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling]; **Exhibits B-C** [Experts' Background].)

Workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the University of California, Berkeley Center for Labor Research and Education concluded:

[L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.¹

Furthermore, workforce policies have significant environmental benefits given that they improve an area's jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (GHG) emissions. In fact, on May 7, 2021, the South Coast Air Quality Management District found that that the "[u]se of a local state-certified apprenticeship program" can result in air pollutant reductions.²

Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

¹ California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* <https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf>.

² South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10>.

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People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.³

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (“VMT”). As planning experts Robert Cervero and Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.⁴ Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city’s First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022, otherwise known as Assembly Bill No. 2011 (“AB2011”). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements.

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³ California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, available at <https://cprroundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf>

⁴ Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, available at <http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf>.

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The City should consider utilizing local workforce policies and requirements to benefit the local area economically and to mitigate greenhouse gas, improve air quality, and reduce transportation impacts.

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II. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Background Concerning the California Environmental Quality Act

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. CEQA Guidelines § 15002(a)(1). “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.’ [Citation.]” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. 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.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795, 810.

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. CEQA Guidelines § 15002(a)(2) and (3). *See also, Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1988) 47 Cal. 3d 376, 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines § 15002(a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA Pub. Res. Code § 21081. CEQA Guidelines § 15092(b)(2)(A–B).

While the 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

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study is entitled to no judicial deference.” *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added) (quoting *Laurel Heights*, 47 Cal. 3d at 391, 409 fn. 12). Drawing this line and determining whether the EIR complies with CEQA’s information disclosure requirements presents a question of law subject to independent review by the courts. *Sierra Club v. Cnty. of Fresno* (2018) 6 Cal. 5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102, 131. As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355:

A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.

“The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR’s function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. [Citation.] For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made.” *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449–450).

Where the Lead Agency chooses to dispose of CEQA by asserting a CEQA exemption, it has a duty to support its CEQA exemption findings by substantial evidence, including evidence that there are no applicable exceptions to exemptions. This duty is imposed by CEQA and related case law. Guidelines § 15020 [“The Lead Agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document.”]; *see also*, *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.* (2015) 242 Cal.App.4th 555, 568 [“The lead agency has the burden to demonstrate that a project falls within a categorical exemption and the agency’s determination must be supported by substantial evidence”]; *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732 [agency is required to consider exemption exceptions “where there is some information or evidence in the record that the project might have a significant impact.”]

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The duty to support CEQA (and/or exemption) findings with substantial evidence is also required by the Code of Civil Procedure and case law on administrative or traditional writs. Under Code of Civil Procedure (“CCP”) § 1094.5(b), an abuse of discretion is established if the decision is not supported by the findings, or the findings are not supported by the evidence. CCP § 1094.5(b). In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515 (“*Topanga*”), our Supreme Court held that “implicit in [Code of Civil Procedure] section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” The agency’s findings may “be determined to be sufficient if a court ‘has no trouble under the circumstances discerning the analytic route the administrative agency traveled from evidence to action.’” *West Chandler Blvd. Neighborhood Ass’n vs. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1521- 1522. However, “mere conclusory findings without reference to the record are inadequate.” *Id.* at 1521 (finding city council findings conclusory, violating *Topanga*).

Further, CEQA exemptions must be narrowly construed to accomplish CEQA’s environmental objectives. *California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 187 (“*California Farm*”); *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697 (“These rules ensure that in all but the clearest cases of categorical exemptions, a project will be subject to some level of environmental review.”)

Finally, CEQA procedures reflect a preference for resolving doubts in favor of environmental review. *See*, Pub. Res. Code § 21080(c) [dispose of EIR only if “there is no substantial evidence, in light of the *whole record* before the lead agency, that the project *may* have a significant effect on the environment” or “revisions in the project Would avoid the effects or mitigate the effects to a point where *clearly* no significant effect on the environment would occur, *and*” Emph. added.]; Guidelines §§ 15061(b)(3) [common sense exemption only “where it can be seen with certainty”]; 15063(b)(1) [prepare an EIR “if he agency determines that there is substantial evidence that *any* aspect of the project, either *individually* or *cumulatively*, *may* cause a significant effect on the environment, *regardless* of whether the overall effect of the project is adverse or beneficial”]; 15064(h) [need to consider cumulative impacts of past, other current and “probable future” projects]; 15070 [prepare a negative declaration only if “no substantial evidence, *in light of the whole record* before the agency, that the project *may*

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have a significant effect on the environment,” or project “revisions would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and (2) there is no substantial evidence, in light of the whole record before the project, that the project as revised *may* have a significant effect on the environment” *emph. added*]; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83-84 [interpret “significant impacts” so as “to afford the fullest possible protection”].

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III. THE RECIRCULATED DRAFT EIR IS LEGALLY INADEQUATE, INCLUDING BECAUSE IT OMITTS CRITICAL INFORMATION AND UNDERSTATES THE SEVERITY OF THE PROJECT’S IMPACTS.

The Draft REIR suffers from several procedural flaws and omissions. These flaws and omissions preclude good faith disclosures, meaningful information and public participation by failing to provide accurate information about the Project’s scope and resultant impacts. In addition, the EIR is based on flawed and erroneous baseline assumptions, and its findings are clearly erroneous and unsupported. As such, the Project lacks an adequate CEQA clearance, as detailed below.

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A. The RDEIR’s Project Description Is Not Accurate, Stable or Finite to Enable a Meaningful Evaluation of Project Impacts or Mitigation.

“The requirement of an accurate, stable, and finite project description as the sine qua non of an informative and legally sufficient EIR has been reiterated in a number of cases since *County of Inyo*.” (*Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17.) Whether the EIR’s project description is adequate is reviewed de novo. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729–730 [“the selection and use of a ‘truncated project concept’ violated CEQA”].) Despite being revised and recirculated, the RDEIR here suffers from the incomplete and legally inadequate project description.

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First, it is unclear which one is the operative DEIR here and which part has been updated. On the one hand, the RDEIR provides that it “supersedes” the entire prior Draft EIR:

The City has decided to Recirculate the Draft EIR to address new information, including the establishment of new logistics warehouse development standards (that were identified through the adoption and amendments to the City of Stockton’s new Warehouse Ordinance), refined utility plans, updated construction schedules, updated air quality

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and greenhouse gas modeling, and revised mitigation measures. The **Recirculated Draft EIR completely supersedes the original Draft EIR.**

(Draft REIR, p. 1.0-6/pdf p. 47, *emph. added*)

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And yet, the RDEIR also lists specific sections that have been updated and provides: “**These chapters** will substitute for and supersede **those** contained in the previously-circulated Draft EIR.” (Draft REIR, p. 1.0-3/pdf p. 44, *emph. added*.) As such, it is unclear which part of the RDEIR has been or should be deemed updated and which one has not.

Second, the RDEIR clarifies that it is a “project-level EIR”:

This EIR has been prepared as a **Project-level EIR** is described in State CEQA Guidelines § 15161 as: “The most common type of EIR (which) examines the environmental impacts of a specific development project. This type of EIR should focus primarily on the changes in the environment that would result from the development project. The EIR shall examine **all phases** of the project **including planning**, construction, and operation. The project-level analysis considers the broad environmental effects of the proposed Project.”

(RDEIR, p. 1.0-4, *emph. added*.)

And yet, despite its claimed *project-specific* review, the RDEIR notes that it is based on *conceptual plans* only, rather than actual *site plans*:

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More specifically, the SSCC Project Tentative Map proposes approximately 298 net acres of limited industrial uses. Although a **final and definitive Site Plan** is **not** currently proposed, for **planning purposes** a **conceptual site plan** was prepared to establish a target Floor Area Ratio (FAR) that was used to generate the **maximum square footage of building area** for the Tentative Map and for purposes of environmental review. Based on a maximum FAR of **0.47**, a maximum of **6,091,551 square feet** of industrial type land uses could be developed throughout the site. Table 2.0-2, SSCC Land Use Summary, identifies the land uses and associated development potential.

(RDEIR, p. 2.0-4—5, *emph. added*.)

Moreover, while the Project proposes “industrial uses” on 298 acres, the RDEIR shows that the word industrial may encompass a range of uses:

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NOTE: FOR PURPOSES OF THE ENVIRONMENTAL ANALYSIS, A **RANGE OF INDUSTRIAL USES IS ASSUMED**. THESE USES INCLUDE GENERAL LIGHT INDUSTRIAL, INDUSTRIAL PARK, WAREHOUSING, MINI-WAREHOUSE, HIGH-CUBE TRANSLOAD AND SHORT-TERM STORAGE WAREHOUSE, HIGH-CUBE FULFILLMENT CENTER WAREHOUSE, HIGH-CUBE PARCEL HUB WAREHOUSE, AND HIGH-CUBE COLD STORAGE WAREHOUSE.”

(RDEIR, p. 2.0-5, *emph. added*.)

As such,, the two claims in the RDEIR are incompatible: there *cannot* be a “project-level” review EIR where there is no final and definitive Site Plan, with clearly defined specific uses and their locations on over 422 acres of land. This was the very specific issue in the *Stopthemillenniumhollywood.com* case, where the Court invalidated the EIR for such a failure to provide an adequate project description in a project-level EIR, stating:

In this case, Millennium’s failure to present any concrete project proposal, instead choosing concepts and “impact envelopes” rather than an accurate, stable, and finite project, was an obstacle to informed public participation, “even if we cannot say such input would have changed the project ultimately selected and approved.” (*Washoe Meadows, supra*, 17 Cal.App.5th at p. 290, 225 Cal.Rptr.3d 238.) Accordingly, the trial court correctly invalidated the EIR and granted the CEQA writ petition.

(*Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 20.)

The Court’s admonition in *Stopthemillenniumhollywood.com* case is all the more imperative here, where the Project proposes to build over 6 million sq. ft. industrial space of warehouses, which may accommodate various trucks, refrigerators, and involve heavy industrial activity, on what is currently mapped as Prime Farmland and Farmland of Statewide Importance and has been historically used for agricultural activity, such as growing watermelons and walnut orchards.

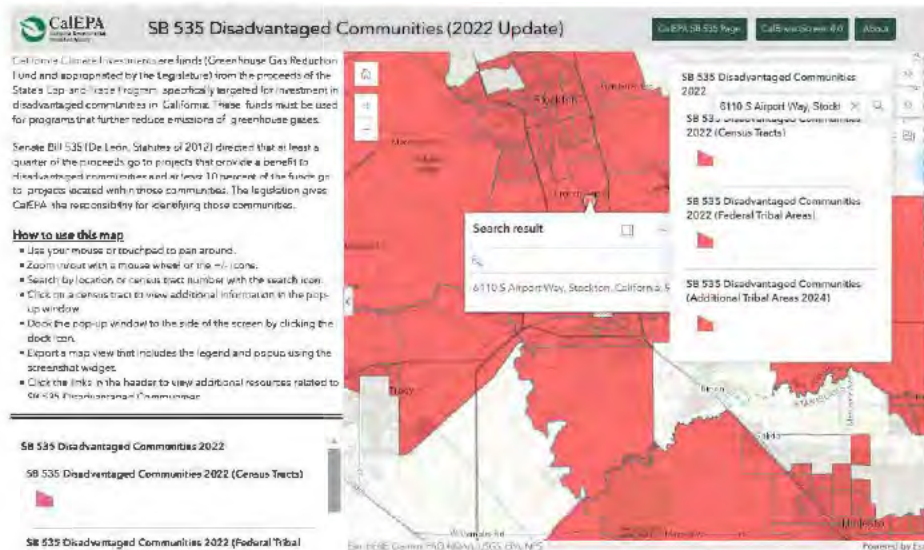
Further yet, the admonition of the court in *Stopthemillenniumhollywood.com* case is paramount here, since the described massive Project, which, as the EIR admits, will have significant and unavoidable air pollution, greenhouse gas emissions (“GHG”) and other impacts on human beings, is proposed near gas and oil wells, close to sensitive receptors, residences, and in an area that has been mapped by the California Environmental Protection Agency (“CalEPA”) as “disadvantaged community area” with various environmental and air pollution issues, as shown on the screenshot below:

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Disadvantaged Communities Map

Click to open this map in a new window



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As such, the massive project of 6 million square feet on over 422.22 acres of land, which will attract heavy industrial uses, trucks, significant and unavoidable air pollution, GHG emissions and invite heavy commercial traffic to the area charged with air pollution, as well as close to residential uses and protected waterways *cannot* be reviewed *summarily* without definitive site plans. In any event, such a summary or conceptual review is improper for what is claimed to be a “project-level” EIR.

Third, while it is apparent that the Project proposes warehouses, the EIR fails to provide good-faith disclosures about those and dances around the issue by summarily referring to a range of “industrial” uses. Our review of Project-related documents revealed conceptual plans for the Project, as shown in the screenshot below from the 2020 Updated Site Plans (see also **Exhibit D** [City’s PRA production] – 2020 Updated Site Plans), which shows the mass and scale of the Project’s proposed warehouses:

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The RDEIR contains, as Appendix A, the Project's Initial Study, with the aerial image of the Project Site, as shown on the screenshot below:



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(RDEIR, Appendix A, p. 17/ pdf p. 573.)

The above aerial image of the Project site's present uses has a meaning only when juxtaposed against what is being proposed by the Project, as shown in the screenshot of conceptual plans. And yet, the RDEIR fails to provide this detail of conceptual plans for the public and decisionmakers to enable the comparison of what is proposed vis-à-vis what the Project Site's existing agricultural uses are and, in turn, to inform the decisionmakers of the scope and intensity of the proposed changed uses of the site.

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The RDEIR's failure to provide a clear and good-faith disclosure of the specific types and sizes of warehouse buildings on the Project Site of 422.22 acres and in what is called a Project-level CEQA review violates CEQA and precludes informed decision-making. Each of the warehouse buildings in orange, as shown in the conceptual plan screenshot above, will attract and accommodate truck traffic and idling, refrigerators, on what is now Prime Farmland growing watermelons, and the public or decisionmakers need to have a clear picture of what is proposed, in order to gauge into the environmental pricetag of the Project. The RDEIR fails to provide such disclosures and instead improperly terms the proposed development as a mix of industrial and commercial uses.

Fourth, and as related to the issue of warehouses, the RDEIR's project description is incomplete and inadequate as it fails to provide the types of tenants or "end users" for the Project and thereby impedes the analysis of the amount of GHG and air-pollution that will be generated by the Project due to stationary uses. The Project Applicant's representative's response to the Valley Air Pollution District's inquiry underscores this deficiency and critical omission:

At this point there is **not enough** information to assess stationary source emissions because **we do not have an end user** of the facility and we **do not know what, or if, stationary sources** would be incorporated into the buildings. The **project** is a **shell facility** at this point. Of the 114 tons/yr of NOx shown in the EIR for unmitigated operational emissions, 109 ton/yr is mobile source emissions. This is over the threshold and Rule 9510 **is** applicable. The **developer would** be required to develop a **mitigation** strategy, **or** pay fees, to bring the emissions equivalent to below the threshold per 9510. At some point the **shell building** will have an **end user** and stationary sources may be necessary. At that point it would be necessary to prepare an AAQA to **calculate stationary source emissions**. Let me know if you would like to discuss this further. Thanks.

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(**Exhibit E**, p. 1, *emph. added* [2021 Email Exchange from the Project Applicant's Environmental Consultant to the Air Quality District].)

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While the referenced comment was made in 2021, the Recirculated Draft EIR provides even less details in 2024, continuing to leave the decisionmakers and the public in dark about the severity of the Project's impacts.

Fifth, the Project provides a speculative description of a potential expansion of the Project under the "circulation improvements," which includes:

The Project also proposes to **potentially include rail service** to up to **three large parcels** (parcels 2, 3, and 4) **within** the Project site. A potential **railroad spur** line would **extend east** from the UPRR along the Project site's northern edge providing **rail access** to the parcels. The **future industrial developer(s)** of **Parcels 2, 3 and 4** will make the **ultimate decision to utilize rail** service to these parcels. The **design and layout** of the **Tentative Map** (and the Draft EIR) has **assumed** that this **service would be provided**.

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(RDEIR, p. 2.0-6, *emph. added*.)

As the above-quoted passage suggests, the RDEIR purports to mention changes and assumes that their design and layout are "assumed" in the Tentative Map, but no such precise plans or maps are provided to the public or decisionmakers to review and gauge into the feasibility of such a rail service. While – in light of the public comments requiring more specificity – the RDEIR's project description appears to mention about the rail service, such statements in the RDEIR lack specificity to inform decisionmakers on the Project's impacts or lack thereof, including from the *potential* Project expansion.

Sixth, the RDEIR's project description includes a list of approvals needed for the Project, which include but are **not limited** to the following:

- Certification of the EIR;
- Adoption of the Mitigation Monitoring and Reporting Program;
- Approval of City of Stockton General Plan Amendment
- Approval of City of Stockton Zoning Map Amendment
- Approval of Tentative and Final maps;
- Approval of Improvement Plans;
- Approval of Grading Plans;
- Approval of Building Permits;
- Approval of Site Plan Review;

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- Approval of Design Review;
- Approval of Completeness Review;
- Approval of Development Agreement;
- Issuance of grading, encroachment, and building permits;
- City review and approval of Project utility plans.

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(RDEIR, p. 2.0-14.)

The above-noted list suggests that the RDEIR should provide adequate information to the City to enable decision on the sought approvals. But the RDEIR fails to provide such adequate information, since it does not even present the final site plans proposed under the Project, leaving such details to future review, if at all, outside of the public eye and elected decisionmakers.

Similarly, the RDEIR lists approvals by Responsible and Trustee Agencies as something that “may” be needed, as follows:

Other governmental agencies that **may** require approval include, but are **not limited** to, the following:

- Public Utilities Commission – Approval of proposed overpass;
- California Department of Fish and Wildlife – Streambed Alteration Agreement pursuant to Section 1602 of the California Fish and Game Code;
- United States Army Corps. Of Engineers (USACE) – Permitting of federal jurisdictional areas pursuant to Section 404 of the Clean Water Act.
- Central Valley Regional Water Quality Control Board (CVRWQCB) – Storm Water Pollution Prevention Plan (SWPPP) approval pursuant to the Clean Water Act;
- CVRWQCB – Water quality certification pursuant to Section 401 of the Clean Water Act;
- San Joaquin Valley Air Pollution Control District (SJVAPCD) – Construction-related permits;
- San Joaquin Valley Air Pollution Control District (SJVAPCD) – As an industrial development, the Project may be subject to Indirect Source Review (ISR) by the SJVAPCD. The storm drain pump stations may require an Authority to Construct and, Permit to Operate;
- Stockton Fire Department – Plan check of the site plan and roadway improvements for adequate emergency vehicle access and fire flow

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capabilities; Plan check of all building plans for Early Suppression, Fast Response (ESFR) fire sprinkler system;

- Central Valley Flood Protection Board (CVFPB) – Approval of the storm drainage flood channel;
- San Joaquin County Flood Control and Water Conservation District – Approval of the proposed storm basins, outfall and pump stations;
- Sacramento & San Joaquin Drain District (SSJDD) – Approval for construction of an outfall;
- San Joaquin Council of Governments (SJCOCG) – Issuance of incidental take permit under the San Joaquin Multi-Species Habitat Conservation and Open Space Plan (SJMSCP); and
- San Joaquin Council of Governments (SJCOCG) – Review and approval of Project plans for consistency with the Airport Land Use Compatibility Plan (ALUCP) for the Environs of Stockton Metropolitan Airport.

(RDEIR, pp. 2.0-14—15, *emph. added.*)

Notably, CEQA allows the above-listed responsible and trustee agencies to rely upon an EIR for completeness and accuracy once the EIR is certified as complete and accurate. But the RDEIR here cannot be complete or accurate for approvals by responsible agencies, since it provides a speculative project description leaving the specifics of the Project unknown despite the fact that the Project's impacts, including air quality and pollution and hydrology/water, depend on these very specifics.

The above-noted issues and examples are only illustrative and not exhaustive of the flawed Project description in the RDEIR. However, they confirm that the RDEIR fails to provide an accurate, complete, and finite project description, as required by CEQA, to inform decisionmakers and responsible agencies about the Project's scope and to help them to gauge into the potential impacts of the Project and require respective mitigation, or decide on the severity of impacts and determine whether such impacts may be outweighed by any economic considerations or benefits.

Because the RDEIR's project description is incomplete and speculative, the RDEIR is fatally flawed and cannot be certified, as a matter of law.

B. The Draft EIR's Description of the Project's Environmental Setting Is Incomplete, Inaccurate, and Misleading, Leading to Understated or Undisclosed Impacts.

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“Without an adequate baseline description, analysis of impacts, mitigation measures and project alternatives becomes impossible.” (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 953.) “An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 320–321.)

Critically, the baseline of the Project, for purposes of an EIR analysis, is not the use that is *permitted* under the zoning regulations or General Plan but rather the specific uses at the Project Site, regardless of zoning regulations. Under CEQA Guidelines section 15125(a)(3), “(3) An existing conditions baseline **shall not** include **hypothetical conditions**, such as those that **might be allowed**, but have **never actually occurred**, under **existing** permits or **plans**, as the baseline.” (Emph. added.)

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Similarly, under CEQA Guidelines section 15125(c):

(c) Knowledge of the regional setting is critical to the assessment of environmental impacts. **Special emphasis** should be placed on environmental resources that are **rare or unique** to that **region** and would be affected by the project. The EIR must **demonstrate** that the significant environmental impacts of the proposed project were **adequately investigated** and **discussed** and it must permit the significant effects of the project to be considered in the **full environmental context**.

(Emph. added.)

The Recirculated DEIR fails CEQA’s above-noted baseline informational mandates in its *quality* and *quantity*. First, as to the *quality* of information, the RDEIR does not have a separate independent *section* for “Environmental Setting” or baseline. Instead, the EIR *infuses* a mini “environmental setting” *subsection* in the analysis of each impact, making the EIR full of redundancies, to say the least. As a result, the EIR fails its informational goal in providing the public a clear and concise description of the environmental setting or baseline to allow the public to form their objective conclusion

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about the relevant baseline. (CEQA Guidelines §§ 15140-15141 [requiring that EIRs be easy to understand and imposing page-limits on EIRs].)

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Second, and despite redundancies, the RDEIR's baseline information suffers in quantity, too, since it fails to provide an accurate or complete *environmental context*. For example, the RDEIR includes a brief subsection on "Project Setting" under the Project Description [Section II], where it references Figure 2.0-4 and briefly states that the "Project site is comprised of active agricultural fields," and the "majority of the fields produce watermelons, with a walnut orchard located in the eastern portion of the site." (RDEIR, p. 2.0-1.) But the RDEIR's noted subsection fails to mention how long the Project Site has been subject to such agricultural uses. It also critically fails to mention that the Project Site's soils are *critical* for the entire California State, which information is provided only later in discussing the agricultural impacts of the Project, disclosing that **158.6 acres** of the Project Site are designated as **Prime Farmland**, **359.4 acres** are designated as **Farmland of Statewide Importance**, and **4.3 acres** are designated as **Unique Farmland**. (RDEIR, p. 3.2-5.)

That the RDEIR includes relevant details in the *agricultural impact* Section III, however, does not cure the EIR's omission of relevant detail in the CEQA-required separate environmental setting or project setting section. CEQA specifically requires a separate and independent discussion of the environmental setting in the EIR to allow the EIR's reader (public and decisionmakers) to understand the full environmental context of the Project objectively and to draw the readers' attention to sensitive issues. As such, contrary to what CEQA Guidelines section 15125(c) required, the RDEIR fails to accurately and fully describe the Project setting and the type of important land at the Project Site, which is of utmost statewide importance.

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The EIR's above-noted omission is even more crucial where, as here, the Project Applicant will be permanently converting *all* of the 422.22 acres of unique agricultural resources into non-agricultural uses, without providing any replacement of such land elsewhere, but will, instead, only pay *in-lieu* fee which cannot provide such replacement or new agricultural land either. As the RDEIR concedes:

While the proposed Project **will contribute fees** toward the purchase of conservation easements on agricultural lands, as required by Mitigation Measure 3.2-1, **those fees and conservation easements would not result** in the creation of **new farmland** to **offset** the **loss** that **would occur** with **Project implementation**. As such, the loss of Important

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Farmland would be a cumulatively considerable contribution and a significant and unavoidable impact.

(RDEIR, p. 4.0-5, *emph. added*.)

As relevant, the above-noted disclosure is found only in *one* section of the RDEIR; i.e., in the section on *agricultural impacts*. But because the RDEIR fails to provide an accurate and complete description of land in its separate independent environmental setting section, decisionmakers and the public were deprived of such critical information. As stated in *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 85, “decision makers and general public should not be forced to ... ferret out the fundamental baseline assumptions that are being used for purposes of the environmental analysis.”

Third, the EIR’s noted environmental setting subsection in the “Project Description” section is also misleading and incomplete in that it fails to mention the fact that some of the surrounding uses in the *vicinity* of the Project Site are *residential*. Instead, the RDEIR repeatedly mentions:

The Project site is primarily bounded by lands within the County to the north, east and south. Lands within the City of Stockton are located to the west. Uses within the surrounding area **include the following**:

- **North** – Rydberg Creek, Army National Guard, and Stockton Airport to the north within County.
- **East** – Agricultural lands, 99 Frontage Road and SR 99.
- **South** – Agricultural lands and Duck and Lone Tree Creeks (also referred to as French Camp Slough).
- **West** – The UPRR, Airport Way, and agricultural lands.

(RDEIR, p. 2.0-2, *emph. added*; see also, RDEIR p. 3.5-2.)

But, as mentioned by the San Joaquin Valley Air Pollution Control District in its comment letter on the EIR in 2021, “There are residential units located **southeast and west** of the Project.” (**Exhibit F**, p. 7, *emph. added* [San Joaquin Valley Air Pollution Control District’s December 14, 2021 Comment letter on the Project’s EIR].)

The RDEIR appears to mention about residential uses only for the Noise analysis and only about the *southwest* side of the Project:

In the **vicinity** of the Project site, **surrounding land uses include existing residential** and industrial uses. **Residential** uses are located to

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the **southwest** of the Project site along South Airport Way and French Camp Road. These **residential** land uses are located outside the boundaries of the City of Stockton and within the boundaries of San Joaquin County. Industrial uses are located directly north of the Project site. Land to the east and south of the Project site is occupied by agricultural uses.

(RDEIR, p. 3.11-4, *emph. added* [Noise impact analysis].)

The flaw and omission in the EIR are manifestly critical and prejudicial. Residential uses near the Project site are important not only for purposes of *noise* impacts, but also for purposes of *air* quality, *GHG*, *hazards*, *geology*, *transportation*, and other impacts, since such impacts can and will adversely affect people's health and safety in the Project's vicinity. Further yet, the RDEIR's omission does not appear to be accidental, as it occurs *despite* the fact that the City was specifically put on notice about the potential adverse air quality and GHG impacts on the public and was alerted to the issue by the very San Joaquin Valley Air Pollution Control District: "There are residential units located southeast and west of the Project. The District suggests the City consider the feasibility of incorporating vegetative barriers and urban greening as a measure to further reduce air pollution exposure on sensitive receptors (e.g. residential units)." (Exhibit F, p. 7.)

The RDEIR's failure to mention about the residential units located southeast and west of the Project in the environmental baseline section is a critical omission which misleadingly presents the Project as being proposed in an entirely industrial and commercial context, with less likelihood of impact on sensitive receptors, whereas the reality is different. And, because of this omission, the EIR's subsequent analysis ignores various adverse impacts on human beings and sensitive receptors, in violation of CEQA.

In light of the above-noted, the EIR fails CEQA's informational goals and is inadequate as a matter of law for its failure to provide an accurate baseline. "If the description of the environmental setting of the project site and surrounding area is inaccurate, incomplete or misleading, the EIR does not comply with CEQA." (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 73, 87; see also *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1220-1221 [the agency abused its discretion where it approved the project "plans on the basis of a record which lacked information regarding the presence in the subject areas of some old-growth-dependent species,

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information which both the department and Fish and Game had determined was necessary”].)

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C. The Recirculated Draft EIR Fails to Provide a Range of Genuine Alternatives and Impermissibly Leaves Out Feasible Alternatives.

The RDEIR’s range and analysis of alternatives are inadequate as the RDEIR omits feasible alternatives, or rejects alternatives by misconstruing CEQA’s *feasibility* concept, or simply provides legally and factually inaccurate descriptions of alternatives.

This, in part, stems from the narrowly-drawn project objectives, which appear to improperly *mirror* the desired Project rather than genuinely provide options to devise an alternative with less environmental impacts, as CEQA requires.

Specifically, the Recirculated DEIR provides the following *objectives*:

The **quantifiable objectives** of the proposed SSCC Project include the following:

- Development of approximately **300 acres of industrial uses** (building and parking areas);
- Development of approximately **41 acres of public facilities** (storm basins and pump stations);
- Creation of approximately **54 acres of open space** (park area and avoidance of French Camp Slough); and
- Build up to a maximum of **6,091,551 square feet** of employment-generating **industrial uses**.

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The **following objectives** have been **identified** for the proposed SSCC Project:

- **Employment Opportunities:** Provide for local and regional employment opportunities that take advantage of the Project area’s high level of accessibility, allow for the **expansion** of the City’s **economic** base, **help create a jobs/housing balance**, and **reduce** the commute for **regional residents**.
- **Improve Circulation:** Create **safe access** to the **industrial** area by constructing an overpass of the Union Pacific Railroad line.
- **Enhance Transportation:** Create the ability to develop **rail service** to the three largest parcels **within** the SSCC Project Area, if needed.

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- **Public Facilities and Services:** Provide **infrastructure** and **services** that **meet** City standards and **integrate with existing** and planned facilities.
- **Phasing:** Establish a logical phasing plan designed to ensure that each phase of development would include **necessary public improvements** required to meet City standards.

(RDEIR, Appendix A, pdf p. 5/pdf p. 561, *emph. added*.)

The flaws in the *quantifiable* objectives and *additional* objectives are manifest. As to the *quantifiable* objectives, those precisely mirror the proposed Project. And, as to the *additional* objectives, those simply defy logic. For example, it is unclear how the Project's proposed warehouses and rail service *within* the Project Site itself can help City residents or meet the City or residents' needs, where the Project proposes over 6 million sf warehouses, in addition to numerous *other* warehouses added in the City and in the surrounding region, to attract heavy trucks (including refrigerator units) from potentially other states, and does so on 422.22 acres of *prime* farmland with existing agricultural uses and in an area already struggling with air pollution and similar impacts.

In the words of the Court, which found that the EIR's alternatives were improper in light of the narrowly-drawn improper objectives in an analogous situation:

In taking this artificially narrow approach for describing the project objectives, the County ensured that the results of its alternatives analysis would be a foregone conclusion. It also, as a result, transformed the EIR's alternatives section—often described as part of the “core of the EIR” (*In re Bay-Delta, supra*, 43 Cal.4th at p. 1162)—into an empty formality.

(*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 692.)

As such, the RDEIR is defective for relying on *legally improper objectives* as described above and, in light of its narrowly-drawn *objectives*, turned the alternatives section of the RDEIR into an empty formality instead of serving CEQA's mitigation goals.

But the RDEIR's flaws with alternatives do not end with the flawed objectives.

1. No Build/No Project - Alternative 1

The RDEIR's Alternative 1 is the No Build/No Project Alternative, where the Project site will remain unchanged and the existing uses will continue. (RDEIR, p. 5.0-3.) The RDEIR's analysis of this Alternative 1 concedes that it will have less impacts than the Project. However, the RDEIR notes: “It is noted that the No Project (No Build)

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Alternative would fail to meet the Project objectives identified by the City of Stockton.” (*Ibid*) The RDEIR’s noted remark is misleading and also irrelevant since, as mentioned above, the “Project objectives” identified by the City are both improperly narrowly-defined in violation of CEQA and altogether logically flawed.

Also, the City’s analysis of the No Project alternative and its impacts is flawed and misleading as it provides that the “land use and population” impacts under the No Project alternative will be “greater” as compared to the Project. (RDEIR, p. 5.0-25.) This conclusion is based on the following legally flawed reasoning:

The Project would not directly introduce new residents to the City as no housing is proposed as part of the Project. It is noted, **however**, that **some** portion of the proposed Project **employees could** become Stockton residents. The **Project** would require a **zoning and general plan amendment** for land use changes. However, **impacts to land use** are considered **less than significant**. The **No Project (No Build) Alternative** would result in **no changes** to land use and would have **no** development. Because the No Project (No Build) Alternative **would not add any additional employment population, impacts** related to population would be **reduced** when **compared** to the proposed Project. It is noted, **however**, that the **employment growth** resulting from the proposed Project would be within the growth projections assumed for the Project site by the General Plan and associated EIR. The Envision Stockton 2040 General Plan Land Use Map designates the Project site as Industrial, Commercial, and Open Space/Agriculture. The Project site is zoned IL (Industrial, Light), CG (Commercial, General), and OS (Open Space). The **No Project (No Build) Alternative** would be **inconsistent** with the **General Plan and zoning designations** for the **site because** the **agricultural uses** which would continue on the site under this alternative **are not allowed within** the Industrial or Commercial land use, or within the IL or CG zoning districts. **Overall**, the impacts related to land use and population under this alternative would be **greater** compared to the proposed Project.

(RDEIR, p. 5.0-9, *emph. added*.)

The above-quoted passage from the RDEIR, however, has a number of critical flaws and legally erroneous statements. *First*, there is an absolute disconnect between the City’s reasoning and the conclusion that the land use and population impacts under this alternative would be “greater.”

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Second, to the extent the RDEIR's conclusion of such impacts is solely based on the "inconsistency" of the existing uses on the Project Site and the General Plan and zoning designations, then a *mere inconsistency* with plans cannot be claimed to have an impact for purposes of CEQA where, as here, no *physical change* occurs under the No Project/No Build alternative. CEQA Guidelines § 15064(d) provides: "In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct **physical changes** in the environment which may be caused by the project and reasonably foreseeable indirect **physical changes** in the environment which may be caused by the project." (Emph. added.) Also, "Evidence of economic and social impacts that do not contribute to or are not caused by physical changes in the environment is not substantial evidence that the project may have a significant effect on the environment." (CEQA Guidelines § 15064(f)(6); see also § 15131 ["The focus of the analysis shall be on the physical changes"]; § 15358(b) ["Effects analyzed under CEQA must be related to a physical change."])

For these reasons, the RDEIR's "No Project" alternative and its impact analysis are flawed and misleading as the RDEIR relies on narrowly-drawn objectives and further incorrectly claims the No Project Alternative will have greater impact than the Project.

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2. Reduced Alternative (25% less) - Alternative 2

The RDEIR's *second* Alternative 2 proposes a 25% reduction of the proposed Project's industrial, commercial, and other uses, purportedly leaving the reduced 25% to the continuation of agricultural uses. The RDEIR describes this reduction as:

Project area would decrease from 422.22 acres under the proposed Project to 316.67 acres. The remaining 105.55 acres outside of the Reduced Project Alternative area **would remain in their current condition** (agricultural and open space uses). The 105.55 acres, which would not be included in the development area for this alternative, would be located in the **western and southern portions** of the site in order to ensure continued preservation of French Camp Slough.

The amount of commercial uses would decrease from 467,834 square feet (sf) to 350,875 sf, the amount of industrial uses would decrease from 12,960,747 sf to 9,720,560 sf, and the open space area would decrease from 54 acres to 40.5 acres. Because the amount of urban development would decrease, the size of the storm basins would also decrease. This would result in a decrease from 41 acres of public facility uses to 30.75 acres. The areas developed with urban uses would be located in the eastern

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portion of the Project site. In order to maintain the proposed rail service under this alternative, the industrial uses would be located adjacent east of the Union Pacific Railroad (UPRR) line.

(RDEIR, p. 5.0-3—4, *emph. added.*)

It is only fair to ask why the RDEIR chose 25% reduction only where, as here, a 50% reduced Alternative would significantly reduce the Project's impacts and also better suit the needs of not only the City but also the State in continuing 50% of agricultural uses. To wit, the RDEIR's comparison of the Reduced Alternative notes that some impacts will be "slightly less significant" than the Project. (RDEIR, p. 5.0-25.) In the words of the Court:

The City was obligated to "independently participate, review, analyze and discuss the alternatives in good faith." (*ibid.*) And the EIR, or some other document in the administrative record, should have "explain[ed] in meaningful detail ... the basis for" the alleged infeasibility of the reduced-size alternative. (*Laurel Heights Improvement Assn. v. Regents of University of California, supra*, 47 Cal.3d 376, 405, 253 Cal.Rptr. 426, 764 P.2d 278.)

Neither the FEIR nor the administrative record contains any meaningful detail or independent analysis of the validity of Lowe's claim that the reduced-size alternative is infeasible, and the City Council made no specific finding validating that claim. On this record, the trial court correctly held that the City's rejection of the reduced-size Lowe's alternative cannot be upheld.

(*Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1356–1357.)

Also, the RDEIR notes that the Reduced Alternative 2 and the Agriculture Protection Alternative 3 do not "fully" meet the City's identified objectives. (RDEIR, p. 5.0-25.) For reasons noted earlier, this remark is misleading and irrelevant in light of the improper and legally inadequate objectives for purposes of CEQA. This comment in the RDEIR is also misleading since it presumes that CEQA requires that Alternatives meet *all* of the Project objectives, whereas it is sufficient for CEQA that Alternatives meet "most" of the Project objectives. (CEQA Guidelines § 15126.6(a)&(c); see also, *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1354 ["A potential alternative should not be excluded from consideration merely because it "would impede to some degree the attainment of the project objectives, or would be more costly." (Guidelines, § 15126.6, subd. (b).) "The range of potential alternatives to the proposed project shall include those that could feasibly accomplish *most of the basic*

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objectives of the project and could avoid or substantially lessen one or more of the significant effects.”.)

In sum, the RDEIR fails to provide a genuine reduced alternative to meet CEQA’s mitigation goals and provide a meaningful and accurate analysis.

3. Agriculture Protection - Alternative 3

The Recirculated Draft EIR’s *third* Alternative is the Agriculture Protection Alternative, which proposes a 50% reduction of the Project’s *footprint* only to allow more agricultural uses to remain, but the Project does not get smaller. Instead, the Project gets vertical – i.e., proposes *two-story* warehouses and buildings. The RDEIR’s description of this Alternative states:

Development of the proposed Project would result in the **permanent conversion of 158.6 acres of Prime Farmland, 259.3 acres of Farmland of Statewide Importance, and 4.3 acres of Unique Farmland.**

Under this alternative, the proposed Project would be developed with the same components as described in the Project Description, but the **size** of the **industrial and commercial areas** would be **reduced** resulting in an **increase** of **undeveloped** land beyond the Reduced Project Alternative. The commercial and industrial uses would be **two-story** in order to reduce the developed area **footprint** by approximately **50 percent** while providing the same square footage as the Project. The 11.0-acre commercial area would be reduced to 5.5 acres, the 298.0-acre industrial area would be reduced to 149.0 acres, and the 54.0-acre open space area would be reduced to 27.0 acres. The total acreage dedicated to the proposed Project would be reduced by approximately 50 percent. The total acreage developed would be 211.11 acres, with **211.11 acres remaining in its current state.** The **211.11 acres which would not** be included in the development area for this alternative would be located in the **western portion** of the site in order to ensure continued preservation of **French Camp Slough**. Because the development areas would be contained within the eastern half of the Project site, the UPRR would not be utilized under this alternative.

(RDEIR, p. 5.0-4, *emph. added.*)

Just like the Alternative 2, the RDEIR’s description of Alternative 3 is misleading and inaccurate in that it relies on legally improper Project objectives.

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Moreover, the RDEIR's analysis of this Alternative 3 is erroneous as it presumes that the Project's Prime Farmland and Farmland of Statewide Importance will indeed continue to be the same where massive industrial uses are proposed in the immediate vicinity, including but not limited to refrigerator uses and heavy traffic.

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Moreover, because the RDEIR fails to disclose the residential uses in the southern part, the discussion of this Alternative also utterly fails to account for impacts of this Alternative on people in the vicinity.

In sum, the RDEIR's Agriculture Protection Alternative is based on flawed assumptions and omissions and fails CEQA's purpose of mitigation of impacts.

4. The EIR Fails to Include an Adequate Range of All Feasible Alternatives.

As our Supreme Court noted:

The process of selecting the alternatives to be included in the EIR begins with the establishment of project objectives by the lead agency. "A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings.... The statement of objectives should include the underlying purpose of the project." (Cal.Code Regs., tit. 14, § 15124, subd. (b).)

(*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1163 [*"In re Bay-Delta"*].)

"Objectives chosen should be broad enough to permit a reasonable range of alternatives. (Cit. omit.)" (*California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 273–274.)

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At the same time, an EIR should be found legally inadequate if it contains an overly narrow range of alternatives. (*Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087 (*"Watsonville"*) [not considering a reduced development alternative was error].) "The purpose of an EIR is not to identify alleged alternatives . . . so that these alleged alternatives may be readily eliminated." (*Id.*) An EIR's failure to analyze a reduced alternative is a CEQA violation. (*Id.* at 1090.)

For all reasons described above, the RDEIR here does not include an adequate range of all feasible alternatives to the Project. As mentioned earlier, the RDEIR offers only a 25% reduction, without explaining why a bigger reduction was not offered in the range of alternatives. At the same time, the RDEIR admits that the reduced alternative

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will still have impacts and, on some levels, reduces the Project's impacts only "slightly".

As such, the RDEIR fails to provide an *adequate range of alternatives* that would significantly either eliminate or reduce the Project's impacts and fails CEQA's mitigation mandates.

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5. The RDEIR Fails to Show the Infeasibility of Alternatives.

The RDEIR's discussion of alternatives is also lacking as it fails to show that it considered and rejected other alternatives (including a much more reduced alternative) but found that such alternatives were infeasible. Notably, CEQA requires that agencies identify *all feasible* alternatives and not approve any project with significant impacts unless *all feasible* alternatives and *all feasible* mitigation measures have been identified. (See, *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 751–752 ["Board must state *why* the alternative is infeasible." (Emph. orig.)]; Pub. Res. Code § 21002 [agency cannot approve a project if feasible alternatives are available].)

As courts noted:

The discussion must 'focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, **even if** these alternatives would **impede** to some degree the **attainment** of the **project objectives**, or would be **more costly**.' (Guidelines, § 15126⁵, subd. (d)(3).)" (*Kings County Farm Bureau v. City of Hanford*, *supra*, 221 Cal.App.3d at p. 733, 270 Cal.Rptr. 650.)

This discussion of alternatives must be "meaningful" and must "contain analysis sufficient to allow informed decision making." (*Laurel Heights*, *supra*, 47 Cal.3d at pp. 403–404, 253 Cal.Rptr. 426, 764 P.2d 278.) The decision to require mitigation measures does not remove the need to consider project alternatives in the EIR. (*Id.* at pp. 401–402, 253 Cal.Rptr. 426, 764 P.2d 278.) Because the FEIR's discussion of alternatives is "lacking in any concrete information or analysis," it fails to meet this standard.

(*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 735, *emph. added*.)

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⁵ Now, Guidelines § 15126.6.

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Also, as noted earlier, CEQA does not require that Alternatives achieve *all* of the Project's objectives. Instead, it is sufficient that Alternatives achieve *most* of the Project's objectives – assuming, of course, those objectives are also neither too broad nor too narrow, as discussed above. (CEQA Guidelines § 15126.6(a)&(c).)

Here, the Recirculated Draft EIR fails to identify *any* alternative, including a bigger reduced alternative, and explain why those are infeasible. At the same time, it is obvious that the majority of the Project's impacts are related with the proposed mass and scale of the Project and can, therefore, be avoided or significantly mitigated with reduced scope alternatives. As such, the EIR improperly leaves out potentially feasible Alternatives and neither studies those nor rules those out.

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Also, to the extent the City views the No Project alternative as infeasible, the City fails to show *why* it is infeasible. The No Project alternative will meet not only the City's needs (one of objectives) but also the State's needs in preserving the agricultural uses and Prime Farmland.

Similarly, the RDEIR fails to show the infeasibility of the No Project alternative. As described by the Court in an analogous situation, such infeasibility *must* be shown:

Lastly, Appellants contend that all the County's stated reasons fail to "demonstrate[] that the no project alternative is infeasible," reasoning, it appears, that the County's stated reasons are flawed because they are premised on the EIR's unreasonably narrow project objectives. We agree, as mentioned, that the offered project objectives were unreasonably narrow. We also agree that this affected the County's analysis of the no-project alternative and that the County, for this reason, will need to redo its analysis.

(*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 692-694, esp. 694.)

In addition, the RDEIR fails to propose *alternatives* with different types of *industrial or commercial uses* on the 422.22 acres of land, which could be more environmentally friendly as compared with the proposed heavy industrial uses of warehouses. Neither does the RDEIR show that such alternative uses would be infeasible at the Project site.

Alternatives "shall include those that could feasibly accomplish *most* of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects." (CEQA Guidelines § 15126.6(a)&(c), *emph. added*) "[T]he discussion of alternatives shall focus on alternatives to the project or its location which

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are capable of avoiding or substantially lessening any significant effects of the project...” (CEQA Guidelines § 15126.6(b).)

Public agencies must refrain from approving projects with significant environmental impacts if there are feasible alternatives that can substantially lessen or avoid those effects. (*Uphold Our Heritage, Town of Woodside* (2007) 147 Cal.App.4th 587, 597.) And, feasible for purposes of CEQA means “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.” (PRC § 21061.1.)

Also notably, with respect to *economic* factors, “[t]he fact that an alternative may be *more expensive* or *less profitable* is *not sufficient* to show that the alternative is financially infeasible. What is required is evidence that the *additional costs* or *lost profitability* are *sufficiently severe* as to render it *impractical* to proceed with the project.” (*Uphold Our Heritage, supra*, 147 Cal.App.4th at 599, *emph. added* (stating also that “the question is not whether [real party] can afford the alternative, but whether the marginal costs of the alternative as compared to the cost of the proposed project are so great that a reasonably prudent property owner would not proceed with the rehabilitation”).)

In light of the above-noted settled law and legal principles, the City’s failure to identify *all* feasible alternatives in the RDEIR or explain why other alternatives, including a further reduced alternative or the no project alternative are infeasible, makes the RDEIR legally inadequate under CEQA and also bars the City from approving the Project with numerous significant and unavoidable impacts and with a statement of overriding considerations. (See, PRC § 21001 [“The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects...”]; PRC § 21001(b) [“Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.”])

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6. The RDEIR Fails to List a *Preferred* Alternative.

An EIR’s discussion of alternatives should also present a *preferred alternative* for the City. The RDEIR’s discussion of alternatives is incomplete as it fails to identify such a *preferred* alternative, while providing a number of inaccurately-described alternatives.

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While the RDEIR mentions that the No Build/No Project Alternative 1 and also the Reduced Alternative 2 would be the environmentally superior alternatives (RDEIR, p. 5.0-25), it also lists that the Alternative 2 fails to meet the Project's objectives, leaving the public in doubt as to which *one* of the Alternatives, if at all, is the *preferred alternative* or whether any one of those is a preferred alternative at all. We also note that a *preferred* alternative is not the same as the *environmentally superior* one.

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As in *Wasboe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 288-289 ("*Wasboe Meadows*"), the RDEIR here with its three alternatives presents a "moving target" (*id.*) typical of a scoping plan, which usually has to be prepared before the EIR is drafted.

In view of the above-noted, the EIR's range and discussion of alternatives are legally inadequate and missing critical information, and the EIR must be recirculated to provide a preferred alternative and an accurate range of all feasible alternatives as detailed above, to allow a meaningful evaluation and mitigation of impacts.

D. The Draft EIR's Cumulative Impact Analysis Is Understated.

The Recirculated DEIR's **cumulative impacts** analysis is also fatally flawed. It claims: "The cumulative setting uses growth projections listed in the general plan, municipal services review, other planning documents and Department of Finance statistics. Table 4.0-1 shows *growth* projections." (RDEIR, p. 4.0-2, *emph. added.*) And the referenced Table 4.0-1 shows the *population* growth in the City, County, and California in general, as shown in the RDEIR screenshot below:

TABLE 4.0-1: GROWTH PROJECTIONS

CALENDAR YEAR	ESTIMATED POPULATION (STOCKTON)	ESTIMATED POPULATION (SAN JOAQUIN COUNTY)	ESTIMATED POPULATION (CALIFORNIA)
2020	318,522	766,644	40,619,346
2025	352,239	822,755	42,373,301
2030	374,939	893,354	44,085,600
2035	401,961	966,889	45,747,645
2040	432,627	1,037,761	47,233,240

SOURCES: CITY OF STOCKTON (2016), DEPARTMENT OF FINANCE (2020), UNIVERSITY OF THE PACIFIC (2016).

(RDEIR, p. 4.0-2, highlighting added)

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Furthermore, the RDEIR belabors that there are two ways to analyze the Project's impacts – by the *list* method (looking at the list of related projects) or by the *projection* method (RDEIR, p. 4.0-3.) And the RDEIR again claims it uses the *projection* method.

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While an agency has significant discretion to choose its methodology in analyzing impacts, such discretion is not unbridled and immune to challenges where it, as here, obfuscates critical details and leaves out critical information for purposes of CEQA analysis. Specifically, CEQA mandates that agencies consider the cumulative impacts of the Project from past, present, and reasonably foreseeable future projects. (CEQA Guidelines § 15130(b)(1).) But CEQA also mandates that an element in the EIR be “(5) A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project’s contribution to any significant cumulative effects.” (CEQA Guidelines § 15130(b)(5).)

In light of the CEQA provisions, the RDEIR’s reliance on the City’s, County’s, and State’s *population growth* projections here is improper since the Project is not a *residential* project and also since, unlike other commercial or industrial projects, the Project will be distinct in that it will bring *heavy industrial* uses to the area. But, by relying solely on the unrelated *population growth projections*, the RDEIR fails to reasonably and meaningfully consider the Project’s cumulative impacts along with all other *warehouses* and similar *heavy industrial uses* in the City or in the area that have been overdeveloped with warehouses, as evidenced by numerous public comments to the EIR (which we incorporate by reference herein). Indeed, our search of the Stockton area revealed numerous warehouses. (**Exhibit I** [Map of Warehouses in Stockton].) And the public comments and objections against the overdevelopment of the City with warehouses is supported by the fact that other warehouses are being added to the City, such as the South McKinley Avenue East Industrial Project of 184,166 square-foot industrial building for warehouse and office use. (**Exhibit J** [Notice of Completion of Initial Study for the Project].)

The result of the City’s erroneous methodology is a largely uninformative and understated cumulative impact analysis in the RDEIR which fails to accurately inform the decisionmakers on the *severity* of the Project’s impacts beyond simply claiming that the cumulative impacts of the Project will be significant and unavoidable. CEQA Guidelines 15130(h) provides: “The **discussion** of cumulative impacts **shall** reflect the **severity** of the impacts **and** their **likelihood** of **occurrence**... The discussion should be guided by the standards of **practicality** and **reasonableness**...” (Emph. added.)

The RDEIR’s reliance on *population growth projection* methodology failed the above-noted mandate since its discussion of the cumulative impacts failed to accurately identify the whole *severity* of the impacts of the Project along with similar warehouse projects in the

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area, and was, therefore, not guided by the standards of practicality and reasonableness. (See also, CEQA Guidelines § 15064.4(c) [“A lead agency may use a model or methodology to estimate greenhouse gas emissions resulting from a project. The lead agency has discretion to select the model or methodology it considers most appropriate to enable decision makers to intelligently take into account the project’s incremental contribution to climate change. The lead agency *must support* its selection of a model or methodology with substantial evidence. The lead agency *should explain* the limitations of the particular model or methodology selected for use.” (Emph. added.)])

As the Court held in an analogous case:

Commission failed to interpret the requirements of a cumulative impact analysis so as to afford the fullest possible protection to the environment. Instead, the Commission abused its discretion by giving such requirements an unreasonably narrow scope, thereby omitting information that it would have been both reasonable, feasible and practical to include. As a result of this omission, the EIRs “provide[d] neither the responsible agency nor the public with the type of information called for under CEQA.” (*Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 411 [151 Cal.Rptr. 866].)

Given these findings, we are compelled to conclude that the trial court erred in its findings concerning the reasonableness of the standards used and projects included in the Commission’s cumulative impact analyses

(*San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 81–82.)

For these reasons, too, the RDEIR is fatally flawed as it failed to accurately inform on the *severity* of the Project’s cumulative impacts with all other related and relevant projects, including warehouses.

E. The Recirculated Draft EIR’s Impact and Mitigation Analysis and Findings Are Legally Inadequate and Unsupported.

First and foremost, for reasons mentioned earlier, the RDEIR’s impact analysis and conclusions are flawed *ab initio*, including because the RDEIR fails to provide an accurate project description, an accurate baseline, or an accurate and adequate range of all feasible alternatives.

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Second, the RDEIR's impact and mitigation analysis is flawed as it fails to conduct proper *studies* and instead defers such studies until after the Project is approved and the agricultural uses "cease" on the Project site:

The Project site is not associated with any **existing hazardous materials** spills; however, **after agricultural operations cease**, and **development is anticipated to occur**, the **applicant or future project proponent** would be **required to hire a qualified consultant** to perform site-specific **soil sampling** to determine if **chemicals of potential concern** associated with the **historical agricultural** uses at the Project site are **present** in shallow soil at **concentrations** that would **pose a threat to human health**. If results of the soil sampling identify concentrations of hazardous materials exceeding appropriate ESLs for the future site-specific use, **on-site remediation** would be **required** in coordination with the San Joaquin County Department of Environmental Health.

(RDEIR, p. 4.0-12, *emph. added*.)

But CEQA does not allow such deferred studies or mitigation of impacts.

Moreover, the RDEIR's above-quoted passage contains unsupported claims. For example, it understates the actual hazards of the Project by claiming there are no hazardous spills on the Project Site. This claim is belied by the fact that the Project site *may* have spills due to the gas wells on site. As stated by the state agency's comment: "No well work may be performed on any oil or gas well without written approval from CalGEM in the form of an appropriate permit. This includes, but is not limited to, mitigating **leaking fluids or gas from abandoned wells**..." (RDEIR, pdf p. 621, *emph. added* [Letter of Department of Conservation on the Project's Initial Study].)

Also, the RDEIR does not explain why studies could not be performed for purposes of the CEQA. CEQA does not allow to *defer* studies of impacts to a later time without showing any impracticality and infeasibility.

Moreover, that the Project site may have contaminated soil due to heavy agricultural uses is reasonably foreseeable, since agricultural uses involve pesticides and various chemicals.

As described by environmental assessment experts:

Agricultural use of pesticides should be part of an overall pest management strategy which includes biological controls, cultural methods, pest monitoring and other applicable practices. When a pesticide

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is needed its selection should be based on effectiveness, toxicity to non-target species, cost, and site characteristics, as well as its solubility and persistence. An important purpose of the pesticide container label is to instruct users to apply the pesticide safely and with minimum threat to non-target species, both on and off the application site. Pesticide users assume responsibility to follow label instructions. It is unsafe and unlawful not to do so. A requirement of an environmental risk assessment is to consider properties, not only adjacent to the subject property, but those within one mile upstream in the direction of the flow of the groundwater, as well as any surface water flow from any direction that flows on or nearby the subject property. It is important that in addition to present land uses, research be done on a 30 year land use basis where agricultural, commercial and, industrial uses could possibly have occurred.

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(Exhibit G, p. 7/pdf p. 9 [Phase I Environmental Site Assessment for Agricultural Projects, by Environmental Assessment Association]⁶.)

As the passage above shows, pesticides are absolutely critical to study in order to identify not only the Project's hazards impacts but also the Project's impacts on hydrology and water quality, where, as here, the Project is proposed close to waterways. (See, RDEIR, p. 4.0-14 ["The proposed Project, along with several of the related projects within the City of Stockton, would ultimately discharge stormwater runoff to the nearby Delta waterways. This would potentially degrade the water quality of the system"])

Third, and as related, the RDEIR is legally inadequate as it relies on an unenforceable and also improperly deferred mitigation measure relying on future studies in a Project-specific EIR. The RDEIR provides:

Mitigation Measure 3.8-2 provides a **requirement** for future developments within the subdivided lots to conduct **site-specific soil sampling** to determine **if chemicals of potential concern** associated with the historical agricultural uses at the Project site are present in shallow soil at concentrations that would pose a threat to human health. This **sampling should** be performed **after agricultural operations** cease, and development is anticipated to occur. **If** results of the soil sampling identify concentrations of hazardous materials exceeding appropriate ESLs, on-

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⁶ See also available at: http://www.eaa-assoc.org/documents/Phase_I_Environmental_Assessment.pdf

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site remediation would be required in coordination with the San Joaquin County Department of Environmental Health.

Implementation of Mitigation Measure 3.8-2 would ensure the redevelopment of the active agricultural land would not result in accidental release of or exposure to hazardous materials.

(RDEIR, p. 3.8-19, cmph. added.)

The RDEIR's above-quoted passage violates CEQA in several ways. Specifically, it provides for improperly *deferred mitigation* or, more precisely, a *deferred study* of soil samples. CEQA prohibits deferred mitigation where, as here, there is no practical hardship in testing the soils for contamination or level of concentration.

Also, the above-quoted passage presumes that further *project-specific* studies will occur when the specific lots get developed in the Project site. While such presumption could be proper in a *program-level* EIR (which is typically followed with project-specific EIRs), it is entirely improper in a *project-level* EIR, where CEQA review ends, as here. Stated differently, the RDEIR here *ends* CEQ review for the entire Project area as it, by definition, purports to provide a specific *project-level* analysis. CEQA does not contemplate that a Project-level EIR will be followed by further EIRs.

And lastly, the RDEIR's mitigation measure of hazards impacts, if at all, only guarantees a *study* but not *mitigation*. Specifically, it is only "If results of the soil sampling identify concentrations of hazardous materials exceeding appropriate ESLs, on-site remediation would be required in coordination with the San Joaquin County Department of Environmental Health." (*Id.*; see also, RDEIR, p. 4.0-12: "the **applicant or future project proponent** would be **required to hire a qualified consultant** to perform site-specific **soil sampling** to determine if **chemicals** of **potential concern** associated with the **historical agricultural** uses at the Project site are **present** in shallow soil at **concentrations** that would **pose a threat to human health**."") As such, mitigation will occur, if at all, only if the Project proponent's expert performs the required testing and discloses the true results of the soil testing.

Notably, there is no requirement that the Project Applicant account for the soil sampling results to anyone in the City. And ultimately, as the RDEIR provides, it would be upon the Project proponent's expert to decide "if" the soil samples identify concentrations of hazardous materials that exceed the "appropriate" ESLs to trigger or require any on-site remediation. This kind of arrangement where the City will not guarantee that mitigation will occur is also improper under CEQA *even* when, unlike

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here, deferred mitigation is proper upon showing of impracticality or infeasibility of earlier studies of the site.

Specifically, under CEQA Guidelines § 15126.4(a)(1)(B):

(B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified.

Formulation of mitigation measures **shall not** be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is **impractical or infeasible** to include those details during the project's environmental review **provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.** Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.

(Emph. added.)

The RDEIR's mitigation measures, including those for hazards, improperly defer mitigation without a showing of impracticality or infeasibility to conduct the necessary study before the Project is approved and also without meeting the conditions identified under CEQA Guidelines section 15126.4, *supra*, including that the agency commits itself to mitigation, and that the RDEIR and mitigation measure provides specific performance standards to measure the success of mitigation and identifies the types of specific actions to reach such performance standards.

As yet another example of inadequate disclosures of hazards and associated impacts in the RDEIR is the existence of oil and gas wells on the Project Site. As the Department of Conservation's comment to the Project's Initial Study provides:

The attached maps show the location of **two gas wells** that are plugged and abandoned. The **first well** is the Reynolds and Carver "Nielsen" 1 (API 0407720021), drilled and abandoned in 1967. The **second well** is the Westates Expl. Co. "Nielsen" 1 (API 0407720098), drilled and abandoned in 1969. Based on the project map submitted, the wells are

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within the construction area. No other wells impact or are impacted by the proposed work. Note that the Division has not verified the actual location of the well.

(RDEIR, pdf p. 621 [Department of Conservation’s Comment of October 20, 2020].)

The Department of Conservation further explains that even abandoned wells present danger and recommends to allow access to those at all times. (*Ibid.*) And yet, the RDEIR is silent on that issue in its analysis of the Project’s hazards impacts or related mitigation *despite* acknowledging that hazards from the gas and oil well were one of concerns identified by the public and agencies: “Aspects of the proposed project that could be of public concern include the following: • Impacts associated with development near oil and gas wells...” (RDEIR, p. 1.0-9.)

Notably, despite the indisputable hazards on the Project Site, including historic agricultural uses with pesticides and chemicals, as well as the presence of gas wells in the area making the Project site not only a candidate for contamination but also a fire hazard, the RDEIR concludes that the Project will not have significant hazard impacts.

The above-noted examples of understated and unmitigated hazards impacts are only illustrative of the RDEIR’s inadequate impact and mitigation analysis. The noted examples of understated and unstudied hazards impacts are also directly associated with the Project’s other impacts, such as air quality, biological resources, hydrology/water quality, greenhouse gas emissions, transportation, and even location or feasibility of the rail or location of warehouses on the Project Site atop the gas wells.

For all of the noted reasons, the RDEIR fails its good-faith disclosure, information, accountability, and mitigation duties under CEQA and improperly defers mitigation.

F. The Project Does Not Qualify for a Statement of Overriding Considerations Since the City Failed to Apply All Feasible Mitigation Measures and All Feasible Alternatives and Since the Project’s Impacts Were Understated.

The RDEIR suggests that the Project qualifies for a Statement of Overriding Considerations (“SOC”) for all the significant and unavoidable impacts. Such an SOC, however, will be improper. First, the RDEIR fails to demonstrate that impacts are truly unavoidable since it fails to either identify *all* of the Project’s impacts and their *severity* or to apply *all feasible* mitigation measures.

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Second, the RDEIR fails to show that the Project is consistent with other state laws, such as the State and Planning Law's critical mandate to consider the environmental justice and impact of Projects on the disadvantaged communities. CEQA does not allow or contemplate that economic considerations outweigh Project impacts where, as here, the Project violates state laws and critical planning, air and GHG state goals and policies. (PRC § 21002.1(c) ["(c) If economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at the discretion of a public agency **if the project is otherwise permissible under applicable laws and regulations.**" (Emph. added.)])

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For these reasons, too, the Project has no adequate CEQA clearance and cannot be approved with an RDEIR or with an SOC.

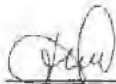
IV. CONCLUSION

In view of the above-noted concerns, we respectfully request that the RDEIR be revised and recirculated to include the omitted information and to provide meaningful analysis, identification, and mitigation of impacts as CEQA requires. We also request that proper and timely soil testing and identification of the exact locations of gas wells, as well as identification of all remediation and mitigation measures be provided in the RDEIR for public review and comment before the Project or any part of it can be approved or the RDEIR can be certified as complete. "CEQA contemplates *serious* and not superficial or pro forma consideration of the potential environmental consequences of a project." (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1347, 272 Cal.Rptr. 372; emphasis added; *Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 593, fn. 3.) The RDEIR here fails to provide such serious consideration of the Project's impacts.

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If the City has any questions or concerns, please feel free to contact my Office.

Sincerely,



Naira Soghatyan
Attorneys for Carpenters
Local Union #152

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Attached:

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (**Exhibit A**);

Air Quality and GHG Expert Paul Rosenfeld CV (**Exhibit B**);

Air Quality and GHG Expert Matt Hagemann CV (**Exhibit C**);

19-2338 Updated Site Plan (2020_10-26) (City's PRA Production) (**Exhibit D**)

11/10/2021 Email from Project Proponent (City's PRA Production) (**Exhibit E**);

12/14/2021 San Joaquin Valley Air Pollution Control District's Comment Letter (**Exhibit F**);

EAA Phase I Environmental Site Assessment for Agricultural Properties download (**Exhibit G**);

Gas Wells on the Property Site (**Exhibit H**);

Printout of Stockton's Map of Warehouses (**Exhibit I**); and

Notice of Completion of the Initial Study/MND on South McKinley Avenue East Industrial Project (**Exhibit J**).